

**CLEVELAND PUBLIC LIBRARY**

**Finance Committee**

January 14, 2014

**RESOLUTION TO RATIFY AGREEMENT WITH RECORDED BOOKS, LLC  
FOR ZINIO ONECLICK DIGITAL CLASSICS ANNUAL SUBSCRIPTION**

WHEREAS, In December 2013, the Executive Director of the Cleveland Public Library entered into an agreement (“Agreement”) with Recorded Books, LLC for its “Zinio” product for CLEVNET and CPL in 2014. Zinio has a roster of more than 5,500 magazine publications that can be read seamlessly across any mobile and desktop device. The cost of the annual Zinio subscription /hosting and content is \$183,647.24; and

WHEREAS, Of the total cost, \$23,907.24 represents the cost of the content, and \$159,740 represents the cost of the subscription/hosting fee. CLEVNET member libraries shall be charged \$124,840 of the subscription/hosting fee. CLEVNET expenditures in excess of \$25,000 are authorized by the Resolution adopted by the Board of Library Trustees on December 17, 1987 and reaffirmed by Resolution adopted on May 16, 2002; and

WHEREAS, Cleveland Public Library shall be charged \$38,400 of the subscription/hosting fee. This expenditure exceeds the \$25,000 contracting authority granted to the Director by the Board of Library Trustees by Resolution adopted on April 18, 1996 and reaffirmed by Resolution adopted on May 16, 2002; and

WHEREAS, The Executive Director hereby requests that the Board of Library Trustees ratify the Agreement entered into with Recorded Books, LLC and authorize the expenditure by Cleveland Public Library of funds in the amount of \$38,400 toward the subscription/hosting fee; now therefore be it

RESOLVED, That the Board of Library Trustees hereby ratifies and approves the agreement entered into with Recorded Books, LLC in the amount of \$183,647.24 for the Zinio product for CLEVNET and CPL in 2014; and further authorizes \$38,400 of the subscription/hosting fee to be expended from General Fund Account 13010053-53710 (Professional Services).



Bundled Service Subscription Form

RB SALES REP: CRAIG MEARS DATE: 10-23-13

NEW X

Customer Name: Cleveland Public Library

Billing Address: 325 Superior Avenue

City: Cleveland

State: OH

Zip Code: 44114

Phone: (216) 623-2988

Website URL:

#of Branches:

CONTACT INFORMATION

Primary Contact Name: Rod Houpe

Email: rod.houpe@cpl.org

Marketing Contact Name:

Email:

Requested Start Date (If no date is indicated, we will make every effort to begin your service on the first of the month following receipt of your order):

Purchase Order:

Authentication and General Setup Information - upon receipt of your signed order form, we will send you a Set-Up email requesting information - if you do not want this sent to the primary contact, please provide an alternate contact.

Name:

Title

ORDER INFORMATION

PRICE

Zinio/OneClickdigital Classics Annual Subscription

\$159,740.00

Content - see attached

\$23,907.24

TERM - 2/1/2014 -1/31/2015, subject to Customer's right to two one-year renewal terms. Content fees shall not increase more than 3% each renewal term, and the Annual Subscription fee shall not increase during either renewal term. Customer has the right to terminate at any time during the original term or any renewal term in the event that Zinio increases the content price 3% of more. TOTAL DUE:

\$183,647.24

CONTENT FEES SHALL BE BASED UPON A MAXIMUM MULTIPLIER OF 6 END USERS DURING THE ORIGINAL TERM AND ALL RENEWALS

BY SIGNING BELOW, SUBSCRIBER 1)INDICATES THAT IT HAS READ AND AGREES TO THE CURRENT VERSION OF THE ZINIO AND ONECLICKDIGITAL SERVICE TERMS; 2)AFFIRMS THAT IT HAS MADE NO CHANGES TO THOSE TERMS EXCEPT AS OTHERWISE STATED HEREIN ; 3)AFFIRMS THAT ALL OF ITS INTERNAL REQUIREMENTS FOR ISSUANCE OF PAYMENT TO RECORDED BOOKS HAVE BEEN SATISFIED; 4)AFFIRMS THAT RECORDED BOOKS SERVICE TERMS WILL GOVERN THIS ORDER AND ALL FUTURE ORDERS AND RENEWALS, UNLESS EXCEPT AS OTHERWISE STATED HEREIN OR OTHERWISE NOTIFIED BY RECORDED BOOKS; AND 5)ORDERS RECORDED BOOKS ZINIO/ONECLICKDIGITALSERVICE.

