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Bibliotheca & City of Coppell
Sales Agreement

Effective: July [   ], 2016

Sales Agreement

THIS AGREEMENT is made and entered into this ____ day of July, 2016, by **Bibliotheca, LLC**, a corporation in the State of Delaware, USA, with offices at 3169 Holcomb Bridge Rd., Ste. 200, Norcross, Georgia 30071 and 403 Hayward Ave. North, Oakdale, MN 55128 (hereinafter referred to as "Bibliotheca") and **The City of Coppell, Texas**, a Texas home-rule municipality located at 255 E. Parkway Blvd., Coppell, TX 75019 (hereinafter referred to as "Customer") (collectively, the "Parties").

RECITALS

WHEREAS, Customer desires to implement Radio Frequency Identification (RFID) systems on the premises of Customer's William T. Cozby Public Library, located at 500 Southwestern Blvd, Coppell, TX 75019, and;

WHEREAS, Bibliotheca is willing to provide such products and services that together comprise the system(s) listed above and is willing to provide such products and services pursuant to all the terms and conditions in the Agreement;

NOW THEREFORE, in consideration of the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bibliotheca and Customer have agreed and do hereby enter into this Agreement according to the provisions set forth herein:

I. **AGREEMENT DOCUMENTS**:

 1. The Agreement Documents shall include the documents identified herein. Every provision of the Agreement Documents below is incorporated into this Agreement by reference. The Agreement Documents referenced below are in descending order of precedence.

    A. This Agreement;

    B. Customer's RFP #0138 entitled "Cozby Library and Community Commons Radio Frequency Identification Conversion," including all addendums and/or amendments issued by the Customer; and,

    C. Bibliotheca's response to Customer's RFP #0138, as amended by all Best and Final Quotes, Letters of Clarification, and Specifications ("Bibliotheca's Response to RFP #0138").

 2. In the event there exists a conflict in interpretation, the documents shall control in the order listed above. These documents shall be referred to collectively as "Agreement Documents."

II. **TERM AND TERMINATION**

 1. Term

    A. The Effective Date of commencement of this Agreement shall be the date indicated above. The Term of this Agreement shall begin on the Effective Date and shall extend for the length of the term outlined below, unless terminated earlier under one of the termination provisions contained in this Agreement.

    B. The Initial Term of this Agreement shall be for a period commencing on the date of execution of all of the Parties hereunder (the "Effective Date") and shall continue for a period of five (5) years as measured from the Go Live Date, with the first year warranty

outlined in Exhibit 2 commencing on the Go Live Date. "Go Live Date" means, with respect to Bibliotheca Software license orders, the date on which the Software is available for operational use for normal daily business, including performing core functions for which it was intended. Support and Maintenance, which shall be provided under the terms and conditions set forth in Exhibit 3, shall be provided on an annual basis commencing on the Go Live Date. The Parties acknowledge that the fee for Support and Maintenance services are included in the first two (2) years after the Go Live Date and that payment of the annual Product Support and Maintenance Fee will commence in the third year following the Go Live Date at the following rates: Year 3: $19,559.00, Year 4: $20,146.49, and Year 5: $20,750.88. Said fees for Support and Maintenance shall be paid in 12-month installments as measured from the Go Live Date.

C. Customer shall have the option to renew this Agreement for additional one (1) year terms after the Initial Term or any extended terms thereafter for the purpose of extending the Support and Maintenance services unless 60 days prior to termination notification is received in writing to accounts-us@bibliotheca.com. Following the Initial Term of this Agreement, Support and Maintenance, and subscription fees may be subject to annual increases.   Bibliotheca shall provide written notice of the fee schedules to be charged to Customer no less than 90 days prior to the end of the Initial Term or the applicable extended term.

2. Termination

A. This Agreement may be terminated by Customer upon ninety (90) days written notice to Bibliotheca should Bibliotheca fail to perform in accordance with all the terms of this Agreement.

B. Notwithstanding Clause A herein, Bibliotheca shall have right to redress, with thirty (30) days to remedy the issue(s) from the date of notification from the Customer.

C. Regardless of reason for termination, Customer is responsible for payment for all products and services delivered according to the terms and conditions of this Agreement up until the date of termination of this Agreement.

III. **DUTIES OF BIBLIOTHECA**
1. Bibliotheca agrees to provide the products and services (hereinafter collectively referred to as the "Work") as listed in its Bibliotheca's Response to RFP #0138 (Exhibit 1).

2. Bibliotheca shall comply with all local laws, ordinances, and regulations bearing on the performance of the Work.

3. Bibliotheca shall enforce good order and discipline among its employees and subcontractors, if any, and shall keep work areas reasonably free from waste materials and rubbish resulting from its operations.

