

PRODUCT ORDER FORM
Library Optimum Feature Set

CUSTOMER
TOM GREEN COUNTY LIBRARY
 33 West Beauregard, San Angelo, TX 76903
 url: www.co.tom-green.tx.us

Customer Contact: Larry Justiss, Library Director, larry.justiss@co.tom-green.tx.us, 325-655-7321
Boopsie Contact: Sam Nickell, VP Business Development, sam.nickell@boopsie.com, 206-510-7298 (cell)

Initial Invoice for Fees Due for Products and Services Specified on Schedule A: \$7,190.00
Initial License Term: Three (3) years (cancelable on anniversary date)
Effective Date: Contract Execution Date

LICENSE AND HOSTED SERVICE TERMS. The license and purchase of the Boopsie products and/or services, as applicable, specified on Schedule A attached hereto ("Schedule A") are subject to Boopsie License and Hosted Service Terms and Conditions ("License and Hosted Service Terms"), also attached hereto as Schedule B. This Product Order Form, Schedule A, the License and Hosted Service Terms, and any addenda signed by both parties constitute the entire agreement ("Agreement") between the parties concerning Customer's use of the Hosted Service and purchase of Boopsie services. Customer's authorized representative, by his or her signature on this Product Order Form, acknowledges Customer's (i) acceptance of the License and Hosted Service Terms; and (ii) binding commitment to pay for the products and services specified on Schedule A in accordance with the payment terms set forth herein and in the License and Hosted Service Terms. Capitalized terms not otherwise defined herein shall have the meaning set forth in the License and Hosted Service Terms.

FEES AND PAYMENT TERMS. The one-time Implementation Fee and the recurring Annual Subscription Fee for Year 1 are due and payable in US Dollars on the Effective Date described on this Product Order Form. The Annual Subscription Fee for subsequent years are due in US Dollars on each anniversary of the Effective Date and payable within thirty (30) days of date of invoice. Upon execution of this product order document, payment obligations for Year 1 are non-cancelable, and all payments made by Customer are non-refundable, except as expressly provided in the License and Hosted Service Terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the Effective Date.

CUSTOMER

Signature: _____

Name: Michael D. Brown

Title: County Judge

Date: 2-20-13

BOOPSIE, INC.

Signature: _____

Name: Greg Carpenter

Title: CEO

Date: _____

CONTACT INFORMATION FOR NOTICES:

CUSTOMER

To: Larry D. Justiss

Title: Library Director

Address: 33 West Beauregard

Fax: 325 659 4027

Phone: 325 655 7321

Email: larry.justiss@co.tom-green.tx.us

BOOPSIE, INC.

To: Greg Carpenter

Title: CEO

Address: 464 Linden Street, Laguna Beach, CA 92651

Fax: (949) 715 2442

Phone: (949) 310 2765

Email: greg@boopsie.com

• SCHEDULE A

INITIAL INVOICE; IMPLEMENTATION AND SUBSCRIPTION FEES

1. Fees for the First Year of the Agreement from the Effective Date.

- Implementation Fee: \$1,295
- Annual Subscription Fee: \$5,895

2. Fees for the Second and Third Year of the Agreement from the Effective Date.

- Annual Subscription Fee: \$5,895

3. ILS System Changes

- If Library makes an ILS system change during the course of the contract term, an additional re-integration fee will be charged. The current fee is 50% of the originally charged integration fee.
- Library **must** provide four (4) weeks notice if planning to change ILS system.

4. Rebranding Fee

- Public Libraries serving populations under 250,000 or Academic Libraries with FTE below 12,500 = \$500
- Public Libraries serving populations over 250,000 or Academic Libraries with FTE above 12,500 = NC for first change, thereafter \$1,500.

CUSTOMER BILLING CONTACT & ADDRESS INFORMATION:

CUSTOMER

To: _____

Title: _____

Address: _____

Fax: _____

Phone: _____

Email: _____

SCHEDULE B

BOOPSIE LICENSE AND HOSTED SERVICE TERMS AND CONDITIONS

1. DEFINITIONS

“**Activated Custom Client**” means the downloaded Custom Client (as defined below) that is actually used by an End User at least one time.

