SERVICE AGREEMENT Number
G-Cloud Buyer

Date:

Parties:

1. **PTFS Europe Limited** (Registered Number 6416372) whose registered office is at Sundial House, High St, Horsell, Woking, GU21 4SU, the “Company"

2. **G-Cloud Buyer**, the “Customer"

Individually the “Party” and collectively the “Parties”

Recital: The Company has agreed to provide the Customer with certain online hosted services and technical support and servicing in relation to the generation and maintenance of the Customer’s library management and related systems. The systems are known as Koha, Knowvation, CORAL, CUFTS, RT, Booked, DSpace, WordPress, PIWIK and related products which are to be made available to the Customer under the terms and conditions of this Agreement

OPERATIVE PROVISIONS

1. Definitions

“Business Hours” means between the hours of 9.00 a.m. and 5.30 p.m. GMT/BST Monday to Friday (excluding English Bank and other Company holidays).

“Commencement Date” means [the Installation Date]

"Customer Personal Data" means any personal data of which the Customer is controller and which is processed by the Supplier under or in connection with the Agreement, including the information more particularly described in Paragraph 3.1 of this Schedule;

"Customer Data" means any information or data, in whatever form, which is held on, entered into, processed by, or retrievable from computer, communication or other systems or equipment of the Customer including Customer Personal Data;

"controller", "data subject", "personal data", "process" and "processing", shall have the meaning set out in the "Data Protection Legislation", being any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, and any laws or regulations implementing Directive 95/46/EC or Directive 2002/58/EC and with effect from 25 May 2018, the General Data Protection Regulation (EU) 2016/679 ("GDPR") and any other legislation in any country implementing the GDPR or such replacement legislation as may come into force from time to time;

“Fees” the fees set out in Schedule 1 of this Agreement.

“Hosted Service” means providing the Customer with access to the Software Programs via a data centre run by a third party.

"Initial Term" means the initial term of this Agreement as set out in clause 9.1 .

'Installation Date' means the date of installation of the Software Programs.

"Program Documentation" means the manuals and other supporting documentation for the current release of the Software Programs

"Renewal Period" means each successive 12 month period after the Initial Term for which this Agreement is renewed.

"Response Time" means the response time for Technical Support set out in clause 4.2.

"Restricted Country" means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Data Protection Legislation (and in particular Article 45(1) of the GDPR);

"Service Levels" means the levels of service detailed at clause 5.

"Services" means the services described in the Agreement and such other services as the Parties may agree in writing from time to time;

"Software Programs" means the software programs supported by the Company for the Customer under the terms of this Agreement and listed in Schedule 1 of this Agreement.

"Subject Access Request" means an actual or purported subject access request or notice or complaint from (or on behalf of) a data subject exercising his rights under the Data Protection Legislation;

"Supplier Personnel" means any person employed or engaged by the Supplier or its Sub Contractors in connection with the provision of the Services;

"Sub-Contractor" means a third party directly or indirectly contracted to the Supplier to perform any of the Supplier's obligations under the Agreement.

"Technical Support" means the provision of such categories of technical support in accordance with clause 4 as shall be specified in respect of each of the Software Programs in Schedule 1 of this Agreement.

2. Provision of Services

2.1 The Company in consideration of the fees set out in clause 3 undertakes to the Customer to provide the services upon the terms and conditions of this agreement.

3. Fees and Payment Schedule

3.1 The Customer shall pay the Fees for the Services as set out at Schedule 1 to this Agreement. The payment schedule is 35% of the total cost following the project kick-off meeting, 35% from the start of training and 30% on live running.

3.2 The Fees shall not include Value Added Tax which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.

3.3 Subject to clause 3.4, the Company shall be entitled to vary the Fees not more than once in every successive period of 12 months during the term of this Agreement upon giving not less than 60 days written notice thereof to the Customer expiring at the end of any year of this Agreement and provided also that no percentage

increase shall exceed the percentage increase in the Index of Retail Prices measured over the 12 months immediately preceding the Company's notice of increase.

3.4 Payment shall be made by the Customer to the Company within thirty days from the date of receipt of the Company's invoice. The Company reserves the right under the Late Payment of Commercial Debts (Interest) Act 1998 to charge additional interest for payments more than 60 days overdue. The rate of late payment interest is 4% above base rate. The base rate is calculated by reference to the Bank of England base rate on 31 December.

4. Technical Support

4.1 With effect from the Commencement Date hereof and for the duration of this Agreement the Company shall provide Technical Support to the Customer in respect of each of the Software Programs.

4.2 Technical Support shall comprise the following categories:

4.2.1 advice by support portal, telephone or e-mail, whichever is the most appropriate to give a timely response, on the use of the Software Programs

4.2.2 information and advice by support portal, telephone or e-mail, whichever is the most appropriate to give a timely response, on forthcoming new releases of the Software Programs

4.2.3 upon request of the Customer the diagnosis of faults in the Software Programs and the rectification of such faults by the issue of fixes as quickly as possible in respect of the Software Programs.

