

SECOND AMENDED INTERLOCAL AGREEMENT FOR MUTUAL ACCESS TO CLOUDLIBRARY DIGITAL RESOURCES

This Interlocal Agreement (“Agreement”) is made and entered into by and among the local governments which have executed it (“Parties”). The Parties, acting by and through their authorized officers execute this Agreement pursuant to Texas Government Code, Chapter 791, known as the Interlocal Cooperation Act (the “Act”).

WHEREAS, the Parties are local governments engaged in promotion of public health and welfare by providing easy access to the broad range of public library services to their citizens, including Bibliotheca cloudLibrary digital resources; and

WHEREAS, the Parties desire to further expand public access to digital content by sharing their respective Cloud Resources, as hereinafter defined, among their respective libraries; and

WHEREAS, the Bibliotheca cloudLink service allows libraries using the service to share their Cloud Resources with each other; and

WHEREAS, the Act provides authorization for local governments to contract with one another to provide governmental functions and services; and

WHEREAS, provision of public library services are governmental functions and services under the terms of the Act;

WHEREAS, the governing body of each local government believes that the Agreement is necessary for the benefit of the public and that each party has the legal authority to provide governmental functions and services that are the subject of the Agreement; and

NOW, THEREFORE, upon and for the mutual consideration stated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I Definitions

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement shall have the following meaning:

“Cloud Resources” shall mean all library content provided by the Parties for upload into the Bibliotheca cloudLibrary for the mutual benefit, access and/or use of the Parties and their Libraries.

“Coordinating Committee” shall mean the representatives selected to represent each Party from the participating Parties in this Agreement.

“Library or Libraries” shall mean the library/ies and resources thereof of the Parties.

“Local Government” shall have the meaning given in Section 791.003 of the Act, as amended.

ARTICLE II

Term

2.1 The initial term of this Agreement shall be for a period of ten (10) years beginning on May 31, 2017, unless sooner terminated as provided herein (“Initial Term”). The Initial Term may be extended by written agreement of the Parties for one or more five (5) year renewal terms (each a “Renewal Term”); provided that any such renewal occurs not less than 30 days prior to the end of the then current term.

ARTICLE III

Responsibilities of the Parties

3.1 Access. Each Library shall allow cardholders of the other Libraries to access and check out its Cloud Resources through the Bibliotheca cloudLink service under the terms and conditions of the cardholder’s Library, unless otherwise specified in the Agreement.

3.2 Policies and Procedures. The current policies and procedures of each Library shall remain in effect, with no coordination or standardization required, except that the following procedures shall be followed for shared Cloud Resources:

- a. Cloud Resources may only be placed on hold by cardholders of the Library which owns the Cloud Resource in question.
- b. Available Cloud Resources may be checked out by any cardholder of a participating Library.
- c. The circulation period of the Cloud Resources are determined by the circulation policies of the cardholder’s Library and may vary among Libraries.
- d. Each Library shall track the number of items checked out from their respective Libraries and create an annual report by fiscal year of such data for review by the Coordinating Committee. These reports shall be provided to the Coordinating Committee annually by not later than January 1st.
- e. Each Library shall submit an annual report of expenditures on Cloud Resources in the preceding fiscal year as set by that Party to the Coordinating Committee annually by not later than January 1st.

- f. Each Library shall submit an annual report of their overall materials budget if their expenditure on Cloud Resources is less than \$10,000 per fiscal year. This report shall be provided to the Coordinating Committee annually by not later than January 1st.

3.3 Liaison Designated. By this Agreement, each Party designates its director of library services or equivalent, as listed on each Party's signature page hereto attached, to act on behalf of the Party to ensure the performance of all duties and obligations of the designee's Party as herein stated, to serve as a liaison for the Party with and among the Parties, and, if necessary, to serve on the Coordinating Committee.

3.4 Participation Requirements. Each Library shall spend a minimum of \$10,000 or 10% of its overall materials budget, whichever is less, on Cloud Resources during each fiscal year as set by that Party. Compliance with this section will not be required for any fiscal year during which a Party did not participate in this Agreement for the entire fiscal year. Compliance with this and other requirements will be determined by the Coordinating Committee on an annual basis, based on reports required by Article III.

3.5 Addition of Members. Any local government in the state of Texas which has contracted for the use of the Bibliotheca cloudLibrary cloudLink service and agrees to abide by the terms of this Agreement may join this Agreement as a Party upon approval by a majority of all of the members of the Coordinating Committee. If approval is given, the new participating entity shall join the Parties by adopting and executing this Agreement through an action of the Party's governing body.

3.6 Cost. Each Party will bear its own cost of performance under this Agreement.

ARTICLE IV

The Coordinating Committee

4.1 Coordinating Committee.

- a. The Coordinating Committee membership shall be the designated liaisons from the following local governments:
 - i. City of Lewisville
 - ii. City of Burleson
 - iii. City of Carrollton
 - iv. City of Colleyville
 - v. City of Coppell
 - vi. City of Euless
 - vii. Town of Flower Mound
 - viii. City of McKinney
 - ix. City of Sachse
 - x. City of Southlake

