

PROFESSIONAL SERVICES AGREEMENT
[Automated Library System Software Licensing, Maintenance, and Support]

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made at Orange, California, on this ____ day of _____, 2024 (the “Effective Date”) by and between the CITY OF ORANGE, a municipal corporation (“City”), and SIRSI CORPORATION, a Delaware corporation (“Contractor”), who agree as follows:

1. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to the reasonable satisfaction of City the services set forth in Exhibit “A,” which is attached hereto and incorporated herein by reference. As a material inducement to City to enter into this Agreement, Contractor represents and warrants that it has thoroughly investigated and considered the scope of services and fully understands the difficulties and restrictions in performing the work. The services which are the subject of this Agreement are not in the usual course of City’s business and City relies on Contractor’s representation that it is independently engaged in the business of providing such services and is experienced in performing the work. Contractor shall perform all services in a manner reasonably satisfactory to City and in a manner in conformance with the standards of quality normally observed by an entity providing such services to a municipal agency. All services provided shall conform to all federal, state and local laws, rules and regulations and to the best professional standards and practices. The terms and conditions set forth in this Agreement shall control over any terms and conditions in Exhibit "A" to the contrary.

Lara Paglinawan, Technology and Support Services Manager (“City’s Project Manager”) shall be the person to whom Contractor will report for the performance of services hereunder. It is understood that Contractor’s performance hereunder shall be under the supervision of City’s Project Manager (or his/her designee), that Contractor shall coordinate its services hereunder with City’s Project Manager to the extent required by City’s Project Manager, and that all performances required hereunder by Contractor shall be performed to the satisfaction of City’s Project Manager and the City Manager.

2. Compensation and Fees.

a. Contractor's total compensation for all services performed under this Agreement, shall not exceed THREE HUNDRED SIXTY-EIGHT THOUSAND SIX HUNDRED TWENTY-SEVEN DOLLARS and 16/100 (\$368,627.16) without the prior written authorization of City.

b. The above compensation shall include all costs, including, but not limited to, all clerical, administrative, overhead, insurance, reproduction, telephone, travel, auto rental, subsistence and all related expenses.

3. Payment.

a. On an annual basis, City will pay Contractor the amount invoiced within thirty (30) days after the approval of the invoice.

d. Payment shall constitute payment in full for all services, authorized costs and authorized extra work covered by that invoice.

4. **Change Orders.** No payment for extra services caused by a change in the scope or complexity of work, or for any other reason, shall be made unless and until such extra services and a price therefor have been previously authorized in writing and approved by City as an amendment to this Agreement. City's Project Manager is authorized to approve a reduction in the services to be performed and compensation therefor. All amendments shall set forth the changes of work, extension of time, and/or adjustment of the compensation to be paid by City to Contractor and shall be signed by the City's Project Manager, City Manager or City Council, as applicable.

5. **Licenses.** Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the work contemplated by this Agreement and that Contractor and its subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Agreement.

6. **Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Agreement. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that it and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

7. **Contractor Not Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind City to any obligation whatsoever.

8. **Designated Persons.** Only those qualified persons authorized by City's Project Manager, or as designated in Exhibit "A," shall perform work provided for under this Agreement. It is understood by the parties that clerical and other nonprofessional work may be performed by persons other than those designated.

9. **Assignment or Subcontracting.** Contractor may assign the Agreement to a successor in interest.

10. Time of Completion. Except as otherwise specified in Exhibit “A,” Contractor shall commence the work provided for in this Agreement within five (5) days of the Effective Date of this Agreement and diligently prosecute completion of the work as otherwise agreed to by and between the representatives of the parties.

11. Time Is of the Essence. Time is of the essence in this Agreement. Contractor shall do all things necessary and incidental to the prosecution of Contractor's work.

12. Reserved.

13. Delays and Extensions of Time. Contractor's sole remedy for delays outside its control, other than those delays caused by City, shall be an extension of time. No matter what the cause of the delay, Contractor must document any delay and request an extension of time in writing at the time of the delay to the satisfaction of City. Any extensions granted shall be limited to the length of the delay outside Contractor’s control. If Contractor believes that delays caused by City will cause it to incur additional costs, it must specify, in writing, why the delay has caused additional costs to be incurred and the exact amount of such cost at the time the delay occurs. No additional costs can be paid that exceed the not to exceed amount stated in Section 2.a, above, absent a written amendment to this Agreement.