Name: Felton Thomas

Title: Director

Signature: X [Handwritten Signature]

Date: 12/18/13

FOR RB OFFICE USE ONLY

Product #: \_\_\_\_\_ Sub Dates: \_\_\_\_\_ to \_\_\_\_\_

**Recorded Books Zinio for Libraries  
Platform License Agreement**

Each Library Account and End User acknowledges and agrees to the terms described herein and in the applicable Zinio Subscription Form and agrees to comply with the terms and conditions set forth in this License Agreement (the "License Agreement" or "Agreement").

**License**

Recorded Books, LLC ("Recorded Books"), a division of Haight Cross Communications, Inc., grants to the institution identified in the applicable Contract Amendment Order (each a "Library Account") a nontransferable and non-exclusive license (the "License") to use (i) the Zinio digital newsstand including all of its publisher approved content (the "Digital Content") made available through the various online sites, application platforms and the proprietary associated Zinio Reader that hosts Digital Content for and on behalf of Zinio service to Recorded Books for resale to users through a single issue or subscription offering by Zinio ("Zinio") and (ii) the Zinio made available by Recorded Books in accordance with the terms of this License Agreement and in the applicable Subscription Form entered into in connection with the Zinio service and annual platform order purchased by Library Account to receive the Zinio service on the terms described herein and in the applicable Zinio Subscription Format the platform level set forth in such Subscription Form. Library Accounts may not reproduce, distribute, display, modify, alter, publish, exploit, transfer or transmit, in any form, or by any means, any Digital Content or any portion of the Zinio service, other than in accordance with this License Agreement, without the prior written consent of Recorded Books. All use by Library Account or any of the Library Account's current employees, representatives, faculty, students, staff, visiting scholars and patrons that the Library Account has reasonably authorized to directly or remotely access the Library Account's systems and content (each, an "End User") of any Digital Content selected by Library Account or otherwise accessed by Library Account or End Users, including but not limited to any authorized trial periods, any period for which a fee has been paid, and when updates and access to new Digital Content are provided, is subject to the terms and conditions set forth in this License. Recorded Books is not responsible for Digital Content that ceases to be available on the Zinio platform due to a publisher's decision to no longer publish said Digital Content and no refund in full or prorated will be offered the Library Account. Library Account shall be responsible for ensuring that any End Users accessing applicable Recorded Books site(s) are notified of, and, the terms of this License:

**Ownership of Digital Content and Trademarks**

Each Library Account acknowledges that (i) Recorded Books has sole and exclusive ownership of all right, title and interest in and to the Digital Content owned by Recorded Books (the "Owned Content"), and (ii) Recorded Books is a licensee, lessee or otherwise has obtained the right to use the Digital Content for which Recorded Books is a licensee, lessee or otherwise has obtained the right to include such Licensed Content in the Digital Content (the "Licensed Content"). Each Library Account and End User further acknowledges and agrees that it has not acquired, and shall not acquire (whether by operation of law, by this License Agreement, by downloading any Digital Content, or otherwise), any right, title, interest or ownership in or to the Owned Content or the Licensed Content or any part thereof. If a Library Account chooses to terminate their Access Fee subscription before the full term of any Digital Content subscription(s), said subscription(s) will cease to be available to Library Account and a pro-rata refund will be issued for any remaining subscription term that has not been used.

Each Library Account and End User additionally acknowledges that (a) the Zinio trademark is owned by Recorded Books and that all trademarks, logos, and service marks displayed on any Zinio website are owned by Recorded Books or the licensors of the Licensed Content (collectively, the "Trademarks"), (b) all Trademarks are the property of their respective owners and are used with permission, and (c) nothing in this License Agreement or contained on the Zinio website may be construed as granting, by implication, estoppel, or otherwise, any right or license to use any Trademark. The Library Account may use the Trademarks on its website for promotion of the Digital Content.

**Disclaimer of Warranty; Limitation of Liability**

RECORDED BOOKS DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, , OR FITNESS FOR A PARTICULAR PURPOSE. RECORDED BOOKS NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR RECORDED BOOKS ANY OTHER LIABILITY IN CONNECTION WITH THE LICENSING OF THE DIGITAL CONTENT AND ZINIO SERVICE AND THEIR USE BY ANY LIBRARY ACCOUNT AND END USER.

IN NO EVENT SHALL RECORDED BOOKS BE LIABLE TO LIBRARY ACCOUNT OR END USERS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE ZINIO SERVICE, OR FOR INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF OPPORTUNITY, LOSS OF USE, OR OTHER LOSS ARISING OUT OF OR IN CONNECTION WITH THE LICENSE, TRANSFER, OR USE OF THE ZINIO SERVICE. IN NO

EVENT SHALL RECORDED BOOKS' LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT OF THE CONTRACT. NOTWITHSTANDING THE FOREGOING, RECORDED BOOKS AGREE TO INDEMNIFY AND HOLD HARMLESS THE LIBRARY ACCOUNT, AND ITS OFFICERS AND EMPLOYEES, FROM ANY DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ON ACCOUNT OF ANY CLAIM, SUIT, ACTION, DEMAND, OR PROCEEDING MADE OR BROUGHT AGAINST SUCH PARTY FOR INFRINGEMENT OF COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS BROUGHT IN CONNECTION WITH THE DIGITAL CONTENT.