“**Agreement**” means collectively (i) the initial Product Order Form, Schedules and any follow-on Product Order Forms; (ii) the License and Hosted Service Terms; and (iii) any addenda signed by both Boopsie and Customer.

“**Confidential Information**” means all information described in Section 9.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity.

“**Custom Client**” means the Customer-branded version of the Boopsie client software that acts as the input and display mechanism for the interactive search of Customer’s information that is directly downloaded to the mobile devices as set forth in Schedule C.

“**Customer**” includes the Customer whose name is set forth in the Product Order Form and any affiliated entity which Controls, is Controlled by, or is under common Control with Customer, provided all such entities ordering or using Boopsie products or the Hosted Service have agreed to be bound by the terms and conditions of this Agreement.

“**Customer Features**” are features identified on Schedule D.

“**Customer Contact**” means Customer’s staff member who is knowledgeable about Customer Equipment and Customer’s use of the Hosted Service.

“**Customer Data**” mean all text, files, data, output, programs, files, or other information or material that Customer provides or uses in conjunction with the Custom Client or Hosted Service.

“**Customer Equipment**” means Customer’s computer hardware, software and network infrastructure used to access the Hosted Service.

“**Trademarks**” means those Boopsie and Customer trademarks identified on Schedule E.

“**Documentation**” means the online help files and other content relating to use of the Hosted Service made available by Boopsie on the Network.

“**Effective Date**” is set forth on the initial Product Order Form.

“**Extension Term**” means each additional renewal period, which shall be for a period of one year, for which this Agreement is extended pursuant to Section 15.

“**Hosted Service**” means collectively the Custom Client, any software updates, documentation and any support or other services that support the Custom Client to deliver the Customer Features listed in Schedule D.

“**Initial Term**” means the initial license term specified on the Product Order Form, commencing on the Effective Date.

“**Network**” is the hosted network that is provided by Boopsie.

“**Product Order Form**” means Boopsie’ Product Order Form or other ordering document (e.g. Customer’s Purchase Order) that (i) specifies the products or services purchased by Customer; (ii) references this Agreement; and (iii) is signed or initialed by authorized representatives of both parties.

“**Scheduled Down Time**” means the total time during which Customer is not able to access the Hosted Services due to planned maintenance.

“**Software Updates**” means updates, modifications, or new releases of the Boopsie client software or hosted services that Boopsie generally makes available via the Network at no additional charge to its customers who are current in payment of Subscription Fees. Software Updates may be used in

accordance with the terms and restrictions relating to Software hereunder. Software Updates do not include products, modules or options that are designated by Boopsie as new products, modules or options for which Boopsie charges a separate fee.

“**Subscription Fees**” means the fees paid by Customer for the right to use the Hosted Service and receive Support during the applicable Term.

“**System Availability**” means the percentage of total time during which the Hosted Service is available to be accessed by Customer, not including the Scheduled Down Time or down time required for emergency maintenance outside the Scheduled Down Time periods.

“**Term**” means the Initial Term and any Extension Term.

“**Work Product**” means all work (including any tools, materials, derivative works and modifications made to the Boopsie client software or Documentation) used, developed or created by Boopsie for Customer during the course of providing the Hosted Services, Custom Client, Support, consulting or any other services to Customer. Work Product does not include Customer Data.

2. LICENSE GRANT

a. Hosted Services. Subject to the terms of this Agreement, Boopsie hereby grants Customer a limited term, non-sublicensable, non-transferable, and non-exclusive license to access and use the Hosted Service in accordance with the Documentation solely for Customer’s internal business purposes. Authorized users include Customer employees and Customer subcontractors, agents, and consultants provided such subcontractors, agents, and consultants use the Hosted Service solely on behalf of Customer in accordance with this Agreement.

b. Custom Client License. Subject to Customer’s compliance with the terms and conditions of this Agreement (including, without limitation, Section 2.c below), Boopsie grants to Customer a non-exclusive license during the term of this Agreement: (i) to distribute the Custom Client via download (or other means such as CD) directly to End Users; (ii) to use the Custom Client as necessary to provide support to End Users; and (iii) to reproduce the Custom Client solely as necessary in connection with exercising the rights granted in the preceding clauses (i) and (ii) of this Section 2 b.

