

CHARLOTTE MECKLENBURG

LIBRARY

CONTRACT BETWEEN THE PUBLIC LIBRARY OF CHARLOTTE AND MECKLENBURG COUNTY AND SERVICE PROVIDER

THIS AGREEMENT is made and entered into as of the date stated on Exhibit A by and between the Public Library of Charlotte and Mecklenburg County (hereinafter called the "Library"), and the Service Provider listed on Exhibit A (hereinafter called the "Service Provider") (the Library and the Service Provider are collectively referred to as "Parties" and individually as a "Party").

Article 1. Engagement of Service Provider/Scope Of Services

- 1.1 The Library hereby engages the Service Provider to perform, and the Service Provider hereby agrees to perform, the following services: See Exhibit A.
- 1.2 The Service Provider shall exercise a normal and customary degree of care and diligence in performing all Service Provider services under this Agreement. The Service Provider shall render services under this Agreement in accordance with the normal and customary professional standards prevailing in the Mecklenburg County North Carolina area.

Article 2. Time of Performance/Place of Performance

- 2.1 The services of the Service Provider are to be provided on or during the dates specified on Exhibit A.
- 2.2 The services are to be provided at/ the location(s) listed on Exhibit A.

Article 3. Compensation

- 3.1 The Service Provider's total fixed fee for services rendered under this agreement shall be a Lump Sum Fee specified in Exhibit A.
- 3.2 The Library shall provide compensation to the Service Provider on the basis of a fixed fee in the amount as stipulated above.

For the services describe in Article 1, payments shall be made within thirty (30) days upon the Library's receipt of a correct invoice stating the percent of the completion of work and accompanied by proper supporting documentation. A correct payment request is defined as an invoice which indicates only those items which have been satisfactorily completed and accepted by the Library. The check will be mailed to the address listed on the Service Provider's W-9 form.

- 3.3 In the event of termination of this Contract by the Library, compensation shall be provided to the Service Provider for all services actually performed, and so authorized, prior to receipt of written notice from the Library of such termination.

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Article 4. Additional Services of Service Provider

- 4.1 Additional Services shall not be provided without prior written approval of the Library under a separate Contract.

Article 5. Publicity

- 5.1 The Service Provider shall not use the name of the Library, nor any member of the Library's staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of the Library.
- 5.2 The Library shall obtain full and complete ownership of the goods or services resulting from this contract upon payment of all compensation due to the Service Provider.

Article 6. Discontinuance or Termination

- 6.1 The Service Provider shall not be in default by reason of any failure in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Service Provider. Such causes may include, but not restricted to, acts of God or natural causes or catastrophes.
- 6.2 The Library may, at any time, and for any reason, direct the discontinuance of the services and work contemplated under this Contract for a period of time or terminate this Contract. Such direction shall be in writing. If discontinued for a period of time, the written direction shall specify the period during which the work shall be discontinued. The work shall be resumed on the date specified at such direction, or upon such other date as the Library may thereafter specify in writing. The period during which such work shall have been discontinued shall be deemed added to the time for performance and said stoppage shall not by itself give rise to any claim against the Library. The provisions of Articles 5 through 10 shall survive the termination of this Agreement.

Article 7. Successors and Assigns

- 7.1 The Library and the Service Provider, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Library nor the Service Provider shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

Article 8. Responsibility for Claims and Liability

- 8.1 To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred by any of them as a result of any claims, demands, lawsuits, actions, or proceedings:
- (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent,

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trade secret or other proprietary rights with respect to any Services or deliverables provided to the Library pursuant to this Contract;

(ii) seeking payment for labor or materials purchased or supplied by the Service Provider or its subcontractors in connection with this Agreement; or

(iii) arising from the Service Provider's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by the Service Provider or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or

(iv) any claim that the Service Provider or an employee or subcontractor of the Service Provider is an employee of the Library, including but not limited to claims relating to worker's compensation, the Affordable Care Act, failure to withhold taxes and the like; or

(v) arising from a violation of any federal, state or local law, regulation or ordinance by the Service Provider or any of its subcontractors, including without limitation E-Verify or other immigration laws.