14. Products of Contractor. The documents, studies, evaluations, assessments, reports, plans, citations, materials, manuals, technical data, logs, files, designs and other products produced or provided by Contractor for this Agreement shall become the property of City upon receipt. Contractor shall deliver all such products to City prior to payment for same. City may use, reuse or otherwise utilize such products without restriction.

15. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:

a. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

b. Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

c. Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

16. Conflicts of Interest. Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a consultant to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code.

17. Indemnity.

a. To the fullest extent permitted by law, Contractor's total liability, including attorneys fees awarded under the agreement, to City for any claim by City or any third parties under the Agreement, excluding liability pursuant to any infringement claims, will be limited to the fees paid by City during the previous twelve (12) months for the product which is the subject matter of the claim.

b. Reserved.

c. Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

d. The indemnities set forth in this section shall survive any closing, rescission, or termination of this Agreement, and shall continue to be binding and in full force and effect in perpetuity with respect to Contractor and its successors.

18. Insurance.

a. Contractor shall carry workers' compensation insurance as required by law for the protection of its employees during the progress of the work. Contractor understands that it is an independent contractor and not entitled to any workers' compensation benefits under any City program.

b. Contractor shall maintain during the life of this Agreement the following minimum amount of comprehensive general liability insurance or commercial general liability insurance: the greater of (1) One Million Dollars (\$1,000,000) per occurrence; or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage and be written on an occurrence basis.

c. Contractor shall maintain during the life of this Agreement, the following minimum amount of automotive liability insurance: the greater of (1) a combined single limit of One Million Dollars (\$1,000,000); or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage for all owned, non-owned and hired vehicles and be written on an occurrence basis.

d. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor under this Agreement.

e. Each policy of general liability and automotive liability shall provide that City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Contractor under this Agreement. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 18.b and c, above, shall apply to City as an additional insured. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth herein shall be maintained for the duration of the Agreement.

f. Contractor shall maintain during the life of this Agreement professional liability insurance covering errors and omissions arising out of the performance of this Agreement with a minimum limit of One Million Dollars (\$1,000,000) per claim. Contractor agrees to keep such policy in force and effect for at least five (5) years from the date of completion of this Agreement.

g. The insurance policies maintained by Contractor shall be primary insurance and no insurance held or owned by City shall be called upon to cover any loss under the policy. Contractor will determine its own needs in procurement of insurance to cover liabilities other than as stated above.

h. Before Contractor performs any work or prepares or delivers any materials, Contractor shall furnish certificates of insurance and endorsements, as required by City, evidencing the aforementioned minimum insurance coverages on forms acceptable to City, which shall provide that the insurance in force will not be canceled or allowed to lapse without at least thirty (30) days' prior written notice to City for all reasons, except ten (10) days' notice of cancellation for non-payment of premium.

i. Except for professional liability insurance coverage that may be required by this Agreement, all insurance maintained by Contractor shall be issued by companies admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide. In the case of professional liability insurance coverage, such coverage shall be issued by companies either licensed or admitted to conduct business in California so long as such insurer possesses the aforementioned Best rating.

j. Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Agreement unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom, by way of set-off from any sums owed Contractor.

k. Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance.

l. Contractor shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to City for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

19. Termination. After the Initial Term, City may cancel sixty (60) days prior to each annual renewal period. City shall not be liable for any claim of lost profits.

20. Maintenance and Inspection of Records. In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the “records”) pertaining to the costs of and completion of services performed under this Agreement. City and its authorized representatives shall have access to and the right to audit and reproduce any of Contractor's records regarding the services provided under this Agreement. Contractor shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Contractor agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days’ notice from City, and copies thereof shall be furnished if requested. Contractor may be reimbursed by the City for its reasonable expenses in connection with such audits where such audits exceed one business day once per year.

21. Compliance with all Laws/Immigration Laws.

a. Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement.

b. If the work provided for in this Agreement constitutes a “public works,” as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid, to the extent Contractor’s employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that it, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations (www.dir.ca.gov/DLSR). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

c. Contractor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Agreement comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Agreement who is ineligible to work in the United States or under the terms of this Agreement; and

(3) Has properly maintained, and shall at all times during the term of this Agreement properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and

(4) Has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

d. Contractor shall require all subcontractors or subconsultants to make the same representations and warranties as set forth in Subsection 21.c.

e. Contractor shall, upon request of City, provide a list of all employees working under this Agreement and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Agreement without written notice to City, accompanied by the verification required herein for such employees.

f. Contractor shall require all subcontractors or sub-consultants to make the same verification as set forth in Subsection 21.e.

g. If Contractor or subcontractor knowingly employs an employee providing work under this Agreement who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee, that shall constitute a material breach of this Agreement and may be cause for immediate termination of this Agreement by City.

h. Contractor agrees to indemnify and hold City, its officers, officials, agents and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Agreement.

22. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California and Contractor agrees to submit to the jurisdiction of California courts. Venue for any dispute arising under this Agreement shall be in Orange County, California.

23. Integration. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

24. Notice. Except as otherwise provided herein, all notices required under this Agreement shall be in writing and delivered personally, by e-mail, or by first class U.S. mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

25. Products Use Rights; Title.

a. Generally. City's purchase of Products under this Agreement may include from time-to-time Software, Subscriptions, Services, and/or Hardware. The following provisions under this Section 25 apply if relevant to the type of Product purchased pursuant to a Quote.

b. Software License. Subject to the terms and conditions of this Agreement including without limitation the restrictions set forth and timely payment of the applicable fees, Contractor hereby grants to City a limited, non-exclusive, and non-transferable license to (i) install, run and use the Software identified in the Quote in the Operating Environment solely for Internal Business Purposes, and (ii) use the Documentation in connection with such use of the Software. City may not make copies of the Software except a reasonable number of machine-readable copies solely for internal backup or archival purposes. All Intellectual Property rights notices must be reproduced and included on such copies. City shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform Contractor in writing of such upon request. Unless otherwise set forth in a Quote, the Software shall not be simultaneously loaded and operated on more than one hardware platform, except temporarily during the process of platform migration. City shall use the Third Party Products solely in conjunction with the Contractor Software and City shall have no broader rights with respect to the Third Party Products than it has to the Contractor Software. Contractor may add and/or substitute functionally equivalent products for any third party items in the event of product unavailability, end-of-life, or changes to software requirements.

c. Subscriptions.

(1) For Subscriptions purchased by City, and subject to the terms and conditions of this Agreement including without limitation the restrictions set forth and timely payment of the applicable fees, Contractor grants to City the right to access and use the

Subscription identified in the Quote solely for Internal Business Purposes and to use the Documentation in connection with such access and use for the Term. Contractor shall use commercially reasonable efforts to make the Subscription Services available 24x7, except for scheduled downtime events, or emergency downtime events, or Internet service provider failures or delays. Contractor will use commercially reasonable efforts to perform scheduled downtime events outside of normal business hours. City acknowledges that the Subscription Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Contractor is not responsible for any delays, delivery failures, or other damage resulting from such problems.

(2) City is solely responsible for obtaining and maintaining at its own expense, all equipment that may be needed to access Subscriptions, including without limitation, Internet connections. City understands that Subscription communications may traverse an unencrypted public Internet connection and that use of the Internet provides the opportunity for unauthorized third parties to illegally gain access to City Data. Accordingly, Contractor does not guaranty the privacy, security or authenticity of any information transmitted over or stored in any system connected to the Internet. City shall not encrypt Subscription traffic except as may be available through the Contractor VPN solution.

(3) City is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user. City is responsible for all activities that occur under City's account. City agrees to immediately notify Contractor of any unauthorized use of City's account or any other breach of security known to City. Contractor shall have no liability for any loss or damage arising from City's failure to comply with these requirements.

(4) City shall be solely responsible for the accuracy, quality, integrity and legality of City Data and of the means by which it acquired City Data. City acknowledges and agrees that Contractor does not monitor or police the content of communications or data of City or its users transmitted through the Subscriptions, and that Contractor shall not be responsible for the content of any such communications or transmissions. City shall use the Subscriptions exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. City agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains viruses or other contaminating or destructive features; (c) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; (d) constitutes sensitive personal information such as social security numbers, credit card information, or drivers license numbers; or (e) otherwise violates any applicable law. City further agrees not to interfere or disrupt networks connected to the Subscriptions, not to interfere with another City's use and enjoyment of similar services and to comply with all regulations, policies and procedures of networks connected to the Subscriptions. Contractor may remove any violating content posted or transmitted on or through the Subscriptions, without notice to City. Contractor may suspend or terminate any user's access to the Subscriptions upon notice in the event that Contractor reasonably determines that such user has violated these terms and conditions.

