

Apollo Integrated Library System Subscription Purchase Agreement

By clicking “I accept”, you execute this Subscription Purchase Agreement on behalf of your employer (“Customer”) and bind Customer to its terms. This Agreement is made by and between Customer and Biblionix, LLC, a Texas limited liability company with a principal place of business at 2025 Guadalupe Street, Suite 260, Austin, Texas 78705 and email address of info@biblionix.com (“Biblionix”).

1. Definitions.

The Apollo ILS/LSP — the cloud-based integrated library system and library services platform hosted by Biblionix that provides various services managing and manipulating Customer’s Data and, if Customer chooses to belong to a FlexShare Consortium, FlexShare Data, and including any Optional Items selected by Customer.

Customer’s Data — Other than FlexShare Data, all data and information that is stored or processed in or through The Apollo ILS/LSP by or on behalf of Customer or Customer’s Users, including but not limited to all bibliographic and other holding records related to Customer’s collections, Customer’s User Data, circulation records, and records regarding balances owed by Customer’s Users.

Customer’s Users — all users of Customer’s library other than FlexShare Users.

Customer’s User Data — any of Customer’s Data that identifies or could potentially identify any of Customer’s Users.

Data Delivery Date — the date upon which Customer agrees to deliver Customer’s Data to Biblionix per Section 3 below.

FlexShare Consortium — a group of libraries who choose to share certain data and information with each other through each library’s use of an Apollo cloud-based integrated library system and library services platform.

FlexShare Data — all data and information stored or processed in or through The Apollo ILS/LSP that was obtained from or through any FlexShare Library or FlexShare User or that is otherwise accessed by Customer, Customer’s Users, or FlexShare Users by virtue of Customer’s membership in a FlexShare Consortium.

FlexShare Library — each library other than Customer who is a member of the same FlexShare Consortium of which Customer is also a member.

FlexShare Users — all users of The Apollo ILS/LSP whose home library is a FlexShare Library.

FlexShare User Data — any data that identifies or could potentially identify a FlexShare User.

Launch Date and Time — the date and time upon which The Apollo ILS/LSP goes live and the first Subscription Period commences.

Optional Items — products provided by parties other than Biblionix that may be included with The Apollo ILS/LSP at the sole discretion of Customer.

Quote — the most recent valid price quote, or bid, provided by Biblionix to Customer in anticipation of entering into this Agreement.

Renewal Date — the first day of each Subscription Period.

Subscription — Customer’s subscription to The Apollo ILS/LSP, per the terms of this Agreement.

Subscription Period — each one-year period during which Customer maintains a Subscription.

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Supporting Material — all documentation regarding The Apollo ILS/LSP that may be provided to Customer by Biblionix, including but not limited to instructional materials.

2. Subscription Services; Supporting Material.

- a. Subject to the terms of this Agreement and during the Subscription Periods, Biblionix shall provide Customer with access to and use of The Apollo ILS/LSP, including Customer's Data and, if Customer chooses to belong to a FlexShare Consortium, FlexShare Data, as maintained and accessed through the Apollo ILS/LSP; any standard upgrades/updates to The Apollo ILS/LSP; and reasonable amounts and levels of customer support and customer service.
- b. Although Biblionix has no obligation to monitor use of The Apollo ILS/LSP by Customer or Customer's Users, Biblionix may do so and may prohibit any use of The Apollo ILS/LSP it believes to be in violation of the terms of this Agreement.
- c. Customer may reproduce, publicly distribute, and publicly display Supporting Material, in any format or medium, only for the purpose of assisting Customer's Users, employees, and volunteers in using The Apollo ILS/LSP and may modify or alter Supporting Materials as reasonably necessary to engage in such activities.

3. Data Delivery Date; Launch Date and Time; Migration of Customer's Data. This Section 3 does not apply for Customers who have gone live with The Apollo ILS/LSP containing Customer's Data prior to execution of this Agreement. Nor does it apply to customers who are automating their collection for the first time and thus have no migration.

