

## INSTITUTION PARTICIPATION AGREEMENT

This Institution Participation Agreement (hereinafter referred to as "IPA") is hereby made and entered into by and between the Community College League of California (hereinafter referred to as the "League") and

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(hereinafter referred to as the "Participating Institution"), with respect to the Participating Institution's participation in the "SaaS Services," as defined in that certain Subscription Agreement, including all exhibits, addendums and annexes thereto (hereinafter collectively referred to as "Subscription Agreement"), dated as of December 18, 2020, by and between the League and Ex Libris (USA) Inc., a company incorporated under the laws of New York, having its main office at 1350 East Touhy Avenue, Des Plaines, IL 60018 (hereinafter referred to as "Contractor").

### RECITALS

**WHEREAS**, the SaaS Services were initially implemented and made available to participating California community college districts pursuant to the implementation and subscription agreement ("Implementation Agreement") between Butte-Glenn Community College District, on behalf of its sponsored program the California Community Colleges Technology Center, and funded by a grant from the California Community Colleges Chancellor's Office; and

**WHEREAS**, the Implementation Agreement expired December 31, 2020; and

**WHEREAS**, the State of California has not allocated additional funding to continue the SaaS Services and participating California community college districts have the option to fund continued SaaS Services from their own resources; and

**WHEREAS**, the League is the party to the Subscription Agreement for the purposes of continuing SaaS Services without interruption to participating California community college districts; and

**WHEREAS**, Participating Institution is an intended beneficiary of the Subscription Agreement; and

**WHEREAS**, Participating Institution desires to continue receiving the SaaS Services and enter into this IPA with the League in connection with its college campus(es) identified in Exhibit A, attached hereto and incorporated herein by reference; and

**WHEREAS**, this IPA is intended to set forth the terms of Participating Institution's participation in the Subscription Agreement; and

**WHEREAS**, the League and Participating Institution acknowledge that the Contractor is not a party to this IPA, but does have certain responsibilities related to this IPA and to Participating Institution as defined in the Subscription Agreement.

## **TERMS**

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **PURPOSE.** The purpose of this IPA is to define the roles and responsibilities of the parties hereto as they relate to the Subscription Agreement.
2. **APPLICABILITY OF SUBSCRIPTION AGREEMENT.** The Participating Institution desires to receive the SaaS Services from Contractor, and agrees to comply with all applicable provisions of the Subscription Agreement, including expressly all terms of any addendum, exhibits, and annexes to the Subscription Agreement, which are attached hereto as Exhibit B and incorporated herein by reference, and any amendments to the Subscription Agreement, that are intended to apply generally to the relationship between Contractor and League and specifically to the relationship between Contractor and Participating Institution. Contractor is entitled to enforce the terms and conditions of the Subscription Agreement against Participating Institution.
3. **PAYMENT FOR SUBSCRIPTION.**
  - A. The Participating Institution shall pay League the amount identified in Exhibit A for the first year of SaaS Services ("Year One Fees"). For the second and third years of SaaS Services, the Participating Institution shall pay League the total of Year One Fees and any applicable annual fee increases enacted by Contractor pursuant to the Subscription Agreement, but not more than 4% in the second year of the Term, and 4.5% in the third year of the Term.
  - B. The Participating Institution shall also pay League annual charges for any Named Users and Bibliographic Titles (in minimum blocks of 500,000 titles) that exceed the allocations which will be transmitted no later than February 10, 2021 as Exhibit C and incorporated herein by reference. The annual cost of each additional Named User is \$375, and of each additional block of 500,000 Bibliographic Titles is \$4,256.25, plus annual fee increases enacted by Contractor. The Participating Institution will have until March 31, 2021 to reduce its number of Named Users and Bibliographic Titles to within the parameters of Exhibit C before incurring the first year of annual charges.
  - C. League shall invoice the Participating Institution for the annual Subscription Fees. League may submit a supplemental invoice to the Participating Institution at any time following March 31, 2021 for charges associated with additional Named Users and Bibliographic Titles records. The Participating Institution shall pay the League within 60 days of receipt of League's invoice.
4. **TERM OF IPA.** This IPA is effective January 1, 2021 and shall continue concurrent with the Subscription Agreement through December 31, 2023, or upon termination of the Subscription Agreement, whichever occurs first.
5. **TERMINATION.** This IPA terminates immediately upon termination of the Subscription Agreement. Participating Institution will notify the League in writing as soon as possible if it becomes aware of a material breach of the Subscription Agreement by Contractor.
6. **CONTINUING SERVICES WHERE SUBSCRIPTION AGREEMENT IS TERMINATED.** Should the Subscription Agreement be terminated for any reason, Participating Institution may elect to continue the SaaS Services by entering into a separate agreement between Participating Institution and Contractor, whereby Participating Institution would pay Contractor directly under that agreement.
7. **SURVIVAL.** The terms of sections 10 (INSURANCE), 11 (INDEMNIFICATION), and 12 (LIMITATION OF LIABILITY) of this IPA, terms of the Subscription Agreement which survive termination, as well as any provisions that are inherently intended to survive the termination of an agreement, shall survive the early termination or expiration of the IPA and remain in effect.

8. **SERVICES OUTSIDE SCOPE OF WORK.** Any additional services not within the SaaS Services defined in the Subscription Agreement shall be subject to a separate agreement between Participating Institution and Contractor.
9. **COMPLIANCE WITH LAWS.** Performance of all obligations under this IPA shall be in compliance with all applicable laws and regulations including, but not limited to the observance of all laws and regulations relating to the privacy of information provided by the Participating Institution or its users.
10. **INSURANCE.** Participating Institution shall bear all cost for payment of insurance premiums and any and all deductibles or self-insurance retentions under its policies and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance. Participating Institution, at its sole cost and expense, shall maintain the following types of insurance coverage until the termination of this IPA: (a) Commercial General Liability insurance in amounts no less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage; (b) Automobile Liability in amounts no less than \$1,000,000 per accident for bodily injury and property damage; (c) Workers' Compensation insurance in amounts as required by the State of California; (d) Employer's Liability insurance in amounts no less than \$1,000,000 per occurrence, \$1,000,000 each employee, and \$1,000,000 policy limit for bodily injury or disease; and (e) Cyber Insurance in amounts no less than \$2,000,000 per occurrence for any security or other cyber breach involving Participating Institution data or confidential pupil information. Such cyber insurance coverage may be included in the Participating Institution's Commercial General Liability insurance so long as it is expressly included.

All insurance policies shall include an endorsement stating that the other party is a named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the other party. If any of the required insurance is not reinstated, each party may, at its sole option, terminate this Agreement. All of the policies shall also include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District. Participating Institution hereby grants to District a waiver of any right to subrogation which any insurer of Participating Institution may acquire against the District by virtue of the payment of any loss under such insurance. Participating Institution agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer. Participating Institution shall furnish the District with certificates and endorsements affecting coverage required by this IPA.

11. **INDEMNITY.** To the fullest extent permitted by law, Participating Institution shall defend, indemnify, and hold harmless the League and its agents, representatives, officers, consultants, employees, Board of Directors, members of the Board of Directors (collectively, the "League Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Participating Institution or its agents, officers, subcontractors, consultants, employees, material or equipment suppliers, invitees, volunteers or licensees in the performance of or failure to perform Participating Institution's obligations under this IPA or Subscription Agreement.

To the fullest extent permitted by law, Participating Institution shall defend, indemnify, and hold harmless the League and its agents, representatives, officers, consultants, employees, Board of Directors, members of the Board of Directors (collectively, the "League Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor or its agents, officers, subcontractors, consultants,

employees, material or equipment suppliers, invitees, volunteers or licensees in the performance of or failure to perform Contractor's obligations under the Subscription Agreement.

- 12. LIMITATION OF LIABILITY.** The League shall not incur any liability for any breach by Contractor by any means whatsoever of any of the terms of the Subscription Agreement, or for any SaaS Services provided to Participating Institution by Contractor. The League shall not incur any liability for any act, error, omission, negligence, or willful misconduct by the Participating Institution or Contractor, or their agents, representatives, officers, employees or consultants related to the Subscription Agreement or this IPA. Should Participating Institution have any dispute, claim or need to enforce any right under this IPA or the Subscription Agreement against Contractor, Participating Institution shall pursue all actions, claims and disputes solely against Contractor and not the League. Participating Institution agrees that it shall enforce any claims it has for Contractor's negligent or intentional acts in connection with this Subscription Agreement or this IPA directly against Contractor. Should the League need to take any action against Contractor to defend the rights of Participating Institution under the terms of the Subscription Agreement or this IPA, League shall do so, at the sole cost and expense of Participating Institution.

The League shall not incur any liability hereunder for any indirect, incidental, special, punitive or consequential damages for claims arising from or related to the Subscription Agreement or this IPA, including but not limited to reliance, cover or loss of anticipated profits or convenience, even if Participating Institution has been advised of the possibility of such damages. League shall not be liable for lost revenues or profits regardless of whether they are classified as direct damages or any other type of damages.

**13. COVENANTS OF PARTICIPATING INSTITUTION.**

- A. Participating Institution agrees not to (i) make the SaaS Service or the Licensor Data (as that term is defined in the Subscription Agreement) available in any way for the use or benefit of any unauthorized party and to use commercially reasonable efforts to prevent unauthorized access to or use of the SaaS Service or the Licensor Data, and to notify Contractor as soon as possible after it becomes aware of any unauthorized access or use; (ii) copy, modify, create derivative works from or use the SaaS Service, the Licensor Data, the Documentation (as that term is defined in the Subscription Agreement) or related materials or other proprietary information received from Contractor, in whole or in part, other than as expressly permitted by the Subscription Agreement, unless Contractor so consents in writing; (iii) reverse engineer, decompile or disassemble the SaaS Service or any components thereof except as permitted by law; (iv) violate or abuse the password protections governing access to and use of the SaaS Service; (v) remove, deface, obscure, or alter Contractor's or any third party's copyright notices, trademarks or other proprietary rights notices affixed to or provided as part of the SaaS Service, the Licensor Data and/or the Documentation; (vi) use any robot, spider, scraper, or other automated means to access the SaaS Service or the Licensor Data for any purpose without Contractor's written consent; (vii) use or display SaaS Service logos differing from Contractor's own without Contractor's prior approval, which shall not be unreasonably withheld; (viii) store information or materials in the SaaS Service that violates a third party's rights or breaches applicable law; and/or (ix) use the SaaS Service, the Licensor Data or the Documentation in a way which would violate any applicable laws, rules and regulations.
- B. Participating Institution agrees to maintain the SaaS Service, any non-public Documentation (as that term is defined in the Subscription Agreement) and related materials confidential, and may disclose the SaaS Service and related materials to its employees or agents to the extent that such disclosure is necessary to Participating Institution's use of the SaaS Service, provided that Participating Institution takes reasonable steps to ensure that such information is not disclosed or distributed by such employees or agents in contravention of the provisions of this Subscription Agreement, and except as required by law.
- C. Participating Institution agrees to abide by the access and use restrictions set forth in the Fee Schedule attached to the Subscription Agreement and Documentation (as that term is defined in the Subscription Agreement), and to refrain from any use of the SaaS Service that is not expressly

permitted by the Subscription Agreement or the Documentation. Specifically, but without limitation, Participating Institution shall undertake to refrain from performing penetration tests or using the SaaS Service in any manner other than in the ordinary course of Participating Institution's regular activities.