4.2.4 Carrying out the installation from time to time of software patches or configuration changes in respect of the Software Programs.

4.2.5 Carrying out the installation from time to time of new releases of the Software Programs or Program Documentation or both. If any of the activities arising from clauses 4.2.4 or 4.2.5 involve system down-time or alterations to the Services, then the scheduling of such work shall be mutually agreed between the Parties so as to minimise disruption to the Services. If this work is carried out outside of Business Hours the Company reserves the right to make additional charges for support outside of Business Hours. These charges will be mutually agreed in advance.

4.3 Technical Support will be available in Business Hours. The Company reserves the right to make additional charges for support outside of Business Hours. These charges will be mutually agreed in advance.

4.4 The Customer shall supply in writing to the Company a detailed description of any faults requiring Technical Support and the circumstances in which it arose as soon as practicable after becoming aware of the same.

4.5 The Parties acknowledge that changes in the scope or delivery of the Services may, from time to time, be requested by the Customer ("Modifications"). These requests shall be submitted via the Customer Support Portal. Without always doing so, the Company reserves the right to make reasonable and mutually agreed additional charges to provide the functionality needed to make the requested Modification(s).

4.6 Change control requests will be submitted by the Customer via the Customer Support Portal and will be made available for ongoing monitoring by the Customer.

5. Service levels

5.1 The annual availability of the Software Programs will be better than 99.9%.

5.2 Faults will be categorised by a process of mutual agreement between the Customer and the Company. These faults will be classified in the following manner and to the following level of service:

Severe: Where the entire system or a complete module is unavailable or unusable. The Company will respond within 2 working hours and will make best endeavours to fix within 6 working hours or recommend an acceptable workaround.

Moderate: Where the system is available but aspects of previously accepted functionality are seriously impaired. The Company will respond within 4 working hours and will make best endeavours to fix within 12 working hours or recommend an acceptable workaround.

Minor or cosmetic: Where aspects of appearance or functionality could be improved without being classified as severe or moderate problems. The Company will respond within 5 working days and make reasonable endeavours to recommend appropriate solutions. These solutions include (but are not limited to) the Company providing a fix, software development or workaround. Without always doing so, the Company reserves the right to make reasonable and mutually agreed additional charges for fixes, software development or enhancements provided for this category of fault. Such additional charges to be agreed with the Customer in advance of any action taken by the Company to rectify the particular fault.

5.2.1 The escalation path for unsatisfactory response to faults will be via the Company's Customer Relations Manager, the Account Manager, Director of Operations and Managing Director.

6. Hosted Service

6.1 The Hosted Service is provided by Bytemark Computer Consulting Ltd. (trading as Bytemark Hosting) Company number: 4484629, VAT number: GB 804671829, Address: The Raylor Centre, James Street, York, YO10 3DW, UK. The provider of the Hosted Service may change from time to time. In any event such Hosted Service shall only be provided within the EEA.

6.2 The Company undertakes to ensure that the Hosted Service provider and the Hosted Service provider's sub-contractors are bound by the terms of this Agreement.

6.3 The Company will perform daily incremental and weekly full back-ups of the Customer Data stored with Bytemark Computer Consulting Ltd.

7. Expenses

7.1 The Customer shall reimburse the Company for any out of pocket expenses reasonably incurred by the Company in connection with duties performed under this Agreement at the Customer's request which fall outside of the categories of Fees at Schedule 1, including travel to and from the Customer's site

7.2 All expenses referred to at clause 7.1 must be agreed by both Parties in writing prior to the Company incurring any such expenses.

7.3 All claims made by the Company for expenses under clause 7.1 must be supported by valid receipts failing which the Customer will reject such claims.

8. Data Protection

8.1 The Company acknowledges that for the purposes of the Agreement each Party shall comply with its respective obligations under the Data Protection Legislation. The Parties agree that the Customer shall determine the

purposes for which and the manner in which Customer Personal Data shall be processed by the Company on behalf of the Customer.