c. EULA for Custom Client. All End Users to whom Customer distributes the Custom Client must be bound by, and Customer will not distribute the Custom Client to any End User who has not expressly accepted, the terms and conditions of the Boopsie EULA, whether the Boopsie EULA is incorporated by reference in Customer’s end user license agreement or linked to from Customer’s end user license agreement or otherwise. The Boopsie EULA is attached hereto on Schedule F.

d. Customer License of Custom Data and Trademarks. Customer grants to Boopsie a non-exclusive license during the term of this Agreement to use the Customer Data and Customer Trademarks only as necessary to provide the Custom Client and Hosted Services to Customer pursuant to this Agreement.

3. **LICENSE RESTRICTIONS**. Customer acknowledges that the Custom Client, Hosted Services, Software Updates and Network (hereinafter collectively referred to as “Software”) contain trade secrets of Boopsie and its licensors and, in order

to protect such trade secrets and other interests that Boopsie and its licensors have in the Boopsie Software, Customer agrees not to disassemble, decompile or reverse engineer any of the Boopsie Software, or permit any third party to do so, except, and solely to the extent, if any, that applicable local law requires that such activities be permitted. Except as expressly authorized by this Agreement, Customer will not: (i) copy or reproduce the Software, in whole or in part except as may be permitted under this Agreement; (ii) modify the Software; or (iii) provide or make the functionality of the Software available to third parties except as may be permitted by this Agreement. Customer will reproduce on each copy it makes of the Custom Client, and not alter, remove or obscure, the Intellectual Property Rights notices of Boopsie and its licensors, that may appear on the Custom Client or any Software provided to Customer.

4. CUSTOMER OBLIGATIONS.

a. Customer Service Related. Customer will at all times: (i) provide and maintain (or have provided and maintained) a content delivery system and the computer server(s) on which the Customer Data is stored and made available to Boopsie to provide the Hosted Service; (ii) cooperate with and assist Boopsie and provide Boopsie with access to such information and Customer Data as may be reasonably required by Boopsie in order to implement and provide the Hosted Service; and (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Service, the Custom Client or any other Software and will notify Boopsie promptly of any such unauthorized access or use.

b. Equipment and Telecommunications and Internet Services. Boopsie is not responsible for (i) obtaining and maintaining any Customer Equipment or any ancillary services needed to connect to, access or otherwise use the Hosted Service; (ii) paying all third-party access charges (e.g., ISP, telecommunications, etc.) incurred while using the Hosted Service; and (iii) ensuring that the Customer Equipment and any ancillary services are compatible with the Hosted Service and comply with all configuration requirements set forth in the Documentation.

c. Customer Features Data. Customer shall provide to Boopsie all data necessary to create all features listed in Schedule D.

5. OWNERSHIP. Boopsie (or its licensors) retains all patent, copyright, trademark and other intellectual property rights in the Hosted Service, the Software, and the Custom Client (except for Customer Data or Customer Trademarks) and any work product that may be created for Customer pursuant to this Agreement. There are no implied rights and all other rights not expressly granted herein are reserved. Unless otherwise agreed to in writing by the parties, all license, right or interest to Work Product shall be the property of Boopsie. Customer retains all right, title and interest to Customer Trademarks and Customer Data.

6. FEES. The Implementation Fee and the Annual Subscription Fee and their payment due dates are set forth on Schedule A. Boopsie may change or increase the Fees it charges Customer for the Customer Features after the Initial Term ends.

a. Collection. All fees are payable in US dollars. Overdue payments shall bear interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is greater. Customer shall pay any attorneys' fees, court costs, or other costs incurred in collection of delinquent undisputed amounts. Except as expressly provided in this Agreement, fees specified on a Product Order Form are non-refundable. Customer shall

pay any and all applicable taxes and duties imposed as a result of Customer's purchase of products or services under this Agreement, except for taxes based on Boopsie's income. When Boopsie has the legal obligation to pay or collect such taxes, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Boopsie with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer will reimburse Boopsie for all reasonable travel and other related expenses pre-authorized by Customer and incurred by Boopsie in the performance of any Support or consulting services. All consulting services shall be performed in accordance with a statement of work signed by Boopsie and Customer that describes the services to be performed and references this Agreement.