- D. Participating Institution shall meet and maintain the technical prerequisites set forth in the Documentation (as that term is defined in the Subscription Agreement). Participating Institution shall be solely responsible for upgrading to the then-current minimum browser requirements as defined by Contractor from time to time.

**14. DIRECTORY INFORMATION.** Participating Institution shall ensure that all data it stores and makes available pursuant to the Subscription Agreement and this IPA, including all Customer Data and Personal Information (as those terms are defined in the Subscription Agreement), is limited to directory information pursuant to the Family Educational Rights Protection Act ("FERPA") and the policies of Participating Institution.

**15. MISCELLANEOUS PROVISIONS.**

- A. **AMENDMENTS.** The terms of this IPA shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties. The terms of the Subscription Agreement may be modified at any time without the approval or consent of Participating Institution.
- B. **ENTIRETY OF AGREEMENT.** This IPA and the terms of the Subscription Agreement and all amendments and annexes thereto, contain the entire agreement and understanding between the Participating Institution and the League and supersedes all prior oral or written representations and agreements with respect to the subject matter herein.
- C. **APPLICABLE LAW/REMEDIES.** This IPA shall be construed in accordance with and governed by the laws of the State of California. The parties shall have all remedies available by law or in equity.
- D. **NOTICES.** Notices under this IPA will be in writing and delivered personally, or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, and shall be made to:

**IF TO PARTICIPATING INSTITUTION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF TO LEAGUE:**

COMMUNITY COLLEGE LEAGUE OF CALIFORNIA  
ATTN: AMY BEADLE  
2017 O STREET  
SACRAMENTO, CA 95811  
(916) 800-2175

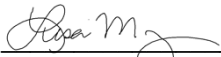
- E. **SEVERABILITY.** If any term, provision, covenant, or condition of this IPA is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the IPA shall remain in full force and effect and in no way shall be affected, impaired, or invalidated.

- F. COUNTERPARTS. This IPA may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- G. NON-WAIVER. No waiver by a party of any default or nonperformance will be deemed a waiver of any subsequent default or nonperformance.
- H. ASSIGNMENT. Participating Institution shall neither assign nor transfer any of its rights, burdens, duties or obligations under this IPA without the prior written consent of the League. League may assign this IPA and transfer its rights, burdens, duties, and obligations to the assignee upon assignment of the Subscription Agreement.
- I. SUCCESSORS AND ASSIGNS. This IPA shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
- J. TIME. Time is of the essence to this IPA.
- K. AUTHORITY. The parties to this IPA warrant that the person signing this IPA on its behalf is authorized to enter into this IPA.
- L. TERMS AND CONDITIONS. The parties to this IPA acknowledge that they have read and understood this IPA and the Subscription Agreement, and will fully comply with all terms and conditions of this IPA as set forth herein and all applicable terms and conditions of the Subscription Agreement.
- M. DEFINITIONS. All capitalized terms used in this IPA shall have the same meanings given such terms in the Subscription Agreement, unless expressly superseded by the terms of this IPA.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the parties to this IPA have executed this IPA by their duly authorized representatives on the dates of their signatures.

**COMMUNITY COLLEGE LEAGUE OF CALIFORNIA** \_\_\_\_\_

By:   
(Signature of authorized official of League.)

Name: Lisa Mealoy  
Title: Chief Operating Officer  
Date: January 24, 2021

By: \_\_\_\_\_  
(Signature of authorized official of Participating Institution.)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

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### Exhibit A

(\*Please note that Year 1 Fees do not reflect any grants or discounts that may have been applied).

Alma Institution/District	College	Year 1 Fees
	Allan Hancock College	\$21,869
Los Rios CCD	American River College	\$48,267
	Antelope Valley College	\$24,076
	Bakersfield	\$41,392
	Barstow	\$5,581
Peralta CCD	Berkeley City	\$7,550
	Butte	\$21,671
	Cabrillo	\$20,368
San Mateo CCCD	Canada	\$8,116
	Cerritos	\$39,500
	Cerro Coso	\$7,251
	Chabot	\$20,846
	Chaffey	\$37,472
	Citrus	\$24,838
	City College of San Francisco	\$33,518
State Center CCD	Clovis	\$12,218
Coast CCD	Coastline	\$13,146
Peralta CCD	College of Alameda	\$6,589
San Mateo CCCD	College of San Mateo	\$14,276
	College of the Canyons	\$30,974
	College of the Desert	\$26,542
	College of the Redwoods	\$9,969
	College of the Sequoias	\$25,046
	College of the Siskiyous	\$4,625
	Columbia	\$3,930
	Compton	\$9,617
Contra Costa CCD	Contra Costa	\$11,891
	Copper Mountain	\$2,897
Los Rios CCD	Cosumnes River	\$21,016
San Bernardino CCD	Crafton Hills	\$10,756
	Cuesta	\$19,016

	Cuyamaca	\$10,795
	Cypress	\$28,324
	De Anza	\$24,515
Contra Costa CCD	Diablo Valley	\$37,950
LACCD	East Los Angeles	\$42,054
	El Camino	\$40,673
San Jose Evergreen CCD	Evergreen	\$14,130
	Feather River	\$4,036
Los Rios CCD	Folsom Lake	\$13,325
	Foothill	\$17,317
State Center CCD	Fresno City	\$39,271
	Fullerton	\$40,354
	Gavilan	\$12,122
	Glendale	\$27,711
Coast CCD	Golden West	\$24,640
	Grossmont	\$24,616
	Hartnell	\$17,862
	Imperial Valley	\$17,611
	Lake Tahoe	\$2,554
Peralta CCD	Laney	\$14,267
	Las Positas	\$15,149
	Lassen	\$3,568
	Long Beach City	\$43,845
LACCD	Los Angeles City	\$19,361
LACCD	Los Angeles Harbor	\$11,723
LACCD	Los Angeles Mission	\$12,621
LACCD	Los Angeles Pierce	\$26,366
LACCD	Los Angeles Southwest	\$8,151
LACCD	Los Angeles Trade Technical	\$19,361
LACCD	Los Angeles Valley	\$22,118
Contra Costa CCD	Los Medanos	\$17,930
State Center CCD	Madera	\$5,576
	Mendocino	\$6,373
	Merced	\$22,352

Peralta CCD	Merritt	\$9,563
	MiraCosta	\$23,207
	Mission	\$11,852
	Modesto	\$28,377
	Monterey Peninsula	\$13,131
VCCD	Moorpark	\$26,354
Riverside CCD	Moreno Valley	\$14,971
	Mt. San Antonio	\$64,213
	Mt. San Jacinto	\$25,220
Riverside CCD	Norco	\$15,670
	Ohlone	\$18,138
Coast CCD	Orange Coast	\$41,745
VCCD	Oxnard	\$11,876
	Palo Verde	\$4,403
	Palomar	\$40,774
	Pasadena	\$51,931
	Porterville	\$7,922
State Center CCD	Reedley	\$11,541
	Rio Hondo	\$29,685
Riverside CCD	Riverside City	\$33,721
Los Rios CCD	Sacramento City	\$29,482
	San Bernardino Valley	\$24,993
San Diego CCD	San Diego City	\$21,742
San Diego CCD	San Diego Mesa	\$32,464
San Diego CCD	San Diego Miramar	\$19,520
	San Joaquin Delta	\$31,863
San Jose Evergreen CCD	San Jose City	\$11,820
	Santa Ana	\$46,374
	Santa Barbara City	\$30,347
	Santa Monica	\$49,662
	Santa Rosa	\$38,235
	Santiago Canyon	\$23,018
	Shasta	\$16,231
	Sierra	\$33,031

San Mateo CCCD	Skyline	\$17,020
	Southwestern	\$33,683
	Taft	\$6,121
VCCD	Ventura	\$22,579
	Victor Valley	\$21,478
West Hills CCD	West Hills - Coalinga	\$4,594
West Hills CCD	West Hills - Lemoore	\$6,563
LACCD	West Los Angeles	\$15,042
	West Valley	\$13,846
Yuba CCD	Woodland	\$5,151
Yuba CCD	Yuba	\$10,032

**EXHIBIT B**

(Subscription Agreement, including exhibits, addendum, and annexes)

## SUBSCRIPTION AGREEMENT

This Subscription Agreement (hereinafter referred to as “Subscription Agreement”) is entered into by and between the Community College League, of California, a California nonprofit corporation, (hereinafter referred to as “the League”) and Ex Libris (USA) Inc., a company incorporated under the laws of New York, having its main office at 1350 East Touhy Avenue, Des Plaines, IL 60018 (hereinafter referred to as “Contractor”) for the Contractor to perform the work which is more particularly set forth in this Subscription Agreement and in the Exhibits attached hereto and incorporated into this Subscription Agreement by this reference.

### RECITALS

WHEREAS, the Contractor implemented the SaaS Alma library services platform and Primo discovery services, and provided SaaS Alma library services platform and Primo discovery subscription services (“SaaS Services”) , for participating California community colleges (“Participating Institutions”) pursuant to an agreement between the Contractor and Butte Community College District, dated August 2, 2018, and expiring December 31, 2020 (“Implementation Agreement”);

WHEREAS, renewal of the Implementation Agreement was not funded by the State of California;

WHEREAS, the League is willing to be a party to the master agreement with Contractor for continuing the Participating Institutions’ access to the SaaS Services for the periods from and after January 1, 2021, and Contractor and the League desire to enter into this Subscription Agreement to provide such SaaS Services to Participating Institutions without interruption following expiration of the Implementation Agreement,

NOW, THEREFORE, the parties agree as follows:

1. **SUBSCRIPTION.** The Contractor shall grant access to the SaaS Services subject to the provisions of the Subscription Agreement and Addendum to the Subscription Agreement (“Addendum”), attached as Exhibit B and incorporated by reference herein.
2. **TERM.** The Term of this Subscription Agreement shall commence on January 1, 2021 and shall expire on December 31, 2023, unless otherwise terminated in accordance with this Subscription Agreement. The Term of this Subscription Agreement may be extended by written approval of the League and Contractor.
3. [INTENTIONALLY LEFT BLANK]
4. **DEFINED TERMS.** A list of capitalized defined terms is attached as Exhibit C and incorporated by reference herein.
5. [INTENTIONALLY LEFT BLANK]
6. **FEES/PAYMENTS.** The League shall pay Contractor for the provision of the SaaS Services to the Participating Institutions set forth in this Subscription Agreement, the

amounts specified in the Fee Schedule, attached as Exhibit D and incorporated by reference herein.

Payment of the Subscription Fee shall be made in the amounts and schedule identified in the Fee Schedule. The League and each Participating Institution shall be jointly and severally liable for payment of all fees for the SaaS Services provided to such Participating Institution.

7. ALLOWABLE COSTS. The League and Participating Institutions shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in providing the SaaS Services except as specified in Section 6 of this Subscription Agreement and/or the Fee Schedule, unless otherwise indicated and agreed to in writing by the Contractor and League.

8. USE OF FACILITIES AND EQUIPMENT. Contractor will furnish the hosting facilities and equipment necessary to provide the SaaS Services. The SaaS Service is cloud-based, and access to same will be through facilities and equipment provided by Participating Institutions and users. No equipment will be provided by Contractor to the League or Participating Institutions.

9. INVOICING. Contractor shall submit itemized invoices for approval to the League's Library Consortium Director for Subscription Fees in accordance with Exhibit D. All invoices should include the SaaS Services provided and the period for which payment is being requested, which must match the description in Exhibit D of the Subscription Agreement, and the specific dollar amount.