- xi. Town of Little Elm
- xii. Bexar County

- b. The Coordinating Committee shall have only the duties specifically outlined in this Agreement. The Coordinating Committee shall have the authority to adopt its own rules of procedure that are consistent with Article III, Section 3.2 and in compliance with terms of this Agreement.
- c. A simple majority of all members of the Coordinating Committee shall constitute a quorum to perform. A quorum of the Coordinating Committee must participate in any decision made by the Coordinating Committee under this Agreement.
- d. The Coordinating Committee shall meet at least once every six (6) months. Meetings shall be held in person, by conference call, or by another live remote meeting access service.
- e. A simple majority vote of all members of the Coordinating Committee shall select a member to receive any reports and send any notices required under this Agreement. This individual's name and contact information shall be provided to all Parties within thirty (30) days of the individual's selection.
- f. A simple majority vote of the Coordinating Committee members present shall select a member to draft minutes outlining the items discussed and decisions made by the Coordinating Committee at any given meeting. The minutes shall be sent to the Coordinating Committee for approval within thirty (30) days of the meeting, and must be approved by a majority of all members of the Coordinating Committee within thirty (30) days of its distribution. The minutes may be distributed and approval of the minutes provided to the drafter via e-mail. These minutes shall be distributed to all Parties within ten (10) days of their approval.
- g. The Parties understand and agree that the Coordinating Committee shall not be construed as a board or committee appointed by a governing body and shall not be required to comply with the provisions of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

ARTICLE V

Termination

5.1 This Agreement may be terminated as follows:

- a. Any Party may choose to terminate its participation in the Agreement with sixty (60) days' written notice to each of the members of the Coordinating Committee at the notice address provided in this Agreement. The

termination of a Party's participation in this Agreement shall not affect the continuation of this Agreement in full force and effect with respect to the remaining Parties.

- b. A Party's participation in the Agreement may be terminated for any reason, including failure to comply with the terms of this Agreement, by an affirmative vote of two-thirds (2/3) of all of the members of the Coordinating Committee to remove the Party. Upon termination under this section, the Coordinating Committee shall provide thirty (30) days' written notice to the Party which has been removed following the Committee's decision. The Coordinating Committee will contact Bibliotheca and notify them of the Party's removal.
- c. In the event that the Bibliotheca cloudLibrary cloudLink program is no longer available, this Agreement shall automatically terminate.

5.2 Upon termination, each Party will retain its rights, title and interest to all Cloud Resources purchased by the Party during its time as a Party to this Agreement.

ARTICLE VI

Liability and Immunity

6.1 Liability and Immunity.

- a. *Handling of Claims.* The Parties agree, to the extent authorized under the constitution and laws of the State of Texas and without waiving any immunity, right, protection, or defense therein, that each shall be individually responsible for any and all claims for damages, cost, and expenses to person or persons and property that may arise out of or be occasioned by the intentional or negligent act or omission of its respective officials, agents, representatives, and employees in the performance of this Agreement, including but not limited to their acts of negligence or omission in the provision of public library services, including the cloud based services that are the subject to this Agreement. The Parties agree that each shall be liable only for damages, including attorneys' fees and costs, related to or arising out of the intentional or negligent act or omission of their respective officials, agents, representatives, and employees in the performance of this Agreement.
- b. *Joint Liability.* In the event of joint or concurrent negligence of the Parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity, right, protection, or defense available to any party

individually under Texas law. The provisions of this section are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- c. *No Waiver of Immunity.* It is expressly understood and agreed that in execution of this Agreement, no Party waives, nor shall be deemed to have waived, immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

ARTICLE VII

Miscellaneous

7.1 Assignment. This Agreement may not be assigned by any Party hereto without the prior written unanimous consent of the other parties. No assignment, delegation of duties or subcontract under this Agreement shall be effective without the prior written unanimous consent of all Parties hereto.

7.2 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action arising as a result of this Agreement shall be in the state court of Denton County, Texas, except when state law requires otherwise.

7.3 Legal Construction. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Agreement.

7.4 Amendment. This Agreement may be amended by a simple majority vote of all members of the Coordinating Committee.

7.5 Entire Agreement. This Agreement represents the entire Agreement among the Parties with respect to the subject matter covered by this Agreement.

7.6 No Relationship Created. The Parties agree and acknowledge that no Party is an agent of any other Party under this Agreement and that each Party is responsible for its own acts, forbearance, negligence, and deeds, and for those of its agents or employees. The purposes for which each Party has entered into this Agreement are separate and distinct. It is not the intent of any of the Parties that a joint enterprise relationship is being entered into and the Parties hereto specifically disclaim such relationship.

7.7 Rights of Third Parties. Nothing contained in this Agreement shall be construed to create, and the Parties do not intend to create, any rights in or for the benefit of third parties.

7.8 Force Majeure. In the event that any party shall be prevented from performing any of its obligations under this Agreement by any act of God, war, right, civil commotion, strikes, fires, flood or by the occurrence of any other event beyond the control of such party, then such party shall be excused from the performance of the obligations in this Agreement but only during such periods of Force Majeure.

7.9 Current Revenues. All costs or expenses incurred by any Party as result of this Agreement shall be paid from the current revenues available to the Party.

7.10 Recitals. The recitals of this Agreement are incorporated herein.

7.11 Severability. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

7.12 Notice. All notices pertaining to this Agreement shall be in writing and shall be deemed delivered (i) when received at a Party's address if hand delivered or sent via overnight delivery service by way of USPS, UPS, FedEx, or similar carrier, or (ii) on the third (3rd) business day after being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Parties at the respective notice addresses set forth below or at other addresses as may have been previously specified by written notice delivered in accordance with this Agreement.

[SIGNATURE PAGES ATTACHED]