ByWater
SOLUTIONS

CONTRACT FOR SERVICES

This Contract for Services (this "Contract") is made effective as of 1/21/2013, by and between the Madison Library of Madison, NH, 03811, as a member of the Northern New Hampshire Library Cooperative ("Client"), and ByWater Solutions LLC, of Santa Barbara, California 93109 ("ByWater").

The Provisions found in "Northern NH Library Cooperative Agreement", which is attached hereto, are hereby incorporated in this contract and made a part thereof.

1. TERM. This Contract shall be effective from 1/21, 2013 to 1/21 2014 and shall automatically renew for four (4) successive one-year terms for a total possible term of five (5) years at the current, agreed-upon fee, unless either party notifies the other in writing within the last sixty (60) days of the then-current Term of the intent not to allow this Agreement to renew for a successive Term and/or of their intention to modify the Contract. Upon renewal, annual support and hosting increases will not exceed 15% of current rate.

2. DESCRIPTION OF SERVICES. ByWater will provide the Client the following services (collectively, the "Services"):

    (a)   Installation and Implementation of Koha Integrated Library System ("Koha"), including migration of all data from legacy system to Koha.

    (b)   Training will be provided for a minimum of three (3) days after completion of the installation. Additional training will be provided upon request of Client. In order to utilize ByWater's training refreshers and answers to training related questions included in technical support, Clients not previously using Koha as the library's primary ILS must receive training; either from ByWater or from another third party service.

    (c)   Terms regarding technical support for the Client are as follows:

        (1) Support will be available 24 hours. Support calls during hours in which the Client's facility is closed will be addressed by level of importance; i.e. system failure dictates immediate response time, training questions will be addressed within 24 hours.

(2) The support package will also cover software updates and Koha enhancements that may be applicable to the Client.

(d) Hosting for the Client's data will be located in a remote cloud, and Service providers may change at any time, at the sole discretion of ByWater. ByWater will not be responsible for any unavoidable data corruption or loss of data that might occur during the normal course of daily, regular backups.

3. PAYMENT FOR SERVICES. In exchange for the Services the Client will pay ByWater according to the following schedule:

(a) Koha Installation: $<u>700.00</u> payment due prior to start of migration.

(b) Data Migration: $<u>1,500.00</u> payment due prior to start of migration.

(c) Annual support and hosting fee: $<u>1,500.00</u>, due on or before <u>1/21</u> of each year, beginning on <u>1/21</u>, 2013.

(d) Training: $<u>1,200.00</u> for the first 3 days (24 hours) , due after the completion of each week in which the training takes place.

4. WORK PRODUCT OWNERSHIP. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively the "Work Product") developed in whole or in part by ByWater solely in connection with the Services will be the exclusive property of the Client. Upon request, ByWater will execute all documents necessary to confirm or perfect the exclusive ownership of the Client to the Work Product.

All such Work Product developed on behalf of the Client will be made available under the terms of the open source license in effect for koha at the time the code is written (currently GPL v2). A copy of the code will be given to the library even though the code may be hosted. A good faith effort will be made both by the library, and by ByWater at the coding stage, to integrate all code into the public, koha-community.org code base, or wherever the public code base may subsequently be located.

Upon expiration or termination of this Contract, ByWater will: (a) return to the Client all records, notes, documentation and other items owned by the Client that were used, created, or controlled by ByWater during the term of this Contract; and (b) assist Client in exporting data from ByWater's data cloud to Client, at no additional charge.

5. CONFIDENTIALITY. ByWater, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of ByWater, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client, except (a) if and to the extent the information is already a matter of public knowledge; (b) such disclosures as may be necessary to ByWater's attorney or accountant (collectively, "Permitted Confidants"); or (c) such disclosures as are required by law or by any litigation between the parties hereto with respect to this Contract. ByWater shall also timely require each of its Permitted Confidants to keep that information confidential. Before making any disclosure required by law, ByWater, or the Permitted Confidant, as the case may be, shall give Client as much notice thereof as is legally permitted, along with a copy of the proposed disclosure. The foregoing duties of confidentiality shall survive the termination of this Contract.

6. RELATIONSHIP OF PARTIES. Client and ByWater agree that the status of ByWater is that of independent contractor, and not that of employee, principal, agent or joint venture partner of Client. Neither party has authority to enter into contracts or assume any obligations for or on behalf of the other party or to make any warranties or representations for or on behalf of the other party.

7. WARRANTY. ByWater shall provide the Services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the Services which meet generally accepted standards in ByWater's industry.

ByWater disclaims all other warranties, expressed or implied. ByWater does not in any way warrant that Koha will operate without interruption or be error free.

ByWater shall have no liability for damages resulting from: hosting inoperability, interruption due to product or delivered software malfunction (provided that regular daily backups are conducted by ByWater), loss of profits, goodwill, damage or loss of data, or any other indirect, special or consequential damages suffered by Client. ByWater will in good faith and using its best reasonable effort work to resolve any such issues.

8. REMEDIES. If Client or ByWater fails to perform its obligations under this Contract, the non-breaching party shall have the right to terminate the Contract and to seek whatever remedy may be available to it, either in law or in equity.

9. LIMITATION OF LIABILITY. Either party's aggregate liability to the other under this agreement, under any legal doctrine whatsoever, shall not exceed the total sum paid by client to ByWater for services rendered under this contract.

10. TERMINATION WITHOUT CAUSE. Client's request for termination of this contract without cause will be at the sole discretion of ByWater and may carry penalties of up to 30% of total contract value.

11. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

12. SEVERABILITY. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable, provided that no party is, as a result thereof, deprived of its substantial benefits under this Contract. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

13. AMENDMENT. This Contract may only be changed, modified, amended or discharged by an agreement in writing executed by the parties hereto.

14. GOVERNING LAW. This Contract shall be construed in accordance with the laws of the State of California.

15. NOTICE. Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

16. ASSIGNMENT. The Client may not assign or transfer this Contract without the prior written consent of ByWater.

17. BINDING EFFECT. This Contract shall inure to the benefit of and be binding upon the parties named herein and their respective heirs, successors and assigns.

18. SIGNATURES

MADISON LIBRARY

By: _____

Mary Cronin 1/16/2013

Mary Cronin
Director

BYWATER SOLUTIONS LLC

By: _____

Brendan Gallagher
CEO

Date:1/10/13