10. PAYMENT. Payment of Subscription Fees shall be made upon receipt by the League of invoice. Payment shall be considered timely if made by the League within thirty (30) days after the receipt of properly submitted invoices.

11. AUDIT. The League, Participating Institutions, the California State Auditor, and any other appropriate government agency authorized by law, or their duly authorized representatives shall, until three (3) years after final payment under this Subscription Agreement, have access to any of the Contractor's records related to payments under this Subscription Agreement, at the Contractor's regular place of business, for the purpose of conducting audits. The period of access for records relating to a) appeals under a dispute, b) litigation or settlement of claims arising from the performance of this Subscription Agreement, or c) costs and expenses of this Subscription Agreement to which exception has been taken shall continue until such appeals, litigation, claims, or exceptions are disposed of.

12. STATUS REPORTS. Contractor shall make available to League tools for retrieving and viewing information relevant to the Subscription Services, including a SaaS system status site, and quarterly uptime reports. Upon League's request from time to time, up to once per quarter, Contractor shall participate in a teleconference to discuss any issues and concerns League and Participating Institutions may have with respect to conformance of the SaaS

Services to the accessibility standards as noted in Section 26 and to report on progress in addressing and resolving any such accessibility issues and concerns previously raised.

13. AUTHORIZED REPRESENTATIVES. For the purpose of this Subscription Agreement, the individuals identified below are hereby designated representatives of the respective parties (unless and until otherwise notified).

For the League:            Technical Matters:    Amy Beadle  
Library Consortium Director  
Community College League of California  
2017 O Street  
Sacramento, California  
Telephone: (916) 800-2175  
Email: [abeadle@ccleague.org](mailto:abeadle@ccleague.org)

Business Matters:        Lisa Mealoy  
Chief Operating Officer  
Community College League of California  
2017 O Street  
Sacramento, California  
Telephone: (916) 245-5027  
E-Mail: [lmealoy@ccleague.org](mailto:lmealoy@ccleague.org)

Authorized Official:     Larry Galizio, PhD  
President and CEO  
Community College League of California  
2017 O Street  
Sacramento, California



For the Contractor      Technical Matters:      Melissa Hilbert  
VP of Professional Services  
Ex Libris (USA) Inc.  
1350 East Touhy Ave, Ste. 150W  
Des Plaines, IL 60018  
Telephone: 617-821-8629  
E-Mail: Melissa.hilbert@exlibrisgroup.com

Business Matters:      Mike Hommel  
Account Manager  
Ex Libris (USA) Inc.  
1350 East Touhy Ave, Ste. 150W  
Des Plaines, IL 60018  
Telephone: (847) 840-9149  
E-Mail: mike.hommel@exlibrisgroup.com

Authorized Official:      Eric Hines  
President, Ex Libris NA  
Ex Libris (USA) Inc.  
1350 East Touhy Ave, Ste. 150W  
Des Plaines, IL 60018  
E-Mail: erich@exlibrisgroup.com

14. INTELLECTUAL PROPERTY. The parties do not anticipate the development of software or other works for the SaaS Services, a cloud-based library services platform based upon Contractor's programs. Contractor agrees, however, that any and all software first developed pursuant to a separate statement of work issued under this Subscription Agreement, signed by both parties and specifying that such software is developed as works for hire for the League shall be and are Work for Hire ("Works"). All rights, title and interest in and to such Works shall be assigned and transferred to the League.

15. [INTENTIONALLY LEFT BLANK]

16. INDEPENDENT CONTRACTOR. Each party shall retain complete control and jurisdiction over such programs of its own that are outside of this Subscription Agreement, and nothing in the execution of this Subscription Agreement or in its performance shall be construed to establish a joint venture of the parties hereto. League or Participating Institutions' students, instructors, and staff participating in this program shall not be considered as employees of the Contractor, and agents or employees of the Contractor shall not be considered employees of the League or Participating Institution. Accordingly, employees of one party shall not be entitled to employee benefits normally provided to bona fide employees of the other party.

17. ASSIGNMENT. Contractor may not assign, transfer or subcontract any part of this Subscription Agreement, any interest herein or claims hereunder, without the prior, written approval of the League, except for assignments to related entities as a result of corporate restructuring or to a company which succeeds to its business hereunder. The League may not assign, transfer or subcontract any part of this Subscription Agreement, any interest herein or claims hereunder, without the prior, written approval of the Contractor, except for assignments made to Participating Institutions so long as such assignment does not alter the scope of the Access and Use Restrictions set forth in Exhibit D or the identity of the libraries using the SaaS Services.

18. TERMINATION.

A. A party may terminate this Subscription Agreement if the other party is in material breach of this agreement and has given written notice of such material breach and the other party has failed to cure such material breach within thirty (30) days of such notice, which shall commence on the date of mailing of the written notice by certified mail or personal delivery.

B. League may terminate this Subscription Agreement pursuant to the terms of Section 28, Appropriated Funds.

19. USE OF NAME. Neither the Contractor nor the League nor a Participating Institution shall make use of this Subscription Agreement, or use the other's name or that of any member of the other's staff for publicity or advertising purposes without prior written approval of the other party. Contractor must seek prior written permission from the League to use "Community College League of California" or in any promotional materials. Contractor must seek prior written permission by the California Community Colleges Chancellor's Office to use California Community Colleges or California Community Colleges Chancellor's Office in any promotional materials. Contractor must seek prior written permission by a Participating Institution to use its name in any promotional materials. Contractor may not use the name of any member of the staff of the League, a Participating Institution, or the California Community Colleges Chancellor's Office without prior written approval of the applicable institution. This restriction shall not include internal documents

available to the public that identify the existence of the Subscription Agreement and SaaS Services.

20. **CHANGES.** By mutual written consent, the Contractor and the League may make changes to the Work and to the terms of this Subscription Agreement. Any such changes shall be in the form of a written amendment signed by authorized representatives of the Contractor and the League.

21. **INDEMNIFICATION.**

A. Contractor agrees to defend, hold harmless and indemnify the League and each Participating Institution, their respective directors, officers and employees against third party claims for injury or damages arising out of the willful misconduct of Contractor in the performance of this Subscription Agreement, but only in proportion to and to the extent such injury or damages are caused by or result from such misconduct.

B. League agrees to defend, hold harmless and indemnify Contractor, its directors, officers and employees against third party claims for injury or damages arising out of the willful misconduct of the League in the performance of this Subscription Agreement, but only in proportion to and to the extent such injury or damages are caused by or result from such misconduct.

C. Each Participating Institution agrees to defend, hold harmless and indemnify Contractor, its directors, officers and employees against third party claims for injury or damages arising out of the willful misconduct of such Participating Institution in the performance of this Subscription Agreement, but only in proportion to and to the extent such injury or damages are caused by or result from such misconduct.

D. The obligations set forth in clauses A-C above shall be subject to the indemnified party (i) giving the indemnifying party prompt written notice of such claim; (ii) upon request of the indemnifying party, giving the indemnifying party the sole authority to defend or settle such claim; and (iii) providing full cooperation in such defense or settlement at the indemnifying party's expense and not taking any action that prejudices defense or settlement of such claim.

22. **INSURANCE.** Contractor, at its sole cost and expense, shall maintain during the Term of this Subscription Agreement the following insurance coverage, limits of coverage, and other insurance requirements as follows:

A. Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage.

B. Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident for bodily injury and property damage with respect to the Contractor's owned, hired, and non-owned vehicles.

C. Workers' Compensation insurance, if applicable, as statutorily required by California State law.

D. Employer's Liability insurance with limits of not less \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for bodily injury or disease.

E. Professional Liability insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by Contractor, or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.

F. Cyber insurance with a limit of not less than \$2,000,000 per occurrence for any security or other cyber breach involving the customer data or information. Such coverage may be included in the Contractor's Commercial General Liability or professional liability insurance so long as it is expressly included.

All insurance required by this Section shall be issued by an insurance company(ies) with a current A.M. Best (or equivalent) rating of A:VII or better. The General Liability and Automobile Liability Insurance policies shall be endorsed to name the "Community College League of California League" as additional insured for claims for which Ex Libris would have liability under this Subscription Agreement. All insurance policies shall be endorsed to provide for a thirty (30)-day advance written notice to the League of cancellation or suspension by the insurance company, or ten (10) days if cancellation is due to non-payment. Ex Libris will provide the League with thirty (30)-day advance written notice of any material changes to such insurance policies which change would cause such policies to no longer comply with the requirements of this Agreement. If any insurance policy(ies) required by this Subscription Agreement is(are) written on a claims-made form, it shall continue for three (3) year following termination of this Subscription Agreement. The insurance shall be in effect as of the effective dates of this Subscription Agreement. Contractor's insurance policies on the terms and limits required above must be primary, and any insurance or self-insurance maintained by the League shall not contribute to it. The coverages required under this Section shall not limit the Contractor's liability. If this Subscription Agreement is assigned, these insurance requirements also apply to the relevant assignee. The Contractor may fulfill its insurance obligations under this paragraph by self-insurance pursuant to an established plan operated in accordance with accepted insurance practices.

Prior to commencing Work under this Subscription Agreement, Contractor shall furnish League with certificates of insurance and original endorsements evidencing the coverage, limits, and conditions required by this Subscription Agreement.

23. EQUIPMENT. Upon termination of this Subscription Agreement, equipment furnished or purchased by the League or Participating Institutions for the SaaS Services shall be retained by the League or said Participating Institutions, and any equipment furnished or purchased by the Contractor shall be retained by the Contractor.

24. COMPLIANCE WITH LAWS. Performance of all obligations under this Subscription Agreement shall be in compliance with all applicable laws and regulations.

25. NONDISCRIMINATION. Contractor shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of ethnic group identification, national origin, religion, creed, age (over 40), sex, race, color, ancestry, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, marital status, denial of family care leave, political affiliation, or position in a labor dispute. Contractor shall also comply with the provisions of the Fair Employment and Housing Act (Gov. Code §§ 12900 *et seq*) and the applicable regulations, as well as the provisions of Government Code sections 11135-11139.8.

26. ACCESSIBILITY FOR PERSONS WITH DISABILITIES. Contractor shall comply in all respects with the Americans with Disabilities Act (ADA of 1990 (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Contractor warrants that the web-based environments for electronic and information resources that are provided to Customer as part of the SaaS Services provided pursuant to this Agreement conform to the W3C Web Content Accessibility Guidelines, version 2.0 or later version ("WCAG") at conformance levels A and AA and Section 508 of the Rehabilitation Act of 1973, with exceptions as set forth in the Voluntary Product Accessibility Templates ("VPATs"), published by Ex Libris from time to time.

Contractor agrees to promptly respond to any complaint regarding accessibility of its products or services provided by the League and Participating Institutions under this Agreement.

The League retains the right to employ the services of a third-party testing vendor to conduct accessibility audit testing in order to verify that said products are in compliance with the provisions of this Section 26.

27. CONFLICT OF INTEREST. Contractor shall not hire or contract with any officer or employee of the League or any member of their immediate family to perform any service covered by this Subscription Agreement. Contractor warrants that no officer or employee of the League has any financial interest, direct or indirect, in Contractor. Any question which may arise during the performance of this Subscription Agreement regarding a possible conflict of interest shall be referred to League for adjudication.