For purposes of this Section: (a) the term "Indemnitees" means the Library and its officers, officials, trustees, employees, agents and independent Contractors (excluding the Service Provider); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

8.2 **INSURANCE:** The Service Provider further agrees to purchase and maintain, during the life of this contract with an insurance company acceptable to the Library and authorized to do business in the State of North Carolina, the following insurance:

Automobile: Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$2,000,000 each person, \$2,000,000 each occurrence bodily injury liability and \$2,000,000 each occurrence property damage liability.

Comprehensive General Liability: Bodily injury and property damage liability insurance as shall protect the Service Provider and any subcontractor performing Work under this Contract from claim of bodily injury or property damage, which arises from operations of this contract whether such operations be performed by the Service Provider, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury and property damage liability each occurrence/aggregate. This insurance shall include coverage for products/completed operations and contractual liability assumed under the indemnity provision of this Contract.

Workers' Compensation and Occupational Disease Insurance:

Meeting the statutory requirements of the State of North Carolina including employer's liability insurance for an amount of not less than \$500,000 for each accident, \$500,000 for disease each employee, and \$500,000 for policy limit.

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Other Insurance Requirements:

- a) The Library shall be exempt from and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Service Provider and/or subcontractor providing such insurance.
- b) The Public Library of Charlotte and Mecklenburg County shall be named as an additional insured under the general and automobile liability insurance policies.
- c) The Service Provider shall be responsible for notifying the Library of any material changes (including renewals) to or cancellation of the insurance coverages required above. Notice to the Library must be completed in writing within forty eight (48) hours of the changes.
- d) Should any of the required insurance coverages be self-insured by the Service Provider, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the Library.
- e) If any part of the work under the Agreement is sublet, the subcontractor shall be required to meet all insurance requirements set forth in the Agreement. Nothing contained herein shall relieve the Service Provider from meeting all insurance requirements or otherwise being responsible for the subcontractor.

Certificates of such insurance shall be furnished to the Library and shall contain the provision that should any of the above-described policies be cancelled before the expiration date thereof, the issuing insurance company will endeavor to mail thirty (30) days written notice to the Library. The Service Provider agrees to notify the Library by telephone and by providing written notice within two (2) days after receipt of information that the insurance company either intends to amend or terminate a policy, or has amended or terminated any insurance policy, providing the coverage referred to above.

Article 9. General Compliance with Laws

- 9.1 **E-Verify, FLSA, ADA, FMLA, OSHA:** The laws of the State of North Carolina shall govern this agreement. The Service Provider agrees to make itself aware of and comply with, and cause its subcontractors to comply with, all federal, state, and local laws, regulations and ordinances relating to the performance of this Contract, or to Services delivered hereunder, including without limitation, E-Verify (Article 2 of Chapter 64 of the North Carolina General Statutes), Workers' Compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and Occupational Safety And Health Administration (OSHA). The Service Provider further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this section has occurred or does occur, the Service Provider will indemnify and save harmless the Library from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.

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- 9.2 **IRAN DIVESTMENT ACT CERTIFICATION:** Service Provider certifies that as of the date of this agreement, Service Provider is not currently listed on the Final Divestment List created and maintained by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Further, Service Provider agrees not to sub-contract with any person or entity to perform any part of the contract terms herein, if, at the time, the sub-contractor's name appears on the then-current version of the Divestment List. Service Provider further agrees to notify the Library if at any time during the term of this agreement, it is added to the Divestment List. The Divestment List may be found on the State Treasurer's website at www.nctreasurer.com/Iran.