- a. The parties shall work together to mutually agree upon a Data Delivery Date and a Launch Date and Time, which shall be documented in writing.
- b. Customer shall provide Biblionix with a current copy of Customer's Data (or a method for retrieving the data) no later than the Data Delivery Date, in the format and by the method specified by Biblionix. Doing so may require Customer to use third-party applications not owned or controlled by Biblionix; in such cases, Biblionix cannot and does not offer any guarantee regarding the performance of such applications or the security of Customer's Data as used with or by such applications.
- c. Should Customer fail to meet the Data Delivery Date, Biblionix reserves the right to require a new Launch Date and Time to be agreed upon by the parties in writing.
- d. Biblionix shall import Customer's Data into The Apollo ILS/LSP and shall notify Customer when The Apollo ILS/LSP containing Customer's Data is available. It is Biblionix's intent to complete these actions no later than the Launch Date and Time. However, Customer understands and accepts that unforeseen circumstances may arise that would prevent Biblionix from meeting the Launch Date and Time and agrees not to hold Biblionix liable for any such delay. In such case, Biblionix shall immediately notify Customer and shall make The Apollo ILS/LSP containing Customer's Data available as soon as reasonably possible.

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- e. Customer acknowledges and agrees that Biblionix's ability to provide The Apollo ILS/LSP necessarily depends upon the accuracy, completeness, and quality of Customer's Data as provided to Biblionix and Biblionix's receipt of the same.

4. Maintenance of Customer's Data.

- a. During the Subscription Periods, Biblionix shall automatically save and store all modifications to Customer's Data made by Customer and Customer's Users through The Apollo ILS/LSP.
- b. Biblionix reserves the right to, at any time and without prior notification to Customer, remove from already uploaded or imported Customer's Data, or refuse to import, any Customer's Data containing personally identifying information that Biblionix, in its sole discretion, deems particularly vulnerable to misuse and unnecessary for the functioning of The Apollo ILS/LSP, including but not limited to credit card numbers and social security numbers.
- c. Biblionix shall create back-up copies of Customer's Data in a manner that adheres to or exceeds industry security standards, including encryption of all Customer's Data.
- d. At any time during the Subscription Periods, Customer may download Customer's Data through The Apollo ILS/LSP into a secure, compressed file, at no additional charge to Customer.

5. Fees.

- a. Section 5.a does not apply for Customers who have gone live with The Apollo ILS/LSP containing Customer's Data prior to execution of this Agreement.
 - i. It is Customer's sole responsibility to ensure the validity of any quote upon which Customer wishes to rely in entering into this Subscription Purchase Agreement. Biblionix will, upon Customer's request, at any time provide Customer with a valid Quote.
 - ii. Other than fees for Optional Items owned by third parties, the Quote states Customer's total fees for each Subscription Period until the later of (1) three years after the Launch Date and Time or (2) Biblionix notifies Customer in writing that fees will increase.
- b. Other than fees for Optional Items owned by third parties, fees shall not increase more frequently than once every three (3) years.
- c. Biblionix shall provide Customer with written notice of any increase in any fees no less than sixty (60) days prior to the next Renewal Date.

6. Payment.

- a. Biblionix shall invoice Customer for the total amount due for the first Subscription Period within fourteen (14) days of the Launch Date and Time.
- b. For each subsequent Subscription Period, Biblionix shall invoice Customer during or about the third week of the month preceding the Renewal Date.

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- c. Customer shall pay Biblionix the full amount invoiced no later than thirty (30) days from the date of the invoice. Payments that are received by Biblionix more than sixty (60) days past the due date shall be subject to a penalty fee equal to the lesser of 18% per annum or the maximum rate allowed by law.
- d. If payment is not made within sixty (60) days of the due date, Biblionix may, at its sole discretion, (i) suspend Customer's access to and use of The Apollo ILS/LSP or certain features thereof until payment has been received in full or (ii) immediately terminate this Agreement. In case of such suspension or termination, Customer shall remain liable for all outstanding fees, including penalties.

7. Subscriptions to Optional Items.

- a. Customer may subscribe to Optional Items at any time. Subscription periods of Optional Items shall correspond to the applicable Subscription Period. If Customer subscribes to an Optional Item after a Subscription Period has commenced, the fee for that item shall be pro-rated accordingly.
- b. Customer may terminate Optional Items at any time without terminating its Subscription. Unless the third-party owner of a terminated Optional Item does not provide for refunds, Biblionix shall timely refund to Customer fees already paid for the terminated Optional Item (s) in a pro-rated amount equivalent to the days remaining in the Subscription Period.