28. APPROPRIATED FUNDS.

(a) The continuation of this Subscription Agreement after December 31, 2022 with respect to a particular Participating Institution shall be subject to sufficient appropriated funds being received by such Participating Institution from the State of California or other public sources to support such Participating Institution's use of a library platform or service. In the event,

through no action or inaction on part of League or such Participating Institution, sufficient funds are not so available to such Participating Institution from the State or other sources or are discontinued at any time, the League may terminate such Participating Institution's SaaS Services Subscription upon thirty (30) days prior written notice to the Contractor, subject to payment of all fees with respect to SaaS Services and other services provided to such Participating Institution by Contractor under this Subscription Agreement through the effective date of termination. In the event of such termination, upon receipt of written notice Contractor shall take all reasonable steps to end the SaaS Services and minimize further costs.

(b) If the California Legislature appropriates future funding for library platform services, or the California Community Colleges Chancellor's Office ("Chancellor's Office"), makes funding available for library platform services, the League may assign this Subscription Agreement to the entity duly authorized to enter this Agreement and administer the funds on behalf of the Participating Institutions. Upon such assignment and to the extent such entity has accepted full responsibility for all obligations under this Subscription Agreement with respect to periods after the effective date of such assignment, Contractor releases the League from all obligations under this Subscription Agreement with respect to such periods.

29. SURVIVAL. The terms of sections 11 (AUDIT), 14 (INTELLECTUAL PROPERTY), 19 (USE OF NAME), 21 (INDEMNIFICATION), and 22 (INSURANCE), and Addendum sections 1.2, 5 (PROTECTION FROM THIRD PARTY INFRINGEMENT), 6 (LIMITATION OF LIABILITY), 7 (CUSTOMER'S UNDERTAKINGS), AND 8 (CUSTOMER DATA) as well as any provisions that are inherently intended to survive the termination of an agreement shall survive the early termination or expiration of the Subscription Agreement and remain in effect.

30. NOTICES. Any notice required or permitted by this Subscription Agreement shall be in writing and shall be delivered by (i) personal delivery; (ii) certified mail; or (iii) electronic mail to the respective party's Authorized Official.

31. WAIVER. No waiver of any breach of this Subscription Agreement shall be held to be a waiver of any other subsequent breach. The failure of any party to enforce at any time any of the provisions of this Subscription Agreement, or to require at any time performance of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Subscription Agreement or effect the rights of the such party to thereafter seek enforcement of the Subscription Agreement.

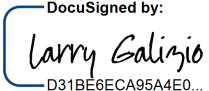
32. APPLICABLE LAW. This Subscription Agreement shall be interpreted and governed by the laws of the State of California.

33. ENTIRE AGREEMENT. This Subscription Agreement, including its Exhibits, is the complete agreement of the Contractor and the League and supersedes all prior understandings regarding the subject matter of this Subscription Agreement.

34. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Subscription Agreement may be executed in one or more counterparts, and counterparts may be exchanged by facsimile, electronic mail or other electronic transmission, each of which will be deemed an original, but all of which together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the respective parties have executed this Subscription Agreement on the dates indicated below.

**COMMUNITY COLLEGE LEAGUE OF CALIFORNIA**

By:    
 (Signature of authorized official of League.)

Name: Larry Galizio  
Title: President & CEO  
Date: 18 December 2020

**EX LIBRIS (USA) INC.**

DocuSigned by:  
By:    
 (Signature of authorized official of Contractor.)

Name: Eric Hines  
Title: President of Ex Libris NA  
Date: 18 December 2020

**Exhibits:**

- A: Statement of Work
- B: Addendum
- C: Defined Terms
- D: Fee Schedule

## EXHIBIT B

### ADDENDUM TO SUBSCRIPTION AGREEMENT

This Addendum establishes additional terms that are incorporated fully into the Subscription Agreement by and between the Community College League of California ("League") and Ex Libris (USA), Inc. ("Ex Libris"), referred to respectively as "League" and "Contractor" in the Subscription Agreement.

#### 1. SUBSCRIPTION TO SaaS SERVICES

1.1. In consideration of the full payment of the annual subscription fee by the League (the "**Subscription Fee**") for the SaaS Service, as set forth in the Fee Schedule attached as Exhibit D, and subject to all the terms and conditions in this Subscription Agreement, Ex Libris hereby grants to Participating Institutions the right to access and use the functionality of the SaaS Service (the "**Subscription**"), as outlined in the Fee Schedule (including, without limitation, any limitation of use to specific locations and Named Users and other use and access restrictions as set forth in the Fee Schedule), during the corresponding subscription period, as well as (i) related materials such as Documentation (as defined below) to the extent then available, and (ii) if applicable, third party data that may be accessed via the SaaS Service ("**Licensor Data**"), all made available to Participating Institutions in conjunction with and under the terms and conditions of this Agreement.

1.2. As between the League and Participating Institutions, on the one hand, and Ex Libris on the other hand,, all rights, title and interest, including without limitation, patent rights, copyrights, trade secrets, trademarks, service marks and other intellectual property rights, and any goodwill associated therewith, in and to the SaaS Service, related Documentation and all reproductions, derivatives, corrections, modifications, enhancements and improvements thereof, including anonymized statistical data derived from the operation of the SaaS Service, are and will remain at all times owned by Ex Libris. Other than the rights explicitly granted to League and Participating Institutions in this Subscription Agreement, all rights are reserved to and shall remain solely and exclusively proprietary to Ex Libris.

#### 2. SERVICE LEVEL; SUPPORT; OTHER PROVISIONS

2.1. Ex Libris will make the SaaS Service available to Participating Institutions in accordance with the SaaS Service Level Agreement set forth in Annex A (the "**SLA**"). In addition, Ex Libris shall provide Participating Institutions with ongoing support services relating to the SaaS Service, as specified in the SLA (the "**Support Services**"). Ex Libris will provide access to all appropriate documentation for fixes, releases, or upgrades to the SaaS Service.

2.2. The above support services do not include on-site services or training. If League requests such services, Ex Libris shall provide them and invoice League at its standard daily rates plus travel and subsistence expenses.

2.3. Provisions applicable to a specific SaaS Service may be set forth in Annex B hereto, and/or in the relevant Fee Schedule, and form a part of this Subscription Agreement.

#### 3. OTHER SERVICES

3.1. [INTENTIONALLY LEFT BLANK]

3.2. [INTENTIONALLY LEFT BLANK]



3.3. If any Participating Institutions use non-Ex Libris programs ("Third Party Programs") that interoperate with the SaaS Service, such Participating Institution acknowledges, that Ex Libris may allow the providers of such Third Party Programs to access Customer Data as required for the interoperation and support of such Third Party Programs. Ex Libris shall not be responsible for any such disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Program providers. For the sake of clarity, this provision does not refer to programs used or provided by Ex Libris as part of the SaaS Services.

#### **4. DOCUMENTATION**

Ex Libris shall make available in electronic format at no cost to League and Participating Institutions, all standard materials published by Ex Libris for use by subscribers to the SaaS Service, including manuals and other relevant materials and documentation, as updated from time to time ("**Documentation**"). League and Participating Institutions may print or copy Documentation as needed, provided all copyright notices are included and, with respect to any such materials not made publicly available by Ex Libris, distribution of said copies complies with the confidentiality provisions of this Subscription Agreement.

#### **5. PROTECTION FROM THIRD PARTY IP INFRINGEMENT**

5.1. Ex Libris will defend League or any Participating Institution to the extent any claim, suit, action or proceeding (each, a "Claim") brought by any third party against League or Participating Institution alleges that the SaaS Service infringes or misappropriates any copyright, trade secret or trademark, and shall pay any amounts awarded by a court pursuant to such Claim or amounts paid to settle the Claim. Ex Libris' obligation pursuant to this paragraph shall not extend to any Claim based on any alleged infringement arising from any use of the SaaS Service other than as permitted by this Subscription Agreement.

5.2. The obligations set forth in the immediately preceding paragraph shall be subject to the League or Participating Institution (i) giving Ex Libris prompt notice of such Claim; (ii) giving Ex Libris the sole authority to defend or settle such Claim; and (iii) providing full cooperation in such defense or settlement at Ex Libris' expense and not taking any action that prejudices Ex Libris' defense or settlement of such Claim.

5.3. If the SaaS Service becomes the subject of a Claim, or in Ex Libris' opinion is likely to become the subject of a Claim, then Ex Libris may, at its expense and option, either: (a) replace or modify the SaaS Service to make it non-infringing, while maintaining equivalent functionality; (b) procure for Participating Institutions the right to continue using the SaaS Service pursuant to this Subscription Agreement; or (c) terminate this Subscription Agreement and refund to League, on a pro-rata basis, the amount of any Subscription Fee that Ex Libris has received from League for the period between the effective date of termination of this Subscription Agreement and the expiration of the subscription period for which the Subscription Fee has been paid.

#### **6. LIMITATION OF LIABILITY**

6.1. Ex Libris does not assume any liability in respect of (i) access to and/or violation of copyright, privacy, database rights or trademark protection of any Licensor Data, third-party data or information resources stored with, or accessible through, the SaaS Service (including data made available by or on behalf of customers); (ii) the content or accuracy of Licensor Data or data posted by or on behalf of customers; and (iii) adverse effects, if any, due to any modification or adaptation made by League or Participating Institution in the SaaS Service without Ex Libris' express and prior written consent.

6.2. Neither League, any Participating Institution, nor Ex Libris shall incur any liability hereunder for any indirect, incidental, special, punitive or consequential damages for claims arising from or related to this Subscription Agreement or the use or inability to use the SaaS Services, including but not limited to reliance, cover or loss of anticipated profits or convenience, even if Ex Libris has been advised of the possibility of such damages. Ex Libris shall not be liable for lost revenues or profits regardless of whether they are classified as direct damages or any other type of damages. IN ANY CASE, (A) EXCEPT WITH RESPECT TO EX LIBRIS' INTELLECTUAL PROPERTY INDEMNITY OBLIGATIONS UNDER SECTION 5.1 ABOVE WHICH SHALL BE UNCAPPED, EX LIBRIS' ENTIRE LIABILITY ARISING FROM OR UNDER THIS SUBSCRIPTION AGREEMENT, OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE OR USE OF THE SAAS SERVICE, SHALL BE LIMITED TO THE AMOUNT OF SUBSCRIPTION FEE ACTUALLY PAID BY LEAGUE FOR THE SAAS SERVICE WHICH IS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTHS PRIOR TO BRINGING THE CLAIM, OR, IF THE AGREEMENT HAS EXPIRED OR BEEN TERMINATED, THE TWELVE (12) MONTHS PRIOR TO TERMINATION OR EXPIRATION OF THE AGREEMENT AND (B) EXCEPT WITH RESPECT TO PARTICIPATING INSTITUTIONS' OBLIGATIONS UNDER SECTION 7.4 BELOW WHICH SHALL BE UNCAPPED, LEAGUE AND PARTICIPATING INSTITUTIONS' ENTIRE LIABILITY ARISING FROM OR UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE USE OF THE SAAS SERVICE, SHALL BE LIMITED TO THE AMOUNT OF SUBSCRIPTION FEE ACTUALLY PAID AND PAYABLE FOR THE SAAS SERVICE WHICH IS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTHS PRIOR TO BRINGING THE CLAIM, OR, IF THE AGREEMENT HAS EXPIRED OR BEEN TERMINATED, THE TWELVE (12) MONTHS PRIOR TO TERMINATION OR EXPIRATION OF THE AGREEMENT AND THE EXISTENCE OF MORE THAN ONE CLAIM OR SUIT WILL NOT ENLARGE OR EXTEND THIS LIMITATION. The foregoing does not limit League's obligation to pay fees due under this Agreement, including any fees due for exceeding the access and use restrictions set forth in the Fee Schedule to this Agreement.

