

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: AUGUST 12, 2013 AGENDA ITEM NUMBER: 14

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR FORSYTH COUNTY TO BE A PARTICIPATING LIBRARY IN A MASTER ONLINE SUBSCRIPTION SERVICES AGREEMENT BETWEEN EQUINOX SOFTWARE, INC. AND THE STATE LIBRARY OF NORTH CAROLINA (FORSYTH COUNTY PUBLIC LIBRARY)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

### SUMMARY OF INFORMATION:

See attached

ATTACHMENTS:  YES  NO

SIGNATURE: *J. Dudley Watts, Jr.* DATE: August 8, 2013  
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR  
FORSYTH COUNTY TO BE A PARTICIPATING LIBRARY IN A MASTER  
ONLINE SUBSCRIPTION SERVICES AGREEMENT BETWEEN EQUINOX  
SOFTWARE, INC. AND THE STATE LIBRARY OF NORTH CAROLINA  
(FORSYTH COUNTY PUBLIC LIBRARY)**

**WHEREAS**, Equinox Software, Inc. and the State Library of North Carolina have entered into a Master Online Subscription Services Agreement and the Forsyth County Public Library desires to be a participating library and receive special rates under the said Master Agreement;

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby authorizes the Chairman or County Manager and Clerk to the Board to execute, on behalf of Forsyth County, an Online Subscription Services Agreement between Forsyth County, on behalf of its Public Library, and Equinox Software, Inc. at an annual cost of \$73,770.00 for the period October 1, 2013 through September 30, 2014, subject to a pre-audit certificate thereon by the Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

**BE IT FURTHER RESOLVED** by the Forsyth County Board of Commissioners that the County Manager is hereby authorized to execute, on behalf of Forsyth County, amendments to this agreement and subsequent agreements with this provider for these services, within budgeted appropriations, in the current and future fiscal years, if these services are deemed necessary, subject to a pre-audit certificate thereon by the Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this the 12<sup>th</sup> day of August 2013.



P.O. Box 69  
Norcross, GA 30091

877. OPEN. ILS  
877. 673. 6457  
866. 497. 6390 (fax)

<http://esilibrary.com/>

PARTICIPATING LIBRARY ONLINE SUBSCRIPTION SERVICE AGREEMENT							
<b>CUSTOMER NAME:</b>	Forsyth County Public Library				<b>EFFECTIVE DATE:</b>		
<b>BILLING ADDRESS:</b>	660 W. Fifth Street						
<b>CITY:</b>	Winston-Salem	<b>STATE:</b>	NC	<b>ZIP CODE:</b>	27101	<b>COUNTRY:</b>	USA
<b>CUSTOMER POINT OF CONTACT:</b>				<b>PHONE #:</b>			

Equinox Software, Inc. and the State Library of North Carolina (the "State Library") have entered into that certain Master Online Subscription Services Agreement dated April 7, 2011 (the "Master Agreement") and its subsequent amendments. Customer desires to be a participating library and benefit from the Master Agreement by receiving the special rates for the subscription services described in this Agreement.

Services	Functionality/Cost
Online Subscription Service (Hardware / hosting, Operating System, and EVERGREEN) (See attached Schedule 1)	<ul style="list-style-type: none"> <li>Each subscription year runs from October 1 to September 30.</li> <li>One-time Subscription Access Fee: \$1,000.00 per outlet (service location) for the balance of the renewal period. The one-time subscription access fee is payable at signing.</li> <li>Annual renewals will be covered by the State Library's Subscription agreement with Equinox.</li> <li>To enable Customer's subscription, Equinox will install a basic configuration of the EVERGREEN software, and translate and load existing data from legacy system to EVERGREEN.</li> <li>Migration and deployment fees are payable 50% at signing and 50% upon substantial completion. Migration fees are not included in the subscription fees.</li> <li>Equinox will also provide on-site training of Customer's staff on how to use the EVERGREEN subscription. Training will be scheduled in advance with Customer. Training fees are not included in the subscription fees.</li> </ul>

The attached Schedule 1 and Additional Terms and Conditions are incorporated herein by reference and form a substantive part of this Agreement. The parties have caused this Agreement to be signed by the undersigned duly authorized representatives as of the Effective Date.