4. Bibliotheca shall deliver products and perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

5. Bibliotheca will have the authority to act on behalf of the Customer only to the extent provided in this Agreement unless otherwise agreed to by the Parties as modified by written amendment.

6. Bibliotheca will supply Customer with written invoices according to the payment schedule specified in the Agreement or, if not specified, following shipment of products to the Customer. Customer shall provide Bibliotheca with a sales tax exemption certificate.

7. Bibliotheca agrees that title to all Work covered by an invoice for payment will pass to the Customer upon receipt of such payment.

8. Bibliotheca warrants all products provided under this Agreement in accordance with the warranty attached hereto as Exhibit 2.

9. Bibliotheca agrees to support and maintain products during the first and second years of operation in accordance with document entitled Terms and Conditions of Support and Maintenance (Exhibit 3).

10. Following the second year, Bibliotheca agrees to continue to support and maintain products supplied under this Agreement for the period(s) specified in the Product Maintenance and Lifespan Policy (Exhibit 4), on a year by year basis, contingent upon the Customer's payment in advance for such Support and Maintenance.

11. Bibliotheca represents that in the performance of the work, duties, and obligations assumed by it under this Agreement that it is acting and performing as an independent contractor and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the Customer.

12. **CUSTOMER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE WORK PERFORMED BY BIBLIOTHECA PURSUANT TO THIS AGREEMENT. BIBLIOTHECA HEREBY WAIVES ALL CLAIMS AGAINST CUSTOMER, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CUSTOMER") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON TO THE EXTENT ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CUSTOMER OR BREACH OF CUSTOMER'S OBLIGATIONS HEREUNDER. BIBLIOTHECA AGREES TO INDEMNIFY AND SAVE HARMLESS CUSTOMER FROM AND AGAINST LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY BIBLIOTHECA'S NEGLIGENT PERFORMANCE OF WORK UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF BIBLIOTHECA, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CUSTOMER, IN WHOLE OR IN PART, IN WHICH CASE BIBLIOTHECA SHALL INDEMNIFY CUSTOMER ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO BIBLIOTHECA AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). BIBLIOTHECA'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY BIBLIOTHECA UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

13. **Intellectual Property**. BIBLIOTHECA SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY CUSTOMER, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM ANY LOSS OF ANY KIND BASED ON A CLAIM THAT THE SERVICES PERFORMED, OR PRODUCTS PROVIDED HEREUNDER, INCLUDING MATERIAL(S) OR ANY PART THEREOF, CONSTITUTES INFRINGEMENT OF ANY PATENT, TRADEMARK, TRADE-NAME, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF THE MANUFACTURE, SALE OR USE OF SUCH WORK, PRODUCTS OR MATERIALS. SUCH INDEMNIFICATION SHALL INCLUDE ALL DAMAGES AND COSTS INCURRED BY CUSTOMER AS THE RESULT OF THE CLAIM, INCLUDING ATTORNEY FEES AND EXPERT WITNESS FEES. BIBLIOTHECA FURTHER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY DEMAND FOR PAYMENT FOR THE USE OF ANY PATENTED MATERIAL, PROCESS, DEVICE, ARTICLE, TRADEMARK, TRADE-NAME, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT THAT MAY RESULT FROM THE WORK OR MATERIALS COVERED BY THIS AGREEMENT. PROVIDED, THE FOREGOING INDEMNITY SHALL NOT APPLY IF THE CLAIM RESULTS FROM DELIVERABLES THAT AS FURNISHED BY BIBLIOTHECA TO CUSTOMER DO NOT INFRINGE UPON ANY U.S. LETTERS PATENT OR COPYRIGHT AND (1) CUSTOMER'S ALTERATION OF A DELIVERABLE, SUCH THAT SAID DELIVERABLE IN ITS ALTERED FORM INFRINGES UPON ANY PRESENTLY EXISTING U.S. LETTERS PATENT OR COPYRIGHT; OR (2) THE USE OF A DELIVERABLE IN COMBINATION WITH OTHER MATERIAL NOT PROVIDED BY BIBLIOTHECA WHEN SUCH USE IN COMBINATION INFRINGES UPON AN EXISTING U.S. LETTER PATENT OR COPYRIGHT; OR (3) THE USE OF A DELIVERABLE IN A MANNER MATERIALLY INCONSISTENT WITH THE SPECIFICATIONS PROVIDED BY BIBLIOTHECA.