6.3. Licensor Data is provided "as is". EX LIBRIS' WARRANTIES AND REPRESENTATIONS ARE LIMITED TO THOSE SET FORTH HEREIN, AND IT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SAAS SERVICE, OTHER SERVICES AND ANY DATA ACCESSED THROUGH THE SAAS SERVICE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EX LIBRIS MAKES NO REPRESENTATION OR WARRANTY THAT THE USE OF THE SAAS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

## **7. CUSTOMER'S UNDERTAKINGS**

7.1. League and each Participating Institution agree not to (i) make the SaaS Service or the Licensor Data available in any way for the use or benefit of any unauthorized party and to use commercially reasonable efforts to prevent unauthorized access to or use of the SaaS Service or the Licensor Data, and to notify Ex Libris as soon as possible after it becomes aware of any unauthorized access or use; (ii) copy, modify, create derivative works from or use the SaaS Service, the Licensor Data, the Documentation or related materials or other proprietary information received from Ex Libris, in whole or in part, other than as expressly permitted by this Subscription Agreement, unless Ex Libris so consents in writing; (iii) reverse engineer, decompile or disassemble the SaaS Service or any components thereof except as permitted by law; (iv) violate or abuse the password protections governing access to and use of the SaaS Service; (v) remove, deface, obscure, or alter Ex Libris' or any third party's copyright notices, trademarks or other proprietary rights notices affixed to or provided as part of the SaaS Service, the Licensor Data

and/or the Documentation; (vi) use any robot, spider, scraper, or other automated means to access the SaaS Service or the Licensor Data for any purpose without Ex Libris' written consent; (vii) use or display SaaS Service logos differing from Ex Libris' own without Ex Libris' prior approval, which shall not be unreasonably withheld; (viii) store information or materials in the SaaS Service that violates a third party's rights or breaches applicable law; and/or (ix) use the SaaS Service, the Licensor Data or the Documentation in a way which would violate any applicable laws, rules and regulations.

7.2. League and each Participating Institution agrees to maintain the SaaS Service, any non-public Documentation and related materials confidential, except as required by law, and may disclose the SaaS Service and related materials to its employees or agents to the extent that such disclosure is necessary to League or Participating Institution's use of the SaaS Service, provided that League or Participating Institution takes reasonable steps to ensure that such information is not disclosed or distributed by such employees or agents in contravention of the provisions of this Subscription Agreement.

7.3. League and each Participating Institution agree to abide by the access and use restrictions set forth in the Fee Schedule and Documentation, and to refrain from any use of the SaaS Service that is not expressly permitted by this Subscription Agreement or the Documentation. Specifically, but without limitation, League and each Participating Institution undertake to refrain from performing penetration tests or using the SaaS Service in any manner other than in the ordinary course of League and Participating Institution's regular activities.

7.4. To the extent that any third party brings a claim against Ex Libris alleging that information stored in the SaaS Service by or on behalf of a Participating Institution violates a third party's rights or breaches applicable law, such Participating Institution will defend the claim and pay any resulting judgment or negotiated settlement. The obligation set forth in this Section 7.4 shall be subject to Ex Libris (i) giving Participating Institution prompt notice of such claim; (ii) giving Participating Institution the sole authority to defend or settle such claim; and (iii) providing full cooperation in such defense or settlement at Participating Institution's expense and not taking any action that prejudices Participating Institution's defense or settlement of such claim.

7.5. In order to allow for proper operation of the SaaS Service, each Participating Institution shall meet and maintain the technical prerequisites set forth in the Documentation. Each Participating Institution shall be solely responsible for upgrading to the then-current minimum browser requirements as defined by Ex Libris from time to time. Ex Libris shall provide Participating Institutions with no less than six months' prior written notice of any change in the minimum browser requirements.

## **8. CUSTOMER DATA**

8.1. Definitions:

8.1.1. "**Customer Data**" means any business information, personal information or other data which each Participating Institution stores, or provides to Ex Libris for storing and processing, in the SaaS Services.

8.1.2. "**Mining Customer Data**" means to search through, access, or extract non-anonymized Customer Data, metadata, or information which is not necessary to accomplish the purpose(s) of the Subscription Agreement, to provide the Work or SaaS Services, or to improve the Work or SaaS Services.

- 8.1.3. **“Personal Information”** means personal identifiers such as name, address, email address and phone number and such other items of personal information permitted to be stored on the SaaS Services.
- 8.1.4. **“Securely Delete”** means taking actions that delete data written on electronic media unrecoverable meeting DoD 5220.22-M or comparable standards.
- 8.1.5. **“Security Breach”** means an event in which Customer Data is exposed to unauthorized disclosure, access, alteration, or use.

8.2. Right and License in Customer Data; Confidentiality

- 8.2.1. Each Participating Institution shall own all rights, title and interest, including all intellectual property rights, in and to all of the Customer Data of such Participating Institution and shall each have sole responsibility for the legality, reliability, integrity, accuracy and quality of its Customer Data. Nothing in the Subscription Agreement shall be interpreted to transfer title or ownership of the Customer Data to Ex Libris or any other party. Except as otherwise set forth in this Subscription Agreement, Ex Libris has a limited, nonexclusive license to access, copy and use the Customer Data solely for the purposes of performing its obligations under this Subscription Agreement. Except as expressly stated in the Subscription Agreement, this Subscription Agreement does not give Ex Libris any rights, implied or otherwise, to Customer Data content or intellectual property.
- 8.2.2. Each Participating Institution shall retain possession and control of its own generated content.
- 8.2.3. Ex Libris agrees during the Term to implement reasonable security measures to protect and backup Customer Data and will, at a minimum, utilize industry standard security and backup procedures. Ex Libris publishes or makes available its information security procedures (“Information Security Plan”) to League and its other customers and regularly reviews its Information Security Plan and updates and revises from time to time as necessary. Ex Libris shall perform an annual audit by a third-party independent auditor of its compliance with the ISO-27001 (or comparable industry) standard. The audit report generated by such audit shall be Ex Libris’ confidential information. During the Term of this Subscription Agreement, the League may request in writing Ex Libris’ then current ISO-27001 certification, in order to verify that Ex Libris processes personal information in accordance with this Subscription Agreement.

Ex Libris’ Information Security Plan shall be designed to: (i) Ensure the security, integrity and confidentiality of the Customer Data; (ii) Protect against any anticipated threats or hazards to the security or integrity of such information; (iii) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to the person that is the subject of such information; (iv) Protect against unauthorized changes to or use of Customer Data; and (v) Comply with all applicable legal and regulatory requirements for data protection. Ex Libris’ Information Security Plan shall include business continuity and disaster recovery plans, and a written response program addressing the appropriate remedial measures it shall undertake in the event that there is an information security breach. Ex Libris shall cause all subcontractors and other persons and entities whose services are retained specifically to provide Services to the Participating Institutions or who hold Customer Data, to implement information security procedures sufficient to enable Ex Libris’ compliance herewith.

- 8.2.4. Each of the Participating Institutions acknowledges that use of the SaaS Service may involve providing Personal Information about such Participating Institution’s permitted users, such as its staff and patrons, and other third parties, to Ex Libris, and each Participating

Institutions shall be responsible for having all necessary rights to collect or allow collection of such Personal Information. As between League and Participating Institutions, on the one hand, and Ex Libris, on the other hand, Participating Institutions retain ownership of the Personal Information of each and may, at any time during the term of this Subscription Agreement, access, review, modify and delete Personal Information that Ex Libris is storing.

8.2.5. Except as otherwise provided in this Subscription Agreement, Ex Libris will use Customer Data only for the purpose of fulfilling its duties under the Subscription Agreement, and, except as part of the normal operation of the SaaS Services, will not share such data with or disclose it to any third party without the prior written consent of the relevant Participating Institution, except as required by law and except to affiliates and third party contractors retained by Ex Libris to provide services related to this Subscription Agreement under written obligations of confidentiality.

8.2.6. Each Participating Institution agrees, that it will not upload to or store on the SaaS Service, and Ex Libris will not be liable with respect to, personal data not necessary to operating library systems, such as government-issued identification numbers (social security number, national identification number, driver's license number, passport number etc.), bank and credit card account numbers, race, origin, sexual orientation, biometric data, health and medical information, student academic records, employment records or financial records. Participating Institution will only store basic personal information necessary to operating library systems (i.e., names, postal addresses, email addresses, telephone numbers, institutional ID and loan and fines information, as applicable). Ex Libris acknowledges that some basic personal information, such as names, postal addresses, email addresses, telephone numbers, and institutional ID, may be considered protected Personal Information pursuant to FERPA.

8.2.7. The SaaS Services provided to the Participating Institution and their Customer Data shall be hosted in data centers located in the United States. Except as incidental to Support, and other services provided hereunder, Customer Data will not be stored outside of the United States without prior written consent of the League. Ex Libris may utilize its Affiliates in the performance of its obligations under this Agreement.

8.2.8.

Ex Libris represents and warrants that in performing the Work and providing the SaaS Services, it will comply with all privacy and data protection laws and regulations of the United States applicable to its operation of the SaaS Services and the permitted Personal Information, including, as applicable, the provisions in the Family Education Rights and Privacy Act ("FERPA"), 20 USC Section 1232(g) et seq. and that it will use commercially reasonable efforts to protect each Participating Institution's Personal Information. To the extent that Ex Libris will have access to "education records" for the Participating Institutions' students as defined under the Family Educational Rights and Privacy Act (FERPA), Ex Libris acknowledges that for the purposes of the Subscription Agreement it is designated as a "school official" with "legitimate educational interests" in the education records, as those terms have been defined under FERPA and its implementing regulations. Each Participating Institution agrees that it will not store Education Records in the SaaS Service except to the extent that basic library patron data regarding its students used in a library system is deemed Education Records under FERPA.

Each Participating Institution represents and warrants that in using the SaaS Services, it will comply with all privacy and data protection laws and regulations of the United States applicable to its use of the SaaS Services, including without limitation, the collection, use,

transfer, and access by its users, of Personal Information in connection with the SaaS Services.

8.2.9. Ex Libris will provide access to Customer Data to its employees, subcontractors, and Affiliates who need to access the data to fulfill Ex Libris' duties under the Subscription Agreement. Ex Libris will ensure that employees, subcontractors, and its Affiliates who perform services are bound to obligations of confidentiality. Ex Libris trains its responsible employees from time to time on compliance with confidentiality and privacy requirements. To the extent applicable, Ex Libris will use the education records only for the purpose of fulfilling its duties under this Subscription Agreement for the Participating Institutions' benefit, and will not share such data with or disclose it to any third party except as part of the normal operation of the SaaS Services or otherwise provided for in this Subscription Agreement, as required by law, or authorized in writing by the relevant Participating Institution.

League and each Participating Institution acknowledge that Ex Libris can rely, is relying and will continue to rely on League and Participating Institutions' full compliance with the applicable obligations imposed by FERPA, as any such obligations may be amended or modified, with respect to any data that may be accessed, obtained, received, extracted, or otherwise used by Ex Libris (or which may be disclosed in any manner to Ex Libris by or on behalf of League or Participating Institutions), in individualized or aggregate form, in connection with the Work.

