

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- Funds have been encumbered out of funds previously appropriated for such purpose.
- Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- Other - Grant Funds Available

[Handwritten Signature]
General Public

City Controller of the City of Houston, Texas

Date: 9-15, 2020

SCC FUND REF: 10003400 551035 AMOUNT: 75,000.00 ENCUMB. NO.: PR 10279927
OA 46-16276

City of Houston, Texas Ordinance No. 2020-820

AN ORDINANCE APPROVING AND AUTHORIZING A SOLE-SOURCE CONTRACT BETWEEN THE CITY OF HOUSTON AND LIBRARY IDEAS, LLC FOR DIGITAL SERVICES FOR THE HOUSTON PUBLIC LIBRARY; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston.

The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. The total allocation for each contract, agreement or other undertaking approved and authorized hereby shall never exceed \$375,000.00 unless and until this sum is increased by ordinance of City Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 23rd day of September, 2020.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is SEP 29 2020.

At J. Manuel
City Secretary

FUNDING SOURCE:

\$375,000.00 – General Fund (1000)

(Prepared by Legal Dept. *Rachel L. Guier*)
(RLG/bt 05/22/2020) Assistant City Attorney
(Requested by Rhea Lawson, Director, Houston Public Library)
(L.D. File Nos. 0412000008001)

AYE	NO	
✓		MAYOR TURNER
••••	••••	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
	✓	POLLARD
✓		MARTHA CASTEX-TATUM
	✓	KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

LIBRARY IDEAS®, LLC DIGITAL SERVICES AGREEMENT

THIS DIGITAL SERVICES AGREEMENT (this "Agreement") is made on the date countersigned by the City Controller by and between the CITY OF HOUSTON (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, on behalf of the HOUSTON PUBLIC LIBRARY (the "Library"), and Library Ideas, LLC, a Delaware media company located at P.O. Box 9, Vienna, Virginia 22183 USA, doing business in Texas (the "Company"). All parties to this Agreement may, from time to time, be referred to as (the "Parties").

RECITALS

WHEREAS, Company has licenses and agreements for media services specifically targeted to libraries that provide the Registered Cardholders of these libraries with access to a site or sites for the purpose of accessing media legally (the "Service");

WHEREAS, Company wishes to sell the right to access and use the Service to Library subject to the terms and conditions described in this Agreement;

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

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

ARTICLE I. Definitions

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

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

Section 1.03. "*Countersignature Date*" means the date shown as the date countersigned on the signature page of this Agreement.

Section 1.04. "*Digital Service(s) Agreement*" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Company.

Section 1.05. "*Digital Service(s) Subscription Fees*" means the fees established for the Digital Services Term.

Section 1.06. “*Library’s Website Portal*” means the website operated by the Library and open to its Registered Cardholders in order to access and use all digital materials and services of the Library.

Section 1.07. “*Company Website*” means the website operated by Company and open to the Library and its Registered Cardholders via the Library’s own website portal.

Section 1.08. “*Cardholders or Registered Cardholders*” mean Library’s registered, authenticated cardholders, and all members of the public in the library’s legal service population who have been issued a library card, including onsite and offsite users.

Section 1.09. “*Personal Use*” means the use of the Digital Services or media, which is of a non-commercial nature and used only by the person who is authorized to use such media (i.e., a downloaded song or other media. “Personal use” does not include the sharing of the Digital Services or media with the public or placing such media in the public domain (i.e., sharing songs or media on the internet).

Section 1.10. “*Director*” means the Director of the Houston Public Library, or the person he or she designates.

ARTICLE II.

Library Ideas Digital Services Terms and Conditions

Section 2.01. *License.* Subject to the terms and conditions of this Digital Services Agreement, Company grants Library a non-exclusive, non-transferrable license to access the Company’s Digital Services via the Library’s Website Portal and access the Digital Service(s) the Library has purchased. During the Term of this Digital Services Agreement, Company shall provide the City with updates and feature enhancements to its Digital Services whenever such updates and feature enhancements become available.

Section 2.02. *Payment Terms.* The City shall pay Company the Digital Services Subscription Fees annually for access to and use of the Digital Services as described in Exhibit A, subject to allocation of funds as set out below.

Subsection 2.02.A. Limit of Appropriation.

- (1) The City’s duty to pay money to Company under this Agreement is limited in its entirety by the provisions of this Section.
- (2) In order to comply with Article II, Sections 19 and 19a of the City’s Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$75,000.00 to pay money due under this Agreement during the City’s current fiscal year (the “Original Allocation”). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- (3) The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to the Company a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ _____

- (4) The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Company must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Company's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

Subsection 2.02.B. Changes.