7. SUPPORT. Boopsie shall provide Support at no additional charge provided Customer is current in payment of the applicable Subscription Fees. Support also includes Software Updates. Boopsie shall have no obligation to support problems caused by (i) Customer's negligence or unauthorized modification of any part of the Hosted Service; (ii) Software in any form or configuration other than as provided by Boopsie; or (iii) other causes external to the Hosted Service or beyond the reasonable control of Boopsie. In addition, Boopsie shall have no obligation to support the installation or maintenance of applications or devices external to the Hosted Service.

8. CUSTOMER INDEMNITY. Customer is responsible for (i) all Customer Data that Customer uploads, posts, transmits, or otherwise disseminates using the Hosted Service; (ii) maintaining secure access to the Hosted Service; (iii) maintaining reasonable security mechanism with respect to issuance of username and password information; (iv) any and all activities that occur under Customer's Hosted Service account; and (iv) using the Hosted Service solely for lawful purposes and in compliance with all applicable laws including, without limitation, copyright, trademark, privacy, obscenity, defamation, and anti-spamming, laws. Customer acknowledges that Customer is responsible for complying with privacy laws that apply to the collection, use and dissemination of Customer Data. Customer will notify Boopsie immediately of any unauthorized use of Customer's Hosted Service account or any other breach of security regarding Customer's Hosted Service account. Customer will at its expense defend and indemnify Boopsie against and pay all costs and settlement or damages awarded against Boopsie resulting from a third party claim related to any breach of Customer's obligations under this Section 8.

9. CONFIDENTIALITY. Confidential Information includes, without limitation, the Documentation, Software Updates, results of Software or Hosted Service comparative performance benchmarks, passwords provided to Customer for Hosted Service access, Customer Data, information related to past, present or future research, development or business affairs, any proprietary products, materials or methodologies, or any other information that which by its nature is normally and reasonably considered confidential or provides the disclosing party with a competitive advantage. Confidential Information shall be marked as confidential or proprietary or, if disclosed verbally, shall be identified as confidential or proprietary at the time of disclosure. The receiving party shall protect the disclosing party's Confidential Information with the same degree of care that it regularly uses to protect its own Confidential Information from unauthorized use or disclosure, but in no event less than a reasonable degree of care. The receiving party shall use the Confidential Information only for the limited purpose of performing its obligations under this Agreement. Confidential Information shall not be provided or disclosed to anyone except those employees or contractors of the receiving party with a

need to know under this Agreement. Confidential Information and any and all authorized copies thereof shall remain the property of the disclosing party and promptly shall be destroyed or returned if requested by the disclosing party.

Notwithstanding any provision contained in this Agreement, neither party shall be required to maintain in confidence any of the following: (i) information that, at the time of disclosure to the receiving party, is in the public domain; (ii) information that, after disclosure, becomes part of the public domain without restriction, except by breach of this Agreement; (iii) information that was in the receiving party's possession at the time of disclosure, and which was not acquired, directly or indirectly, from the disclosing party; (iv) information that the receiving party can demonstrate resulted from its own research and development, independent of and without reference to disclosure from the disclosing party; (v) information that the receiving party receives from third parties, provided such information was not obtained by such third parties from the disclosing party on a confidential basis; or (vi) information that is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

10. LIMITED HOSTED SERVICES WARRANTY. Boopsie warrants that for the Term of this Agreement (i) the Hosted Service will perform in all material respects in accordance with the Documentation; and (ii) any consulting services will be provided in a professional and workmanlike manner. As Customer's sole and exclusive remedy and Boopsie's entire liability for any breach of the foregoing warranty, Boopsie will either (a) fix, provide a work-around or otherwise remedy a problem that results in the Hosted Service being nonconforming; or (b) reperform any nonconforming consulting services so that the Hosted Service or consulting services operate as warranted. If, after thirty (30) days from the date of receipt of written notice of any non-conforming Hosted Service or consulting services from Customer, Boopsie does not fix the non-conforming Hosted Service or re-perform the non-conforming consulting services, Boopsie will either (A) refund a pro-rata portion of the Subscription Fees from the date of Customer's notice of the Hosted Service non-conformance through the remainder of the applicable Term; or (B) refund fees paid for the nonconforming consulting services.

