



This Axis360 Agreement ("Agreement") is made and entered into as of the 29 day of July, 2013 by and between **BAKER & TAYLOR, INC.**, a Delaware corporation, authorized to do business in Arizona ("B&T") and the City of Glendale, an Arizona municipal corporation ("Customer").

**CUSTOMER: CITY OF GLENDALE**

**CUSTOMER CONTACT INFORMATION:**

PRIMARY CONTACT TAMI MILLER  
TITLE ADMINISTRATIVE LIBRARIAN  
E-MAIL ADDRESS tmiller2@glendaleaz.com  
TELEPHONE 623-930-3587  
FAX 623-842-4209  
STREET ADDRESS 5959 W BROWN ST  
CITY GLENDALE  
STATE, ZIP AZ, 85302

**CUSTOMER BILLING INFORMATION (if different):**

PRIMARY CONTACT TAMI MILLER  
TITLE ADMINISTRATIVE LIBRARIAN  
E-MAIL ADDRESS tmiller2@glendaleaz.com  
TELEPHONE 623-930-3587  
FAX 623-842-4209  
STREET ADDRESS 5959 W BROWN ST  
CITY GLENDALE  
STATE, ZIP AZ, 85302

**PURCHASE OF AXIS360 SERVICES AND E-CONTENT:**

**SEE SCHEDULE 1: FEE SCHEDULE, SCHEDULE 2: SERVICE DESCRIPTION, AND SCHEDULE 3: TERMS AND CONDITIONS**

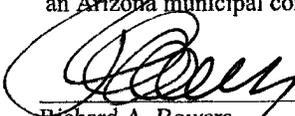
**RETURN THIS AGREEMENT TO:**

BAKER & TAYLOR, INC.  
501 S. Gladiolus Street  
Mokenca, IL 60954  
Attention: Axis360 Administration

*(Signatures Appear on Following Page)*

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES SIGNING BELOW HEREBY CONFIRM THAT THEY EACH AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AXIS360 AGREEMENT, INCLUDING THE ADDENDUM AND SCHEDULES 1, 2 AND 3, WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

CITY OF GLENDALE,  
an Arizona municipal corporation

  
Richard A. Bowers  
Acting City Manager

ATTEST:

  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
Nicholas C. DiPiazza  
Acting City Attorney

Baker & Taylor, a Delaware corporation

  
By: Carol Belshaw, EBIS Administration

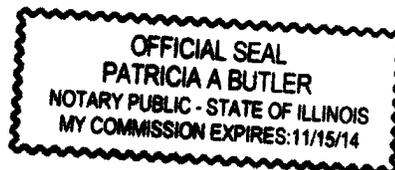
STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of August, 2013, by Carol Belshaw, the EBIS Supervisor who signed the above document.

  
Notary Public

My Commission Expires:

11-15-14



## ADDENDUM TO AXIS360 AGREEMENT

### 9. Immigration Law Compliance.

- 9.1. B&T, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2. Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3. Customer retains the legal right to inspect the papers of B&T or subcontractor employee who performs work under this Agreement to ensure that B&T or any subcontractor is compliant with the warranty under subsection 9.1. above.
- 9.4. Customer may conduct random inspections, and upon request of Customer, B&T shall provide copies of papers and records of B&T demonstrating continued compliance with the warranty under subsection 9.1 above. B&T agrees to keep papers and records available for inspection by Customer during normal business hours and will cooperate with Customer in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5. B&T agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon B&T and expressly accrue those obligations directly to the benefit of Customer. B&T also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of Customer.
- 9.6. B&T's warranty and obligations under this section to Customer is continuing throughout the term of this Agreement or until such time as Customer determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. **Foreign Prohibitions.** B&T certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
11. **Conflict.** B&T acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on Customer's behalf is also an employee, agent, or consultant of any other party to this Agreement.
12. **Governing Law.** This Agreement is governed by the laws of the State of Arizona.