8.2 The Company shall:

8.2.1 process the Customer Personal Data only to the extent and in such a manner as is necessary for the performance, and duration, of its obligations under the Agreement and in accordance with the written instructions of the Customer, and shall not process the Customer Personal Data for any other purpose save to the extent EU law or the law of one of the countries of the EU requires it to process the Customer Personal Data for another purpose;

8.2.2 only allow access to Customer Personal Data to those Company Personnel who: (i) are required to assist it in performing its obligations under this Agreement; (ii) have been subject to adequate pre-employment checks; (iii) have undergone appropriate training in the law of data protection; and (iv) are bound (by contract or enactment) by appropriate confidentiality undertakings;

8.2.3 implement and maintain at its cost and expense appropriate technical and organisational measures in relation to the processing of the Customer Personal Data: (i) such that the processing will meet the requirements regarding security set out in the Data Protection Legislation (including, in particular, the measures set out in Article 32(1) of the GDPR taking due account of the matters described in Article 32(2) of the GDPR), all relevant Customer policies and this Agreement;

8.2.4 not disclose Customer Personal Data to any third party (including a Sub-Contractor) in any circumstances except as required or permitted by this Agreement or with the Customer's prior written consent and provided always that (i) the Company has a contract with such third party on terms which are substantially the same as, and no less onerous than, the terms set out in this Schedule and (ii) notwithstanding any such consent the Company shall remain primarily liable to the Customer for the acts, errors and omissions of such third party and shall be responsible to the Customer for such acts, errors and omissions as if they were the Company's own;

8.2.5 not (and shall not instruct or permit a third party to) transfer the Customer Personal Data to, access the Customer Personal Data from, and/ or process the Customer Personal Data within, a jurisdiction or territory that is a Restricted Country unless it: (i) has first obtained the Customer's prior written consent; and (ii) has put in place measures to ensure the Customer’s compliance with Data Protection Legislation, including entering into, or procuring that the applicable Sub-Contractors enter into, a data transfer agreement with the Customer on terms which provide adequate protection under Data Protection Legislation;

8.2.6 within twenty-four (24) hours, notify the Customer about any actual or suspected breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Data, provide the Customer with full assistance in investigating and reporting such breach, and at the Company's cost, implement any measures necessary to restore the security of compromised Customer Data;

8.2.7 assist the Customer to comply with Data Protection Legislation and other applicable law, including promptly forwarding to the Customer any (i) Subject Access Request and (ii) requests for information in relation to the processing of Customer Personal Data from the clients and regulators of the Customer and providing full assistance in complying with such requests.

8.3 The Company shall within thirty (30) calendar days of a request from the Customer, allow its data processing procedures and documentation to be submitted for scrutiny and inspection by the Customer (and/ or its representatives) in order to ascertain compliance with the terms of this Schedule, and provide reasonable information, assistance and co-operation to the Customer, including access to relevant Company Personnel and/ or, on the request of the Customer, provide the Customer with written evidence of its compliance with the requirements

of this Schedule.

8.4 In the event of a breach by the Company or its Sub-Contractors of this Schedule and/ or their respective obligations under Data Protection Legislation, the Company shall be liable to the Customer for all or any losses incurred by the Customer, or for which the Customer may become liable, in each case to the extent arising as a result of such breach and nothing in the Agreement shall exclude or limit liability under this Paragraph 3.

8.5 On expiry or termination of the Agreement for any reason the Company shall immediately cease processing the Customer Personal Data and (at the Customer's option) arrange for the prompt and safe return and/or destruction of all Customer Personal Data.

8.6 Notwithstanding anything in the Agreement to the contrary, this Schedule shall continue in full force and effect for so long as the Company processes any Customer Personal Data.

9 Term and Termination.

9.1 This Agreement shall, unless otherwise terminated as provided in this clause 9, commence on the Commencement Date and shall continue for a period of [1] year(s) ("Initial Term") and, thereafter, this Agreement shall be renewed for successive periods of 12 months (each a "Renewal Period" unless notice of non-renewal is received by either Party from the other not less than 60 days prior to the end of the Initial Term or Renewal Period in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period. Upon termination the Company will charge reasonable professional fees for the professional time taken to return Customer Data to the Customer.

9.2 This Agreement shall be terminated:-

9.2.1 forthwith by either Party giving notice if the other commits any material breach of any terms of this Agreement and in the case of a breach capable of remedy has not remedied it with 30 days after receipt of notice in writing requiring it to do so.;

9.2.2 forthwith by either Party giving notice if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if the trustee receiver or Administrative Receiver or similar officer is appointed in respect of all or any part of the business or assets of the other Party or analogous action in any jurisdiction in consequence of debt;

9.2.3 forthwith by either Party without cause upon not less than ninety (90) days' written notice to the other Party.

9.3 Any termination of this Agreement pursuant to this clause 9 shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after termination.

9.4 Waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any rights power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

10 Notices

10.1 Any notice request instruction or other document to be given hereunder shall be in writing and delivered or sent by first class post to the address of the other Party set out in this Agreement (or such address as may have been notified in writing) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon expiration of 48 hours after posting.

11 Invalidity

11.1 If any provision of this Agreement shall be found by any court or administrative body or competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all the provisions not effected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

12 Entire Agreement

12.1. This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

12.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

13. No Partnership or Agency

13.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14 Successors

14.1 This Agreement or all or any of the rights or obligations under it may not be assigned, transferred, charged or sub-contracted in whole or in part by either Party without first obtaining the written consent of the other, such consent shall not be unreasonably withheld or delayed.