(5) The provision of third party Subscriptions is subject to availability from third party providers and Contractor shall have no liability should such Subscription become unavailable for any reason or is no longer available under reasonable commercial terms.

(6) In the event that City is locally hosting Subscription Software, Contractor hereby grants to City, subject to the terms and conditions of this Agreement including without limitation the restrictions set forth and timely payment of the applicable fees, a limited, non-exclusive, non-transferable grant of use to locally install and use the Subscription Software solely for City's internal business purposes. The grant of use for Subscription Software is not a license and remains in effect only while City is timely paying its Subscription fees to Contractor. If City fails to timely pay Subscription fees, City must immediately discontinue use of and certify to Contractor the removal of Subscription Software.

d. Services. Services are described in the Quote. Contractor shall be responsible for securing, managing, scheduling, coordinating and supervising Contractor personnel, including its subcontractors, in performing any Services. Any change to the scope of Services must be in writing signed by both parties. Once executed by both parties, a change shall become a part of the Quote.

e. City acknowledges and agrees that Contractor performance is dependent upon the timely and effective satisfaction of City's responsibilities hereunder and timely decisions and approvals of City in connection with the Services. Contractor shall be entitled to rely on all decisions and approvals of City. City's data must be provided to Contractor in a format reasonably approved by Contractor or additional charges will apply. City shall be responsible for providing secured access to City's systems to Contractor. Contractor alone shall decide whether such access is sufficient for the performance of Services.

f. Software Maintenance.

(1) Subject to City's timely payment of applicable fees, Contractor will provide during the Term Maintenance services for the Software in accordance with the maintenance plan indicated in the Quote, provided however that with respect to Third Party Products, Contractor's obligation to offer Maintenance is limited to using commercially reasonable efforts to obtain Maintenance from the third party owner of such Software. All licenses in City's possession must be supported under the same maintenance plan.

(2) Updates are provided if and when available, and Contractor is under no obligation to develop any future programs or functionality.

(3) Contractor is under no obligation to provide Maintenance with respect to: (i) a Product that has been altered or modified by anyone other than Contractor or its licensors; (ii) a release for which Maintenance has been discontinued; (iii) a Product used other than in accordance with the Documentation or other than on the Operating Environment; (iv) discrepancies that do not significantly impair or affect the operation of the Product; or (v) any systems or programs not supplied by Contractor.

(4) For the avoidance of doubt, Updates provided under Maintenance services are subsequent minor or maintenance releases to the standard Products, excluding custom development or customizations whether such customizations are performed by Contractor or by City or a third party. Contractor reserves the right to charge Client for any reintegration work required to make customizations compatible with future releases.

(5) If ordered, Maintenance must be ordered for all Software and all associated License Metrics licensed by City. City may not purchase or renew Maintenance for a subset of its licenses only.

(6) If an Error was corrected or is not present in a more current release of the Product, Contractor shall have no obligation to correct such Errors in prior releases of the Software.

(7) Fees for Maintenance Services do not include implementation, training and other Professional Services.

(8) It is City's responsibility to ensure that all appropriate users receive initial training services sufficient to enable City to effectively use the Software. Failure to do so could result in additional Maintenance fees if service requests are deemed excessive as a result of insufficient training, at Contractor's discretion.

(9) In the event City does not renew Maintenance and subsequently desires to reinstate Maintenance, a reinstatement fee shall be assessed equal to 120% of the aggregate Maintenance fee that would have been payable during the period of lapse.

(10) For Software licenses and Subscription Software, City is solely responsible for the installation of Updates and agrees to (i) meet the Update standard set forth in the Contractor Support Policies referenced in the definition of Maintenance and (ii) maintain the Operating Environment. With respect to Subscriptions, Contractor is responsible for the implementation of Updates and shall no longer provide access to any previous release upon the date Contractor migrates to a new Update for production use in Contractor's hosted environment.

g. Hardware and Hardware Maintenance. Title to the Hardware identified in the Quote, if any, shall pass to City on Contractor's placement of the Hardware with a common carrier or licensed trucker, which shall constitute delivery to City. Thereafter City will be responsible for risks of loss or damage, except for loss or damage caused by Contractor in the process of installation. Contractor does not provide support for Hardware unless City purchases any available maintenance associated with such Hardware. Such Hardware maintenance may be provided through a third party and is subject to that third party's standard terms, conditions and warranties, if any.

h. License Metrics. City may not use the Products in excess of the License Metrics specified in the Quote. Additional License Metrics and associated Maintenance must be purchased at the pricing in effect at the time the additional License Metrics are added in the event actual usage exceeds the licensed quantity, prorated for the remainder of the then-current Term.