14. Bibliotheca shall furnish and maintain during the life of the Agreement adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

Type of Insurance	Amount
Worker's Compensation	As set forth in the Worker's Compensation Act
Commercial General	$1,000,000 each Accident/Occurrence
Liability (Public)	$1,000,000 Aggregate $1,000,000 Products & Completed Operations Aggregate
Owner's Protective Liability Insurance	$600,000 per occurrence $1,000,000 aggregate
Excess/Umbrella Liability	$1,000,000 per occurrence W/drop down coverage
Endorsement CG 2503	Amendment Aggregate Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project
Automobile Liability	$500,000 Combined single limit per occurrence

IN ADDITION, PRIOR TO PERFORMING ANY WORK OR DELIVERING ANY PRODUCTS UNDER THIS AGREEMENT, BIBLIOTHECA SHALL OBTAIN AND FILE WITH CUSTOMER A STANDARD CERTIFICATE OF INSURANCE AND APPLICABLE POLICY ENDORSEMENT EVIDENCING THE REQUIRED COVERAGES AND NAMING CUSTOMER AS AN ADDITIONAL INSURED ON THE REQUIED COVERAGE.

IV. **DUTIES OF CUSTOMER**

1. Customer will inspect all products immediately upon delivery, noting damage to external packaging and/or contents on the delivery receipt or bill of lading. Customer will immediately notify Bibliotheca of any apparent damage. Customer understands that failure to immediately report damage may result in the inability to file claims with the shipper or insurance companies. If claims with the shipper or insurance companies are denied as a result of Customer's delayed reporting of damage to Bibliotheca, the customer agrees to repair the equipment at customer cost.

2. Customer will issue purchase orders to Bibliotheca in writing for the products and services listed in Exhibit 1, noting desired delivery dates that will not be earlier than sixty (60) days following receipt of the purchase order by Bibliotheca.

3. Customer will be prepared to receive products from the date of its purchase order. The specific date for delivery and commencement of installation shall be agreed upon in consultation between the Customer and Bibliotheca. Should Customer, due to delays in construction or for any other reason, not be prepared to accept delivery on or before the stated desired delivery date on the purchase order, Bibliotheca will delay without penalty the shipment of product for up to two weeks following that date, as long as no cost-incurring changes are required in the Bibliotheca technician's installation schedule. If, after two weeks following the stated desired delivery date, Customer is still not ready to accept delivery, Bibliotheca will invoice Customer according to the percentages below and delay shipment of the products on condition that the Customer remit payments as if shipment and installation had taken place at the latest possible dates that fall within this two week period: 35% of the total contract seven days following the date of the delivery specified on the purchase order and 15% fourteen days following the date of delivery specified on the purchase order. In all cases, Customer will be fully responsible for all costs incurred by Bibliotheca as a result of a change in the Bibliotheca technician's installation schedule. Furthermore, as Bibliotheca will be required to store the equipment until Customer accepts delivery, Customer will be charged 0.5% of the purchase price of the system and/or products each month until system and/or products are shipped and accepted by Customer.

4. Customer will accept delivery of products delivered to its truck high dock during normal business hours. If Customer does not have a truck high dock or can accept deliveries only during specified hours, it must note these and any other special delivery requirements on its purchase order. The absence of a truck high dock and the presence of special delivery requirements may result in increased delivery costs, for which the Customer will be fully responsible.

5. Customer shall compensate Bibliotheca pursuant to this Agreement in an amount not to exceed the total amount of $170,362.00 for the cost of the products and first two years of Support and Maintenance services following the Go Live Date as set forth in Exhibit 6. Starting in the Third Year after the Go Live Date, Customer shall pay Bibliotheca an annual Product Support and Maintenance Fee not to exceed the following: Year 3: not to exceed $19,559.00, Year 4: not to exceed $20,146.49, and Year 5: not to exceed $20,750.88. Payment of the annual Product Support and Maintenance Fee starting in the Third Year of the Initial Term in 12-month installments as measured from the Go Live Date.

6. Customer will remit payment in U.S. Dollars to Bibliotheca in no more than 30 days following the date of invoice. Interest will accrue on the amount due at the rate of two percent (2%) per month for each full calendar month or part thereof during which such amount shall be

outstanding, such interest to commence to accrue on the fifteenth (15th) day after such amount is due and payable. If this interest rate exceeds the maximum interest rate permitted by law, then the interest payable shall be at such maximum permissible rate.

7. Payments for products/services are due within thirty days of invoice receipt.

8. Support and Maintenance is invoiced prior to the start of the contract period and is due within thirty days of invoice.

9. In the event that the Customer is exempt from such taxes or should Customer elect to pay such taxes directly to the taxing authority, then Customer shall provide Bibliotheca with a valid tax exemption certificate or similar document in form satisfactory to Bibliotheca.

10. Customer is responsible for supplying materials, equipment, and services as described in Exhibit 1 and other documents that have been provided to the Customer relating to the work proposed.

11. Customer is responsible for security and paying for all licenses and permits required for the execution of the Work. Bibliotheca hereby grants Customer a license to use software related to the Work, as provided in Exhibit 5.