Customer:

Equinox Software, Inc.

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

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Schedule 1
Online Subscription Service

Subscribing to Equinox's online service for access to a library-specific EVERGREEN Open ILS system in accordance with the Master Agreement provides Customer with access to various benefits:

Hardware System Administration

Equinox will:

- Host and maintain the Customer's EVERGREEN instance at Equinox's Quality Technology Services (QTS) data center...
Coordinate and perform hardware replacement and new hardware installs.
Test installation will include a replication of the production EVERGREEN system...

Technical Support

- Customer will contact the State Library to receive technical support in accordance with the Master Agreement. Tier 1 issues (non-technical, user-level issues initial contact) will be handled by State Library staff.
Equinox will actively monitor system health 24x7x365 with automated monitoring software (currently Nagios) that polls servers and network devices.
Equinox will provide up to two EVERGREEN upgrades per subscription year. Security patch releases will be applied without limits.

Migration and Deployment

- Equinox will provide EVERGREEN Basic policy configuration for Customer to join the shared online services at the rate provided below.
Asterisk Telephony Configuration - Equinox will provide remote services that include consulting on the installation of Asterisk on local servers, the configuration of Asterisk, and the configuration of Evergreen to work with the provide Asterisk server.
Equinox staff will perform the migration of Customer's data (bibliographic, item, patron, and transactional) into a database for access through the EVERGREEN software...

Data Extraction Service

Equinox can provide extraction data services from the following legacy integrated library systems: Unicorn, Symphony, TLC Library.Solution, Dynix, Horizon, Mandarin, and Koha. For other ILSs not mentioned, Equinox will determine its ability to provide this service as necessary. In all cases, Equinox will require remote desktop access to the legacy ILS database.

Customer (Initial): \_\_\_\_\_
Equinox (Initial): \_\_\_\_\_

- **Bibliographic/Item/Authority Record Migration**  
Equinox will migrate bibliographic, item and authority records to the State Library's EVERGREEN system.
  - **Patron Record Migration**  
Equinox will migrate patron records to the State Library's EVERGREEN system.
  - **Circulation Record Migration**  
Equinox will migrate loans, fines, and holds to the State Library's EVERGREEN system.
  - **Acquisition Record Migration**  
N/A
  - **Serial Record Migration**  
Equinox will migrate serial issues, MFHD, subscription, and prediction pattern records to the State Library's EVERGREEN system as determined in consultation with Customer and the State Library. To determine a final cost, Equinox will require either access to the legacy ILS database or a file of these records to review the migration costs.
  - **Bibliographic Record Deduplication**  
Equinox will conduct bibliographic record deduplication of the incoming bibliographic records against the State Library's EVERGREEN system as needed. This will be per run, so it would be recommended to conduct a single deduplication run when multiple library systems join to minimize costs.
  - **Patron Record Deduplication**  
N/A
- The "go live" date is the date on which the software deployed by Equinox under this Agreement is first accessible by Customer's patrons.
  - Migration and deployment services shall terminate, and payment for the remaining fee shall be due, once Equinox's work to migrate and deploy the EVERGREEN software is substantially complete.

### Training

- Training of staff on the EVERGREEN software as requested by the Customer while the Agreement is in force. Dates, times, and locations for the training shall be approved by Customer and Equinox at least 45 days in advance of the training.
- Equinox will provide a 3-day On-site Training Starter Package at a rate of \$5,000.00, which includes travel expenses intended for libraries joining the shared ILS. The training package includes three days devoted to OPAC, circulation, cataloging and administration.
- Equinox will provide an additional 2-days of training devoted to acquisitions, serials, and reports.
- If additional training is requested or necessary for a library joining the State Library's EVERGREEN system, they can be added at the reduced rate described below. Fees for training after the first year of the Agreement will be at Equinox's then-current training rates. Training fees are payable 50% at signing, 50% invoiced at the completion of training.