8.2.10. Ex Libris shall not use the Personal Information for any purpose except in the performance of this Agreement and to provide Support Services to the Participating Institutions and their respective permitted users.

Ex Libris will not use the Customer Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by the applicable Participating Institution.

Ex Libris is prohibited from Mining Customer Data for any purposes other than as part of the normal functioning of the SaaS Service for the benefit of Participating Institution and the operation of the SaaS Services environment by Ex Libris or those otherwise agreed to by the applicable Participating Institution.

8.2.11. Upon expiration or termination of a Subscription, Ex Libris will, upon League or Participating Institution's request, make the Customer Data available to Participating Institution for download for the forty-five (45) days following such expiration or termination (the "**Termination Assistance Period**"). After the Termination Assistance Period, Ex Libris shall have no obligation to maintain or provide any Customer Data relating to the expired or terminated Subscription and will, unless legally prohibited, delete it. Ex Libris will Securely Delete any such Customer Data containing Personal Information, and will following a period of no more than one hundred and twenty (120) days following the Termination Assistance Period provide certification of data deletion to the League or Participating Institution upon request.

8.2.12. Ex Libris will notify the League of impending cessation of its business and any contingency plans, including plans for the transfer and inventory of Customer Data.

### 8.3. Security Breach

8.3.1. Upon notification of any potential Security Breaches, Ex Libris shall promptly investigate and remediate such breaches using industry standard technology. Promptly, but in no event longer than 48 hours, after confirming a Security Breach, Ex Libris will notify the League and impacted Participating Institution, fully investigate the incident, and

cooperate fully with the Participating Institution's response to the incident. Except as otherwise required by law, Ex Libris will not provide notice of the incident directly to individuals whose Personal Information was involved, regulatory agencies, or other entities, without prior written permission from the impacted Participating Institution.

#### 8.4. Response to Legal Orders; Demands or Requests for Data

Except as otherwise expressly prohibited by law or an investigating authority, Ex Libris will:

- (i) promptly notify the impacted Participating Institution of any subpoenas, warrants, or other legal orders, demands or requests received Ex Libris seeking Customer Data;
- (ii) Consult with the Participating Institution regarding its response;
- (iii) Cooperate with the Participating Institution's reasonable requests in connection with efforts by the Participating Institution to intervene and quash or modify the legal order, demand or request; and
- (iv) Upon the Participating Institution's request, provide the Participating Institution with a copy of its response.

If the Participating Institution receives a subpoena, warrant, or other legal order, demand, including requests pursuant to the California Public Records Act (Gov. Code, §§ 6250, *et seq.*) ("requests") or requests seeking Customer Data maintained by Ex Libris, the Participating Institution will promptly provide a copy of the request to Ex Libris. To the extent Participating Institution does not have access to such data, Ex Libris will promptly supply the Participating Institution with copies of records or information to which Ex Libris has access, at Participating Institution's reasonable expense, as required for the Participating Institution to respond, and will cooperate with the Participating Institution's reasonable requests in connection with its response.

### 9. **FORCE MAJEURE**

Ex Libris shall not be responsible for any failures of its obligations under this Subscription Agreement to the extent that such failure is due to causes beyond Ex Libris' control including, but not limited to, acts of God, war, terrorism, riots, civil unrest, acts of any government or agency thereof, fire, explosions, epidemics, quarantine restrictions, delivery services, telecommunication providers, interruption or failure of the Internet, strikes, labor difficulties, lockouts, embargoes, or severe weather conditions.

### 10. **PARTICIPATING INSTITUTIONS**

10.1. Participating Institutions shall be identified by the League from among, and are limited to, the 116 California community colleges (the "California Community College Institutions").

10.2. It is agreed that any Center belonging to one of the Participating Institutions which subsequently becomes a separately-accredited California community college as provided for under the provisions of California state law shall have a right to become an additional Participating Institution, subject to notice to Ex Libris and agreement with respect to payment of fees associated with any implementation and/or other professional services necessary to create a separate SaaS Service institution for such additional Participating Institution, along with any increase in the scope of the Subscription beyond the Access and Use Restrictions initially set forth in the Fee Schedule for the Participating Institution to which it belonged. The League shall require Participating Institutions to enter into an agreement with the League regarding the SaaS Service, which agreement shall at minimum require the Participating Institutions to agree to the terms and their

obligations under the Subscription Agreement, including the Addendum and Annexes, and that Ex Libris shall be entitled to enforce the terms and conditions of this Subscription Agreement against each of the Participating Institutions. Participating Institutions are the intended beneficiaries of the Subscription Agreement shall be entitled to enforce the terms and conditions of this Subscription Agreement against Ex Libris. So long as a Participating Institution is subject to the terms of this Subscription Agreement and that such terms are enforceable directly by Ex Libris (as required above), Ex Libris agrees that it shall enforce any claims it has for a Participating Institution's negligent or intentional acts in connection with this Subscription Agreement directly against such Participating Institution. The foregoing shall not limit Ex Libris' rights to make claims to and against the League for the League's obligations under this Subscription Agreement, including without limitation, with respect to payment of fees and other amounts due hereunder.

10.3. Participating Institutions will be added to this Subscription Agreement as follows:

10.3.1. [INTENTIONALLY LEFT BLANK]

10.3.2. [INTENTIONALLY LEFT BLANK]

10.3.3. To the extent any of the 116 California Community College Institutions are not Participating Institutions on January 1, 2021, such Institutions may become Participating Institutions at a later date ("Late Adopters"). The League shall from time to time provide Ex Libris with Notices of Participation of Late Adopters that have requested to become Participating Institutions. The fees, and terms and conditions, applicable to Late Adopters will be addressed on a case-by-case basis, depending on the size of the Late Adopter. Upon agreement by the League and Ex Libris with respect to the implementation services and associated fees necessary to add such Late Adopter and the annual Subscription Fees, such institutions shall thereafter be subject to the applicable terms and conditions of this Subscription Agreement and be Participating Institutions hereunder for all purposes.

10.4. [INTENTIONALLY LEFT BLANK]

10.5. [INTENTIONALLY LEFT BLANK]

## **11. RIGHTS AND REMEDIES OF THE LEAGUE FOR DEFAULT**

11.1. In the event the League terminates this Subscription Agreement under Section 17 of the Subscription Agreement for Ex Libris' material breach, Ex Libris shall refund to League, on a pro-rata basis, the amount of any Subscription Fee that Ex Libris has received from League for the period between the effective date of termination of the Subscription Agreement and the expiration of the subscription period for which the Subscription Fee has been paid for terminated SaaS Services. The League's rights and remedies provided above shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity or this Subscription Agreement.

## **12. WARRANTY**

12.1. Ex Libris warrants that during the subscription period the SaaS Services will perform substantially in accordance with the Documentation.

12.2. Ex Libris warrants that at the time of the effective date of the Subscription Agreement, and upon each update and upgrade, the SaaS Services shall be free of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software).



12.3. All warranties, including special warranties specified elsewhere herein, shall inure to League and the Participating Institutions.

**13. SAFETY AND ACCIDENT PREVENTION**

In performing work under the Subscription Agreement on the premises of League or Participating Institutions, Ex Libris shall conform to all specific safety requirements contained in this Subscription Agreement or as required by law or regulation. Ex Libris shall take all additional precautions as the League or Participating Institution may reasonably require for safety and accident prevention purposes.

## **LIST OF ANNEXES**

- |                |   |
|----------------|---|
| <b>ANNEX A</b> | <b>SaaS Service Level Agreement (SLA)</b> |
| <b>ANNEX B</b> | <b>SaaS Service-Specific Provisions</b>   |

## ANNEX A

### SaaS Service Level Agreement (the "SLA")

#### **A. For Programs other than Sandbox**

##### **1. Availability**

For the duration of the Subscription, Ex Libris will use commercially reasonable efforts to ensure that the SaaS Service is available for access and use in accordance with the Subscription Agreement at an annual Uptime Percentage (defined below) of at least 99.5%, as measured over any calendar year. Upon request, Ex Libris shall provide the Participating Institution or League with a report of any Downtime during a calendar quarter (the "**Quarterly Report**").

##### **2. Definitions**

All capitalized terms used in this SLA without definition shall have the meaning ascribed to them in the Subscription Agreement. In addition, the following definitions shall apply to this SLA:

- 2.1. "**Downtime**" means the total time within a Measured Period during which the SaaS Service is inoperable or inaccessible, excluding SLA Exclusions during such Measured Period.
- 2.2. "**Measured Period**" means the total number of minutes in the calendar year.
- 2.3. "**Scheduled Downtime**" shall mean any Downtime (i) of which Participating Institution is notified at least seven (7) days in advance, or (ii) during a standard maintenance window, as published by Ex Libris from time to time. In either of the foregoing two situations, Ex Libris will use commercially reasonable efforts to ensure that the Scheduled Downtime falls between the hours of Saturday 8PM and Sunday 6AM Toronto time.
- 2.4. "**Uptime**" means the total period in minutes during which the SaaS Service is available for access and use during a Measured Period.
- 2.5. "**Uptime Percentage**" means Uptime expressed as a percentage, calculated in accordance with the following formula:

$$\text{Uptime Percentage} = X / (Y - Z) \times 100$$

Where:

- |   |   |   |
|---|---|---|
| X | = | Uptime  |
| Y | = | Measured Period   |
| Z | = | The duration (in minutes) of any SLA Exclusions during the applicable Measured Period |

##### **3. SLA Exclusions**

The following shall not be considered within the definition or calculation of Downtime: (i) Scheduled Downtime; (ii) SaaS Service unavailability attributable to (a) causes beyond Ex Libris' reasonable control, including any Force Majeure event or the performance of any third party communications or internet service provider; (b) the Participating Institution's failure to

perform any obligation under the Subscription Agreement that affects the performance of the SaaS Service; and/or (c) any actions or omissions of the Participating Institution, its permitted users or any third party acting on their behalf, or to the Participating Institution's or any third party's equipment, software or other technology; (iii) SaaS Service unavailability caused by the suspension and termination of the Participating Institution's right to use the SaaS Service in accordance with the Agreement; and (iv) separate instances of SaaS Service unavailability of less than 5 (five) minutes duration each, provided such instances are not of a persistent nature such that they cause a detrimental impact on the Participating Institution (each an "SLA Exclusion").

#### 4. Low Uptime Percentage

- 4.1. If the Uptime Percentage shown on any two consecutive Quarterly Reports falls below 97%, then the League shall be entitled to terminate the Subscription immediately, without Ex Libris incurring any liability arising from the fact of such termination. The League and Participating Institution are liable for Subscription Fees only up to the date of termination. The League's right to terminate under this Section 4.1 only exists for a period of one month following delivery of the applicable Quarterly Report.
- 4.2. If the Participating Institution or League disputes the accuracy of any Quarterly Report, it must submit notice thereof within two weeks of its receipt of the Quarterly Report, which notice must include the dates, times and duration of each incident of Downtime that the Participating Institution or League claims to have experienced, including instance ids of the instances that were running and affected during the time of each incident. Failure to do so shall render the Quarterly Report definitive.
- 4.3. Ex Libris' obligations hereunder are based on and subject to the Participating Institution: (i) complying with the terms and conditions of the Subscription Agreement, including this SLA; (ii) complying with Ex Libris' instructions, if any, for performing corrective action; and (iii) the Participating Institution maintaining the connectivity (with acceptable bandwidth) of the workstations and end customers to the main internet, including network connectivity to the SaaS Service, and connectivity between the SaaS Service and the Participating Institution's local applications interacting with the SaaS Service, as well as creating and maintaining firewall definitions and opening required ports that permit access to the SaaS Service.