**SCHEDULE 1**  
**FEE SCHEDULE**

1. **Annual Hosting, Access, and Service Fee.** B&T will charge an annual fee of \$4,495 for providing Customer the Axis 360, a digital media circulation platform. These services include maintaining secure hosting of purchased content on B&T servers, the ongoing authentication and management of the Axis 360 platform, and the customer service and technical support services provided to ensure the overall Axis 360 digital services are available to Customer.
2. **Required Opening Order.** B&T will charge an initial fee of \$7,500 for digital content to be used as the opening-day collection. This initial fee must be paid by Customer before Axis 360 will provide services.
3. **First Year Purchase Commitment.** Customer will pay an annual fee of \$20,000 for the minimum aggregate digital content in the first year of Axis 360 service. The initial fee of \$7,500 set out in Section 2, is included toward this first year purchase commitment.
4. **Amendment.** This Fee Schedule may be amended by B&T upon providing a 60 day written notice.

## SCHEDULE 2

### AXIS 360 SERVICE DESCRIPTION

Axis 360 is a digital media circulation platform provided by B&T that offers the following services to Customer:

1. **One eBook.** Patrons can download eBooks in EPUB, PDF or Blio formats to serve a range of PCs, eReader and mobile devices.
  - a. Mobile Version. Patrons using mobile devices — including Apple and Android tablets, smartphones and more — can view your collection, check out and read materials in a user interface optimized for their device.
  - b. Acoustik™ Digital Audiobooks. Patrons will enjoy direct-to-device download and listening in just a few taps.
  - c. Ease of Ordering. Customer can quickly discover, order and activate digital selections for Axis 360 via Title Source™ 3.
  - d. Print + Digital. Collection development services will assist Customer order the right balance of formats, all at one time.
2. **Metadata and Collection Development Programs.** Customer can take advantage of market-leading metadata and collection development programs, such as:
  - a. Enriched Metadata. Jacket art, reviews, excerpts, tables of contents, subject classifications, audience levels, accelerated reader and reading counts ratings, to guide your title selections.
  - b. Opening Day Collections. Custom selection lists and packaged starting collections for best-sellers, subjects and genres to launch your new eBook and audiobook services.
  - c. First Look Digital. Notification plans for forthcoming eBook and audiobook new releases.
  - d. Pre-publication ordering. New titles will be available in your Axis 360 collection upon release.
  - e. Series Standing Order Plans. Popular, high-demand series titles made available for your patrons every month, automatically.
3. **Benefits to Patrons.** Customers patrons will experience:
  - a. Ease of Use. Fast and simple check out and download from the library's catalog via cloud-based delivery for reading on multiple devices.
  - b. Reading Application Integration. Axis 360 delivers a range of eBook and audiobook formats to the devices and applications that patrons prefer to use for digital reading and listening.
  - c. Enriched Title Details and Patron Reviews. Full-text industry reviews, patron-contributed reviews, eBook ratings and reading recommendations.
  - d. Buy Now Purchase Option. Patrons can purchase titles directly from the library, including digital content, physical books, movies and music - and have them shipped to their homes.
4. **Acoustik Audiobooks.** Acoustik, powered by Findaway World, is a free digital audiobook app for Apple and Android smartphones and tablet devices. With Axis 360 and Acoustik, audiobook listeners will have a streamlined, intuitive way of downloading and listening to content.
5. **Accessibility.** The entire digital library - from discovery and check out on Axis 360 to reading in Blio – will provide an enjoyable eContent download experience for all users, including visually-impaired individuals, in compliance with the Americans with Disabilities Act.
  - a. B&T worked closely with the National Federation of the Blind to make Axis 360 fully compatible with the leading assistive screen-reader technologies, including: JAWS (Job Access with Speech), Window-Eyes, NVDA (non-visual desktop access) and System Access To Go.
  - b. Visually-impaired users can fully access all books through screen-reader technologies.
  - c. Low-vision users can magnify books to read them in large print.
  - d. Print-disabled users, such as those with dyslexia or others with low literacy skills, can use the read-aloud feature while highlighting words to use materials.
  - e. Physically disabled users can use the built-in keyboard navigation alternatives.