The additional License Metrics purchased shall terminate on the same date as the pre-existing Products. Prices are based on License Metrics purchased and not actual usage. The number of License Metrics provided in the initial Quote is a minimum amount that City has committed to for the Term and there shall be no fee adjustments or refunds for any decreases in usage.

i. Reservation of Rights. All rights not expressly granted in the Agreement are reserved by Contractor and its third party providers. City acknowledges that: (i) all Software is licensed and not sold and all Subscriptions and Content are subscribed to and not sold; (ii) City acquires only the right to use the Protected Materials. Contractor and its third party providers retain sole and exclusive ownership and all rights, title, and interest in, including Intellectual Property embodied or associated with, the Protected Materials and all copies and derivative works thereof (whether developed by Contractor, City or a third party); and (iii) the Protected Materials, including the source and object codes, logic and structure, constitute valuable trade secrets of Contractor and its third party providers. City agrees to secure and protect the Products consistent with the maintenance of Contractor's and its third party providers' rights in the Products, as set forth in this Agreement.

j. Restrictions. Unless specifically permitted or licensed by Contractor, City shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Protected Materials; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Protected Materials, including the license keys, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Protected Materials to any user other than City's employees and independent contractors who have a need to such access and who shall be bound by a nondisclosure agreement with provisions that are at least as restrictive as the terms of this Agreement (except the City may grant access to public access catalogs to library users, other libraries, and third party entities); (iv) write or develop any derivative works based upon the Protected Materials; (v) modify, adapt, translate or otherwise make any changes to the Protected Materials or any part thereof; (vi) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Contractor's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Protected Materials; or (viii) otherwise use or copy the Protected Materials except as expressly permitted herein.

k. City Data. Contractor disclaims ownership of any and all City Data, all bibliographic, authority, item, fine, patron, and other data loaded to, created and/or entered into City's database or supplied to Contractor by City. Upon expiration of this Agreement, Contractor's sole obligation to City with respect to City Data will be:

(1) In the case of data stored in a Symphony ILS, extracting the entire ILS data set in in a documented database-independent ASCII format and storing the resulting files on City's server (or on a hosted SFTP server for Subscription Cities). Authority and bibliographic records (including items) will also be extracted and delivered in MARC21 format.

(2) In the case of data stored in a Horizon ILS, providing a backup of the database in the standard backup format for the database.. Contractor shall have the right to aggregate and retain non-personally identifiable data.

l. License Grant by City. City grants to Contractor a non-exclusive, royalty-free license, to use equipment, software, City Data or other material of City solely for the purpose of performing Contractor's obligations under this Agreement.

m. Enforcement. City shall (i) ensure that all users of the Products comply with the terms and conditions of this Agreement, (ii) promptly notify Contractor of any actual or suspected violation thereof and (iii) cooperate with Contractor with respect to investigation and enforcement of this Agreement.

26. Warranties; Remedies; Disclaimers.

a. Contractor Software. Contractor warrants that, for a period of 90 days from the Go Live Date, the Contractor Software, as updated by Contractor and used in accordance with the Documentation and in the Operating Environment, will operate in all material respects in conformity with the Documentation.

If Contractor Software does not perform as warranted, Contractor shall use commercially reasonable efforts to correct Errors. As City's exclusive remedy for any claim under this warranty, City shall promptly notify Contractor in writing of its claim. Provided that such claim is reasonably determined by Contractor to be Contractor's responsibility, Contractor shall, within ninety (90) days of its receipt of City's written notice; (i) correct such Error; (ii) provide City with a plan reasonably acceptable to City for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Contractor, then Contractor or City may terminate the affected Contractor Software license and City will be entitled to an equitable adjustment in the fees paid for the affected Contractor Software at Contractor's discretion. The preceding warranty cure shall constitute Contractor's entire liability and City's exclusive remedy for cure of the warranty set forth herein.

b. Contractor Subscriptions. Contractor warrants that Subscriptions, as used in accordance with the Documentation, will operate in all material respects in conformity with the Documentation.