15 Headings

15.1 Headings to clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of the Agreement.

16 Confidentiality

16.1 Each of the Parties hereto undertakes to the other to keep confidential all information written or oral concerning the business and affairs of the other that is shall have obtained or received as a result of the discussions leading up to or the entering into this Agreement ("Confidential Information") save that which is:-

16.1.1 required to be disclosed in compliance with a legal requirement of a governmental agency, regulatory authority or otherwise where disclosure is required by operation of law (provided, in the case of a disclosure under the Freedom of Information Act 2000, none of the exceptions to that Act applies to the information disclosed);

16.1.2 already in its possession other than as a result of a breach of confidence;

16.1.3 in the public domain or becomes publicly known other than as a result of a breach of this clause;

16.1.4 independently developed by the receiving party, which independent development can be shown by written evidence; or

16.1.5 lawfully disclosed to the receiving party by a third party without restriction on disclosure.

16.2 Each of the Parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provision of this clause 16 by its employees agents and sub-contractors.

16.3 The Company acknowledges that the Customer Data is the Confidential Information of the Customer

16.4 The provisions of this clause 16 will survive termination of this Agreement however arising and will continue indefinitely.

17. Third Party Rights

17.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

18. Warranty

The Company represents, warrants and covenants that:-

18.1 The Company, its employees, agents and contractors will use reasonable skill, care and diligence in performing its obligations under this Agreement and will comply at all times with all applicable laws and regulations, and that it will provide the Services in accordance with generally accepted professional standards and that it is and will continue to be adequately financed to meet all financial obligations it may be required to meet under this Agreement.

18.2 The Company, its employees, its agents and contractors will not introduce into the Software Programs any virus and will not, in any way, destroy, damage, corrupt or render inaccessible any software or data on any operating system used by the Customer.

19 Governing Law and Jurisdiction

19.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties hereto agree to submit to the exclusive jurisdiction of the English Courts to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including

non-contractual disputes or claims)..

20 Force Majeure

20.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Companys or sub-contractors, or any disaster or an industrial dispute affecting a Party or a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees.

20.2 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

20.3 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

21 Limitation of Liability

21.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:-

21.1.1 any breach of its contractual obligations arising under this Agreement; and

21.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement

21.2 Any act or omission on the part of the Company or its employees agents or sub-contractors falling within clause 21.1 above shall for the purpose of this clause 21 be known as an 'Event of Default'.

21.3 The Company's liability to the Customer for death or injury resulting from its own or that of its employees' agents or sub-contractors' negligence or for fraud or fraudulent misrepresentation shall not be limited

21.4 Subject to the limits set out in clause 21.5. below the Company shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Company or its employees agents or sub-contractors.

21.5 Subject to the provisions of clause 21.3 above, the Company's entire liability in respect of any Event of Default shall be limited to damages of an amount not exceeding:

£5,000,000 in the case of an Event of Default falling within clause 21.4 above; and

150% of the value of the Agreement in the case of any other Event of Default.

21.6 Subject to Clause 21.3 above the Company shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.

22. Indemnity

22.1 Notwithstanding clause 21, the Company shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:

22.1.1 any alleged or actual infringement, whether or not under English law, of any third party's intellectual property rights or other rights arising out of the use or supply of the Services; or

22.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Company.

22.2 The provisions of this clause 22 will survive the expiration or earlier termination of this Agreement.

23. Proprietary Rights

23.1 The Customer acknowledges and agrees that the Company and/or its licensors own all intellectual property rights in the Services and the Program Documentation. Except as expressly stared herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Program Documentation.

23.2 The Company confirms that it has all the rights in relation to the Services and the Program Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

24. Insurance

24.1 The Company will carry appropriate insurance with a reputable insurance company covering property damage, business interruption and general liability insurance to protect its own business interests.

24.2 Without prejudice to clause 24.1, the Company shall (from and including the Commencement Date of this Agreement) insure with reputable insurers in respect of its public liability, employer liability and professional indemnity liability arising pursuant to the performance of its obligations and/or liabilities under this Agreement to a minimum value of £10,000,000 in respect of any one event or series of events; and shall provide evidence of its compliance with this clause as the Customer shall reasonably require from time to time.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date written above.

For and on behalf of

THE COMPANY

BY:

NAME:

TITLE:

DATE:

THE CUSTOMER

BY:

NAME:

TITLE:

DATE:

PLEASE NOTE

We can accept either electronic signature or hard copy.

If sending by hard copy the address is:

Finance Department
PTFS Europe
54 Well Lane
Woking
GU21 4PP
UK