Variable Rate Services for Libraries Joining the State Library of North Carolina's EVERGREEN System

Service	Unit Type	Quantity	Rate	Total
Equinox Subscription	Outlet	10	\$1,000.00	\$10,000.00
EVERGREEN Basic Configuration	Outlet	10	\$500.00	\$5,000.00
Asterisk configuration	Server	N/A	\$1,400.00	N/A
Data Extraction Service	Data Source	1	\$1,400.00	\$1,400.00
Bibliographic/Item/Authority Record Migration	Bib Record	283,000	\$.09	\$25,470.00
Patron Record Migration	Patron Record	225,000	\$.06	\$13,500.00
Circulation Record Migration	Data Source	1	\$2,500.00	\$2,500.00
Acquisition Record Migration – vendor, fund, current FY orders	Hour	N/A	\$175.00	N/A
Acquisition Record Migration – historical funds and orders	Hour	N/A	\$175.00	N/A
Serial Record Migration – subscriptions, issues, publication patterns	Data Source	1	\$7,000.00	\$7,000.00
Bibliographic Record Deduplication	Run	1	\$1,400.00	\$1,400.00
Patron Record Deduplication	Run	N/A	\$1,400.00	N/A
3-Day On-site Training Starter Package	3 Days	1	\$5,000.00	\$5,000.00
Additional On-site Training Days – Acquisitions, Serials	Day	2	\$1,250.00	\$2,500.00
<b>TOTAL NOT TO EXCEED</b>				<b>\$73,770.00</b>

\* Actual Subscription cost will be prorated from the library go-live date to the NC Cardinal Subscription Renewal Date.

[End of Schedule.]

Customer (Initial): \_\_\_\_\_  
 Equinox (Initial): \_\_\_\_\_

**Additional Terms and Conditions  
to the ILS Services Agreement**

The following are additional terms and conditions to the ILS Services Agreement between Equinox and Customer. The "Agreement" consists of page 1, the schedule attached thereto, and these additional terms and conditions. If there is any conflict among or between page 1, the attached schedule, and these additional terms and conditions, then the portions of this Agreement will have control in the following order of preference: page 1, then the schedule, then these additional terms and conditions.

**1. Services**

a. *Services.* Beginning on the "go live" date, Equinox will provide Customer with non-exclusive electronic access to a digital information processing, transmission, and storage system ("Server") to store Customer's EVERGREEN system ("Site") and make the Site available on the Internet (the "Hosting Services"). Equinox will also provide Customer with the services described in Schedule 1 and elsewhere in this Agreement (which, together with the Hosting Services, are collectively referred to as the "ILS Services"). Equinox will provide the ILS Services on a non-exclusive basis and may therefore perform services for others. Equinox may subcontract with third parties to perform all or part of the ILS Services. Equinox is not responsible for providing any services or performing any tasks not specifically set forth in this Agreement. To the extent that Customer wishes to receive from Equinox, and Equinox wishes to provide to Customer, services other than the Hosting Services, such as, by way of example only, services relating to listservs, FTP, or e-mail, (collectively, the "Additional Services" and, together with the Hosting Services, the "Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement that is duly executed by the parties (the "Services Addendum"). The Services Addendum shall be incorporated into, and become a part of this Agreement.

b. *Availability of Services.* Equinox shall attempt to provide the Services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement. Customer agrees that from time to time the Services may be inaccessible or inoperable for any reason, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that Equinox may undertake from time to time; or (iii) causes beyond the control of Equinox or which are not reasonably foreseeable by Equinox, including interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, and other failures. Equinox has no control of availability of Services on a continuous or uninterrupted basis. In the event of any loss or interruption of Hosting Services, Customer's sole and exclusive remedy and Equinox's sole and exclusive liability shall be with respect to a loss or interruption that exceeds a continual period of twenty-four (24) hours, in which event Customer shall receive a credit against future Hosting Services equal to a pro rata portion of Hosting Service fees for the period of downtime.

c. *Domain Name Registration.* As part of the initial Hosting Services, Customer shall provide Equinox with a registered domain name, or Equinox shall register \_\_\_\_\_ ( ) domain name(s) selected by Customer provided that such domain name(s) are available for registration and do not violate any InterNIC or other registration service's policies, or any law or regulation. Customer will promptly reimburse Equinox for any fees paid by Equinox to InterNIC or such other registration services for the registration and maintenance of such domain name.

