

Apollo Integrated Library System Trial Subscription Agreement

By clicking “I accept”, you execute this Trial Subscription 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, as further defined in the Quote, that provides various services managing and manipulating Customer’s Data and including any Optional Items selected by Customer.

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

Customer’s Users — all users of The Apollo ILS/LSP.

Optional Items — products identified in the Quote that may be included in The Apollo ILS/LSP at the sole discretion of Customer.

Quote — the most recent valid document titled “Biblionix Quote” provided by Biblionix to Customer in anticipation of entering into this Agreement or an Apollo Integrated Library System [Subscription Purchase Agreement](#).

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

Trial Subscription Period — the period of time beginning upon client’s execution of this Agreement and ending upon termination of this Trial Subscription Agreement for any reason under Section 5 below.

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

2. Trial Subscription Services; Supporting Material.

- a. Subject to the terms of this Agreement and during the Trial Subscription Period, Biblionix shall provide Customer with access to and use of The Apollo ILS/LSP, including Customer’s Data as maintained and accessed through the Apollo ILS/LSP, without charge, only for purposes of assessment, testing, and training; 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. Unless the parties agree otherwise in writing, only employees, volunteers, and other agents of Customer may access and use The Apollo ILS/LSP during the Trial Subscription Period.

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- d. Customer may reproduce, publicly distribute, and publicly display Supporting Material, in any format or medium, only to the extent that doing so furthers its assessment or testing of, or training of Customer's staff or volunteers in the use of, The Apollo ILS/LSP; and may modify or alter Supporting Materials only as reasonably necessary to engage in such activities.
3. **Nature of Trial Subscription.** Customer understands and acknowledges that, during the Trial Subscription Period, the copy of Customer's Data submitted to Biblionix under Section 4 below exists separately and apart from data and records in the possession or control of Customer, such as data and records contained in Customer's current integrated library system, and neither Customer's Data nor The Apollo ILS/LSP will, in any way, be integrated with data or records in the possession or control of Customer or with actual daily functions in Customer's library.
4. **Migration, Maintenance, and Refreshing of Customer's Data.**
- a. At any point after executing this Agreement, Customer shall make Customer's Data available to Biblionix 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.
 - b. In a timely manner upon receiving Customer's Data, Biblionix shall import Customer's Data into The Apollo ILS/LSP and provide Customer with the URL and login information by which Customer may access The Apollo ILS/LSP for trial purposes.
 - c. 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.
 - d. Biblionix may update Customer's Data during the Trial Subscription Period at its sole discretion or in response to Customer's reasonable request to do so.
 - e. 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.
5. **Term; Termination.**
- a. Unless terminated earlier under this Section 5, this Trial Subscription Agreement shall automatically terminate if Customer does not communicate with Biblionix regarding The Apollo ILS/LSP for one (1) consecutive year, regardless of whether Biblionix has provided Customer with notice of such termination beyond this Section 5.
 - b. If Customer chooses to purchase a subscription to The Apollo ILS/LSP, this Trial Subscription Agreement shall automatically terminate on the Launch Date and Time as defined in the [Subscription Purchase Agreement](#) between the parties.

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- c. Either party may terminate this Agreement at any time, for any or no reason, by providing seven (7) days' written notice to the other party.
6. **Effect of Termination.** Upon termination of this Agreement by either party for any reason, including automatic termination:
 - a. Customer shall no longer have access to or the right to use The Apollo ILS/LSP under this Trial Subscription Agreement. If Customer purchases a subscription to The Apollo ILS/LSP, Customer's use shall be governed by the applicable [Subscription Purchase Agreement](#).
 - b. Unless otherwise instructed by Customer, Biblionix shall timely delete or otherwise destroy all Customer's Data in its possession or under its control that Customer provided to it under this Trial Subscription Agreement. If Customer purchases a subscription to The Apollo ILS/LSP, Biblionix shall replace the deleted or destroyed data with the Customer's Data provided under the terms of the applicable [Subscription Purchase Agreement](#).
7. **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 BIBLIONIX, APOLLO, VERSACARD, VERSACAT, GABBIE, 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.
8. **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 or Customer's Users.
 - d. Any activities that occur through the use of such passwords.
9. **Use and Security of Customer's Data.**
 - a. **Collecting Data.** 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 Data provided to Biblionix by Customer, including any updates, additions, or other modifications made directly by Customer and Customer's Users.
 - b. **Use and Sharing of Customer's Data.**

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- i. Biblionix may use Customer's 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 Customer's Data.
 - ii. Biblionix shall not otherwise use Customer's Data in any way other than as necessary to facilitate and provide The Apollo ILS/LSP and shall not allow anyone else to access or use Customer's Data except to the extent necessary to facilitate and provide the Apollo ILS/LSP.
 - iii. Notwithstanding the foregoing, Biblionix may disclose Customer's 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 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 Data, including but not limited to encrypting all Customer's Data, both in storage and in transit, and exercising commercially reasonable efforts to prevent unauthorized exposure or disclosure of Customer's Data.
 - iii. Notwithstanding the foregoing, Customer understands and acknowledges that Biblionix cannot guarantee the absolute security of Customer's Data.
- d. **Data Collected by Optional Items.** Customer acknowledges and understands that most 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 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 to such policy as appropriate.
- 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 abiding by standards set by the [American Library Association](#) and the [Children's Online Privacy Protection Act](#).
- g. **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 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 User Data about such child.

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- iii. Upon the request of a parent or authorized guardian of a child under the age of 13, modify or delete User Data about the child.

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

- a. Possesses the legal rights and authority necessary to enter into this Trial Subscription 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, including but not limited to encrypting all Customer's Data, both in storage and in transit, and exercising commercially reasonable efforts to prevent unauthorized exposure or disclosure of Customer's Data.

11. Third-Party Goods and Services; Disclaimer.

- a. As indicated in the Quote, most 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 10 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.

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

- a. Possesses the legal rights and authority necessary to enter into this Trial Subscription Agreement;
- b. Will abide by the terms of all agreements required by the licensors of all Optional Items selected by Customer.
- c. 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 Trial Subscription Agreement;

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- 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.

13. 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 OR ANY OF CUSTOMER'S USERS FOR ANY FAILURE, DELAY, OR INTERRUPTION OF THE APOLLO ILS/LSP, OR ANY OTHER DISRUPTION IN THE ABILITY OF CUSTOMER OR ANY OF CUSTOMER'S USERS TO USE THE APOLLO ILS/LSP, THAT RESULT FROM A CAUSE BEYOND THE REASONABLE CONTROL OF BIBLIONIX.

14. **Notices and Required Writings.** All notices, agreements, and documentations required to be in writing under the terms of this Trial Subscription 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.

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15. **Force Majeure.** Neither party shall be considered in breach of this Trial Subscription 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 Trial Subscription Agreement.

16. **Assignment.** Biblionix may assign or subcontract this Trial Subscription 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 Trial Subscription Agreement or any rights under it without Biblionix's prior written consent.

17. **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.