12. Customer will designate a primary and secondary contact person for the purpose of coordinating with Bibliotheca representatives all technical aspects and implementation of the system(s).

13. Individuals designated above will promptly provide to Bibliotheca all information needed by Bibliotheca for implementation of the system.

14. Customer warrants that the project is located on real property owned by the Customer and that access to such real property will be furnished to Bibliotheca at such times and on such dates as Bibliotheca may reasonably require in connection with the execution and completion of the Work. Customers will provide a clear path for access to and from the installation site for personnel and equipment. Customer will ensure that not later than the scheduled start of installation date, the installation site is free and clear, that all civil work and necessary removal or modifications of existing equipment or buildings is concluded, and that all necessary Customer-provided infrastructure, including but not limited to electrical and network connections, is in place according to Bibliotheca specifications, which shall be provided to Customer in writing prior to delivery. Customer will be fully responsible for all costs associated with the failure of the Customer to meet these requirements. These costs include, but are not limited to, additional work performed by Bibliotheca to prepare the site, additional time required for installation and training, and the additional costs associated with required travel.

15. Customer understands that the proper performance of the system depends upon a thorough understanding and implementation of the installation and operating instructions provided by Bibliotheca. Customer is responsible for ensuring that all staff, volunteers and others who perform services at the Customer's behest are fully trained in the operation of the system components with which they are working.

16. Customer will report all system problems to Bibliotheca within a reasonable time.

17. At Bibliotheca's request, Customer will generate system reports as may be needed by Bibliotheca and, if requested, maintain a log detailing all problems experienced with the system.

18. Customer will not modify Bibliotheca hardware or software without first consulting Bibliotheca.

19. Customer agrees to permit Bibliotheca reasonable remote access to support the System as demonstrated in Exhibit 1.

20. Customer will maintain the confidentiality of all information, be it in written, unwritten, or any other form, provided it by Bibliotheca, unless otherwise required to disclose said information pursuant to the Texas Public Information Act.

21. Customer represents that Bibliotheca software is the intellectual property of Bibliotheca and is protected by law, including copyright laws and international treaties. Copies of software may not be made without the expressed written consent of a Bibliotheca representative authorized to legally obligate the company.

22. Customer shall take all reasonable steps to protect Bibliotheca's intellectual property rights.

V. MISCELLANEOUS

1. Force Majeure. The Parties will not be liable for any delay or failure to perform their obligations if that failure or delay is due to any cause or condition beyond the control of that party and, in particular, without limitation, any failure, damage or loss due to fire, flood, exposure or any act of God, industrial disturbance, failure of electrical telecommunications networks, acts of vandalism, sabotage, civil services, war, changes in legislation or regulations of any government or governmental agency, refusal or revocation of any license or consent by the government of any authority.

2. Limitation of Liability. The liability of Bibliotheca, its agents, employees, subcontractors and supplies with respect to any claims arising out of the performance or non-performance of obligations under the Agreement, or the design, manufacture, sales, delivery, installation or use of the Work or materials or the condition of other services hereunder irrespective of the theory upon which any claim may be based, including, without limitation, breach of the Agreement, breach of warranty or tort (including negligence), indemnity, strict liability or otherwise (i) shall in no event include consequential, indirect, special or similar damages including, but not limited to, loss of profits or revenue, or loss of business, and Customer hereby irrevocably waives any right it may have to any damages in excess of actual and incidental and (ii) except with respect to indemnity claims for personal injury (including death) or damage to property of third parties, shall in no event exceed in the aggregate 100% of the Purchase Price or the scope and limits of insurance required to be maintained under the terms of the Agreement, whichever is less. The limitation of liability shall prevail over any conflicting or inconsistent provisions contained in the Agreement except where such conflicting or inconsistent provisions provide a more restrictive remedy.

3. Change orders. Customer is fully responsible for any and all costs that are incurred as a result of changes initiated by Customer to this Agreement, to any other contract signed between Bibliotheca and the Customer related to the Work, to any Purchase Order issued to Bibliotheca by the Customer related to the Work, and to any instructions provided to Bibliotheca by the Customer related to the Work.

4. Assignment. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement will not sell, transfer, assign, license, franchise or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assigned agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement whether express or implied as if the proposed assignee was an original contracting party to this Agreement.

5. Severability. Should any court of competent jurisdiction declare any provision of this Agreement invalid, then such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

6. Choice of Law: Venue. The laws of the State of Texas shall control the validity, construction and effect of this Agreement and also any extensions and/or modifications of it. Any action, suit, or other proceeding concerning this Agreement must be brought and maintained only in a court of competent jurisdiction sitting in Dallas County, Texas.

7. Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for Customer, to: With a copy to:

Jane Darling, Assistant Library Director   Robert Hager
William T. Cozby Public Library   Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 Southwestern Blvd.   1800 Ross Tower
Coppell, Texas 75019   500 North Akard
(972) 304-3660   Dallas, Texas 75201
JDarling@coppelltx.gov   (214) 965-9900

If intended for Bibliotheca:

Al Coalla, Director
Bibliotheca
3169 Holcomb Bridge Rd., Ste. 200
Norcross, GA 30071
877-207-3127 ext. 121
a.coalla@bibliotheca.com

8. Entire Agreement. The complete understanding between the parties is set out in this Agreement and this Agreement supersedes and voids all prior and contemporaneous understandings, proposals, letters, agreements or conditions expressed or implied, oral or written, except as herein contained. Any amendment, modification, waiver or discharge of any requirement of the Agreement will not be effective unless in writing signed by the parties hereto or by their authorized representatives.

9. Headings. The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

10. Third Parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the parties to this Agreement.

11. Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

12. Inter-Local Purchase. To the full extent permitted by local, state and federal law, the prices, terms and conditions of this Agreement, in part or in whole, may be extended to other similar governmental and non-governmental bodies without restriction and without compensation. The aforementioned bodies may or may not be affiliated with the parties to this agreement through a purchasing cooperative, inter-local participation agreement, consortium or other cooperative agreement designed to extend contractual terms agreed to by any one member to all members of the cooperative group.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written. Signature below indicates agreement to all written terms in this document and its exhibits:

BIBLIOTHECA, LLC DBA BIBLIOTHECA

Signature: _____

Name: Al Coalla
Title: Director

Date: _____

CITY OF COPPELL, TEXAS

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit 1: Bibliotheca's Response to RFP #0138

Ctrl + Click to follow link, below:

Coppell Proposal-Bibliotheca

Exhibit 2: One Year Limited Warranty

Bibliotheca warrants that the equipment provided in conjunction with any Bibliotheca developed and supplied system(s) under the terms of this Agreement to be free from factory defects for a period of one year from the date of installation.

This limited warranty does not extend to any Bibliotheca product which, in the sole judgment of Bibliotheca has been subjected to abuse, misuse, neglect, improper installation, or accident, or any damage due to use or misuse produced from integration of the products into any mechanical, electrical, or computer system. Further, any abuse, misuse, neglect, improper installation, accident, enhancement, modification, alteration or change made without Bibliotheca's written consent will invalidate Bibliotheca's Limited Product Warranty.

In the event that it is determined the equipment failure is covered under this warranty, Bibliotheca shall, at its sole option, repair or replace the piece of equipment with functionally equivalent or better equipment and return such repaired or replaced equipment without charge for service or return freight.

This limited warranty, except as to title is in lieu of all other warranties or guarantees, either express or implied, and specifically excludes, without limitation, warranties of merchantability and fitness for a particular purpose under the uniform commercial code, or arising out of custom or conduct. The rights and remedies provided herein are exclusive and in lieu of any other rights or remedies.

In no event shall Bibliotheca be liable for any indirect or consequential damages, incidental damages, damages to person or property, or other damages or expenses due directly or indirectly to the purchased equipment, except as stated in this warranty. In no event shall any liability of Bibliotheca exceed the actual amount paid to Bibliotheca for a specific piece of equipment involved in the incident.

Unless specifically contracted otherwise, warranty service is provided under the terms and conditions of Bibliotheca's standard yearly support and maintenance agreement with the exception of any reference to software updates.

Exhibit 3: Terms and Conditions of Support and Maintenance

These Terms and Conditions of Support and Maintenance are evergreen in nature and do not expire. Billing cycle for Support and Maintenance will be on an annual basis beginning with the Go Live Date. The Parties acknowledge that the fee for Support and Maintenance services are included in the first two (2) years after the Go Live Date and that payment of the annual Product Support and Maintenance Fee will commence in the third year following the Go Live Date, and for any extended one (1) year terms thereafter.

I.   Coverage. During the Initial Term of this Agreement and any optional one year terms thereafter, Bibliotheca will provide Customer support and maintenance services on an annual basis subject to Bibliotheca's Equipment Lifecycle Policy and payment of the annual Product Support and Maintenance Fee, as applicable. The following services will be provided as described below:

   i.   With the exception of consumable supplies (e.g. print ribbons) and parts with specified limited usage life spans (e.g. printer heads), Bibliotheca will repair or replace hardware components unless such failure is caused by Customer, as determined by Bibliotheca in consultation with the Customer.

   ii.   Replacement parts, whether new or refurbished, will be equal to or better than the parts being replaced. Replacement parts will be provided on an exchange basis. End of Support (EOS) for Hardware products is specified in the attached document entitled Bibliotheca Maintenance and Equipment Lifecycle Policy.

