

LIBRARY IDEAS®, LLC DIGITAL SERVICES AGREEMENT

THIS DIGITAL SERVICES AGREEMENT (this "Agreement") is made by and between Monterey County Free Libraries, a COUNTY (state, province or county) Library maintaining a physical address at 188 Seaside Circle, Marina, CA, hereafter referred to as (the "Library") and Library Ideas, LLC, a Delaware media company located at P.O. Box 9, Vienna, Virginia 22183 USA, hereafter referred to as (the "Company"). All parties to this Agreement may, from time to time, be referred to as (the "Parties").

RECITALS

WHEREAS Company has licenses and agreements for media services specifically targeted to libraries which provides the Registered Cardholders of these institutions access to a site or sites to access media legally (the "Service").

WHEREAS Company wishes to sell institutional Registered Cardholder access and include the right to use the Service to the Library subject to the terms and conditions described in this Agreement.

WHEREAS Library desires to purchase access and use the Service from Company subject to the terms and conditions described in this Agreement.

NOW THEREFORE in consideration of the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I. Definitions

Section 1.01 Definitions. The terms defined within this Agreement have the respective meanings attributed to them throughout this Agreement or in this Article I. Any defined term may be used in the singular and in the plural forms, as appropriate in the context.

Section 1.02. "Service(s) or Digital Services" refers to the Company's digital services (that the library is paying to access on Schedule A) which may include Freegal® Music (with or without streaming), Freegal® Movies, Freeding® eBooks or Rocket Languages, and is related to Library's ongoing access to and use of such service via the Internet.

Section 1.03. "Effective Date" Unless otherwise agreed to in writing by the Parties, the "Effective Date" of this Agreement means the date the service is available for use by Library Patrons.

Section 1.04. "Digital Service(s) Agreement" means the right to access Company's Service(s) for a schedule of fees ("Digital Service(s) Price(s)") expiring after a specified length of time ("Digital Service(s) Term").

Section 1.05. "Digital Service(s) Price" means the price established for the Digital Services Term.

Section 1.06. "Digital Service(s) Term or Term" refers to the right to access Company's Digital Service(s) for a specific period of time. The "Digital Service Term" of this Agreement commences on the Effective Date and ends after the end of the number of months or years indicated in Schedule A.

Section 1.07. "*Library's Website Portal*" means the Website operated by the Library and open to its Registered Cardholders in order to access and use all digital materials and services of the Library.

Section 1.08. "*Company Website*" means the Website operated by Company and open to the Library and its Registered Cardholders via the Library's own website portal.

Section 1.09. "*Cardholders or Registered Cardholders*" mean Library's registered, authenticated cardholders, and all members of the public in the library's legal service population who have been issued a library card, including onsite and offsite users.

Section 1.10. "*License*" means a revocable permission to commit some act that would otherwise be unlawful such as downloading the copyrighted works of the rightful owner.

Section 1.11. "*Personal Use*" is defined, for purposes of this Agreement, as the use which is of a personal nature and used only by the person who is authorized to use such media, i.e. a downloaded song or other media, and prohibits the sharing of said media with the public or placing such media in the public domain, i.e. sharing songs or media on the internet. This Agreement adopts the definitions of "personal use" as established by the Courts and home country Copyright laws.

ARTICLE II. Library Ideas Digital Services Terms and Conditions

Section 2.01. *Digital Service(s) Price.* Company will charge Library a price for access. The price is described herein in Schedule A.

Section 2.02. *All Purchases are Final.* All purchases of Services are final. No refunds are allowed unless the product is not delivered.

Section 2.03. *Payment Due Date.* All fees and charges are due and payable 30 days from the date of the related invoice. The Company may deny Library and its Patrons access to Library's Company Website until the unpaid invoice is paid in full.

Section 2.04. *Limits on the Service.* Registered Cardholders of Library have limits on access to the Service as specified in Schedule A.

Section 2.05. Renewal and Termination

Subsection 2.05.A. *Termination by Expiration of Term.* This Agreement will terminate automatically at the end of the Digital Services Term mentioned on Schedule A. If Library wishes to renew for an additional Term, Library may contact Company at any time during or after the end of the current Term and agree to a new Digital Services Term. The Library may renew or extend its Digital Services Term for an agreed upon Digital Services Price by email to an authorized representative of the Company, and all terms and conditions of this Agreement will be automatically extended to coincide with the new Digital Services Term(s).

Subsection 2.05.B. *Termination for Breach of this Agreement.* Either party may terminate this Agreement or one of the individual Digital Service(s) for cause at any time by providing the other party with prior written notice of the occurrence of any of the following events: (1) a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 10 days of the notice; or (2) a party

breaches any Material provision of this Agreement provided that the breach cannot be, or is not, cured within 30 days of the notice. Material terms of this Agreement are Sections 2.03, 2.05, 2.06, 2.07, 2.08, 2.09, 2.12, 3.01, and 3.02.

Section 2.06. Provision of Digital Services. During the Term, the Company will establish, host, and administer Company's Website. The Library and its Cardholders will access Company's Service(s) through Library's Website Portal. The Library and its Cardholders will access the Library's Service(s) either inside the library (if allowed and enabled) using the Library's own Internet connection or remotely as allowed. Company will deny access to anyone attempting to access Service from a country that is not allowed. Service will have reasonable periods of scheduled maintenance in which the Service is not available. Otherwise Service will be available at commercially accepted standards of operation.