8. Subscription Period; Renewal.

- a. The first Subscription Period shall begin on the Launch Date and Time and, unless this Agreement is terminated by either party as provided herein, shall automatically renew for successive one-year Subscription Periods unless and until Customer notifies Biblionix in writing of its intent to not renew at least seven (7) days prior to the next Renewal Date.
- b. For the sake of clarity, if a Trial Subscription Agreement between Customer and Biblionix is in effect as of the execution of this Agreement, those terms shall continue to govern Customer's use of the trial subscription until terminated under the terms of that agreement.

9. Term and Termination.

- a. Customer may terminate this Agreement at any time, for any or no reason, by providing a minimum of seven (7) days' written notice to Biblionix.
- b. Biblionix may terminate this Agreement under Section 6.d above or at any time, for any or no reason, by providing Customer with 120 days' written notice.

10. Effect of Termination. Upon termination of this Agreement by either party for any reason, including for lack of payment under Section 6.d above, unless the parties agree in writing otherwise:

- a. As of the effective date of the termination, Customer shall no longer have access to or the right to use The Apollo ILS/LSP.

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- b. Biblionix shall timely refund to Customer fees already paid in a pro-rated amount equivalent to the number of days remaining in the Subscription Period, except for fees paid for Optional Items for which third-party owners do not provide refunds for early termination.
- c. If Customer owes any outstanding debt to Biblionix for services provided up to the effective date of termination, Customer shall remain liable to Biblionix for the outstanding amount and any associated penalties and other fees.
- d. Unless otherwise instructed by Customer, Biblionix shall timely delete or otherwise destroy all Customer's Data in its possession or under its control.

11. Intellectual Property Ownership and Usage. Customer acknowledges and agrees that:

- a. Biblionix and/or its licensors own all legal rights and interests, including but not limited to patent rights and copyrights, in and to The Apollo ILS/LSP (including the Optional Items) and the Supporting Material.
- b. Biblionix is the sole owner of the trademarks and tradenames APOLLO, ARTEMIS, BIBLIONIX, FLEXSHARE, GABBIE, POWER TO PUBLICS, VERSACARD, VERSACAT, and RESERVE EXPRESS.
- c. Unless Customer has obtained prior written agreement from Biblionix, Customer may use the Biblionix trademarks and tradenames only in a nominative manner to refer to the goods and services provided by Biblionix under those trademarks and tradenames.

12. Additional Customer Responsibilities. Customer acknowledges and agrees that it is solely responsible for:

- a. Providing Biblionix with complete and accurate Customer's Data and, upon request, with corrected or updated copies of Customer's Data sufficient for Biblionix to correct, repair, or replace any Customer's Data that is incorrect or that becomes damaged, lost, or destroyed.
- b. Providing, maintaining, and ensuring the security of all technology, equipment, hardware, software, and third-party services (such as Internet access) not under the control of Biblionix that are required for use of The Apollo ILS/LSP by Customer and Customer's Users.
- c. Maintaining the security of all passwords employed in conjunction with the use of The Apollo ILS/LSP by Customer, Customer's Users, or FlexShare Users.
- d. Any activities that occur through the use of such passwords.

13. Use and Security of Data.

a. Collecting Data.

- i. Biblionix shall not, in connection with use of The Apollo ILS/LSP by Customer or Customer's Users, directly collect any data about any individual other than as contained in Customer's User Data, including any updates, additions, or other modifications made directly by Customer and Customer's Users.
- ii. Biblionix shall not, in connection with use of The Apollo ILS/LSP by any FlexShare Library or FlexShare Users, directly collect any data about any individual other than as contained in FlexShare User Data, including any updates, additions, or other modifications made directly by a FlexShare Library or FlexShare Users.

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b. Use and Sharing of User Data.

- i. If Customer has chosen to join a FlexShare Consortium, Biblionix may disclose and use Customer's Data and Customer's User Data to the extent necessary to facilitate and provide the FlexShare Consortium as directed by Customer.
- ii. Biblionix may use Customer's User Data and FlexShare User Data to create and share aggregate statistics across multiple libraries. In such cases, Biblionix shall, at the minimum, abide by generally accepted industry standards in protecting such data.
- iii. Biblionix shall not otherwise use or disclose, or allow anyone else to access, use, or disclose, Customer's User Data or FlexShare User Data in any way other than as necessary to facilitate and provide the Apollo ILS/LSP.
- iv. Notwithstanding the foregoing, Biblionix may disclose Customer's User Data and FlexShare User Data as required by applicable law or by proper legal or governmental authority. Biblionix shall give Customer prompt notice of any such legal or governmental demand and shall reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

c. Data Security.