c. Exclusions. Contractor is not responsible for any claimed breach of any warranty caused by: (i) modifications made to the Contractor Software by anyone other than Contractor; (ii) the combination, operation or use of the Contractor Software with any items that are not part of the Operating Environment; (iii) City's failure to use any new or corrected releases of the Contractor Software made available by Contractor; (iv) Contractor's adherence to City's specifications or instructions; or (v) City deviating from the operating procedures described in the Documentation.

d. Third Party Products. Contractor warrants that it is an authorized distributor of the Third Party Product and that with the execution of this Agreement and the

applicable EULA, City will have the right to use such Product in accordance with the terms and conditions of the terms of this Agreement and the applicable EULA. CONTRACTOR MAKES NO OTHER WARRANTY WITH RESPECT TO ANY THIRD PARTY PRODUCTS. CITY'S SOLE REMEDY WITH RESPECT TO SUCH THIRD PARTY PRODUCTS SHALL BE PURSUANT TO THE ORIGINAL LICENSOR'S WARRANTY, IF ANY, TO CONTRACTOR, TO THE EXTENT PERMITTED BY THE ORIGINAL LICENSOR. THIRD PARTY PRODUCTS ARE MADE AVAILABLE BY CONTRACTOR ON AN "AS IS, AS AVAILABLE" BASIS.

e. **Disclaimers.** THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND CONTRACTOR, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY PRODUCT IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED; (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, (iii) ANY WARRANTY THAT CONTENT OR THIRD PARTY PRODUCTS WILL BE ACCURATE, RELIABLE AND ERROR-FREE AND (iv) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY CONTRACTOR, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN. CITY ACKNOWLEDGES THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND CITY DATA AND THAT NO FORM OF ENCRYPTION IS FOOL PROOF. ACCORDINGLY, CONTRACTOR CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

f. **Compliance.** During the term of this Agreement and for a period of one year following its termination, Contractor shall have the right to verify City's full compliance with the terms and requirements of the Agreement. If such verification process reveals any noncompliance by City, City shall reimburse Contractor for the reasonable costs and expenses of such verification process incurred by Contractor (including but not limited to reasonable attorneys' fees) , and City shall promptly cure any such noncompliance; provided, however, that the obligations under this section do not constitute a waiver of Contractor's termination rights and do not affect Contractor's right to payment for Products and interest fees related to usage in excess of the License Metrics.

“CONTRACTOR”

Sirsi Corporation
3300 N. Ashton Blvd., Ste. 500
Lehi, UT 84043
Attn.: Peter Gray

Telephone: 800-288-8020
E-Mail: Legal@Contractor.com

“CITY”

City of Orange
300 E. Chapman Avenue
Orange, CA 92866-1591
Attn.: Lara Paglinawan

Telephone: 714-288-2572
E-Mail: lpaglinawan@cityoforange.org

25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

IN WITNESS of this Agreement, the parties have entered into this Agreement as of the year and day first above written.

“CONTRACTOR”

“CITY”

SIRSI CORPORATION, a Delaware corporation

CITY OF ORANGE, a municipal corporation

DocuSigned by:
Scott Worthington
*By: BDD0DF0E60CE45B
Printed Name: Scott Worthington
Title: General Counsel/Secretary

By: _____
Daniel R. Slater, Mayor

DocuSigned by:
Bill Davison
*By: 9D43ECC0A9C34C7
Printed Name: Bill Davison
Title: CEO

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

By: _____
Mike Vigliotta, City Attorney

***NOTE:**
-- City requires the following signature(s) on behalf of the Contractor:
(1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR
-- The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to City.

√NA

EXHIBIT "A"

SCOPE OF SERVICES

[Beneath this sheet.]



QUOTE

Quote 117981 for:

City of Orange Public Library

5 Year Agreement

Quote valid until:
Prepared by:

August 20, 2024
Linda Bone,
Inside Account Manager

This Quote is hereby fully incorporated into the current Agreement executed between SirsiDynix and Customer, if any. The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.

Purchase Details

All prices are in U.S. dollars (\$) and are exclusive of taxes unless otherwise noted.