Section 2.07. Library and Cardholder Usage - Limiting Access Measures. The Library will be solely responsible for authenticating which Cardholders will have access to the Library's Website under this Agreement. However, the Company will facilitate this process. Except for standard fees charged by Library to its Cardholders, the Library will not charge any Cardholder for the use of the Company's Website.

Section 2.08. Library's Company Website. The use of the Company's Website by the Library and its Patrons will be governed by the End User Agreement. If Patrons violate the End User Agreement, Company reserves the right, in its sole discretion, to suspend the Library's or the Patrons's access to and use of the Company's Website. The Library acknowledges and agrees that, in the case of repeated or persistent violations, the Company may terminate this Agreement and issue a pro-rated refund for unused service.

Section 2.09. Copyrighted Works. Library acknowledges and agrees that the copyright to each digital file is owned by the respective publisher thereof. All Rights Reserved.

Section 2.10. No Copyright Conveyed. Upon signing this Agreement, Library will receive a license coinciding with the Term to access the Company's Service via the Library's Website Portal and access the Service(s) the Library has purchased access to. Library will not acquire any other rights in the Company or the Company's Service.

Section 2.11. Offensive Content. Company makes no warranty and no representations against claims of offensive content by Cardholders and does not have the ability to remove specific elements of the Service for just one library participating in the Service.

Section 2.12. Publicity and Marketing. Library agrees to use only the Publicity and Marketing Material given to it by the Company unless otherwise approved in writing by the Company. The Company will send Library a template press release and marketing kit in advance of the Library going live with the Service. The name of the Service(s) is/are as indicated in Schedule A, and the Library will not promote the Service under any other name.

ARTICLE III Elements of the Service

Section 3.01. Member Access & Clean Sweep Protocols. For all Library computers capable of accessing the Company's Website, Library will implement a Clean Sweep or similar type program which functions to log-out or wipe clean the information existing on the computer screen of the previous Cardholder.

Section 3.02. Reports. Payment of the Digital Services Price entitles Library to the standard reports offered by Company which gauges the use of Company's Service(s).

ARTICLE IV General Provisions

Section 4.01. Governing Law. This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of this Agreement or its formation) shall be governed by and construed in accordance with the laws of the State of Delaware in the United States of America.

Section 4.02. Notice to Parties. All notices from either party to the other under this Agreement shall be sent by telegram, overnight courier service, or by registered or certified mail, return receipt requested, or hand-delivered with signed receipt. Whenever in this Agreement reference is made to a Notice to be given, such Notice shall be deemed given when mailed, wired, or hand-delivered to the proper notice address of the party to be notified. Notices shall be addressed in care of the individual representatives identified herein and mailed to the address designated for each Party and listed in the Signature Page of this Agreement. Either party may, from time to time, designate a different address for receiving Notices by giving the other party notice of the change of address in the manner above specified.

Section 4.03. Assignment. Library may not sell, assign, transfer or convey this Agreement or any rights and obligations thereto. However, Company may assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon written notice to the Library.

Section 4.04. Successors & Assigns. This Agreement shall be binding on and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns.

Section 4.05. Section Partial Invalidity. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 4.06. Separability. Each and every covenant or understanding contained in this Agreement shall, for all intents and purposes, be construed as a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be found invalid and unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is valid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

Section 4.07. Headings. The headings to the various paragraphs and/or Sections of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the expressed terms and provisions of this Agreement.

Section 4.08. Limited Warranty. Company warrants that Company has the necessary authority to license the Service(s) to Library and, if applicable, to provide Service(s) to Library. Company warrants that it will use its commercially reasonable efforts to provide such Service(s) as described in this Agreement.

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Section 4.09. Limitation on Liability. Neither party will claim special, incidental, indirect, or consequential damages; including lost profits for breach of this Agreement. This limitation will also apply to any claims brought against Company's content providers. Remedies are limited to claims for amounts due, for injunctive relief only as provided, or for direct damages. A party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount of Digital Service(s) Price(s) paid by Library to the Company during the 12 month period immediately preceding the date on which the claim first arose.

Section 4.10. Force Majeure. Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes; riots; acts of war; power failures; and functions or malfunctions of the Internet, telecommunications services, firewalls, encryption systems, and security devices; or governmental regulations imposed after the Effective Date.

IN WITNESS WHEREOF the parties hereto by and through their authorized agents, have duly affixed their signatures under seal as of the date shown herein.

[SIGNATURES TO FOLLOW]

Company:

LIBRARY IDEAS, LLC

By: 

Date: 10/27/16

Address:

P.O. Box 9

Vienna, Virginia 22183 USA

Library:

Name of Library

By: _____
Authorized Agent/Representative

Print Name

Date: _____

Address:

Monterey County Free Libraries, CA
Library Name, State/Province

SCHEDULE A

| <u>Service Name</u> | <u>Term</u> | <u>Pricing</u> | <u>Cardholder Limit</u> |
|---|--------------------|-----------------------|--------------------------------|
| Digital Services: Freegal Downloadable Music | 4/25/16-4/24/17 | \$14,317 | 5 DLs/Cardholder/Week |
| Total: | | \$14,317 | |