



hoopla® Service Agreement

This hoopla Service Agreement ("Agreement") is made as of this 9 day of JAN, 2018 ("Effective Date") by and between City of St. Helena Public Library (the "Library"), and Midwest Tape, LLC.

Whereas, Midwest Tape offers its hoopla digital service ("hoopla," the "Service," or the "hoopla Service") to libraries to allow authorized library patrons to access digital media content using smart phones, tablets, computers, and web browsers;

Whereas, the Service is comprised of a digital media platform that includes content in multiple formats (e.g., movies, television programs, music, audiobooks, eBooks, and comics) and is designed to be accessible 24/7 in accordance with circulation limits (if any) and other settings established by the user's library system; and

Whereas, the Library wishes to make hoopla available to the Library's authorized users ("Patrons");

Now, therefore, in consideration of the promises and mutual covenants contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Library and Midwest Tape (each a "Party" and collectively the "Parties") agree as follows:

I. **DEFINITIONS.** The following definitions apply wherever those terms appear in this Agreement:

"Digital Media Application" means one or more computer programs maintained, owned, and/or used by Midwest Tape to provide access for limited periods to Digital Titles (including the ability to browse, borrow, stream, download, and/or return such titles) using certain smart phones, computer tablets, and/or other mobile devices. The Digital Media Application currently bears the name "hoopla."

"Digital Media Platform" means one or more computer programs owned, maintained, and/or used by Midwest Tape to provide access to Digital Titles and/or to allow the Library to manage its offering and Patron use of Digital Titles, including the Digital Media Application, hoopla digital Website, and hoopla Library Administration Website.

"Digital Titles" means any and all movies, television programs, music, audiobooks, eBooks, comics, and other audio or visual works that Midwest Tape makes available to the Library and its Patrons via the Digital Media Platform during the Term of this Agreement.

"hoopla Library Administration Website" means a Midwest Tape website that may be accessed and utilized by the Library to manage content available to Patrons in the Digital Media Platform, and to administer Library policies in regard to Patron use of the Service.

"hoopla digital Website" means a Midwest Tape website (currently www.hoopladigital.com) that may be used to access, browse, borrow, stream, download, and/or return Digital Titles.

"Intellectual Property Rights" means all rights in and to patents, trademarks, service marks, trade names, copyrights, trade secrets, technology, software, designs, algorithms, know-how, as well as moral rights and all other intellectual and proprietary rights of any type under the laws of any governmental authority.

"Library Website" means a website owned, maintained, and/or used by or for the Library for the purpose of providing information to Patrons and/or the general public about the Library and its various content offerings, policies, objectives, initiatives, and procedures.



"Marks" means any trademarks, service marks, trade names, logos, designs, icons, characters, cover art, styles, and trade dress associated with any Digital Titles, including without limitation all translations or transliterations of the foregoing in any language, or any colorable imitations or modified versions thereof.

"Midwest Tape" means Midwest Tape, LLC and any of its parents, subsidiaries, or affiliated entities that are engaged in the business of distributing media content in digital form to libraries and library users via the Digital Media Platform.

"Service Partners" means any third parties that provide digital storage, webhosting, IT services, data analysis and processing, or distribution or other services to Midwest Tape in connection with the Service.

"Title Summary and Promotional Data" means, with respect to each Digital Title, the following information and data that is made available to Library pursuant to this Agreement: (i) title; (ii) author(s), publisher, illustrator(s), narrator(s), actor(s), director(s), producer(s), studio(s), and similar descriptive information; (iii) if commercially used, the digital object identifier; (iv) narrative description or summary of the work; (v) cover art and image, graphics, and other images; (vi) copyright notice; and (vii) any other identifying information.

"Vendor" means any supplier to Midwest Tape of (i) Digital Title(s); (ii) Title Summary and Promotional Data; and/or (iii) technology or services necessary for Midwest Tape to provide the Service to the Library.

II. LIBRARY RIGHTS & OBLIGATIONS.

Rights. During the Term, and subject to all the terms and limitations set forth in this Agreement, Midwest Tape grants to the Library the non-exclusive and non-transferrable right to display and access the Digital Media Platform and Title Summary and Promotional Data for the limited purpose of: (a) allowing Patrons to access, view, and borrow Digital Titles through the Service and pursuant to this Agreement; (b) promoting awareness and authorized use of the Service, including via postings on the Library Website(s); and (c) establishing and implementing Library-specific policies in regard to use of the Service by the Library and Patrons, consistent with this Agreement and the requirements of the Digital Media Platform.