d. *Domain Name Disputes.* If any dispute or cause of action arises out of or relates to Customer's domain name used in connection with the Site, the upon Customer's request Equinox will attempt to register with InterNIC an alternative domain name chosen by Customer and will attempt to make the Site available over the Internet under such alternative name for an additional fee to be charged to Customer pursuant to Equinox's then current fee and payment schedule.

e. *Equinox Materials.* In connection with performance of the Hosting Services and at the sole discretion of Equinox with no obligation, Equinox may provide to Customer certain materials, including computer software (in object code or source code form), data, documentation, or information developed or provided by Equinox or its suppliers under this Agreement, such as domain names, electronic mail addresses, and other network addresses assigned to Customer, and other know-how, methodologies, equipment (such as the Servers), and processes used by



Equinox to provide the Hosting Services to Customer, together with all legally protectable elements, derivative works, modifications, and enhancements thereto that are owned or licensed by Equinox other than Customer Content (collectively, the "Equinox Materials").

f. *Customer Content.* Customer may provide files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Site, including, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, metatags, domain names, software and text ("Customer Content"). The Customer Content shall also include any registered domain names provided by Customer or registered on behalf of Customer in connection with the Services.

**2. Licenses and Proprietary Rights**

a. *License of Customer Content.* Customer hereby grants to Equinox a non-exclusive, worldwide, and royalty-free license during the term of this Agreement to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Customer Content as necessary to render the Services to Customer under this Agreement.

b. *License of Equinox Materials.* Equinox grants to Customer a limited, non-transferable, non-exclusive license, for the term of this Agreement, to copy and use the Equinox Materials, solely in connection with the Site and for Customer's internal business purposes.

**3. Site and Services Terms and Limitations**

a. *Storage and Security.* As part of the Hosting Services, Equinox will use its commercially reasonable best efforts to correct any problem with the Site, Customer Content, or the Server that prevents the Site from being accessible or that prevents the Site, Customer Content, or Server from working in accordance with its respective design specifications. Equinox will be responsible for any loss and damage to the Server, the Site, and Customer Content to the extent caused wholly by Equinox's gross negligence or willful misconduct, subject to all limitations in the attached Terms and Conditions. Notwithstanding the foregoing to the contrary, Customer shall be solely responsible for undertaking measures to: (i) maintain independent archival and backup copies of the Site and all Customer Content; (ii) ensure the security, confidentiality, and integrity of all Customer Content transmitted through or stored on the Server; and (iii) ensure the confidentiality of Customer's password. If Customer's password is lost, stolen, or otherwise compromised, Customer shall promptly notify Equinox, whereupon Equinox may suspend access to the Services by use of such password and issue a replacement password to Customer's authorized representative.

b. *Additional Storage and Transfer.* If the Site requires storage and transfer on the Server that exceeds the amount of storage included in the Hosting Services, Customer may, upon \_\_\_\_\_ ( ) days written notice to Equinox, request that Equinox (a) upgrade the level of Hosting Services, or (b) acquire additional incremental storage to be included in the Hosting Services, on a time and materials basis and in accordance with Equinox's then current fee and payment schedule. Equinox shall review all such requests and determine, in consultation with Customer, whether it can reasonably comply with such requests and, if so, Equinox shall propose a procedure and budget for complying with such request, which may require additional fees.

c. *Acceptable Use Policy.* Customer is solely responsible for all acts, omissions, and use under and charges incurred with Customer's account or password or in connection with the Site or any Customer Content displayed, linked, transmitted through, or stored on the Server. Customer will not engage in unacceptable use of any Services, which includes use of the Services to: (i) disseminate or transmit unsolicited messages, chain letters, or unsolicited commercial email; (ii) disseminate or transmit any material that to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, or malicious; (iii) disseminate or transmit files, graphics, software, or other material, data, or work that actually or potentially infringes the copyright, trademark, patent, trade secret, or other intellectual property right of any person; (iv) create a false identity or to otherwise attempt to mislead any person as to the identity, source, or origin of any communication; (v) export, re-export, or permit downloading of any message or content in violation of any export or import law, regulation, or

Customer (Initial): \_\_\_\_\_  
Equinox (Initial): \_\_\_\_\_



restriction of the United States and its agencies or authorities, or without all required approvals, licenses, and exemptions; (vi) interfere, disrupt, or attempt to gain unauthorized access to any computer system, server, network, or account for which Customer does not have authorization to access or at a level exceeding Customer's authorization; (vii) disseminate or transmit any virus, trojan horse, or other malicious, harmful, or disabling data, work, code, or program; or (viii) engage in any other activity deemed by Equinox to be in conflict with the spirit or intent of this Agreement or any Equinox policy.

d. *Rights of Equinox.* Customer agrees that Equinox may, in its sole discretion, remove or disable access to all or any portion of the Site or Customer Content stored on the Server at any time and for any reason. Equinox has no obligation to monitor the Site or any Customer Content, but reserves the right in its sole discretion to do so.