11. LIMITED SERVICE LEVEL WARRANTY. Boopsie will undertake commercially reasonable efforts to provide Customer with 100% System Availability. The System will have periodic Scheduled Downtime to, for example, maintain or improve system performance. Boopsie will at times have to run batch process that may slow down Hosted Service performance. Boopsie will make commercially reasonable efforts to remedy any performance problem. If Boopsie fails to correct such performance problem within 10 days from the date of Boopsie's receipt of written notice from Customer, as Customer's sole and exclusive remedy and Boopsie's entire liability for such failure to correct such performance problem, Customer may terminate this Agreement pursuant to Section 15 and Boopsie will refund a pro rata portion of the Subscription Fees from the time of termination through the remainder of the applicable Term.

12. WARRANTY EXCEPTIONS. The Hosted Service and System Availability warranties set forth in Sections 10 and 11 are void to the extent any problem which results in the Hosted Service performance or System Availability to be other than as warranted is due to (i) use of the Hosted Service outside the scope described in the Documentation; (ii) Customer Equipment and/or third party software, hardware or network infrastructure outside of the data center supplied by Boopsie and/or not under

the direct control of Boopsie; (iii) failure of the external internet beyond Boopsie's Network; (iv) electrical or internet access disruptions; (v) any actions or inactions of Customer or any other third party not under the direct control of Boopsie; (vi) attacks (i.e. hacks, denial of service attacks, malicious introduction of viruses and disabling devices) caused by third parties; or (vii) events of force majeure.

13. NO OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES SET ABOVE IN SECTIONS 10 AND 11 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. Without limiting the generality of the foregoing, Boopsie disclaims any responsibility for damages or losses incurred by Customer or any End User resulting from use of Hosted Services or the Custom Client or from any content downloaded through use of the Boopsie Service or the Custom Client.

14. LIMITATION OF LIABILITY. EXCEPT (I) FOR DAMAGES RELATED TO CLAIMS BASED ON A BREACH OF ITS OBLIGATIONS SET FORTH IN SECTION 10 OR (II) DAMAGES RELATED TO CLAIMS BASED ON ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BOOPSIE'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO BOOPSIE FOR THE HOSTED SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

a. EXCEPT FOR (I) DAMAGES RELATED TO CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT; (II) DAMAGES RELATED TO CLAIMS BASED ON EITHER PARTY'S BREACH OF ITS OBLIGATIONS SET FORTH IN SECTION 10; OR (III) DAMAGES RELATED TO EITHER PARTY'S UNAUTHORIZED USE, DISTRIBUTION, OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. NOTWITHSTANDING ANYTHING SET OUT ABOVE OR OTHERWISE IN THIS AGREEMENT, NOTHING IN THIS AGREEMENT SHALL ATTEMPT TO LIMIT OR EXCLUDE ANY LOSS OR DAMAGES ARISING FROM DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

15. TERM AND TERMINATION. This Agreement is effective immediately on execution of the Product Order Form and unless sooner terminated by either party in accordance with this Section 15, shall remain effective for the Term. After the Initial Term, if Customer is current in payment of all applicable fees, this Agreement shall automatically extend for an Extension Term, unless terminated by either party by giving notice to the other party not less than thirty (30) days prior to the end of the Initial Term or any Extension Term.

a. Termination. Notwithstanding the foregoing, this Agreement may be terminated by either party immediately upon written notice if the other party: (i) becomes insolvent or ceases doing

business for a period greater than ninety (90) days; or (ii) materially breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days following written notice to such party.

b. Survival. Terms relating to limitations of liability, confidentiality, indemnification obligations, governing law, payment obligations, and any other term that by its nature ought to survive termination will survive the expiration or termination of this Agreement.

c. Consequence of Termination. Upon the effective date of termination of this Agreement: (i) Boopsie will immediately cease providing the Hosted Service to Customer; (ii) Customer's license to use the Custom Client and the Hosted Services will cease; (iii) any and all payment obligations of Customer incurred prior to the date of termination will immediately become due; (iv) within thirty (30) days of such termination each party will return all copies of Confidential Information of the other party in its possession except as required to comply with any applicable legal or accounting record keeping requirement; (v) upon Customer's written request, Boopsie will acknowledge to Customer in writing that all active Customer Data has been removed and deleted from its systems within ten (10) days of termination; and (vi) Boopsie will delete all backed-up Customer Data from Boopsie's systems within 30 days of termination of this Agreement.