- (1) At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Company shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- (2) The Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Company] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Company provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of Director]

- (3) The Director may issue more than one Change Order, subject to the following limitations:
 - (a) Council expressly authorizes the Director to approve a Change Order up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
 - (b) If a Change Order describes items that Company is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Company.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Company receives a Change Order, Company shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Company shall complete the work within the time prescribed. If no time for completion is prescribed, Company shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Company is required to perform under this Agreement, Company may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

Subsection 2.02.C. Taxes. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Company's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Company if requested.

Section 2.03. Payment Due Date. Company shall issue an invoice to the City approximately 90 days in advance of the Annual Renewal Date (July 2 of each year). The invoice shall specify the annual Digital Services Subscription Fee due, and the City shall pay such annual Digital Services Subscription Fee 30 days before the Annual Renewal Date. All fees and charges are due and payable 30 days from the date of the related invoice. Company agrees that it will not suspend Digital Services or charge any late fees or interest for late payment. Notwithstanding the foregoing, if the City disputes any items in an invoice Company submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Company of the dispute and request remedial action. After the dispute is settled, Company shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

Section 2.04. Limits on the Service. Registered Cardholders of Library shall have limited access (i.e., 5 downloads per patron per week and 5 hours of streaming per patron per day) to the Service as specified in Schedule A.

Section 2.05. Term, Renewals, and Termination

Subsection 2.05.A. Term. This Agreement is effective on the Countersignature Date and expires three years after the Countersignature Date, unless sooner terminated in accordance with the terms and conditions of this Agreement (the "Initial Term").

Subsection 2.05.B. Renewals. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will automatically renewed for two successive on-year terms on the same terms and conditions. If the Director or the City chooses not to renew this Agreement, the Director shall notify Company and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

Subsection 2.05.C. Termination for Convenience by City.

- (1) The Director may terminate this Agreement at any time by giving 30 days written notice to Company with a copy of the notice to the City's Chief Procurement Officer. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- (2) On receiving the notice, Company shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Company shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Company for services actually performed, but not already paid for, in the same manner as prescribed in Section 2.03 unless the fees exceed the allocated funds remaining under this Agreement.
- (3) TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE COMPANY'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. COMPANY WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

Subsection 2.05.D. Termination for Breach of this Agreement. Either party may terminate this Agreement or one of the individual Digital Service(s) for cause at any time if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if (1) a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 30 days of the notice; or (2) a party breaches any material provision of this Agreement provided that the breach cannot be, or is not, cured within 30 days of receiving the notice. The Director shall act on behalf of the City to notify Company of a breach and to effect termination, with a copy of the notice to the City's Chief Procurement Officer.

Section 2.06. Provision of Digital Services. During the Initial Term and any Renewals of this Digital Services Agreement, the Company will establish, host, and administer Company Website. Library and its Cardholders will access the Digital Service(s) and Company Website through Library's Website Portal either inside Library (if allowed and enabled) using Library's own internet connection or remotely as allowed. Company will deny access to anyone attempting to access the Digital Service(s) and Company Website from a country that is not allowed. The Digital Service(s) and Company Website will have reasonable periods of scheduled maintenance in which the Digital Service(s) and Company Website is not available. Such

scheduled maintenance shall be performed only during non-business hours of 10:00 PM CST to 04:00 AM CST. Otherwise Digital Service(s) and Company Website will be available at commercially accepted standards of operation. Company shall ensure the availability of qualified personnel at any and all times, ready to intervene to address any problems or inoperability of the Digital Services or Company Website, should the need arise.

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

Section 2.08. Library's Company Website. The use of the Company's Website by the Cardholders will be governed by an End User Agreement. Library shall use reasonable efforts to ensure that the Cardholders comply with the End User Agreement, including, but not limited to, restricting or terminating a Cardholder's access to the Digital Services or Company Website if Library is made aware of a Cardholder's improper or fraudulent use of the Digital Services or Company Website.

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

Section 2.10. Warranties.

Subsection 2.10.A. Right to Grant License. Company warrants that it is the sole owner and/or has all necessary intellectual property rights in the entire right, title, and interests in and to the Products that Company provides to City under this Agreement. Company further warrants that it has the sole right to grant licenses to the Products and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights that Company grants to the City. Company further warrants that the Products and related documentation do not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party.