#### **Data Security**

Each Library Account will implement and maintain reasonable measures to ensure that only authorized End Users have access to the Zinio service and Digital Content. Each Library Account will take reasonable steps to prevent unwarranted intrusion into data managed or maintained by Recorded Books on behalf of such Library Account acquired in the course of the operation of the Zinio service, including but not limited to reasonable steps to protect such Library Account's password files and access to the administrative website for management of the Zinio service.

#### **Technical Support Services**

Recorded Books agrees to provide technical support services by email and phone to each Library Account, including but not limited to reasonable efforts to (a) assist such Library Account in providing Primary Support, (b) correct, fix, or circumvent errors, and (c) in the sole discretion of Recorded Books, provide updates, enhancements, and new versions of the Zinio service ("Secondary Support"). Recorded Books shall provide such Secondary Support by email and phone during its normal business hours of Monday- Friday 8:00 AM to 9:00 PM Eastern Standard Time. Each Library Account and End User acknowledges that errors in the Zinio service shall not be a breach of this License Agreement.

#### **Confidentiality**

#### **Privacy Policy and Terms of Use**

Use of and access to the Zinio service and the Digital Content shall be subject to the Zinio privacy policy and the Zinio terms of use as in effect from time to time and available at "<http://www.zinio.com/www/legal/terms.jsp>", except as otherwise modified in this License Agreement, and subject to the following exceptions: Condition 10 in the Terms of Service is not applicable to the Library Account

**Term and Termination**

The term for each Library Account's access to the Zinio service shall be for a period of twelve (12) months, unless otherwise agreed by Recorded Books and such Library Account. Such Library Account obtains certain rights and access to use the Digital Content and Zinio service for the term of its agreement with Recorded Books. The License granted to such Library Account shall be terminated at the end of such term, unless renewed or extended by the mutual agreement of Recorded Books and such Library Account or as otherwise stated in the Subscription Form, along with such Library Account's access to the Zinio service and any and all Digital Content, and such Library Account and/or its End Users shall make no further use of all or any part of the Digital Content and the Zinio service.

In the event of a breach of any of its obligations, including but not limited to non-payment or late payment for services, each Library Account shall have thirty (30) days from the receipt of written notice of such breach from Recorded Books to cure such breach. If the Library Account fails to remedy such breach within such 30-day period, Recorded Books may, at its option and in its sole discretion, terminate its agreement with such Library Account upon written notice to such Library Account and/or temporarily or permanently suspend such Library Account's access to the Zinio service.

In the event Zinio fails to provide the Digital Content to Library Account for a period of five (5) consecutive days, Zinio shall have five (5) business days from receipt of written notice of breach to cure such breach. If Zinio fails to remedy such breach within such time period, Library Account may, at its option and in its sole discretion, terminate its agreement with Zinio and Zinio shall promptly provide Library Account a refund prorated through the end of the term.

#### **General Provisions**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this License Agreement. To the extent permitted by law, each of Recorded Books, the Library Accounts and the End Users hereby waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this License Agreement. This License Agreement shall be governed and interpreted in accordance with the substantive laws of the State of Ohio without regard to conflict of law provisions. In the event that an action or claim arises outside of the exclusive jurisdiction specified herein which names Recorded Books as a party, Library

Account agrees to consent to and/or cooperate with any and all efforts to remove the matter to the exclusive jurisdiction named herein.

In the event that a court of competent jurisdiction determines that any portion of this License Agreement is unenforceable, void, invalid or inoperative, the remaining provisions of this License Agreement shall not be affected and shall continue in effect as though such invalid provisions were deleted.


Neither Library Account, Recorded Books nor the licensors of the Licensed Content will be liable or deemed to be in default of this License Agreement for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facility shortages, failures of equipment, or failures of the Internet.

Recorded Books should be notified of any claims of copyright infringement regarding materials available or accessible on, through, or in connection with the Zinio service or the associated websites.

This License Agreement constitutes the entire Agreement and understanding of the parties. This Agreement may be amended or modified upon mutual agreement of the parties hereto.

This License Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors. In the event Recorded Books enters into an agreement to sell substantially all the assets of Recorded Books, this License Agreement shall be binding upon the purchaser.

LIBRARY ACCOUNT: Cleveland Public Library

Signature: X 

Name: Felton Thomas

Title: Director

RECORDED BOOKS, LLC

Signature: 

Name: Jim Schmidt

Title: SVP Sales + Marketing