Limitations. Except for the limited, non-exclusive, non-transferrable rights expressly granted to the Library above in this Section II, the Library shall have no right in or to, or ownership of, the Service, Digital Titles, Digital Media Platform, hoopla digital Website, hoopla Library Administration Website, Digital Media Application, Marks, Title Summary and Promotional Data, or any other artwork or materials delivered by Midwest Tape in connection with this Agreement. The Library shall have no right to access, use, modify, or reproduce any portion of any source code relating to the Service and/or the Digital Media Platform, or to make, sell, or distribute any variations or derivative works of the Service and/or the Digital Media Platform. The Library agrees to the support and protection of Intellectual Property Rights (including but not limited to copyright and trademark protections), to prohibit Patrons from engaging in activities that infringe on these rights, and to refrain from facilitating such activities. In addition, the Library will comply with all other requirements communicated by Midwest Tape with respect to any Intellectual Property Rights and the Marks.

No Public Performance Rights. The Library shall have no public performance rights in the Digital Titles. Accordingly, the Library may not offer any Digital Titles as a performance in order to entice Patrons or the general public to come to an event, sponsored by the Library or otherwise.

General Obligations. To facilitate the successful introduction of the Service to, and use of the Service by, Patrons, the Library shall: (a) regularly communicate to staff, Patrons, and the general public served that the Service is available to Patrons; (b) provide suitable training opportunities to appropriate Library staff members, so that they understand the Service and can assist in the promotion and the use of the Service by Patrons; (c) regularly feature prominent links and references to popular Digital Titles and the hoopla



digital Website on the Library Website's homepage; (d) incorporate MARC record data regarding Digital Titles in the Library's catalog to enhance the discoverability of key content available in the Service; (e) manage all funds designated or appropriated for use of the Service; (f) participate in the implementation of the Service at the Library, including without limitation by providing Midwest Tape with sufficient and accurate information to identify Patrons of the Library who are authorized to utilize the Service; (g) provide Primary Support, as defined below; (h) perform requested linkage between the Service and the Library Website, as well as reasonable technical services to support and maintain the Service during the Term; and (i); notify Midwest Tape at least three (3) business days before any change in any RSS links, ILS configuration, URL updates, or other equipment or technology that could adversely impact the Service and/or the use of the Service, including any changes that could impact the process of Patron authentication.

Network Connectivity. The Library is responsible for providing a suitable network and Internet system for integration of the Service into the Library Website or other systems.

Use of the hoopla Library Administration Website. The Library agrees that it is solely responsible for managing its use of the hoopla Library Administration Website and using that website as designed, including by establishing, verifying, and maintaining any settings and controls regarding use of the Service by Patrons (e.g., limitations on circulations, content restrictions, reporting preferences, etc.).

Library Website. The Library is solely responsible for all aspects of catalog integration, operation, training, support, and/or maintenance necessary for the operation of the Library Website. This may include obtaining a SIP2 or similar protocol software license(s) from a third-party vendor in order to support direct integration of the Service with the Library's own Library Website or other systems, as well as the cost for customized MARC records it may obtain from a third-party supplier such as OCLC. The Library shall keep its hoopla account information current with Midwest Tape and promptly alert Midwest Tape to any significant changes relating to the Library Website, including but not limited to changes of personnel that could impact the support, functionality, and/or performance of the Service.

Primary Support. The Library is responsible for providing its Patrons with "Primary Support," which includes assisting Patrons with the use of the Service, responding to Patron questions regarding the functionality and technical requirements of the hoopla digital Website and the Digital Media Application, and helping Patrons with the process of communicating with Midwest Tape where necessary and appropriate to obtain additional support and technical assistance.

No Warranties or Representations to Others. The Library represents and agrees that, except for the representations, warranties, and promises made to Midwest Tape in this Agreement, neither the Library nor any of its employees, agents, or others acting under its direction has made or will make any representations or warranties, expressed or implied, to anyone concerning the Service, Digital Titles, Digital Media Application, Digital Media Platform, hoopla digital Website, and/or hoopla Library Administration Website.

Compliance with Applicable Laws and Regulations. The Library will, at its own expense, comply with all applicable laws, ordinances, rules, regulations, and other legal requirements in connection with the Library's performance under this Agreement.

Costs and Expenses. The Library is responsible for all of its own expenses and costs related to its performance under this Agreement. Midwest Tape has no obligation to reimburse the Library for any expenses or costs incurred by the Library related to this Agreement or to the performance of the Library's obligations, including but not limited to any expenses and costs incurred in the preparation, systems integration, or use of the Digital Media Platform, hoopla Library Administration Website, hoopla digital Website, and Digital Media Application.