   iii.   In the event that the Customer reports material bugs or defects in the Software, Bibliotheca shall use commercially reasonable efforts to correct or replace the Software or provide the services necessary to remedy any programming error attributable to Bibliotheca that significantly affects the functionality of the Software.

   iv.   Bibliotheca shall provide points of contact for Customer to report Product problems, failures, and defects and to request Product changes and enhancements. Only those individuals specifically designated by the Customer shall contact Bibliotheca in regard to such matters and Bibliotheca is not obligated to respond to any other employees except those specifically designated.

   v.   Bibliotheca shall provide the maintenance and support services during the service period by telephone, facsimile, email, on site visit or any other means which its deems appropriate, at its sole discretion, to adequately provide those services.

   vi.   Bibliotheca shall be responsible for outbound shipping costs of products and components covered under this Agreement. The Customer is responsible for shipping costs of products and components that are returned to Bibliotheca for replacement or repair.

   vii.   As a part of this Agreement, Bibliotheca shall supply Customer any and all updates, improvements, and modifications to the Licensed Programs that Bibliotheca makes available to its licensees generally without charge, provided that Bibliotheca reserves the right to charge separately for new options or new applications that, in the discretion of Bibliotheca, constitute a new software product.

viii. Such updates, improvements, and modifications shall be provided to the Customer within the framework of periodic official releases. Software support will be limited to the two most recently distributed releases.

ix. Maintenance services to be provided by Bibliotheca under this Agreement do not include:

   i. Correction of errors arising from changes, alterations, additions, or modification by persons other than the employees or agents of Bibliotheca or caused by the operation of the Product other than in accordance with the operating specifications.

   ii. Correction of errors arising from the fault, neglect, misuse, or omission of the Customer or its servants, agents, contractors, invitees, or any other person whether or not that person is under the control or direction of the Customer.

   iii. Rectification of errors or defects caused by the incorrect or unauthorized use, modification, revision, variation or translation of the software by the Customer or its servants, agents, contractors, or invitees.

   iv. Repair of damage arising from the failure or surge of electrical power, fusion, fire, air conditioning malfunction, damage caused in transportation, or any other environmental factor or cause other than a cause arising from normal use of the Product.

   v. Correction of errors caused by the use of computer programs not licensed by Bibliotheca for use by the Customer.

   vi. Customer shall be responsible for ILS/LMS-related changes and will bear the responsibility and costs incurred when these changes result in changes to Bibliotheca system configurations.

II. <u>Assignment of Warranties on Hardware Products</u>. In addition to Bibliotheca's obligations under the Maintenance Agreement, Bibliotheca hereby assigns to the Customer all rights of Bibliotheca under any manufacturer's warranties applicable to Hardware Products purchased under this Agreement to the extent such assignment is permitted under such warranties. Such assignment will be effective upon payment of the Total Purchase Price and all other charges invoiced for the shipment of the Products. Except as provided hereunder or pursuant to an executed Maintenance Agreement, Bibliotheca shall have no obligation to provide maintenance support or other services for Hardware Products purchased under this Agreement.

III. <u>Limitation on Services</u>. Notwithstanding the above, in the event that Customer or any third party enhances, modifies, alters, or otherwise makes any change to the Products without the prior express written consent of Bibliotheca, Bibliotheca shall have no obligation whatsoever to provide maintenance or support of such Products at any time after such enhancement, modification, alteration, or change. Notwithstanding anything herein to the contrary, Bibliotheca's obligation to provide maintenance and support for the Licensed Programs shall extend only to the most recent version and the next most recent version of the Licensed Programs provided to Customer.

IV. <u>Upgrades</u>. The information technology industry is dynamic and marked by frequent product replacement and upgrades. With respect to hardware and third party software, Customer retains the responsibility for the costs of purchase and installation of said upgrades necessary to maintain the functionality of system.

V. <u>Customer Obligations</u>. During the term of this Agreement:

    i. Customer shall provide Bibliotheca with sufficient documentation, information, assistance, support, and test time on Customer's computer system to duplicate any reported problems, certify that the problem is with the Products, and certify that the problem has been corrected. Bibliotheca will be provided with remote access to systems to aid the troubleshooting and repair process.

    ii. Customer shall designate specific employees who will be trained in all aspects of the products, including trouble shooting. These, and only these employees, may contact Bibliotheca for matters related to this Agreement.

    iii. Customer shall perform problem definition activities and any remedial or corrective actions as described in the Licensed Programs customer manuals and other system documentation provided to Customer by Bibliotheca prior to seeking assistance from Bibliotheca.

    iv. Customer is responsible for performing scheduled preventative maintenance as per product specifications.

    v. Customer shall provide Bibliotheca's Maintenance personnel with proper and safe access to the equipment and software at all requisite times for the purpose of providing the maintenance services.

    vi. Customer will provide Bibliotheca with at least thirty days written notice of the Customer's intention to move the equipment to a location other than the premises.