**4. Change Procedures.** Except as otherwise provided in this Agreement, any change to any part of this Agreement must be in writing and signed by both parties before becoming effective. Upon receipt of a fully signed amendment, Equinox shall promptly commence performance in accordance with the amendment. Equinox, at its discretion, may suspend the particular ILS Service related to the change while an amendment request is outstanding.

**5. Customer Obligations.** Part of Equinox's ability to meet time deadlines depends on Customer's timely performance of the following obligations (collectively referred to with payment of invoices as "Customer Obligations"), which Customer shall perform:

(a) designate and provide one Customer point-of-contact, who shall be responsible for responding to Equinox's questions and issues relating to the ILS Services;

(b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing Customer Obligations set forth in this Agreement; (ii) making timely decisions necessary to move the ILS Services forward; (iii) participating in the project and assisting Equinox in rendering the ILS Services; and (iv) facilitating development, testing, and implementation of the EVERGREEN software;

(c) provide Equinox with reasonable access to Customer's facilities during Customer's normal business hours and otherwise as reasonably requested by Equinox in order to enable Equinox to perform the ILS Services; and

(d) to the extent that ILS Services are performed at Customer's site, provide Equinox with such reasonable working space, equipment, and office support (including phone lines for dial-up capabilities, digital or analog phone lines for long distance and local calls related to the provision of ILS Services, and photocopying equipment), and an adequate environment for consultants where they can conduct efficient analytical work and meet with Customer personnel and other Equinox personnel as Equinox may reasonably request.

**6. Equinox Obligations.** Equinox shall perform or cause to be performed the ILS Services. Equinox's ability to perform the ILS Services or cause them to be performed is conditioned upon Customer's timely performance of the Customer Obligations and upon correctness of the assumptions described in this Agreement. Customer's performance of the Customer Obligations is material to Equinox's ability to provide the ILS Services. If Customer does not perform the Customer Obligations in a timely manner, or if the applicable assumptions are incorrect, then Equinox may revise the applicable portion of this Agreement, including the quoted time and cost of performance.

**7. Fees, Expenses, and Payment.** Except as otherwise provided above, Equinox reserves the right to change its rates charged hereunder for the ILS Services at any time upon thirty (30) days notice to Customer. If Customer exceeds the scope of the ILS Services, Customer shall pay Equinox for such additional services not within the scope of the ILS Services at Equinox's then current rates. Hourly rates are billed in 1-minute increments for actual time spent on a matter, which may include travel time. For all ILS Services performed by Equinox, Customer shall: (i) pay Equinox at the rates and times set forth on page 1 of this Agreement as adjusted from time to time pursuant to this Agreement; and (ii) pay Equinox within 30 calendar days after the date of each invoice without setoff, recoupment, or deduction. Customer shall not withhold or delay payments due to any software license or schedule status. All payments must be in U.S. dollars and are non-refundable. Customer is responsible for all taxes, duties,

Customer (Initial): \_\_\_\_\_  
Equinox (Initial): \_\_\_\_\_

and customs fees concerning the ILS Services performed, excluding taxes based on Equinox's income. All past due amounts will bear simple interest at the lesser of 1.5% per month or the highest interest rate allowable under applicable law, and such interest shall accrue daily. Equinox's provision of ILS Services and the rates quoted in this Agreement assume that Customer's servers meet all technical requirements to operate the EVERGREEN software and, where applicable, to access or be accessible from the Internet.