Subsection 2.10.B. Malicious Code. Company represents that it has used reasonable best efforts utilizing generally accepted industry tools and practices to provide Products that does not contain any "time bombs," "worms," "viruses," "trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Products ("Malicious Code"). If Company is unable to remove or isolate the Malicious Code using reasonable efforts within a reasonable period of time, then Client may pursue its remedies at law to direct damages resulting from the breach of this warranty. Company shall take action immediately to investigate, identify and remove such Malicious Code from the Products.

Subsection 2.10.C. Performance. Company's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and Products Company provides under this Agreement. Upon the Director of the Library's request, Company shall promptly re-perform or re-provide, at no charge to the City, any services or Products that fail to reasonably conform to the warranty contained in this section. If Company is unable to repair or replace such services or Products within a reasonable period of time, the Client may pursue its remedies at law to direct damages resulting from the breach of this warranty.

Section 2.11. RELEASE. COMPANY AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY

THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. COMPANY HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

Section 2.12. INDEMNIFICATION.

- (a) COMPANY AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING COMPANY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS COMPANY FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. COMPANY SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.
- (b) COMPANY SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.
- (c) WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, COMPANY SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE PRODUCTS OR DISCONTINUE THE PROCESS, AND COMPANY SHALL REFUND THE PURCHASE PRICE.

Section 2.13. Indemnification Procedures.

Subsection 2.13.A. Notice of Claims.

- (i) If the City or Company receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party (i.e., the City or Company) shall give written notice to the other party within 30 days. The notice must include the following:

- a. a description of the indemnification event in reasonable detail,

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b. the basis on which indemnification may be due, and

c. the anticipated amount of the indemnified loss.

- (ii) This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Company is prejudiced, suffers loss, or incurs expense because of the delay.

Subsection 2.13.B. Defense of Claims.

- (i) Assumption of Defense. Company may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Company shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Company must advise the City as to whether or not it will defend the claim. If Company does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- (ii) Continued Participation. If Company elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

Section 2.14. Insurance.

Subsection 2.14.A. Risks and Limits of Liability. Company shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none">• Bodily Injury by Accident \$500,000 (each accident)• Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Director and Officer Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00

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Cyber Liability	\$1,000,000.00 aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

Subsection 2.14.B. Insurance Coverage. At all times during the term of this Contract and any extensions or renewals, Company shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Company shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Company shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Company waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Company shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

Subsection 2.14.C. Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

Subsection 2.14.D. Required Coverage. The City shall be an Additional Insured under this Contract, and all policies, except Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Company waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Company's insurance policies, except professional liability, must contain coverage waiving such claim. Each policy, except Workers' Compensation, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract.

Subsection 2.14.E. Notice. COMPANY SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Company shall provide other suitable policies in order to maintain the required coverage. If Company does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Company from any further performance under this Agreement and begin procedures to terminate for default.

Section 2.15. No Copyright Conveyed. Upon signing this Agreement, Library will receive a license coinciding with the Initial Term and any Renewals to access the Digital Service(s) and Company Website via the Library's Website Portal. Library will not acquire any other rights in Company, Digital Service(s) or Company Website .

Section 2.16. Offensive Content. Company makes no warranty and no representations against claims of offensive content by Cardholders and does not have the ability to remove specific elements of the Digital Service(s) for just one library participating in the Digital Service(s).

Section 2.17. *Publicity and Marketing of Digital Services.* Library agrees to use only the Publicity and Marketing Material given to it by the Company unless otherwise approved in writing by Company. Company will send Library a template press release and marketing kit in advance of Library going live with the Digital Service(s) and Company Website. The name of the Digital Service(s) is/are as indicated in Schedule A, and Library will not promote the Digital Service(s) under any other name.

Section 2.18. *Publicity and Use of City's Marks.* Company shall not use City's branding, trademarks, logos, or other marks without prior written consent from the Director.

ARTICLE III
Elements of the Service

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

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

ARTICLE IV City
Programs and State
Law Requirements

Section 4.01. *Anti-Boycott of Israel.* Company certifies that Company is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Section 4.02. *Zero Tolerance Policy for Human Trafficking and Related Activities.* The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Company has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's Countersignature Date. Company shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Company or its subcontractors providing services or goods under this Agreement within 7 days of Company becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

Section 4.03. *Preservation of Contractor Information.*

- (a) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Company agrees that this Agreement can be terminated if Company knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Company shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government

Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Company shall provide any Contracting Information related to this Agreement that is in the custody or possession of Company. Upon the expiration or termination of this Agreement, Company shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Company, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