16. PUBLICITY AND PROMOTION. The parties may issue one or more mutually agreed upon press releases at mutually agreed times. Boopsie may include Customer's name in a list of its customers. Customer shall prominently promote the Custom Client download on its website and other online and offline communication channels as appropriate.

17. MISCELLANEOUS. This Agreement represents the complete agreement regarding the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

a. Amendments. This Agreement may be amended only by a written document executed by a duly authorized representative of each party. No purchase order, other ordering document or any hand written or typewritten text which purports to modify or supplement the printed text of this Agreement or any Product Order Form shall add to or vary the terms of this Agreement unless signed or initialed by authorized representatives of each party.

b. Unenforceable Provisions. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make the remainder of the Agreement enforceable.

c. Notices. All notices given under this Agreement shall be in writing, and shall be delivered by a form of mail to the addresses listed on the Product Order Form, which provides receipt evidencing such delivery.

d. Waiver. No waiver by either party hereto of any breach of any provision herein shall constitute waiver of any other provision nor shall such waiver constitute consent that the breach may continue or that any other breach will be waived. Unless stated otherwise in this Agreement, the remedies provided are cumulative, and are in addition to any other remedies available at law or equity.

e. Independent Contractors. The parties hereto are and shall remain independent contractors. Nothing herein shall be

deemed to establish a partnership, joint venture, or agency relationship between the parties.

f. Counterparts. This Agreement may be executed in several counterparts, all of which taken together constitute one single agreement between the parties.

g. Assignment. Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld, and any attempt to do so without such consent will be void; provided, however, that, upon written notice to the other party, (i) either party may assign its rights or obligations hereunder to a parent corporation or an affiliate in which the assigning party or its parent corporation holds a Controlling interest without the consent of the other party and (ii) either party may assign its rights and obligations hereunder in connection with any transaction involving the merger, acquisition or consolidation of the assigning party or the sale of all or substantially all of its assets without the consent of the other party. This Agreement shall inure to the benefit of and bind successors and permitted assigns of the parties.

f. Force Majeure. Neither party will be liable for any failure or delay in the performance of its obligations (except the obligation to pay money) hereunder on account of events beyond the reasonable control of such party, which may include, without limitation, government action, acts of God, war, terrorism, fire, flood, earthquakes or other natural disasters, denial-of-service attacks or communication line or power failures or material shortages or labor conditions; provided that such party gives prompt notice to the other party, and use its commercially reasonable efforts to resume performance as soon as reasonably practicable.

h. Governing Law/Jurisdiction. This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. The Customer consents to exclusive jurisdiction and venue in the federal courts in Los Angeles County, California, unless no federal subject matter jurisdiction exists, in which case the Customer consents to exclusive jurisdiction and venue in the Superior Court of Los Angeles, California. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens.

i. Government Rights. The Custom Client is "commercial computer software," as such term is used in FAR 12.212. Any use, duplication, or disclosure of the Custom Client or any other Software by or on behalf of the U.S. Government is subject to restrictions as set forth in this Agreement. Manufacturer is Boopsie.

j. 3rd Party Approval Customer understands that the Custom Client may require approval and acceptance by a third party before being placed in an application store. For example, Apple, Inc. approves any software included in the AppStore. While Boopsie has extensive experience in getting applications based upon the software in the Custom Client accepted by such third party application stores, such third party stores exercise complete control over what is approved. Therefore, Boopsie cannot and does not guarantee that third parties asserting such control over their application stores will accept the Custom Client. If this occurs, Boopsie will provide a download site for the Clients for all platforms that support direct download of the application. All fees will be due and payable as stated in this Agreement regardless of any third party application store acceptance or rejection.