	Year 1	Estimated Year 2	Estimated Year 3	Estimated Year 4	Estimated Year 5
Active Products	68,194.72	70,854.31	73,617.63	76,488.72	79,471.78

Active Products

Quantity	Total Price	Component	Note
1.00	6,899.32	BLUEcloud Analytics, Annual Subscription	
1.00	0.00	BLUEcloud MobileCirc, Annual Subscription	
1.00	2,470.59	COSUGI Package, Annual Subscription	
1.00	1,843.32	DataStream 2.0 Content Annual Subscription	
650.00	4,858.52	Enriched Content Basic Public Subscription (Per 1000 Circ)	
650.00	1,078.21	Enriched Content Video and Music 1 Single Element Subscription for Public Libraries	
1.00	0.00	SaaS User Level - 40 Staff seats	
1.00	0.00	SIP2 Interface for Cert.Vendor	
1.00	1,856.59	SirsiDynix Symphony SaaS 9xx, Per User	
1.00	8,624.17	SirsiDynix Symphony SaaS Acquisitions	
1.00	28,846.61	SirsiDynix Symphony SaaS Core	
1.00	2,072.18	SirsiDynix Symphony SaaS Electronic Data Interchange (EDI)	
1.00	0.00	SirsiDynix Symphony SaaS ReferenceLIBRARIAN	
1.00	2,072.18	SirsiDynix Symphony SaaS SmartPORT, Unlimited Users	
1.00	5,174.49	SirsiDynix Symphony SaaS Test System	
1.00	0.00	SirsiDynix Symphony SaaS Unicode Server Extension Test System	

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1.00	2,398.54	Training - Subscription, Value Instructor-Led	
	68,194.72	Active Product Total Year 1	

Initial Term: Five (5) Years

Initial Term Annual Price Increase Cap for SirsiDynix Products/Services: 3.9% until Term renewal

The Initial Term and the Initial Term Annual Price Increase Cap set forth above shall apply to Active Products and new purchased Products/Services.

Customer's usage is subject to limitations that can be found in the Terms and Conditions section at the end of the Quote.

SirsiDynix reserves the right to adjust Initial Term pricing for Third Party/integrated products/services if a Third Party vendor increases pricing for Third Party/integrated products/services.

Any applicable discount shall be applied on final payment. Any and all pre-printed terms and conditions on Customer's Purchase Order(s) submitted to SirsiDynix are hereby rejected and shall be superseded by the current Master Agreement, unless such additional terms are statutorily required of the Customer.

This Purchase Details section may not include pre-existing obligations for ongoing Products not listed in the Quote.

This Quote is hereby fully incorporated into the current Agreement executed between SirsiDynix and Customer, if any. The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.

Terms and Conditions

Current Contract License Limits:

Up to 1,310,000 annually circulated items.

Up to 200,000 titles.

Customer shall not integrate products offered by third parties into Software, Subscriptions or Subscription Software without additional license from SirsiDynix.

SirsiDynix shall have the right to aggregate and retain non-personally identifiable data.

Payment Terms

The term of any quoted products is for no less than the Initial Term and shall automatically renew for the length of the Initial Term. Subsequent years' Maintenance and Subscription fees are to be paid annually in advance. Following the first year of System operation, Maintenance and Subscription fees will be subject to annual increases. Unless otherwise specifically stated in writing, products and/or services purchased at promotional prices or with promotional discounts do not qualify for such discounts or limitations on price increases for subsequent years.

Any reference to license metrics and/or licensed amounts included in this quote shall be applicable only to the Products and/or services mentioned in this quote. This document and any software or professional services associated with this document are hereby fully incorporated into the current Agreement executed between SirsiDynix and Customer. If there is no current agreement between the parties, the terms and conditions of the current SirsiDynix Master Software License and Services Agreement shall be deemed the controlling Agreement between the parties, a copy of which shall be furnished upon Customer's request. Any and all pre-printed terms and conditions on Customer's Purchase Order(s) submitted to SirsiDynix are hereby rejected and shall be superseded by the current Agreement, unless such additional terms are statutorily required of the Customer. In the event of a conflict, the terms, payment terms, discounts, product lists and/or statement of work contained within this document shall take precedence over the current Agreement between the parties. In the event Customer desires or requires updated terms and conditions for the continuing business relationship with SirsiDynix, please contact your regional Sales Representative.

This Quote is hereby fully incorporated into the current Agreement executed between SirsiDynix and Customer, if any. The above information is a trade secret, proprietary and confidential and is only for use by the library named above and not to be released.

Signature(s)

**Customer Signature:
City of Orange Public Library**

SirsiDynix Signature:

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Name: _____
(Printed)

Name: _____
(Printed)

Job Title: _____

Job Title: _____

Date: _____

Date: _____

Billing Address:

City of Orange Public Library
407 E. Chapman Ave.
Orange
California 92866
United States

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