

ADDENDUM C

BOOPSIE LICENSE

1. DEFINITIONS

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

“Contract” means OSOS Contract No. S-4497 and addenda signed by both Boopsie and OSOS.

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

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

“OSOS” The Washington State Library is acting on behalf of the public, tribal and academic libraries in the state of Washington in the production of the application by Boopsie. Following the term of this Contract these libraries may opt to continue use of the app with Boopsie as they desire.

“OSOS Features” are features identified in the Statement of Work of the Contract.

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

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

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

“Trademarks” means those Boopsie and OSOS trademarks as discussed herein.

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

“Hosted Service” means collectively the Custom Client, any software updates, documentation and any support or other services that support the Custom Client to deliver the OSOS Features listed in the Statement of Work in the Contract.

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

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

“Software Updates” means updates, modifications, or new releases of the Boopsie client software or hosted services that Boopsie generally makes available via the Network at no additional charge to its OSOSs who are current in payment of Subscription Fees. Software Updates may be used in accordance with the terms and restrictions relating to Software hereunder. Software Updates do not include products, modules or options that are designated by Boopsie as new products, modules or options for which Boopsie charges a separate fee.

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

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

“Term” means the license term specified in the Contract.

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

2. LICENSE GRANT

a. Custom Client License and Hosted Services. Subject to the terms of this Contract, Boopsie grants OSOS a limited term, non-sublicensable, non-transferable, and non-exclusive license to access and use the Hosted Service in accordance with the Documentation for OSOS, OSOS’s Library and Library patron purposes.

b. EULA for Custom Client. All End Users are bound by the terms and conditions of The Boopsie EULA, Addendum D.

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

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

4. OSOS OBLIGATIONS.

- a. OSOS Service Related. OSOS will at all times: (i) provide and maintain (or have provided and maintained) a content delivery system and the computer server(s) on which the OSOS Data is stored and made available to Boopsie to provide the Hosted Service; (ii) cooperate with and assist Boopsie and provide Boopsie with access to such information and OSOS Data as may be reasonably required by Boopsie in order to implement and provide the Hosted Service; and (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Service, the Custom Client or any other Software and will notify Boopsie promptly of any such unauthorized access or use.
- b. Equipment and Telecommunications and Internet Services. Boopsie is not responsible for (i) obtaining and maintaining any OSOS Equipment or any ancillary services needed to connect to, access or otherwise use the Hosted Service; (ii) paying all third-party access charges (e.g., ISP, telecommunications, etc.) incurred while using the Hosted Service; and (iii) ensuring that the OSOS Equipment and any ancillary services are compatible with the Hosted Service and comply with all configuration requirements set forth in the Documentation.
- c. OSOS Features Data. OSOS shall provide to Boopsie all data necessary to create all features listed in Statement of Work in Contract

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

6. [Deleted by Agreement of the Parties]

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

8. [Deleted by Agreement of the Parties]

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

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

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

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

12. WARRANTY EXCEPTIONS. The Hosted Service and System Availability warranties set forth in Sections 10 and 11 are void to the extent any problem which results in the Hosted Service performance or System Availability to be other than as warranted is due to (i) use of the Hosted Service outside the scope described in the Documentation; (ii) OSOS Equipment and/or third party software, hardware or network infrastructure outside of the data center supplied by Boopsie and/or not under the direct control of Boopsie; (iii) failure of the external internet beyond Boopsie's Network; (iv) electrical or internet access disruptions; (v) any actions or inactions of OSOS or any other third party not under the direct control of Boopsie; (vi) attacks (i.e. hacks, denial of service attacks, malicious introduction of viruses and disabling devices) caused by third parties; or (vii) events of force majeure.

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

14. LIMITATION OF LIABILITY. EXCEPT (I) AS PROVIDED IN SECTION 8; (II) FOR DAMAGES RELATED TO CLAIMS BASED ON A BREACH OF ITS OBLIGATIONS SET FORTH IN SECTION 10 OR (III) DAMAGES RELATED TO CLAIMS BASED ON ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BOOPSIE'S LIABILITY FOR DIRECT DAMAGES UNDER THIS CONTRACT SHALL IN NO EVENT EXCEED THE SUBSCRIPTION FEES PAID BY OSOS TO BOOPSIE FOR THE HOSTED SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

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

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

15 – 17. [Deleted by Agreement of the Parties]