#### 5. Support Incidents

- 5.1. Participating Institution shall report all issues via Salesforce, through the creation of a Salesforce Case (a "Support Case"). Level I and II issues, as described in 5.2 below, should also be reported to 24X7hub@exlibrisgroup.com.
- 5.2. Ex Libris Response to Support Cases:

Response Level	Description	Initial Response
I	<ul style="list-style-type: none"> <li>▪ The SaaS Service is not available</li> </ul>	1 hour
II	<ul style="list-style-type: none"> <li>▪ An inoperable production module</li> </ul>	2 hours
III	<ul style="list-style-type: none"> <li>▪ Other production performance related issues, typically a module feature working incorrectly</li> </ul>	1 business day

IV	<ul style="list-style-type: none"> <li>▪ Non-performance related incidents, including: general questions, requests for information, documentation questions, enhancement requests</li> </ul>	2 business days
----	--	-----------------

### 5.3. Updates relating to Support Cases

All incidents of Downtime which are known by Ex Libris are reported by Ex Libris to Participating Institution and available for Participating Institution to view via a designated link on the Participating Institution Portal ("**Downtime Status Page**"). In the event of Downtime, Ex Libris shall update the Downtime Status Page on an hourly basis until resolution of such Downtime event. All incidents of Downtime which are known by Ex Libris and which affect only Participating Institution will be communicated via a support case or by email.

### 5.4. Escalation

If Downtime is not resolved within two hours, then Ex Libris will escalate the matter to its 24x7 Team Hub Manager; if it is not resolved within four hours, then Ex Libris will escalate the matter to its Director of Support for North America; and if it is not resolved within eight hours, then Ex Libris will escalate the matter to its Global Support Director.

## 6. 24x7 Monitoring

The Ex Libris hub team provides 24x7 coverage for the SaaS Service by monitoring and alerting on any issues or problems with:

- servers
- operating systems
- network devices (switches/routers)
- backup systems
- server side performance

### **B. For Sandbox**

Ex Libris makes no warranty or representation regarding Uptime. Ex Libris shall respond to Support Cases for Sandbox as follows:

- (i) Performance related issues: within two (2) business days.

Non-performance related matters, including: general questions, requests for information, documentation questions, and enhancement requests: within four (4) business days.

## ANNEX B

### SaaS Service-Specific Provisions

Provisions that apply specifically to Alma

#### 1. DaaS – DATA AS A SERVICE

1.1 Both Participating Institution and Ex Libris may make content and data available in connection with the SaaS Service. The intent is to make content and data available which may be useful to others. The rights in connection with this content and data are as set forth below:

- (i) Participating Institution may choose to post certain Customer Data into a community zone which is accessible by all of the SaaS Service customers (the "**Community Zone**"). Participating Institution hereby grants to Ex Libris and to any customer of the SaaS Service a royalty-free, perpetual, irrevocable, worldwide, unrestricted license to use, copy, distribute, display, and create derivative works from, any Customer Data which is posted in the Community Zone (such derivative works, including any enhancements, enrichments or modifications, to be owned by Participating Institution and subject to the same unrestricted license);
- (ii) Material which Ex Libris posts to the Community Zone will continue to be owned by Ex Libris or its licensor;
  - (a) if it is owned by Ex Libris, then Ex Libris grants any user a royalty-free, perpetual, irrevocable, worldwide, unrestricted license to use, copy, distribute, display and create derivative works from, such material (such derivative works, including any enhancements, enrichments or modifications, to be owned by Ex Libris and subject to the same unrestricted license);
  - (b) if it is owned by a licensor, then the uses will be only those permitted by the licensor, which permitted uses shall be made known to the users of the Community Zone.

1.2 Notwithstanding anything else herein, as between the parties, material (excluding Customer Data) which Ex Libris posts to other products or data services, such as KnowledgeBase, or creates, such as indices based on other material, shall be owned by Ex Libris.

1.3 The parties agree that Ex Libris may replace the above-mentioned unrestricted license with a comparable Open License (as defined in Exhibit C).

Provisions that apply specifically to Primo

1. If the Participating Institution wishes to contribute usage logs to the bX service (the "**bX Service**"), the Participating Institution shall provide access to the Participating Institution's linking service, as specified in the Service FAQ available on Ex Libris' customer information site (currently: <http://registration.service.exlibrisgroup.com/customer/faq.do?product=bx>). All usage logs so contributed will be anonymized and the data will be encrypted during transfer from Participating Institution's linking server to the bX server. The Participating Institution agrees that all such data contributed to the bX Service will be used by the bX

Service on a perpetual, irrevocable basis, whether or not Participating Institution continues to contribute to the bX Service or terminates the Participating Institution.

2. Participating Institution shall comply with, and shall use reasonable efforts that each end user complies with the Primo Central Index Terms of Service and Primo Central Service Configuration and Display Guidelines, which can be viewed on the Customer Portal. Participating Institution further agrees that it shall not, nor will it allow any end user or third party to:
  - 2.1. Store or cache data accessible through the SaaS Service (the "**Data**") beyond the normal day-to-day use of an individual user;
  - 2.2. Return or display in the Data search results snippets of full text that exceed one hundred and sixty one (161) characters in length;
  - 2.3. Independently produce or display snippets in the Data search results when no such snippets are returned by the SaaS Service;
  - 2.4. Use the Data for or in connection with any application, product or service other than the SaaS Service;
  - 2.5. Create or repackage a database containing material amounts of Data;
  - 2.6. Merge Data with other data or records (whether or not obtained via the Primo Central Index), in any manner.
  - 2.7. Text mine, data mine or harvest metadata from the Data.

## EXHIBIT C

### Definitions

**“Affiliate”** means, with respect to an entity, another entity that controls, is controlled by, or is under common control with, the first entity.

**“Subscription Agreement”** means the Subscription Agreement, including its Exhibits and other attachments.

**“Agreement Effective Date”** means the date set forth in Section 2 of the Subscription Agreement, which is the date this Subscription Agreement goes into effect.

**“Bibliographic Titles”** means, the total number of descriptive metadata records managed within Alma, including both physical and e-book titles as well as locally managed authority records. This number excludes e-journal titles and digital metadata record counts.

**“Community Zone”** means the part of the Alma SaaS Service as further described in Annex B, where Ex Libris and the customers of the SaaS Service, have the option to load metadata, electronic resource and collection definitions (also known as the Knowledge Base) and authority records to be used by all participating customers, to streamline resource management processes, including ordering, cataloging, discovery, and related functions such as context sensitive linking services for end users, authority control and analytics.

**“Current Agreement(s)”** means those previously entered software license or subscription agreement(s) pursuant to Section 10.4 of the Addendum.

**“Current Software”** means the software and services listed on Annex D to the Addendum, as applicable in accordance with Section 10.4 of the Addendum.

**“Customer Data”** means, as set forth in Section 8, any business information, personal information or other data which League or Participating Institution stores, or provides to Ex Libris for storing, in the SaaS Service.

**“Documentation”** means, as set forth in Section 4 of the Addendum, materials published by Ex Libris for use by Participating Institutions, including manuals and other materials.

**“Ex Libris”** means the Ex Libris entity named in the first paragraph of this Subscription Agreement.

**“FTE’s”** consisting of the following categories of individuals:

- (i) then-currently enrolled students;
- (ii) then-current faculty (i.e., professors, lecturers and instructors); and
- (iii) then-current other personnel (e.g., library staff, university administrators etc.)



**“Go Live Date”** means the date on which the Participating Institution first uses the SaaS Service for commercial or production purposes, or makes the SaaS Service generally available to Participating Institution’s users, or uses the SaaS Service in any way beyond testing.

**“Fee Schedule”** means, the Fee Schedule(s) attached to this Subscription Agreement as Exhibit D.

**“Licensor Data”** means, as set forth in Section 1.1 of the Addendum, third-party data that may be accessed via the SaaS Service.

**“Named Users”** means, Participating Institutions’ users that have been entitled by the Participating Institutions with unique login credentials to the SaaS Service. Named Users may include Participating Institution’s employees, library student assistants, temporary staff, consultants, or contractors.

**“Open License”** means a license which allows a copyright owner to permanently relinquish copyrights to data of a bibliographic nature for the purpose of contributing to a commons of creative, cultural and scientific works that the public can reliably, and without liability for later claims of infringement, build upon, modify, incorporate in other data, reuse and redistribute freely in any form and for any purpose, including, without limitation, commercial purposes. Open Data Commons Public Domain Dedication and License (PDDL) and Creative Commons (CC) license are two of several public copyright licenses that are considered Open Licenses.

**“Participating Institution”** means, as set forth in the recitals of this Subscription Agreement, each subscribing Institution that has been granted a Subscription to the SaaS Services under this Subscription Agreement with Ex Libris.

**“Personal Information”** means, as set forth in Section 8.2.4 of the Addendum, personal information of Participating Institutions’ permitted users, such as its staff and patrons, and other third parties.

**“Primo Documents”** means, any full text or metadata records which are harvested (from Alma or other library sources such as institutional digital repositories) and made discoverable via Primo. The average record size of all Primo Documents must be under 5kb.

**“Fee Schedules”** means, as set forth in Section 6 of the Subscription Agreement and attached as Exhibit D, collectively the Initial Fee Schedule and any Additional Fee Schedules.

**“SaaS”** means Software as a Service.

**“SaaS Service”** means, as set forth in recitals of the Subscription Agreement, the Alma and Primo SaaS Service(s) and any additional SaaS services added by agreement of the parties.

**“SaaS Service Contract Date”** means, with respect to a SaaS Service, the date as of which that SaaS Service became a part of this Subscription Agreement. Accordingly, the SaaS Service Contract Date of a SaaS Service that was included on the Initial Fee Schedule would be the Agreement Effective Date. However, the SaaS Service Contract Date of a SaaS Service that was included on an Additional Fee Schedule subsequently prepared by Ex Libris, signed by the Customer and added to the Fee Schedule would be the date of the Customer’s signature on

such Additional Fee Schedule (or the date of any other amendment to this Subscription Agreement by which the SaaS Service was added).

“**SLA**” means, as set forth in Section 2.1 of the Addendum, the Service Level Agreement set forth on Annex A.

“**Subscription**” means, as set forth in Section 1.1 of the Addendum, the right to access and use the functionality of the SaaS Services.

“**Subscription Effective Date**” means, with respect to a Subscription, the beginning date of that Subscription as set forth in the Fee Schedule or otherwise in this Agreement.

“**Subscription Fee**” means, with respect to the relevant SaaS Service, the Subscription Fee set forth on the relevant Fee Schedule, as set forth in Section 6 of the Subscription Agreement.

“**Support Services**” means, as set forth in Section 2.1 of the Addendum, the maintenance and support services relating to the SaaS Service specified in the SLA.

“**Term**” means, with respect to a Subscription, the Term and any extensions, as set forth in Section 2 of the Subscription Agreement.

“**Termination Assistance Period**” means, as set forth in Section 8.2.11, the 45-day period immediately following the expiration or termination of a Subscription, during which Ex Libris will, upon Participating Institution’s request, make the Customer Data available to Participating Institution for download.