**SCHEDULE 3**  
**TERMS AND CONDITIONS**

**1.00 DEFINITIONS**

As used herein, the following definitions shall apply

1.01 "Agreement" means this Axis360 Agreement, including the signature page, the schedules referenced on the signature page (including Schedule 1 Fee Schedule, Schedule 2 Service Description and Schedule 3 Terms and Conditions), and the orders for licensed eContent issued by Customer pursuant to this Agreement. No other terms and conditions contained in any purchase order issued by or for Customer, or otherwise communicated by or through any other ordering or transactional process utilized by or for Customer, shall apply to this Agreement.

1.02 "Authorized Users" means those individuals that are employees or users of the Customer (including patrons, students and faculty) and authenticated by the Customer's automated management system. This Agreement specifically excludes all users other than Authorized Users.

1.03 "Axis360" refers to the Axis360 System and Axis360 Services.

1.04 "Axis360 System" means the digital content management system established by B&T for Customer under this Agreement for the purpose of supplying and hosting eContent.

1.05 "Axis360 Services" means all services involved in supplying and hosting of eContent via the Axis360 System under the terms of this Agreement.

1.06 "Axis360 Hosting Fee" means the fees in effect from time to time that are payable by Customer to B&T for hosting the Axis360 System, including the creation, operation and use thereof.

1.07 "B&T" means Baker & Taylor, Inc., its successors, assigns and subsidiaries, including but not limited to YBP Library Services.

1.08 "Blio" means that certain e-reader software application licensed to Customer and/or Authorized Users for the display of certain eContent converted by or for B&T for such use.

1.09 "Customer" means such public, academic, school, special or private library identified in this Agreement.

1.10 "DRM" means such digital rights management requirements as may be placed on eContent by the publishers and/or licensors supplying eContent to B&T.

1.11 "eContent" means such copyrighted books, audiobooks, video and other proprietary works in digital format that are licensed to Customer by B&T for inclusion in the Axis360 System.

1.12 "eContent License Fees" means the fees in effect from time to time that are payable by Customer to B&T for the licensing of eContent under this Agreement.

1.13 "EULA" means the license agreement posted on Axis360, as amended by B&T from time to time, that Authorized Users will accept in order to download and display eContent and/or Blio.

1.14 "Fees" means, collectively, Axis360 Hosting Fee, the eContent License Fees, and any other fee referenced herein.

1.15 "Launch Date" means the date that Axis360 is launched for Customer, as determined by B&T.

1.16 "Library Lending Period" means the period of time that Authorized Users are allowed to borrow eContent under the lending policy of Customer.

1.17 "Other Content" means materials that may be added to the Axis360 System by Customer or Authorized Users, such as User Reviews displayed in association with eContent, and/or by mutual agreement of Customer and B&T.

1.18 "Privacy Policy" the privacy policy posted on Axis360, as amended by B&T from time to time, that Authorized Users will accept in order to download and display eContent and/or Blio.

1.19 "User Review(s)" means star ratings and comments contributed by Authorized Users relating to eContent hosted on the Axis360 System.

**2.00 ECONTENT LICENSE**

2.01 Subject to the terms and conditions of this Agreement and payment of the Axis360 Hosting Fee and eContent License Fees by Customer, B&T hereby grants to Customer a nonexclusive, nontransferable and revocable license to access and use Axis360 and such eContent as Customer may order pursuant to this Agreement. Additional e-Content titles/collections can be added to Axis360 at any time during the term of this Agreement upon the payment of applicable eContent License Fees by Customer. Except as otherwise expressly provided herein, all purchases of eContent shall be non-returnable and all Fees paid by Customer shall be non-refundable.

2.02 Customer and Customer's Authorized Users shall access Axis360 and eContent via computers and Internet connections to be supplied by, and at the expense of, Customer and/or Customer's Authorized Users. All such access shall be controlled by valid IP address, referring URL, identification codes and passwords or other commercially reasonable methods as determined by B&T.

2.03 Use of Axis360 and eContent is limited to Customer and Authorized Users. Customer shall be responsible for determining which Authorized Users shall have access to Axis360 and eContent. Customer shall not allow any access to Axis360 or eContent by other libraries through consortia or similar arrangement without B&T's prior written consent. Inter-library loan for the access and use of Axis360 or eContent is expressly prohibited.