**8. Termination.** This Agreement shall only be terminable as provided in this Agreement. Customer may terminate this Agreement for any or no reason upon 60 days prior notice to Equinox. Equinox may only terminate this Agreement for cause. "Cause" includes, but is not limited to, Customer's failure to pay Equinox in accordance with this Agreement. Termination of this Agreement shall not affect the Master Agreement, but termination of the Master Agreement shall terminate this Agreement. Equinox may also suspend ILS Services under this Agreement when ILS Services under the Master Agreement are suspended. If Customer fails to pay Equinox or otherwise acts or fails to act in manner that constitutes cause, then (a) Equinox may suspend any and all ILS Services under this Agreement, with or without notice, for so long as the cause continues, and (b) Equinox may terminate this Agreement by giving Customer notice of default, in which case this Agreement shall terminate at 5 p.m. Eastern Time on the 5th calendar day following notice unless Customer cures the breach beforehand. Regardless of how this Agreement is properly terminated, (i) immediately upon the effective date of such termination, Equinox shall retain all previously paid fees, and Customer must pay Equinox all fees and expenses that are payable under this Agreement on the effective date of the termination; (ii) Equinox will invoice Customer for, and Customer will promptly pay, all fees and expenses that Equinox accrued or incurred as of the effective date of the termination; and (iii) to defray any additional expenses that Equinox may incur regarding its consultants, Equinox reserves the right to invoice Customer for up to an additional 10 business days of consulting services per Equinox consultant that was assigned to Customer's project(s).

#### **9. Ownership.**

(a) *Ownership.* As explained in Paragraph 15 below, the EVERGREEN software is licensed under the GPL, as is any derivative work done by Equinox to the EVERGREEN software in performing the ILS Services. However, to the extent that the ILS Services includes any original works by Equinox (Work Product, as defined below), as opposed to derivative works, Equinox and not Customer shall own such Work Product. Full and exclusive rights and ownership in everything developed as part of the ILS Services, including Work Product but excluding the EVERGREEN software and any derivative work created thereunder, and in any and all related letters patent, trademarks, copyrights, trade secrets, Confidential Information, and any other proprietary rights that Equinox possesses or is entitled to shall vest in Equinox at all times. "Work Product" means any expression of Equinox's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, source and object code, software, and other technical information. For no additional license fee, Equinox shall grant a nonexclusive license to Customer to use the Work Product with respect to the operation of Customer's OpenILS system. To the extent Customer acquires any rights in the Work Product other than the foregoing license, Customer hereby irrevocable assigns those rights to Equinox.

(b) *Equinox Service Marks.* "Equinox," "Equinox Software," the Equinox Software logo, and "Virtual System Administrator" are service marks and trademarks of Equinox.

(c) *Cooperation by Customer.* If Equinox or any of its agents or representatives seek to obtain letters patent, trademarks, or copyrights in any country on all or part of anything provided or developed under this Agreement to which Equinox owns as described above, then Customer will cooperate fully without compensation in providing information, completing forms, performing actions, and obtaining the necessary signatures or assignments required to obtain such letters patent, trademarks, or copyrights. If Equinox is unable for any reason to obtain Customer's signature on any document necessary for any purpose set forth in the foregoing sentence, Customer hereby irrevocably designates and appoints Equinox and Equinox's duly authorized officers and agents as Customer's agent and attorney-in-fact to act for and in Customer's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Customer.

Customer (Initial): \_\_\_\_\_  
Equinox (Initial): \_\_\_\_\_

10. **Insurance.** The parties shall each maintain general liability insurance and employer's liability insurance and, to the extent required by applicable law, worker's compensation insurance.