“**Third Party Programs**” means, as set forth in Section 3.3 of the Addendum, non-Ex Libris programs that interoperate with the SaaS Services.

“**Unique e-Journal Titles**” means, the total number of e-journal titles obtained by counting e-journals once even if they are available from multiple sources. This includes all e-journal titles managed in Alma and is not dependent on the manner they are accessed or acquired (e.g. subscriptions from content providers, open access collections, databases, etc.).

**EXHIBIT D**  
**Fee Schedule**  
**ALMA & PRIMO**  
**All Prices Quoted are in USD**

1. Fees

(a) Annual Subscription Fees

- i. The 2021 initial annual Alma and Primo Subscription Fee for the Participating Institutions listed in Table A below is: \$1,922,449
- ii. 10 Standard Alma Sandboxes (to be shared amongst the consortium members) and 1 Standard Network Zone Sandbox is included in the annual Subscription Fee; it includes standard Ex Libris data and standard Ex Libris configuration.
- iii. 10 Standard Primo Sandboxes (to be shared amongst the consortium members) and 1 Standard Network Zone Sandbox are included in the annual Subscription Fee; it includes up to 100,000 records.

**TABLE A—California Community Colleges Participating Institutions**

<b>Participating Institution Name</b>
(Los Angeles Community College District) <ul style="list-style-type: none"> <li>• East Los Angeles College</li> <li>Los Angeles City College</li> <li>Los Angeles Harbor College</li> <li>Los Angeles Mission College</li> <li>Los Angeles Pierce College</li> <li>Los Angeles Southwest College</li> <li>Los Angeles Trade Technical College</li> <li>Los Angeles Valley College</li> <li>West Los Angeles College</li> </ul>
(Los Rios Community College District) <ul style="list-style-type: none"> <li>• American River College</li> <li>Cosumnes River College</li> <li>Folsom Lake College</li> <li>Sacramento City College</li> </ul>
(Peralta Community College District) <ul style="list-style-type: none"> <li>• Berkeley City College</li> <li>College of Alameda</li> <li>Laney College</li> <li>Merritt College</li> </ul>
(Riverside Community College District) <ul style="list-style-type: none"> <li>• Moreno Valley College</li> <li>Norco College</li> <li>Riverside City College</li> </ul>
(San Diego Community College District)

<ul style="list-style-type: none"> <li>San Diego City College</li> <li>San Diego Mesa College</li> <li>San Diego Miramar College</li> </ul>
<p>(San Jose Evergreen Community College District)</p> <ul style="list-style-type: none"> <li>Evergreen Valley College</li> <li>San Jose City College</li> </ul>
<p>(San Mateo Community College District)</p> <ul style="list-style-type: none"> <li>Canada College</li> <li>College of San Mateo</li> <li>Skyline College</li> </ul>
<p>(State Center Community College District)</p> <ul style="list-style-type: none"> <li>Clovis Community College</li> <li>Fresno City College</li> <li>Madera Community College</li> <li>Reedley College</li> </ul>
<p>(West Hills Community College District)</p> <ul style="list-style-type: none"> <li>West Hills College -- Coalinga</li> <li>West Hills College Lemoore</li> </ul>
<p>(Yuba Community College District)</p> <ul style="list-style-type: none"> <li>Woodland Community College</li> <li>Yuba College</li> </ul>
Allan Hancock College
Antelope Valley College
Bakersfield College
Barstow College
Butte College
Cabrillo College
Cerritos College
Cerro Coso Community College
Chabot College
Chaffey College
Citrus College
City College of San Francisco
Coastline Community College
College of the Canyons
College of the Desert
College of the Redwoods
College of the Sequoias

College of the Siskiyous
Columbia College
Compton College
Contra Costa College
Copper Mountain College
Crafton Hills College
Cuesta College
Cuyamaca College
Cypress College
De Anza College
Diablo Valley College
El Camino College
Feather River College
Foothill College
Fullerton College
Gavilan College
Glendale Community College
Golden West College
Grossmont College
Hartnell College
Imperial Valley College
Lake Tahoe Community College
Las Positas College
Lassen Community College
Long Beach City College
Los Medanos College
Mendocino College
Merced College
MiraCosta College
Mission College
Modesto Junior College
Monterey Peninsula College
Moorpark College

Mt. San Antonio College
Mt. San Jacinto College
Ohlone College
Orange Coast College
Oxnard College
Palo Verde College
Palomar College
Pasadena City College
Porterville College
Rio Hondo College
San Bernardino Valley College
San Joaquin Delta College
Santa Ana College
Santa Barbara City College
Santa Monica College
Santa Rosa Junior College
Santiago Canyon College
Shasta College
Sierra College
Southwestern College
Taft College
Ventura College
Victor Valley College
West Valley College

2. Subscription Fee Increases:

Following the end of the first year of the Term, prices for the Subscription Fee and other services may be increased by Ex Libris from time to time upon notice to the League, but not more than 4% (four percent) per year for the second year of the Term and not more than 4.5% (four and a half percent) per year for the third year of the Term, in each case, for the relevant scope/parameters specified in the Fee Schedule.

3. Access and Use Restrictions:

Usage of the SaaS Service is limited to:

- (a) Participating Institutions and is not for the use of any other campus, college, university, library or entity of any kind. Any use of the SaaS Service by any other entity is strictly prohibited and is considered a material breach of the Subscription Agreement. For the sake of clarity, Participating Institution's authorized users may access the SaaS Services from outside of Customer's jurisdiction, but Customer shall ensure that it is entitled to transfer Customer Data and Personal Information from and to any such Customer user location and shall be responsible for compliance with privacy laws applicable to such transfers.
- (b) Alma subscription for up to: (i) 1,437 Named Users (includes special increase of 287 beyond the priced Named Users of 1,150) for Alma (ii) thirty (30) users for each Alma Sandbox; (iii) 20,000,000 Bibliographic Titles (including e-books and local authority records) (includes special increase of 9,347,403 beyond the priced Bibliographic Titles of 10,652,597); and (iv) 1,149,466 Unique e-Journal Titles.
- (c) A subscription to manage the following resource types in Alma: (i) Print; and (ii) Electronic.
- (d) Primo subscription is for up to (i) 20,000,000 Primo Documents (ii) 495,503FTE's; and (iii) 110 Participating Institutions.
- (e) Growth Pricing: For a period of thirty-six (36) months from January 1, 2021, League may increase the number of Named Users and Bibliographic Titles subscribed hereunder as set forth above, at the following prices:
  - i. \$500 per year increase of annual Subscription Fees for each additional Named User.
  - ii. \$5,675 per year increase of the annual Subscription Fee for each additional 500,000 Bibliographic Titles (increases are in minimum blocks of 500,000).
  - iii. Pricing for additional e-journal Titles and FTEs will be quoted by Ex Libris should increases become relevant.
  - iv. Solely with respect to additional Named Users and Bibliographic Titles purchased during the period between January 1, 2021 and December 31, 2023, League shall be entitled to a special 25% discount on the prices set forth above.

For the sake of clarity, any annual increases applied to the Subscription Fees paid hereunder shall be applied to the forgoing prices on a proportional basis.

- (f) Grace Period and Initial True Up: The parties acknowledge that the Participating Institutions currently exceed the level of Named Users and Bibliographic Titles subscribed under this Subscription Agreement and set forth above (the "Subscribed Parameters"). Ex Libris agrees to provide a grace period until March 31, 2021 to provide the Participating Institutions with the opportunity to reduce their collective usage to meet the Subscribed Parameters without charging for such excess. Following March 31, 2021, Ex Libris shall measure the actual usage and to the extent the actual usage of the SaaS Services exceeds the Subscribed Parameters, the annual Subscription Fees and Subscribed Parameters under this Agreement shall be increased by such excess in accordance with the growth prices set forth above in Section 3(e). Solely with respect to the period from January 1 through December 31, 2021, the full amount of such increase

in Subscription Fees shall be added to, and payable as part of, the second invoice and payment of Subscription Fees (due July 15, 2021) as set forth in Section 4(a) below.

- (g) One Time Participating Institution Reduction: League shall have the one-time right, upon written notice to Ex Libris provided no later than March 31, 2021, to remove Participating Institutions from this Agreement (each a “Withdrawing Institution”) with a reduction of each of the access and use parameters (e.g., Named Users, Bibliographic Titles, e-Journal Titles, FTE’s, etc.) (“Metrics Reduction Amount”) according to each Withdrawing Institution’s Proportional Percentage (as defined below); provided that the aggregate reduction for all Withdrawing Institutions may not exceed an amount representing more than 5% of the annual Subscription Fees. From and after April 1, 2021, each such Withdrawing Institution shall no longer have access to the SaaS Services and shall be removed as a Participating Institution from the Agreement. Effective from and after April 1, 2021 and so long as the actual usage by all Participating Institutions have been reduced below the total subscribed access and use parameters set forth herein by the aggregate Metrics Reduction Amount for all Withdrawing Institutions, League will be entitled to a proportional reduction of the Alma and Primo Subscription Fees, which reduction will in no event exceed 5% of the total annual Subscription Fees hereunder. With respect to the period between April 1, 2021 and June 30, 2021, a pro rata credit with respect to any reduction in accordance with the foregoing shall be applied to the second invoice and payment of Subscription Fees (due July 15, 2021) as set forth in Section 4(a) below.

For purposes hereof, a “Withdrawing Institution’s Proportional Percentage” shall be calculated by taking the percentage of the total Initial Annual Alma and Primo Subscription Fees paid under the Implementation Agreement, represented by the total annual Alma and Primo Subscription Fees set forth for the Withdrawing Institution in Table A of Exhibit D of the Implementation Agreement.

4. Payment Schedule:

- (a) Payment of the Subscription Fee becomes due upon Ex Libris submitting invoices to the League in accordance with Section 9, Invoicing, and Section 10, Payment, of the Subscription Agreement, and upon reaching the below payment milestones. For the sake of clarity, Ex Libris may invoice in advance of such milestones, but payment will not be due before the relevant date set forth below:

50% of the annual SaaS Service Subscription Fee for each year is due on or prior to <b>January 15</b> of such year.
The remaining 50% of the annual SaaS Service Subscription Fee for each year is due on or prior to <b>July 15</b> of such year.

- (b) Annual Subscription Fee: The initial Subscription Fee is for the one-year period commencing on January 1, 2021 (the “**Subscription Effective Date**”), and each subsequent Subscription Fee is for the one-year period commencing on each



anniversary thereof. The Subscription Fee for the first year and subsequent years of Subscription is due as set forth above.

- (c) Increase in Scope of Subscription: In the event the scope of the Subscription is extended beyond the Access and Use Restrictions initially set forth in this Fee Schedule, the annual Subscription Fee shall be increased in accordance with this Fee Schedule from the time said extension is granted by Ex Libris, without regard to the annual cap on increases set forth in Section 3 of the Fee Schedule.
- (d) All prices and fees stated in this Fee Schedule exclude all applicable sales tax or any other direct or indirect tax, charge, duty or assessment, all of which shall be added to the fees and paid by League (except for taxes based upon Ex Libris' net income). Payment of the fees shall be made without deduction or withholding of any amount, tax or government charge. If the League is a tax-exempt institution, the League will supply Ex Libris with appropriate certification of its tax-exempt status within ten (10) days of the Agreement Effective Date and will promptly notify Ex Libris of any change to such status.

**Exhibit C**

<b>College</b>	<b>College's Allocation of Named Users</b>	<b>College's Allocation of Bibliographic Titles</b>