2.04 All access to Axis360 and eContent by Customer and Authorized Users shall be subject to and governed by this Agreement, the EULA and the Privacy Policy. B&T reserves the right to suspend or terminate access to Axis360 by Customer in the event of any violation thereof by Customer. Repeated violations of the EULA by Authorized Users may be cause for suspension or termination of this Agreement, as determined by B&T.

2.05 Customer agrees to comply with all copyright, patent and other intellectual property laws and all DRM applicable to Axis360 and/or eContent. Notwithstanding any provision herein to the contrary, in the event that the DRM applicable to any given eContent imposes license requirements other than, or different from, those expressed herein, such DRM shall control with respect thereto and the license granted hereby shall be deemed automatically amended by such DRM.

2.06 Customer will enforce the proper and intended access to Axis360 by Authorized Users. The number of simultaneous users of eContent at any given time shall be limited to a single user per licensed copy. Access to eContent by Authorized Users, including but not limited to any ability to view, print and download, will terminate upon expiration of the applicable Library Lending Period.

2.07 All rights not expressly granted or licensed to Customer with respect to Axis360 and/or eContent are reserved by B&T.

**3.00 TERM AND TERMINATION**

3.01 Except where earlier termination is required under the provisions hereof or by any DRM applicable to Axis360 and/or eContent, this Agreement will be effective for a period beginning on the Launch Date and ending at 11:59:59 P.M. (Eastern U.S. Time) on the day preceding the third (3<sup>rd</sup>) anniversary of the Launch Date and shall automatically renew for successive terms of one year each. Either party shall have the right to prevent renewal by giving written notice of termination to the other party at least 60 days' prior to expiration of the then current term. In addition, in the event that (i) necessary funds will not be available to Customer in the year following any anniversary of the Launch Date or (ii) Customer elects to decline changes made by B&T

to the Fee Schedule on sixty (60) days prior notice to Customer, Customer may terminate this Agreement as of any anniversary of the Launch Date by providing a 30 day written notice to B&T.

3.02 Subject to Section 3.03 hereof, upon termination of this Agreement and/or termination of any eContent license hereunder by operation of applicable DRM for any reason whatsoever, all rights and licenses granted pursuant to this Agreement will automatically terminate and Customer will not attempt to access to, or permit any access or use of, all or any portion of Axis360 or eContent.

3.03 Upon termination of this Agreement, the provisions of Section 3.02 hereof will apply to 1) eContent that has been converted for use with Blio and 2) all other eContent supplied to Customer on Axis360. B&T's sole responsibility to Customer will be to (i) confirm the eContent titles under license by Customer on Axis360 as of the date immediately preceding such termination date (other than eContent that has been converted for use with Blio) and (ii) submit on Customer's behalf to B&T's suppliers of such eContent titles a request for a license to allow Customer to receive access to such eContent titles, at no additional charge, on the digital content management system of the third party vendor then selected by Customer to provide such services **B&T MAKES NO REPRESENTATIONS OR WARRANTIES AS TO WHETHER B&T'S SUPPLIERS WOULD ALLOW ANY SUCH LICENSE FOLLOWING TERMINATION OF THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, NO LICENSE FOR ECONTENT CONVERTED FOR USE WITH BLIO WILL BE AVAILABLE AFTER TERMINATION OF THIS AGREEMENT IN CONNECTION WITH THE DIGITAL CONTENT MANAGEMENT SYSTEM OF SUCH THIRD PARTY VENDOR.**

#### 4.00 DEFAULT AND REMEDIES

Either party's failure to perform any of its obligations hereunder in any material respect, which failure is not cured within 60 days after notice from the non-defaulting party (provided that a 10 day notice and cure period shall apply to any failure to pay any amounts due) shall be an "Event of Default" hereunder. The non-defaulting party will have all rights and remedies available to it under applicable law if an Event of Default occurs, except as otherwise expressly provided herein. Without limiting the generality of the foregoing, B&T's rights and remedies will include, without limitation, the right to disable the Axis360 System to prevent access during the applicable cure period if reasonably needed to prevent further nonconformance.