11. **Confidential Information.** During the course of the parties' relationship, Customer may have access to Confidential Information. The term "Confidential Information" means all information or material that gives Equinox some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to Equinox, but shall exclude anything designated by Equinox as not confidential. Confidential Information includes this Agreement, including the terms, conditions, and pricing contained in the Agreement; information concerning finances, customers, suppliers, operations, processes, methods, technology, "know how," devices, technical information, inventions, discoveries, methods, enhancements, improvements, mechanisms, advertising, marketing, selling, and distribution; and information about employees, contracts, bids, prices, discounts, prospects, trade secrets, market research, and business plans and proposals. During the term of this Agreement and for one year thereafter, Customer will maintain the secrecy of the Confidential Information, will not use the Confidential Information except in connection with this Agreement, and will not disclose the Confidential Information to anyone other than Equinox and anyone employed by Customer who needs to know the Confidential Information to perform his or her duties in compliance with this Agreement. Notwithstanding anything in this Agreement to the contrary, "Confidential Information" shall not include any information that (a) is in the possession of or was rightfully known by Customer without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Customer in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is required to be disclosed by applicable law, provided that Customer first notifies Equinox of such requirement before disclosure and provides Equinox a reasonable opportunity to review the disclosure before it is made so that Equinox may interpose its own objection to the disclosure, and provided further that Customer makes diligent efforts to limit any such disclosure by means of a protective order or a request for confidential treatment. Upon any termination or expiration of this Agreement, Customer shall return all Confidential Information in its possession, custody, or control to Equinox and erase and remove all copies of all Confidential Information from any computer equipment and media in Customer's possession, custody, or control. Notwithstanding anything in this paragraph to the contrary, Customer's obligations under this paragraph will continue indefinitely with respect to any Confidential Information that is a "trade secret" for so long as such Confidential Information remains a trade secret under applicable law.

12. **Non-Piracy.** During the term of this Agreement and for a period of one (1) year thereafter, Customer will neither directly nor indirectly attempt to cause or otherwise encourage any of Equinox's employees to leave Equinox's employ.

### 13. Warranties

a. *Equinox Warranties.* Equinox warrants to Customer that: (i) Equinox has the right and authority to enter into and perform its obligations under this Agreement; and (ii) THE ILS SERVICES WILL BE PERFORMED CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. NO SPECIFIC RESULT FROM PROVISION OF THE ILS SERVICES IS ASSURED OR GUARANTEED. EQUINOX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CUSTOMER ACCEPTS THE ILS SERVICES (AND ALL WORK PRODUCT THEREUNDER) ON AN AS-IS, WHERE-IS BASIS.

b. *Customer Warranties.* Customer represents and warrants to Equinox that: (i) Customer has the power and authority to enter into and perform its obligations under this Agreement; (ii) Customer Content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising, or services that actually or potentially violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract, or tort right of any person; and (iii) Customer owns the Customer Content and all proprietary or intellectual property rights therein, or has express written authorization from the owner to copy, use, and display the Customer Content on and within the Site.

Customer (Initial): \_\_\_\_\_  
Equinox (Initial): \_\_\_\_\_

**14. Remedies.** CUSTOMER'S SOLE REMEDY AND EQUINOX'S SOLE OBLIGATION IN THE EVENT OF A BREACH OF THIS AGREEMENT IS, AT EQUINOX'S SOLE OPTION AND DISCRETION: (i) FOR EQUINOX TO REPERFORM THE ILS SERVICES, OR (ii) FOR EQUINOX TO PAY CUSTOMER FOR THE DIRECT AND PROXIMATE DAMAGES RESULTING FROM THE BREACH, AS LIMITED IN PARAGRAPH 17 BELOW. FOR CUSTOMER TO AVAIL ITSELF OF ITS REMEDIES, EQUINOX MUST RECEIVE NOTICE FROM CUSTOMER WITHIN THIRTY (30) DAYS AFTER THE COMPLETION OF THE RESPECTIVE ILS SERVICE THAT CUSTOMER ALLEGES WAS NOT PERFORMED CONSISTENT WITH THIS AGREEMENT, WHICH NOTICE MUST SPECIFY THE DETAILS OF THE WARRANTY BREACH, OTHERWISE THE BREACH SHALL BE DEEMED WAIVED.

**15. EVERGREEN and KOHA.** EVERGREEN® and the EVERGREEN logo are the registered trademarks of the Board of Regents of the University System of Georgia and are used by Equinox under license. KOHA is a trademark of the Koha Development Team and is a community supported open source product not to be confused with LibLime's Koha Enterprise, its "Harley Release," or koha®, all of which are claimed properties of Progressive Technology Federal Systems, Inc. and its affiliated entities (collectively, "PTFS"). Equinox does not have the power or authority to sublicense the use of the EVERGREEN® or KOHA trademarks or any property owned by PTFS, nor is Equinox providing any such sublicense to Customer. The EVERGREEN® and KOHA software and documentation are licensed under the GNU General Public License ("GPL") version 2 or later, and Customer accepts the software subject to such license. Any derivative work that Equinox creates with respect to the EVERGREEN® or KOHA software, and any documentation prepared by Equinox with respect to EVERGREEN® or KOHA, for Customer's use will be licensed under the GPL or under such different open source license as it typically applicable to that particular work.

