

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: OVERDRIVE, INC.	DATE ISSUED:	<u>8/1/2021</u>
OVERDRIVE WAY	CONTRACT NO:	<u>22-LIB-EP-350</u>
CLEVELAND, OHIO 44125	CONTRACT TITLE:	<u>LICENSED OVERDRIVE CONTENT</u>

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.


The contract documents consist of the terms and conditions of AGREEMENT No. 22-LIB-EP-350 including any attachments or amendments thereto.

EFFECTIVE DATE: 8/1/2021
EXPIRES: 7/31/2022
RENEWALS: 4 (FOUR) 1 (ONE) YEAR RENEWALS REMAINING
LIVING WAGE: N

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

<u>VENDOR CONTACT:</u> NICK KOPERA	<u>VENDOR TEL. NO.:</u>	<u>(216) 573-6886 x1441</u>
<u>EMAIL ADDRESS:</u> NKOPERA@OVERDRIVE.COM		
<u>COUNTY CONTACT:</u> PETE PETRUSKI (LIB)	<u>COUNTY TEL. NO.:</u>	<u>(703) 228-6339</u>
<u>COUNTY CONTACT EMAIL:</u> PPETRUSKI@ARLINGTONVA.US		

PURCHASING DIVISION AUTHORIZATION

	Procurement Officer	7/30/2021
	Title	Date

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201**

AGREEMENT NO. 22-LIB-EP-350

THIS AGREEMENT is made, on the date of execution by the County, between OverDrive, Inc., Overdrive Way, Cleveland, Ohio 44125 ("Contractor"), a Delaware corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement; and
- Exhibit A – Reserve Access Agreement.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). The primary purpose of the Work is to provide digital library lending services and licensed OverDrive content to Library Patrons. The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It will be the Contractor's responsibility, at its sole cost, to provide the services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. The Work will commence on August 1, 2021 and must be completed no later than July 31, 2022 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than 4 (four) additional 12-month periods, from August 1, 2022 to July 31, 2026 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT PRICING

Subject to the terms herein, the Contractor will invoice the County for an annual fee of \$12,000 (USD) within thirty (30) days from the start of the term of this Agreement. All payments to OverDrive are due within thirty

(30) days of presentation of invoice.

6. PAYMENT TERMS

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 45 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

9. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

10. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction,

indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

11. WARRANTY

The Contractor guarantees against and will correct at its expense factory defects that occur during the manufacturer's standard warranty period. The Contractor will provide all manufacturers' warranties at the time of delivery.

All work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance of the work by the County. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

12. PROJECT STAFF

The County has the right to reasonably reject staff or subcontractors whom the Contractor assigns to the Project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees and its subcontractors is the sole responsibility of the Contractor.

13. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the employees and subcontractors performing under this Contract and shall not employ on the Work any person not reasonably proficient in the work assigned.

14. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.

- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

15. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

16. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

17. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by

providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

18. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

19. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

20. OWNERSHIP AND RETURN OF RECORDS

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

21. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions,

processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

22. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its bid was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

23. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

24. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

25. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

26. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

27. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

28. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with

this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

29. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

30. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County. Notwithstanding the foregoing, without securing such prior consent, either party may upon written notice to the other party assign this Agreement and its rights and obligations to any successor of such first party by way of merger, consolidation, or the acquisition of substantially all of such first party's business and relating assets. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors and permitted assigns

31. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

32. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

33. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project

Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

34. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

35. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

36. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

37. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

38. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

39. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

40. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

41. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; WARRANTY; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

42. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

43. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

44. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

OverDrive, Inc.
ATTN: Erica Lazzaro, EVP & General Counsel
One OverDrive Way
Cleveland, OH 44125

TO THE COUNTY:

Peter Petruski, Project Officer
Arlington County Government
1015 N Quincy Street
Arlington, Virginia 22201

AND

Sharon T. Lewis, Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

45. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 (“Licenses”) of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

46. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

47. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract’s scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

48. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- f. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- g. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

OVERDRIVE, INC.