#### 5.00 WARRANTY, LIMITATION OF LIABILITY

5.01 B&T warrants that publishers and/or licensors of eContent in the Axis360 System have authorized the licenses granted hereunder. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5.01, ALL ECONTENT AND ANY PORTIONS THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXPRESSLY EXCLUDED HEREBY ARE ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY B&T, ITS AGENTS OR EMPLOYEES, WILL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.**

5.02 Neither B&T nor any other party that has been involved in the creation, production or delivery of all or any portion of the eContent through Axis 360 or otherwise will be liable for indirect, special, incidental, punitive, exemplary or consequential damages (including, without limitation, damages for claims by third parties, or loss of profits) arising out of the access to or use or inability to use all or any portion of Axis360 or the eContent, even if B&T or such other party shall have been advised or otherwise have known of the possibility of such damages. In no case will any liability of B&T or any such other party hereunder exceed the amount of the Axis360 Hosting Fees actually paid by Customer in the 12 month period preceding the claim giving rise to such liability.

#### 6.00 INFRINGEMENT

6.01 All unauthorized use, copying, modification and/or distribution of all or any portion of Axis360 or the eContent is expressly forbidden. Customer will be liable for any infringement that is caused, facilitated or encouraged by its failure to abide by the terms of this Agreement and/or any

applicable DRM

6.02 Customer will promptly notify B&T in writing if any infringement claim relating to all or any portion of Axis360 or the eContent is made against Customer. If Customer provides B&T with sufficient notice of any such infringement claim, B&T at its option will make commercially reasonable effort to eliminate, or request that applicable publishers or licensors eliminate, the circumstances giving rise to such infringement. Alternatively, B&T may issue a refund to Customer on a prorated basis and terminate access. The foregoing is the only remedy available to Customer, and the only liability of B&T, in the event of a claim of infringement.

#### 7.00 FORCE MAJEURE

Customer acknowledges that the Internet is an unregulated, unorganized, unreliable, unstable, insecure and ever-changing environment. The ability of each party to comply with this Agreement may be dependent on the Internet and equipment, software, systems, data, content and services provided by third parties, among other things. Neither party shall have any liability for any failure of performance due to events beyond its reasonable control. Lack of funds shall not be excused under this section.

#### 8.00 MISCELLANEOUS

8.01 Except as otherwise required by law, B&T and Customer agree to maintain the confidentiality of any data relating to the usage of the eContent by specific Authorized Users

8.02 Customer will be responsible for payment of any and all applicable sales, use, value-added, excise or similar taxes, if any, incurred in connection with any transactions under this Agreement.

8.03 Any failure by either party to exercise any right hereunder will not be deemed a continuing waiver of such right. If any of the terms or provisions of this Agreement are ruled to be invalid or unenforceable by a court or administrative tribunal of competent jurisdiction, the remainder of the Agreement will not be affected thereby.

8.04 Customer will not assign this Agreement, by operation of law or otherwise, without B&T's prior written consent. This Agreement will be binding upon, and will inure to the benefit of, the parties hereto and their respective successors and permitted assigns

8.05 All notices required or permitted to be given by one party to the other under this Agreement will be sufficient if hand-delivered, sent by recognized overnight courier, receipt acknowledged, or sent by certified mail, return receipt requested, to the other party at the applicable address set forth in this Agreement or to such other applicable address as may be designated by notice from one party to the other pursuant to this paragraph.

8.06 If the use of a digital signature is needed, each party shall adopt as its authorized signature a confidential digital identification consisting of symbols(s) or code(s) which are to be affixed to or contained in each digital transmission

8.07 This Agreement and the Schedules, EULA and Privacy Policy referenced herein constitute the complete and exclusive statement of the terms and conditions between the parties regarding the subject matter hereof and supersede all prior proposals, understandings and agreements, oral and written, between the parties relating hereto, notwithstanding any order form submitted either before or after the date hereof. This Agreement may not be modified or altered except by written instrument duly executed by both parties. This Agreement may be executed in counterparts, all of which, when taken together, will constitute a single instrument