**16. Indemnities.**

(a) Each party ("Indemnifying Party") will indemnify and hold the other party ("Indemnified Party") harmless against any claims by third parties for damages, including costs and reasonable attorney's fees, arising out of or relating to the negligent or intentional acts or failure to act by the Indemnifying Party, its agents or representatives, while performing its obligations pursuant to this Agreement. The Indemnified Party will provide the Indemnifying Party with prompt written notice of such claim, and information, reasonable assistance, and the sole authority to defend or settle such claim.

(b) Customer will defend and indemnify Equinox against any claims by third parties for damages incurred by Equinox arising from or related to the third party's allegations of infringement of a copyright, patent, or trademark on those portions of any deliverable under this Agreement that contains or were developed from information, Confidential Information, specifications, software code, ideas, or other material furnished by Customer, its agents or representatives.

**17. Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EQUINOX SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EQUINOX'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NONPROVISION OF SERVICES OR SOFTWARE (WHETHER IN CONTRACT OR TORT) SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY EQUINOX FROM CUSTOMER UNDER THE APPLICABLE SCHEDULE, AND IF SUCH DAMAGES RESULT FROM SPECIFIC SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE SERVICES GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE. WITHOUT CUSTOMER'S AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE PRICE CHARGED FOR THE SERVICES WOULD BE HIGHER.

**18. Relationship.** Equinox is and shall at all times be an independent contractor and shall not be deemed an employee or agent of Customer. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, joint venture, or agency relationship between the parties.

**19. Notice.** All notices must be in writing and must be sent by certified mail, overnight mail, courier, or delivered personally to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) business days prior written notice to the other party, to be effective. Notices made pursuant to this Section shall be effective on the date shown on the receipt evidencing delivery, or if there is no receipt or if delivery is refused, then delivery shall be deemed given on the third business day following the date notice was sent.

**20. Survival.** The terms of Paragraphs 7 (as to interest), 9 (Ownership), 11 (Confidential Information), 12 (Non-Piracy), 13 (Warranties), 14 (Remedies), 16 (Indemnities), 17 (Limitation of Liability), 19 (Notice), 20 (Survival), and 22 (Miscellaneous) of these additional terms and conditions shall survive the termination of this Agreement.

**21. Force Majeure.** If either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act required under this Agreement to be performed by the party, and such delay or hindrance is due to strikes, lockouts, acts of God, governmental restrictions, enemy or terrorist act, civil commotion, fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered, then performance of such work, service, or other act shall be excused for the period of such delay, and the period for the performance of such work, service, or other act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing to the contrary, in no event shall the financial inability of any party to pay any monetary obligation under this Agreement be deemed a force majeure event hereunder.

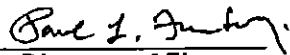
**22. Miscellaneous.** The prevailing party in any dispute, whether or not suit is brought, shall be entitled to an award of its reasonable attorney's fees actually incurred. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. No purchase order or other ordering document that purports to amend or add to this Agreement shall amend or add to the terms of this Agreement unless otherwise agreed to in writing by both parties. If any part of this Agreement is held to be unenforceable, this Agreement shall be construed without such part. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future. This Agreement may be executed in one or more counterparts or multiple originals, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement may be signed and delivered electronically and constitute an electronic record signed by electronic signature within the meaning of such terms in the Electronic Signatures in Global and National Commerce Act or any other law of similar import, including the Uniform Electronic Transactions Act, as the same may be enacted in any State, and the electronic record and signature will constitute an original for all purposes. Except for actions for non-payment or breach of Equinox's proprietary rights in the Work Product, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued. This Agreement and the Master Agreement constitutes the entire agreement between the parties concerning the subject matter contained herein. This Agreement and the Master Agreement replace and supersede any prior oral or written understandings, proposals, quotations, communications, and representations between the parties relating to the subject matter hereof. Remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

[End of Additional Terms and Conditions.]

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

7/1/2013

Date



Director of Finance