DocuSigned by:
AUTHORIZED SIGNATURE Lucas Alexander
502342428F9D4B4...

DocuSigned by:
AUTHORIZED SIGNATURE Erica Lazzaro
14755945E923455...

NAME: Lucas Alexander

NAME: Erica Lazzaro

TITLE: Procurement Officer

TITLE: General Counsel

DATE: 7/30/2021

DATE: 7/29/2021

EXHIBIT A

OverDrive Digital Library Reserve Access Agreement

1. OverDrive Responsibilities:

1.1 Create and host a Library Website for Library's use of the Application Services. OverDrive shall provide the Application Services to the Library under the terms of the Order Form and this Access Agreement.

1.2 Create an account in OverDrive's content selection platform, OverDrive Marketplace, for Library to select Digital Content to make available at the Library Website to Authorized Patrons and to access reports.

1.3 Use commercially reasonable efforts to make the Application Services perform substantially in accordance with the terms herein. From time to time, OverDrive may make modifications or updates to the operation, performance, or functionality of the Application Services as it sees fit or as required by OverDrive's suppliers. Library may be required to complete additional forms, documents or other associated materials provided by OverDrive. Library shall use commercially reasonable efforts to complete the documents in a timely manner.

1.4 Use commercially reasonable efforts to provide Secondary Support to Library.

1.5 Have sole discretion to approve any and all libraries that seek to participate in Library's DLR Service, as well as approve any other terms and conditions related to such expansion of the DLR Service to additional libraries. OverDrive shall have sole discretion to honor any prior version of an order form, participation form or related material completed by Library. OverDrive may require Library to complete an updated version of the same.

1.6 OverDrive may employ commercially reasonable efforts to monitor and maintain the availability of its Application Services, including review of traffic for request volume levels, unusual behaviors or patterns, attempts to create a denial of service response, and/or excessive or abusive usage as determined by OverDrive, in its sole discretion.

2. Library Responsibilities:

2.1 Use commercially reasonable efforts to ensure that use of the Application Services, the Library's Overdrive Website and the Digital Content are in compliance with this Access Agreement and with permitted uses as communicated by OverDrive to Library. Library shall use commercially reasonable efforts to prevent unauthorized use of the Digital Content from OverDrive by their users and Authorized Patrons.

2.2 Cooperate with OverDrive to limit access to the DLR Service to end users who are Authorized Patrons. In the event Library desires to provide access to the DLR Service to users other than Authorized Patrons, OverDrive reserves the right to limit availability of certain Digital Content, as may be required by supplying publishers. Online library card applications, with or without fees, that provide access, temporary or permanent, to the DLR Service to users who do not otherwise qualify as Authorized Patrons

shall not be permitted.

2.3 Library represents and warrants that it will not make any representations or create any warranties, expressed or implied, concerning the Application Services and Digital Content, and will take reasonable steps to ensure that its employees, agents, and others under its direction abide by the Agreement.

2.4 Perform Primary Support for its Authorized Patrons, unless Library has completed the Front Line Tech Support Order Form and paid for Front Line Tech Support services. OverDrive will provide Library with training and documentation for Library's provision of Primary Support. Library will cooperate with OverDrive to implement customer support practices recommended by OverDrive, including but not limited to directing Authorized Patrons to OverDrive-supplied FAQs and support pages on its Library Website.

3. Joint Responsibilities

3.1 If Library seeks a modification of the Application Services or integration of the Application Services beyond those offered on the Order Form, the parties shall cooperate to agree on the specifications for the additional services and any associated terms and conditions. Such changes may, at the County's discretion, require a contract amendment.

3.2 Nothing under the Agreement grants any right to Library to the use of, or access to, any Application Services source code. Library does not have the right to reproduce the Application Services, to distribute copies or versions of any modules of the Application Services to any third parties including its Authorized Patrons, or to make and/or sell variations or derivative works of the Application Services. Sole ownership of copyrights and other intellectual proprietary rights shall remain solely with OverDrive or its suppliers. OverDrive reserves the right, at its sole discretion, to display its branding, trademarks, logos, and/or third-party marketing or promotional materials on the Overdrive interface that displays through the Library Website

3.3 Library shall not access the Application Services in a manner not explicitly permitted by the Agreement, including but not limited to scraping the Library Website and/or web traffic or data to and from the Library Website, intercepting, redirecting, capturing or holding OverDrive-initiated email or other electronic communications, nor shall it allow any third party to access the Application Services in a manner as described in this paragraph.