SCHEDULE C

MOBILE OPERATING SYSTEMS

- Android - 1.6 or greater
- BlackBerry 4.0 or greater
- Java CLDC1.1 MIDP 2.0
- Palm OS 5.4 and greater
- Symbian S60 3rd Edition
- Windows Mobile 5.0 – 6.5
- iOS 4.3 and greater ((Subject to Customer acquiring an Apple Developer account for iOS development, which currently will cost the customer an additional \$99.00 per year, subject to Apple approval)

SCHEDULE D

OPTIMUM LIBRARY APP PRODUCT FEATURES

The Customer Boopsie optimum library app includes the features listed below. Customer can decide to exclude features.

- Library Locator
- Catalog Search using Smart Prefix Search
- ILS Integration for holds, renewals
- Ask A Librarian
- Reading Lists
- Events, Calendar (limited to 10 iCal feeds)
- Blogs and Twitter
- BookLook
- Publisher Reviews – integration with library supplied book review providers
- Overdrive Access
- Third Party Database Access (limited to 20 links)

For BookLook, the client library's ILS must support an ISBN search or the MARC records must contain the ISBN.

For Publisher Reviews, library is responsible for securing access to the review source.

For Overdrive Access – library is responsible for providing access to their existing Overdrive service

SCHEDULE E
TRADEMARKS

BOOPSIE:

1. Boopsie
2. Mobile Find
3. Smart Prefix

CUSTOMER:

1. All Customer trademarks

SCHEDULE F

END USER LICENSE AGREEMENT

PREAMBLE

IMPORTANT! THIS IS THE LICENSE AGREEMENT THAT YOU ARE REQUIRED TO ACCEPT BEFORE INSTALLING AND USING BOOPSIE, INC. SOFTWARE. CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT BEFORE PROCEEDING WITH THE DOWNLOADING AND/OR INSTALLATION OF THIS SOFTWARE PRODUCT. YOU ARE NOT PERMITTED TO DOWNLOAD AND/OR INSTALL THIS SOFTWARE PRODUCT UNTIL YOU HAVE AGREED TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT. IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT AND CHOOSE NOT TO INSTALL THIS SOFTWARE PRODUCT, TO OBTAIN A REFUND OF THE AMOUNT PAID FOR THIS LICENSE, PROMPTLY RETURN THIS SOFTWARE PRODUCT IN UNMODIFIED FORM TOGETHER WITH WRITTEN CERTIFICATION THAT THE ORIGINAL SOFTWARE PRODUCT AND ANY COPIES MADE HAVE BEEN RETURNED, TO EITHER BOOPSIE, INC. OR THE AUTHORIZED DISTRIBUTOR WHO PROVIDED THE SOFTWARE PRODUCT TO YOU, AS APPLICABLE, NO LATER THAN 14 DAYS FROM YOUR RECEIPT OF THE SOFTWARE PRODUCT. BY ACCEPTING THIS LICENSE AGREEMENT YOU ALSO REPRESENT AND WARRANT THAT YOU ARE DULY AUTHORIZED TO ACCEPT THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT ON BEHALF OF YOUR EMPLOYER. THIS AGREEMENT IS ENTERED INTO BY BOOPSIE, INC. ("BOOPSIEINC") AND YOU AS END USER OF THE SOFTWARE PRODUCT ("END USER").

1. The Software Product

The subject of this license is the BOOPSIEINC software product in which this license is embedded and any related updates, provided to END USER, including computer software and, where applicable, associated media, printed materials and online or electronic documentation ("Software Product").

2. License Grant

END USER is hereby granted, upon the following terms and conditions including payment of any applicable license fee, a non-exclusive, non-transferable license, for its internal, end-use purposes only (excluding the commercialization of information technology products), in the ordinary course of END USER'S business to:

- 2.1. If a single user license is purchased or otherwise agreed to, install and use the Software Product on a single device only (and not on a computer, network or a server),
- 2.2. If a server license is purchased or otherwise agreed to, install and use the Software Product on a single designated server being a single computer which provides shared services to multiple single computers linked to the server, subject to the number of concurrent users agreed to in writing by BOOPSIEINC, in each case where such single device or server is owned, leased or otherwise substantially controlled by END USER. If END USER desires to use this Software Product on more than a single device (not being a server) or server, additional licenses must be obtained from BOOPSIEINC for each device or server upon which or where the Software Product is to be used.

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