- (b) If Company fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Company and may terminate this Agreement. To effect final termination, the Director must notify Company in writing with a copy of the notice to the City's Chief Procurement Officer. After receiving the notice, Company shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

Section 4.04. **CONTRACTOR DEBT.** IF COMPANY, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT COMPANY HAS INCURRED A DEBT, HE/SHE SHALL IMMEDIATELY NOTIFY COMPANY IN WRITING. IF COMPANY DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO COMPANY UNDER THIS AGREEMENT, AND COMPANY WAIVES ANY RECOURSE THEREFOR. COMPANY SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

ARTICLE V General Provisions

Section 5.01. Governing Law. This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of this Agreement or its formation) shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

Section 5.02. Notice to Parties. All notices from either party to the other under this Agreement shall be sent by facsimile, overnight courier service, such as United States Express Mail, Federal Express, or UPS, or by registered or certified mail, return receipt requested, or hand-delivered with signed receipt. Whenever in this Agreement reference is made to a Notice to be given, such Notice shall be deemed given when mailed, faxed, or hand-delivered to the proper notice address of the party to be notified. Postage or delivery charges must be paid by the party giving notice. Either party may, from time to time, designate a different address for receiving Notices by giving the other party notice of the change of address in the manner above specified. Notices shall be addressed must be addressed to the party to whom the notice is given at the addresses set out below.

To City:

Director or Designee
Houston Public Library
500 McKinney St.
Houston, Texas 77002

To Library Ideas, LLC:

P.O. Box. 9
Vienna, Virginia 22183

Section 5.03. Assignment. Library may not sell, assign, transfer or convey this Agreement or any rights and obligations thereto. However, Company may assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon Director's prior written consent. Company shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

Section 5.04. Successors & Assigns. This Agreement shall be binding on and inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Section 5.05. Section Partial Invalidity. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law, unless the result materially prejudices either party.

Section 5.06. Separability. Each and every covenant or understanding contained in this Agreement shall, for all intents and purposes, be construed as a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be found invalid and unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is valid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law, unless the result materially prejudices either party. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

Section 5.07. Headings. The headings to the various paragraphs and/or Sections of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending, changing or construing the expressed terms and provisions of this Agreement.

Section 5.08. Force Majeure. Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes; riots; acts of war; power failures; and functions or malfunctions of the Internet; or

governmental regulations not the fault of the party failing or delaying in performance imposed after the Countersignature Date.

Section 5.09. Parties in Interest. This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Company only.

Section 5.10. Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Company shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Company's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

Section 5.11. Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

Section 5.12. Survival. Company shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions

Section 5.13. Written Amendment. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Company. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

Section 5.14. Non-Waiver. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement. An approval by the Director, or by any other employee or agent of the City, of any part of Company's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

Section 5.15. Entire Agreement. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

Section 5.16. Remedies Cumulative. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions

[SIGNATURE PAGE FOLLOWS]

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

LIBRARY IDEAS, LLC

DocuSigned by:
Brian Downing
By: _____
A778F7E925464B0...
Name: Brian Downing
Title: CEO

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

APPROVED:

DocuSigned by:
Dr. Keia Brown Lawson

363DA421E89945D...
Director, Houston Public Library

COUNTERSIGNED BY:

City Controller

DocuSigned by:
Jerry Adams

9DD3507337A8F4C6...
Chief Procurement Officer

APPROVED AS TO FORM:

DocuSigned by:
Rachel Grier

6649881A261241A...
Assistant City Attorney
L.D. File No. 041-2000008-001

DATE COUNTERSIGNED:

EXHIBIT A – PRICING

Description	Cost	Total
Freegal Music and Streaming Subscription - July 2, 2020 to July 1, 2023	238,771.00	238,771.00
Less Discount	-13,771.00	-13,771.00
Subtotal		225,000.00
Terms: 5 DL's/patron/week and 5 hours Streaming/patron/day To be invoiced \$75,000 each on 7/2/20, 7/2/21 and 7/2/22		
Option Year #1:		
Freegal Music and Streaming Subscription - July 2, 2023 to July 1, 2024	84,412.00	84,412.00
Less Discount	-8,412.00	-8,412.00
Subtotal		76,000.00
Terms: 5 DL's/patron/week and 5 hours Streaming/patron/day to be invoiced on 7/2/23		
Option Year #2:		
Freegal Music and Streaming Subscription - July 2, 2024 to July 1, 2025		86,944.00
Less Discount	-10,944.00	-10,944.00
Subtotal		76,000.00
Terms: 5 DL's/patron/week and 5 hours Streaming/patron/day to be invoiced on 7/2/24		