3.4 OverDrive to grant the Library and Authorized Patrons a non-assignable, non-transferable, limited license to use the Digital Content provided by OverDrive's suppliers for personal, non-commercial use.

Authorized Patrons and/or Library may access and/or download, the Digital Content:

- (a) On Library-issued devices or computers with exclusive and individual unique user accounts;
- (b) On Library-issued devices which are circulated in accordance with the OverDrive Test Drive program;
- (c) On Authorized Patrons personal devices directly;
- (d) On shared Library computers that employ an application that restores the computer to its original configuration after use by an individual Authorized Patron (e.g. Deep

- Freeze, Windows SteadyState, or other similar application); and
- (e) For any use consistent with the relevant fair use doctrine or similar law in your jurisdiction.

4. Warranties

4.1 The parties represent and warrant that each has the necessary permissions, ownership and intellectual property rights and licenses related to performance under this Agreement.

4.2 THE WARRANTIES SET FORTH UNDER THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL OVERDRIVE BE LIABLE TO LIBRARY OR ITS AUTHORIZED PATRONS AND OR END USERS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE APPLICATION SERVICES, OR FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFIT OR OPPORTUNITY, LOSS OF USE OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE LICENSE OR USE OF THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE'S LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE UNDER THIS AGREEMENT, EXCEPT THAT THE LIMITATIONS OF THIS SECTION DO NOT APPLY TO CLAIMS OF INTELLECTUAL PROPERTY INDEMNIFICATION

5. Definitions

As used throughout the Agreement, the following definitions shall apply:

5.1 "Application Services" or "DLR Service" shall mean the Library Website and digital content distribution service provided to Library, which utilize OverDrive[®] and other third-party technologies and services.

5.2 "Authorized Patron(s)" shall mean those individuals who provide proof of residency, ownership of property, employment, or enrollment in school or similar institution in the Library's service area and which the Library authorizes to download and/or access Digital Content from the Library Website or otherwise utilize the Application Services.

5.3 "Digital Content" shall mean the digital titles (e.g. eBooks, audiobooks, music and video) made available from OverDrive at the Library Website.

5.4 "Library" shall mean the organization or entity identified in the Library Information section of the Order Form.

5.5 "Library Website" shall mean the Internet-based application hosted and operated by OverDrive that provides Authorized Patrons access to Digital Content.

5.6 "Order Form" shall mean the OverDrive Digital Library Reserve Order Form completed by the Library.

5.7 "OverDrive" shall mean: OverDrive, Inc., a Delaware Corporation, and its subsidiaries and

affiliates.

5.8 “Primary Support” shall mean the services provided by Library to its Authorized Patrons for its day-to-day help, support, technical aid and other assistance for their use of the Library Website and DigitalContent.

5.9 “Secondary Support” shall mean the technical support services provided by OverDrive to Library in the English language, including reasonable efforts to assist Library in providing PrimarySupport.

OverDrive Digital Library features included with Annual Fee:

<i>Collection</i>
Annual Collection Credit
Thousands of classic ebooks from Project Gutenberg – free
Web-based staff training to use collection development tools in OverDrive’s Marketplace catalog of 700,000+ popular & educational ebooks, audiobooks, & video
<i>Services</i>
Library-branded website plus system-wide updates
Authentication options
Web-based staff training – lead by expert trainer (live)
Reporting module
Customizable marketing resources to promote service to staff and community both inside & outside the library
Secondary-level user support
<i>Technology</i>
OverDrive apps for ebooks, audiobooks, video
Support for iPad®, plus all major devices
Configuration and license fee
Third-party licenses for digital rights management
Maintenance, hosting & support services
Bandwidth for all downloads