Article 10. Miscellaneous

- 10.1 This Agreement and the rights, obligations, and remedies of the Parties will be governed by and construed and enforced in accordance with the laws of the State of North Carolina, without reference to any of its conflict of law principles. The Parties irrevocably, solely, and exclusively submit to the jurisdiction of any state or federal court located in Mecklenburg County in the State of North Carolina for any dispute arising out of the interpretation and enforcement of the provisions of this Agreement and/or the transactions contemplated hereby. The Parties waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement of this Agreement, that it is not subject to jurisdiction of, or that such action, suit or proceeding may not be brought or is not maintainable in, said courts or that the venue may not be appropriate or that this Agreement may not be enforced in or by such courts, and the Parties irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a state or federal court. If either Party brings any legal action or other proceeding to enforce or interpret any of the rights, obligations, or provisions of this Agreement, the prevailing Party will be entitled to recover from the non-prevailing Party all reasonable attorneys' fees and all other costs in such action or proceeding, in addition to any other relief to which such prevailing Party may be entitled.
- 10.2 The Library shall withhold a four percent (4%) personal service income tax from compensation paid to a non-resident of North Carolina in excess of \$1,500.00 under this Contract, if applicable.
- 10.3 Despite any provisions herein to the contrary, the Library shall not be obligated for payment during any of the Library's future fiscal years unless and until the Library's Board of Trustees appropriates funds for this Contract in the Library's budget for each such future fiscal year. If funds are not appropriated for the Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The Library shall notify the Service Provider in writing of any such non-appropriation of funds at the earliest possible date.
- 10.4 The Parties agree that the relationship of the Service Provider to the Library is that of an independent contractor. The Service Provider has no authority to bind the Library by or to any obligation, agreement, promise, representation, or warranty, and the Service Provider

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shall not incur any liability for or on behalf of the Library. Nothing herein will be deemed to constitute or appoint the Service Provider as the agent or legal representative of Library.

- 10.5 This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior written or verbal agreements or understandings in connection herewith. No amendment, waiver, or modification hereto will be valid unless specifically made in writing and signed by an authorized signatory of both Parties hereto. If any provision is judicially determined to be invalid or unenforceable, then such provision will be modified to the least extent to make such provision valid and enforceable, if legally permissible, or, if not, such provision will be ineffective only to the extent of such invalidity or unenforceability, and the remaining provisions will be given full force and effect.
- 10.6 **Confidentiality.** Each Party agrees it will receive certain Confidential Information from the other Party. Each Party agrees to, and shall cause its representatives to: (a) treat and hold as confidential (and not disclose or provide access to any Person) all information relating to trade secrets, processes, patent applications, product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, details of client and consultant contracts, operations methods, product development techniques, business acquisition plans, new personnel acquisition plans and all other confidential or proprietary information with respect to the Business (collectively, “Confidential Information”), (b) in the event that such Party or any of its representatives or Affiliates becomes legally compelled to disclose any such Confidential Information, provide the other Party with prompt written notice of such requirement so that such other Party may seek a protective order or other remedy or waive compliance with this Section, (c) in the event that such protective order or other remedy is not obtained, or the other Party waives compliance with this Section, furnish only that portion of such Confidential Information which is legally required to be provided and exercise its best efforts to obtain assurances that confidential treatment will be accorded such information, and (d) promptly furnish to the other Party any and all copies (in whatever form or medium) of all such Confidential Information then in the possession of such Party or any of its representatives and destroy any and all additional copies then in the possession of such Party or any of its representatives of such information and of any analyses, compilations, studies or other documents prepared, in whole or in part, on the basis thereof. The terms of this paragraph are not intended to limit the rights or obligations of Library under any applicable public records laws, and any disclosure authorized or required thereunder shall be permitted hereunder without notice or consent of Service Provider.

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In WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

SERVICE PROVIDER:

Service Provider Authorized Signature

By (print name): _____

Its (insert title): _____

**PUBLIC LIBRARY OF CHARLOTTE
AND MECKLENBURG COUNTY:**

Library Authorized Signature

By (print name): _____

Its (insert title): _____

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

Finance Director