Exhibit 4: Product Maintenance and Lifespan Policy

The supplied self-service solution will be maintainable throughout the life of the equipment while it has a valid support contract. We recommend investing in a support contract for five years with agreed service level agreement. By investing in a support and maintenance agreement, all parts are replaced and/or repaired free of charge should they become defective during the life of the equipment. This excludes any consumables. Our solutions are based upon industry leading design and the high quality materials we use in our manufacturing processes.

We recommend a practice of powering and shutting down your systems on a daily basis to preserve the operating capabilities of the internal PCs and peripherals. Our systems have been designed with quality components that minimize the risk of failure. We suggest that the system is monitored to ensure that any staff actions, such as replacement of consumables or bin emptying, are carried out regularly as required.

Our recommended remote management solution, smartadmin™, provides staff with extensive capabilities in monitoring and managing aspects of the solution both on the library floor and remotely, as well as collecting detailed transactional information.

Quality Products: Our dedication to high quality in manufacture is a contributory factor in Bibliotheca self-service solutions regularly achieving 90% plus self-service statistics for all lending transactions.

For All Products but Security Gates: Bibliotheca recommends that for planning purposes the expected lifespan of all hardware products (excluding security pedestals) is six years. After this period, Support will continue to be made available on a contractual year by year basis if this is considered economically viable (based on availability/cost of major components at that time). Bibliotheca's intention is to meet the customer's ongoing requirements and all efforts will be made to affect repairs on said equipment, but results may be limited by availability of parts or inventory. In all cases and to ensure that the customer uses the latest available technology, Bibliotheca allows customers to upgrade their equipment to the current levels at a 35% discount.

Security Gates: Bibliotheca recommends that the expected lifespan for security pedestals is eight years. After this period, Support will continue to be made available on a contractual year by year basis if this is considered economically viable (based on availability/cost of major components at that time). Bibliotheca's intention is to meet the customer's ongoing requirements and all efforts will be made to affect repairs on said equipment, but results may be limited by availability of parts or inventory. In all cases and to ensure that the customer uses the latest available technology, Bibliotheca allows customers to upgrade their equipment to the current levels at a 35% discount.

RFID Tags: Bibliotheca guarantees its tags for the life of the items to which they are affixed. Should the Customer find a tag that is inoperable, Bibliotheca will replace it, free of charge.

Automated Materials Handling: Bibliotheca recommends that the expected lifespan of the smartsort™ 100, smartsort™ 200, and smartsort™ 300 is ten years; the smartsort™ 400 is set at eight years. Bibliotheca's trade-in program allows customers to trade smaller sorters toward the purchase of larger ones at any time, with a yearly straight line depreciation of just 15%, with a sorter up to five years old. For example, if the Library spends $20,000 on a sorter and in three years elects to trade up to a larger unit, it will receive $11,000 in credit toward that new purchase.

Exhibit 5: Software License Agreement

Bibliotheca, LLC ("Bibliotheca") hereby agrees to grant the City of Coppell, Texas ("Customer"), who agrees to accept, the following licensed rights and limitations ("License") for Customer's use of Bibliotheca -provided software.

1. Software: Software, under the terms and conditions of this License (referenced hereinafter as "Software"), means any of the following components provided to Customer by Bibliotheca:

   i. Any computer programs provided by Bibliotheca, either consisting of a set of instructions, calculations and/or statements loaded in a computer (or a device which incorporates a computer) or recorded on a computer readable medium for loading in a computer;

   ii. Supportive instructional/reference materials such as: training materials, manuals, on-screen tutorials, and other computer program relevant materials whether on paper or computer readable media ("Documentation"); and

   iii. Any new release, update, upgrade, enhancement, addition, supplement, modification of a program or additional Bibliotheca Software and/or its Documentation provided by Bibliotheca, subsequent to the initial delivery, that is not licensed by specific reference under a mutually agreed upon separate license agreement.

2. Grant of License: Bibliotheca hereby grants Customer and Customer hereby accepts a non-transferable, non-exclusive license, under applicable copyrights and/or trade secrets, to use Bibliotheca-provided Software only on the specific computer(s) for which it was registered and delivered to Customer. All Software (other than Documentation) will be provided by Bibliotheca to Customer in machine-readable object code only. Customer acknowledges that it does not acquire any rights of title or ownership in the Software (including Documentation) and agrees that all proprietary rights to the Software shall at all times remain with Bibliotheca or its relevant third-party provider. Customer may, for its internal use only, print or otherwise reproduce Vendor-developed Documentation if all included Bibliotheca markings, e.g. trademarks, copyrights and statements of confidentiality, are included on each copy. Customer acknowledges and agrees that any third party documentation supplied by Bibliotheca, which is marked as copyrighted and/or confidential, shall not be copied or reproduced in any manner.