- i. Biblionix shall store Customer's User Data and FlexShare User Data only on physical servers which are exclusively dedicated to Biblionix and not shared with any other party, and on physical backup media in the possession of Biblionix.
- ii. Biblionix shall, at the minimum, abide by generally accepted industry standards in protecting Customer's User Data and FlexShare User Data, including but not limited to encrypting all Customer's User Data and FlexShare User Data, both in storage and in transit, and exercising commercially reasonable efforts to prevent unauthorized exposure or disclosure of Customer's User Data and FlexShare User Data.
- iii. Notwithstanding the foregoing, Customer understands and acknowledges that Biblionix cannot guarantee the absolute security of Customer's User Data, FlexShare User Data, or any other Customer's Data or FlexShare Data.

d. Data Collected by Optional Items.

Customer acknowledges and understands that Optional Items are owned and controlled, either in part or in whole, by parties other than Biblionix and that Biblionix has no control over the collection or processing of Customer's Data or FlexShare Data by or through those Optional Items. Biblionix strongly encourages Customer to investigate the privacy policies of Optional Items before selecting them for inclusion in The Apollo ILS/LSP.

e. Biblionix User Privacy Policy.

Customer acknowledges that it has read and understands the Biblionix User Privacy Policy or will do so in a timely manner and agrees to direct Customer's Users and FlexShare Users to such policy as appropriate. The Privacy Policy can be accessed in The Apollo ILS/LSP via the public catalog and the Help pop-up; and also can be found here: [Biblionix User Privacy Policy](#)

f. Customer Privacy Policy.

If Customer has not already done so, Biblionix strongly encourages Customer to develop and implement strong privacy policies and practices protecting the privacy of Customer's Users and FlexShare Users and abiding by standards set by the [American Library Association](#) and the [Children's Online Privacy Protection Act](#).

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- g. **Customer's User Data About Children Under the Age of 13.** Biblionix encourages Customer to abide by the [Children's Online Privacy Protection Act](#) even if not required to do so, including the following:
- i. Ensure that Customer's User Data and FlexShare User Data about children under the age of 13 is obtained only with the prior knowledge and consent of a parent or authorized guardian.
 - ii. Allow the parent or authorized guardian of a child under the age of 13 the ability to access, modify, or delete records containing Customer's User Data or FlexShare User Data about such child.
 - iii. Upon the request of a parent or authorized guardian of a child under the age of 13, modify or delete Customer's User Data or FlexShare User Data about the child.

14. Biblionix Representations and Warranties. Biblionix represents and warrants that it:

- a. Possesses the legal rights and authority necessary to enter into this Agreement;
- b. Will exercise commercially reasonable efforts and follow industry standards in providing access to and use of The Apollo ILS/LSP on a continuous, 24/7 basis, except for scheduled maintenance; ensuring that The Apollo ILS/LSP is free of viruses and other harmful software; maintaining The Apollo ILS/LSP; promptly correcting any failure of The Apollo ILS/LSP; and providing support services; and
- c. Will abide by, at the minimum, generally accepted industry standards in protecting Customer's Data and FlexShare Data, including but not limited to encrypting all such data, both in storage and in transit, and exercising commercially reasonable efforts to prevent unauthorized exposure or disclosure of Customer's Data and FlexShare Data.

15. Third-Party Goods and Services; Disclaimer.

- a. Optional Items are owned and controlled, either in part or in whole, by parties other than Biblionix.
- b. Biblionix may provide Customer with information about other goods and/or services owned by third parties in which Biblionix thinks Customer may be interested. Biblionix does so purely for Customers' convenience, and these actions should not be construed as recommendations, endorsements, or approval of such goods or services.
- c. CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING BIBLIONIX'S REPRESENTATIONS AND WARRANTIES IN SECTION 14 14 ABOVE, BIBLIONIX HAS NO CONTROL OVER THE OPTIONAL ITEMS THEMSELVES OR ANY OTHER THIRD-PARTY GOODS OR SERVICES, WHETHER OR NOT INTEGRATED INTO THE APOLLO ILS/LSP, AND CANNOT AND DOES NOT OFFER ANY GUARANTEE REGARDING THEIR APPLICABILITY TO CUSTOMER'S NEEDS, THEIR PERFORMANCE, OR ANY OTHER ASPECT OF SUCH GOODS AND SERVICES.