III. FEES, PAYMENTS & REPORTING.

Advance. On or before the Effective Date, the Library shall remit to Midwest Tape an advance/down payment ("Advance") in the amount of \$ 2,000, i.e., the amount indicated in Appendix A for the Library's service-area population. These funds will be applied toward payment of future invoices for transactions in the Per Circulation Program, described below, unless the Library notifies Midwest Tape on or before the Effective Date that the Library instead prefers to use such funds to pay Midwest Tape for hoopla promotional materials, events, or communication efforts in connection with the introduction of the Service to Library Patrons. Upon written notice to Midwest Tape, the Library may choose to send additional funds to Midwest Tape to reestablish or replenish the Advance.

Per Circulation Program. The Library shall pay Midwest Tape a Per Circulation Fee for each Circulation of a Digital Title. A "Circulation" occurs when the Library or a Patron using the Service, via the Digital Media Application or the hoopla digital Website, selects "borrow" and thereby obtains the opportunity to access, view, stream, or temporarily download a Digital Title for a specific period of time that is terminated either (i) upon expiration of the applicable borrowing period for that Digital Title, or (ii) when the Digital Title is returned before the end of the applicable borrowing period for that Digital Title. Midwest Tape shall be entitled to payment of a fee for each Circulation, regardless of whether the Digital Title is actually accessed, viewed, streamed, or downloaded during that circulation period. The "Per Circulation Fees" for individual Digital Titles are listed in the hoopla Library Administration Website and are subject to change from time to time. The Service allows for an unlimited number of Circulations of each of the Digital Titles that are available to the Library's Patrons, so that multiple Patrons may access the same Digital Title(s) simultaneously via multiple transactions.

Invoicing and Payment. Midwest Tape will invoice the Library by Invoice Period. "Invoice Period" means a calendar monthly period, recorded in UTC time, in which Circulations occur. Payment of each invoice will be due within thirty (30) days from the date of the invoice. During any period in which Midwest Tape is holding an Advance from the Library, Midwest Tape will apply the Advance funds toward payment of the invoice upon issuance. If the Library has any remaining Advance funds on account upon expiration or termination of this Agreement, Midwest Tape will notify the Library and refund any unencumbered and unapplied monies upon the Library's written request.

Reporting. Through the hoopla Library Administration Website, the Library will have access to certain reports summarizing Patron usage, circulation data, and purchase activity for the Digital Titles.

Taxes. The Library is required to provide a sales tax exemption certificate, if applicable, to Midwest Tape as part of the on-boarding process. If the Library is not exempt or does not do so, Midwest Tape will add (and collect) sales taxes to any purchases made pursuant to this Agreement.

IV. TERM AND TERMINATION.

Term. The term of this Agreement (the "Term") begins on the Effective Date and continues for a period of 24 months thereafter. Upon expiration of the Term, this Agreement will automatically renew and the Term will be extended for successive renewal periods of 12 months (each a "Renewal Term"), unless either Party has provided at least sixty (60) days' advance written notice of non-renewal.

Termination. This Agreement may be terminated in either of the following ways:

By Notice. Either Party may terminate this Agreement, with or without cause, by providing the other Party with sixty (60) days' advance written notice.



Due to Breach. Either Party may suspend its performance or, at that Party's sole option, terminate this Agreement by providing the other Party with written notice of such action in the event of (i) the other Party's material breach of this Agreement, which breach continues uncured for a period of thirty (30) days after written notice of such breach; or (ii) the Library's failure to perform its payment obligations under Section III of this Agreement for a period of at least thirty (30) days.

Upon termination of this Agreement, the Library shall immediately (i) cease distribution and use of the Service, Digital Media Application, Digital Media Platform, Digital Titles, Marks, Metadata, and Promotional Postings; and (ii) pay all amounts due to Midwest Tape. Once the Library satisfies these obligations, any unapplied portion of an Advance payment will be refunded within thirty (30) days.

V. MIDWEST TAPE RIGHTS & OBLIGATIONS.

The hoopla Service. Midwest Tape and/or its Service Partners will: (a) host and support the Service as provided in this Agreement; (b) designate an implementation specialist ("hoopla Coordinator") to be available for customer support to the Library in connection with the launch and implementation of the Service; and (c) provide the Library with access to the hoopla Library Administration Website, which offers tools to enable the Library to manage use of the Service, including in regard to Patron borrowing limits, lending policies, title blocking, ratings- and user-advisory settings, usage dashboard, and reporting.