3. Term of License: This License shall remain in force from the date of delivery and continue until Customer ceases all use of the Software or Customer's licensed rights are terminated for cause. Customer acknowledges and agrees that if this Agreement terminates for any reason, all of Customer's licensed rights to the Software (including Documentation) are relinquished and, within five business days thereafter, Customer (at Vendor's option) will either deliver to Vendor or destroy the original and all copies of the Software including its Documentation. Upon Bibliotheca's request, Customer agrees to certify to Bibliotheca in writing its full compliance with this provision.

4. Assignment: This License and any rights granted herein shall not be transferred, sub-licensed or assigned to any third party without the prior written consent of Bibliotheca.

5. <u>Termination</u>: If Customer neglects or fails to pay the specified license fees, or fails to adhere to any of its obligations hereunder, this license may be immediately terminated by Bibliotheca for cause.

6. <u>Security and Limitations of License</u>: Customer acknowledges and agrees that:

   i. All Software and upgrades of Software (including its Documentation), which are provided to Customer by Bibliotheca, contain proprietary copyrighted, trade secret and/or confidential information of Bibliotheca or its relevant third-party provider;

   ii. Customer shall not decrypt, reverse engineer, reverse compile, modify, or create derivative works of the Software;

   iii. Customer and its employees shall take all reasonable precautions to safeguard and hold all Software, including upgrades, additions and enhancements, in confidence, at least to the same extent that it protects its own most valuable confidential information;

   iv. If Customer violates this License or does not pay the agreed upon licensing fees, Bibliotheca will have all of the rights provided herein and available under law, including the right to injunctive relief;

   v. If any other communication, agreement or purchase order conflicts with, or may affect interpretation of, the understandings set forth herein, this License shall control as the singular expression of licensed rights.

Exhibit 6: Payment amounts for First Two Years after Go Live Date

If applicable, the hardware and software includes 24-month warranty, set-up and configuration

Item ID	Item Type	Quantity	Sale Price	Sub Total
TAG000030-000-US	smartlabel™ 500 High Value Asset Tag (Min. Qty. 10 - incl. shipping)	1	$339.000	$339.00
HND304002-000-US	3M™ Mobile Staff Workstation Model 920 with Printer	1	$3,549.000	$3,549.00
SHP000001-000-US	Shipping, Handling, and Administration	1	$5,560.000	$5,560.00
TAG300010-000-US	smartlabel™ 110 50x50 HF Tag (6,000 tags/Box)	17	$780.000	$13,260.00
TAG000112-000-US	smartlabel™ 320 StingRay Full Coverage CD/DVD Tag (1000/Roll)	10	$590.000	$5,900.00
SCK331008-000-US	3M™ SelfCheck™ System Model 8422 (R-Series) Tabletop (Black)	2	$7,199.000	$14,398.00
SER901177-000-US	3M Con. Station M811/812 One Month Rental Fee 2 Conversion Stations for 3 months each	6	$495.000	$2,970.00
STF316004-000-US	3M™ Staff Workstation Model 895 with USB Reader	4	$945.000	$3,780.00
GAT313017-000-US	RFID Detection System Model 9102 36" Direct Mount (Wired Network Card)	1	$9,385.000	$9,385.00
SER325004-000-US	3M™ Command Center Enterprise (25 Networked Devices) (SC, 9100, IR)	1	$1,995.000	$1,995.00
STF313001-000-US	3M™ USB Powered Conversion Station Kit Model 815	1	$795.000	$795.00

Total (Less Sales Tax): $61,931.00

Grand Total:	$61,931.00

Item ID	Item Type	Quantity	Sale Price	Sub Total
AAA901342-000-US	3M AMH Pre-Site Visit	2	$840.000	$1,680.00
AMH901440-000-US	3M FX 5 Bin Sorter System - Domestic	1	$48,352.000	$48,352.00
SHP000001-000-US	Shipping, Handling, and Administration	1	$3,600.000	$3,600.00
AMH404031-000-US	3M IR Model 2830 Intelligent Return Staff Induction Station	1	$29,757.400	$29,757.40
AMH901447-000-US	3M FX 2860 - 2' Directional (Right) - Domestic	1	$10,731.000	$10,731.00
AMH404034-000-US	3M Surround 2820/2822 IR Plus Unit	1	$1,000.000	$1,000.00
AMH404030-000-US	3M IR Model 2822 Intelligent Return Plus Outdoor (w/o Surround)	1	$38,913.000	$38,913.00

Total (Less Sales Tax): $134,033.40

Discount:	$25,602.40
Grand Total:	$108,431.00

bibliotheca® + 3M

the best of both worlds

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