16. Customer Representations and Warranties. Customer represents and warrants that it:

- a. Possesses the legal rights and authority necessary to enter into this Agreement;

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- b. Will abide by the terms of all agreements required by the licensors of all Optional Items selected by Customer.
- c. Will provide the same level of protection and security to FlexShare Data and FlexShare User Data that it provides to Customer's Data and Customer's User Data.
- d. Will not engage in, or assist others in engaging in:
 - i. any action that infringes the rights of Biblionix or its licensors in The Apollo ILS/LSP or the Supporting Material, including but not limited to copying, modifying, creating derivatives of, or distributing the same to the public, other than as allowed by this Agreement;
 - ii. reverse engineering or in any way attempting to discover the source code, object code, or underlying structure, ideas, know-how, or algorithms of The Apollo ILS/LSP;
 - iii. using any device, software, or routine that interferes with or attempts to interfere with the proper working of The Apollo ILS/LSP; or
 - iv. doing anything that could disable, overburden, or impair the proper functioning of The Apollo ILS/LSP.

17. **Controlling Agreement.** In the case of any conflict between the terms of this Agreement and any statement in a Quote, the terms of this Agreement shall be deemed to control.

18. DISCLAIMERS; LIMITATION ON LIABILITY.

- a. ALTHOUGH BIBLIONIX DOES NOT ANTICIPATE THAT CUSTOMER WILL ENCOUNTER ANY PROBLEMS USING THE APOLLO ILS/LSP, BIBLIONIX MAKES NO SPECIFIC PROMISES OR WARRANTIES, EITHER IMPLIED OR EXPRESS, REGARDING THE APOLLO ILS/LSP, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- b. BIBLIONIX'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER DURING THE CALENDAR YEAR IN WHICH THE EVENT GIVING RISE TO LIABILITY OCCURS. APPLICATION OF THIS LIMITATION EXPRESSLY INCLUDES (I) LIABILITY FOR NEGLIGENCE; (II) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (III) EVEN IF BIBLIONIX IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (IV) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL BIBLIONIX BE OTHERWISE LIABLE TO CUSTOMER OR ANY OF CUSTOMER'S USERS FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- c. UNDER NO CIRCUMSTANCES SHALL BIBLIONIX BE LIABLE TO CUSTOMER, ANY OF CUSTOMER'S USERS, OR ANY FLEXSHARE USER FOR ANY FAILURE, DELAY, OR INTERRUPTION OF THE APOLLO ILS/LSP, OR ANY OTHER

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DISRUPTION IN THE ABILITY OF CUSTOMER, CUSTOMER'S USERS, A FLEXSHARE LIBRARY, OR FLEXSHARE USERS TO USE THE APOLLO ILS/LSP, THAT RESULT FROM A CAUSE BEYOND THE REASONABLE CONTROL OF BIBLIONIX.

19. **Notices and Required Writings.** All notices, agreements, and documentations required to be in writing under the terms of this Agreement shall be provided by email, U.S.P.S. Return Receipt Requested, or any private courier service with signature required to Biblionix at the address provided above and to Customer at the address it provides to Biblionix upon entering into this Agreement, or to any other address agreed upon by the parties. Email shall be deemed to have been received upon the recipient's acknowledgement of receipt.
20. **Force Majeure.** Neither party shall be considered in breach of this Agreement or in any way liable to the other party should it reasonably be prevented by an event that is beyond the reasonable control of either party from complying with any of its responsibilities or obligations under this Agreement, other than payment.
21. **Assignment.** Biblionix may assign or subcontract this Agreement in whole or in part; in such case, Biblionix shall provide written notice to Customer in a timely manner. Customer shall not assign this Agreement or any rights under it without Biblionix's prior written consent.
22. **Miscellanea.**
 - a. This Agreement constitutes the complete understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or proposals of the parties relating to the matter of this Agreement.
 - b. Any provision of this Agreement that may be deemed invalid or unenforceable shall in no way invalidate or render unenforceable the remainder of this Agreement, which shall remain in full force and effect.
 - c. The failure or delay of a party at any time to enforce performance of this Agreement shall not be construed as a waiver of the right of such party to enforce performance of this Agreement at any subsequent time.
 - d. No amendment to or waiver of any provision of this Agreement shall be valid unless in writing and signed by both parties.
 - e. For purposes of this Agreement, the singular shall include the plural and vice versa.
 - f. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.