Ownership of Vendors's Intellectual Property. Subject to the provisions of this Agreement, Vendors retain all of their Intellectual Property Rights in and to the Vendor's Digital Titles, Metadata, Marks, and Promotional Postings, artwork, and other property that may be utilized or accessed in connection with the Service.

Ownership of Midwest Tape's Intellectual Property. As between the Parties, Midwest Tape owns and retains all Intellectual Property Rights in and to the Service, Digital Media Platform, Digital Media Application, hoopla digital Website, hoopla Library Administration Website, Midwest Tape and hoopla and hoopla digital trademarks, and all other Midwest Tape intellectual property, including but not limited to all modifications, updates, or improvements made thereto. The Library acknowledges Midwest Tape's ownership of such Intellectual Property Rights.

Modifications to Digital Media Platform. Midwest Tape has the right to modify, at any time, the Service, Digital Media Platform, Digital Media Application, hoopla digital Website, hoopla Library Administration Website, and other aspects and features of hoopla in Midwest Tape's sole discretion, in order to develop, modify, or improve operations, performance, or functionality.

Addition, Removal, and Modifications of Digital Titles. Midwest Tape has the right to take any or all of the following actions with respect to any Digital Title(s) at any time and in its sole discretion: (a) add or remove Digital Titles to or from the Service; (b) set or adjust the applicable Per Circulation Fee(s); (c) replace content files, Metadata, and/or Promotional Postings; and (d) edit or modify editorial content or designs. The Library will be notified by email, the hoopla Library Administration Website, or other means of major modifications to the functionality of the Service.

Promotion of the Service. Midwest Tape may, at its own expense and in its own discretion, publicize the Service and communicate with the general public and Patrons regarding the availability, features, and use of the Service, Digital Titles, Digital Media Platform, and Digital Media Application.

Support. Midwest Tape will support the Service by maintaining help files, information, and other appropriate documentation and training materials. Midwest Tape will undertake reasonable efforts to help the Library perform the Library's obligation to provide Primary Support to Patrons, including by offering periodic training opportunities to Library staff, updating the Library regarding system changes, and providing the Library with answers to "frequently asked questions" related to the Service.



Midwest Tape will supply activation support, including assisting with the implementation of any software, and reasonable levels of continuing support to assist the Library in its use of the Service. Midwest Tape will make technical support personnel available for feedback, problem-solving, and/or general questions. Technical support services to the Library include: (i) reasonable efforts to identify, correct, and/or circumvent errors in the System, Digital Media Platform, Digital Media Application, hoopla digital Website, and hoopla Library Administration Website; and (ii) supplying updates, enhancements, and new versions of the Service as they become available (the "Secondary Support"). Midwest Tape has no obligation to provide Primary Support to Patrons and any support provided by Midwest Tape to Patrons will be in Midwest Tape's sole discretion.

Midwest Tape will use reasonable efforts to provide continuous service. Permissible down-time includes periodic unavailability due to matters such as: maintenance of the server(s); installation or testing of software, public or private telecommunications services, or internet nodes or facilities; and failure of equipment or services outside the control of Midwest Tape. Scheduled down-time will occur periodically and at times designed, in Midwest Tape's sole discretion, to minimize inconvenience to hoopla users.

VI. MISCELLANEOUS.

Indemnities. Each Party ("Indemnifying Party") agrees to defend, indemnify, and hold harmless the other Party and its Service Partners from and against any and all third-party claims, demands, suits, legal proceedings, and causes of action that arise out of or relate to any breach by the Indemnifying Party of any of its representations and warranties as stated in this Agreement (collectively, "Indemnifiable Claims"), including but not limited to all damages, costs, expenses, reasonable attorneys' fees, judgments, and settlements resulting from such Indemnifiable Claims; provided, however, that no Indemnifiable Claim may be settled without the express written consent of the Indemnifying Party.

Indemnity Process. The Party seeking indemnification must provide prompt written notice to the Indemnifying Party of any Indemnifiable Claim for which indemnification will be sought. The Indemnifying Party may elect to control the defense and settlement of any Indemnifiable Claims with counsel of its choosing. The Party seeking indemnification will cooperate with the Indemnifying Party's defense against the Indemnifiable Claims. If any Indemnifiable Claim is covered in part but not entirely by a Party's indemnification obligation hereunder, the Indemnifying Party will only be responsible for costs to the extent attributable to the covered portion.

DISCLAIMER OF WARRANTIES. EXCEPT FOR ANY WARRANTIES EXPRESSLY PROVIDED BY MIDWEST TAPE IN THIS AGREEMENT, MIDWEST TAPE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST BUSINESS OPPORTUNITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

Confidential Information. "Confidential Information" means any non-public information of either Party that is disclosed to the other Party in connection with this Agreement either directly or indirectly, in writing, orally, electronically, or by inspection of tangible objects, and that is designated in writing as "Confidential" at the time of disclosure or within five (5) days thereafter. Confidential Information includes, without limitation, any and all non-public business plans, customer information, pricing, contract terms, available content and sales, marketing and/or finances of the disclosing Party. Each Party agrees to hold the Confidential



Information of the other Party in confidence and to refrain from disclosing such Confidential Information to any third party, except to the extent required to be disclosed pursuant to governmental or judicial process, provided that notice of such process is promptly provided to the disclosing Party in order that it may have every opportunity to intercede in such process to contest such disclosure or seek an appropriate protective order. Confidential Information is the property of the disclosing Party, and the receiving Party will not be deemed by virtue of its access to Confidential Information to have acquired any right or interest in or to any such Confidential Information. Confidential does not affect either Party's right to use or disclose information that is not Confidential Information, including information that is in the public domain or that the receiving Party can show was known to it without any confidentiality obligation prior to the disclosure by the disclosing Party.

Assignment. Except as provided herein, neither Party may, by operation of law or otherwise, assign, sublicense, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which may not be unreasonably withheld or delayed. Either Party may assign, transfer, or otherwise delegate any or all of its rights and obligations under this Agreement to any successor carrying on that part of the business to which this Agreement relates or to any purchaser of all or substantially all of the assets or stock of such Party. Each Party may appoint contractors to perform part of its obligations hereunder, provided that the Party remains fully responsible for such contractor's performance. This Agreement binds, benefits, and is enforceable by and against both Parties and their respective successors and permitted assigns.

Notices. Notices required by this Agreement must be sent by United States mail, as well as by electronic mail (or by facsimile), directed as follows:

Midwest Tape, LLC:
 6950 Hall Street
 Holland, Ohio 43528
info@midwesttapes.com
 1 (800) 875-2785

Library: St. Helena Public Library
1480 Main Street
St. Helena, CA 94574

Amendment. No amendment, modification, addendum, or revision to this Agreement is valid unless it is in writing and signed by all Parties to this Agreement.

Arms-Length Negotiations. This Agreement was negotiated at arm's length with each Party receiving advice from independent legal counsel, and has been executed and delivered in good faith. It is the intent of the Parties that no part of this Agreement should be construed against any Party because of the identity of the drafter.

Counterparts. This Agreement may be executed in counterparts, each of which taken together constitutes one single Agreement between the Parties.

Entire Agreement. This Agreement is an integrated Agreement containing the entire understanding between the Parties regarding the subject matter of this Agreement, and, except for the representations, warranties, and promises expressly set forth in this Agreement, no representations, warranties, or promises have been made or relied upon by either Party as an inducement to enter into this Agreement. This Agreement prevails over all prior communications or agreements between the Parties or their representatives regarding the subject matter hereof.

[Remainder of page intentionally left blank.]



Force Majeure. No Party may be considered in default or to have incurred any liability hereunder due to any failure to perform this Agreement should such failure arise out of causes beyond its reasonable control, including, without limitation, work stoppages, fires, riots, accidents, floods, storms, unavailability of utilities or fuel, Internet or other communication failures, or other similar failures or occurrences. The time for performance will be extended for a period equal to the duration of such conditions.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

ACCEPTED AND AGREED

Name of Library: City of St. Helena

By: *MTP*

Print Name: Mark T. Prestwich

Title: City Manager

Date Signed: 1/9/2018

ACCEPTED AND AGREED

MIDWEST TAPE, LLC

By: *Susan Basick*

Print Name: SUSAN BASICK

Title: VP Finance & Inv.

Date Signed: 12/20/17



Appendix A

Advance Schedule

Population of Service Area	Advance in U.S. Dollars
> 1,000,000	\$ 100,000
500,000 - 999,999	\$ 75,000
300,000 - 499,999	\$ 50,000
200,000 - 299,999	\$ 35,000
100,000 - 199,999	\$ 25,000
50,000 - 99,999	\$ 12,000
16,000 - 49,999	\$ 3,000
0 - 15,999	\$ 1,000

Service Agreement Advance

(Fill in according to Schedule Above)

Population of Service Area	Advance
	\$ 2,000