

**STATE OF TEXAS** §  
§  
**COUNTY OF FORT BEND** §

## ADDENDUM TO OVERDRIVE SERVICES APPLICATION AGREEMENT

THIS ADDENDUM is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and OverDrive, Inc. ("Contractor"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have executed and accepted that certain End User License Agreement ("Agreement") for use of overdrive eBooks, audiobooks, streaming software services ("Software"), attached hereto as "Exhibit A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Payment.** Payment shall be made by County within thirty (30) days of receipt of invoice.
2. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
3. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
4. **Confidential Information.** Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.
5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Contractor for any reason are hereby deleted.
6. **Software Assurance.** Contractor represents and warrants that its software and any related systems and/or services related to its software (collectively, the "Software") furnished by Contractor to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Contractor will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of the Contractor's Software infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and the Contractor's

liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.

7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.
8. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
9. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
10. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the dates below.

FORT BEND COUNTY

\_\_\_\_\_  
Robert Hebert, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

OVERDRIVE, INC.

\_\_\_\_\_  
Authorized Agent – Signature

Erica Lazzaro  
Authorized Agent- Printed Name

General Counsel  
Title

12/13/16  
Date

#### AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$\_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

# EXHIBIT A





## OverDrive® Digital Library Reserve Order Form

Library Information	
Name of Library: Fort Bend County Libraries	
Address: 1001 Golfview Drive	
City, State/Province, Postal Code: Richmond, TX 77469	Country: USA
Primary Contact	
Name:	Title:
Telephone:	Email:
Accounting Contact <i>(all invoices will be emailed to the contact listed below):</i>	
Name:	Title:
Telephone:	Email:
Bill To Address:	
City, State/Province, Postal Code:	Country:

☐ OverDrive sends emails about promotions, new products and services. By checking this box, you consent to receiving OverDrive's communications and promotional emails to your Primary Contact email address. These emails also include an easy method to manage your subscription(s), including unsubscribing to future emails.

### OverDrive Content Service Plan Fee Schedule

My Library will be invoiced an **Annual Fee of \$ 12,000 (USD)** within thirty (30) days from the Effective Date of this Order Form. All payments due to OverDrive under this Agreement are due within thirty (30) days of presentation of invoice.

### OverDrive Terms and Conditions:

The initial Term of this Agreement shall be for **one (1) year** from the Effective Date and may be renewed for additional one (1) year terms upon mutual written agreement between the Parties.

OverDrive Digital Library Reserve is licensed pursuant to the OverDrive Digital Library Reserve Access Agreement, available at <http://www.overdrive.com/dlr-aa.pdf>, the terms of which are incorporated herein and may be modified from time to time.

### Acknowledgement and Acceptance:

On behalf of my Library, I represent and warrant that I have the authority to enter into this Agreement and my signature below indicates my Library's agreement and acceptance of the OverDrive Digital Library Reserve Access Agreement.

By (signature) \_\_\_\_\_ Title \_\_\_\_\_

Name (Print) \_\_\_\_\_ Effective Date January 23, 2017

**OverDrive Digital Library features included with Annual Fee:**

<b><i>Collection</i></b>
More than 20,000 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, music & video
<b><i>Services</i></b>
Library-branded website plus system-wide updates
Authentication options
Web-based staff training – lead by expert trainer (live)
Web-based staff training – access to online Learning Center (recordings)
Reporting module
Customizable marketing resources to promote service to staff and community both inside & outside the library
Secondary-level user support
<b><i>Technology</i></b>
OverDrive Media Console™ apps for eBooks, audiobooks, music, video
Support for Kindle® (US only), NOOK™ and iPad®, plus all major devices
Configuration and license fee
Third-party licenses for digital rights management
Maintenance, hosting & support services
Bandwidth for all downloads

Please complete this order form and return by fax to +1 216-573-6889 or email to [sales@overdrive.com](mailto:sales@overdrive.com).

Thank you for your order!





October 1, 2016

Teresa Thiim  
Fort Bend County Libraries  
1001 Golfview Drive  
Richmond, TX 77469

RE: OverDrive as a sole source provider

Dear Ms. Thiim:

OverDrive uniquely provides a series of services and digital content materials that enable public libraries to lend popular audiobooks, eBooks, streaming video and other digital content via the library's website on a single platform.

Uniquely available only from OverDrive as a sole source provider, we offer a system that combines:

- A customized website service for download digital materials integrated with the library's ILS system for real-time patron authentication
- OverDrive uniquely offers a Local Content portal for libraries, providing the ability to upload locally-produced and self-published digital content into the platform for lending to their patrons, with lending policies set by the library
- OverDrive Next Generation library platform features that provide instant access to eBook, video and audio formats, including browser-based reading with OverDrive Read, streaming access for video format, and browser-based listening with OverDrive Listen
- OverDrive's proprietary browser-based formats are the industry's only browser-based formats that are able cache the content for offline usage and does not require active internet connection to read/listen to the digital content
- OverDrive APIs, available via the OverDrive Developer Portal, allow for integration of digital content with library discovery tools
- Control for the library to set digital book lending policies and manage access and usage of materials, as well as a "Recommend to Library" feature for patrons to submit purchase suggestions
- Download eBooks capable of operating on portable devices such as iPads, Chromebooks, Nooks, Windows Mobile, as well as all generations of Amazon Kindle (*exclusive to OverDrive*)
- OverDrive is the only digital library lending provider that is able to offer downloads in the Kindle format and compatibility with all generations of the Amazon Kindle, the most popular and widely used eReading device on the market
- OverDrive apps for Windows and MACs, a single integrated desktop client software application for use of download audiobooks, music and video
- OverDrive is the only digital library vendor selling high quality fixed format and read-along ePUB3 content from top trade houses
- Download audiobooks and music with accessibility features for the blind and visually impaired
- OverDrive MP3 Audiobooks compatible with MAC/OS, iPods and other Apple devices

As a result of the combination of the above referenced items, as well as OverDrive, Inc.'s continued innovation, library market leadership, proven success and secret processes, OverDrive, Inc. is the sole vendor to offer these unique services and sought after materials. Please do not hesitate to contact me for further information.

World Headquarters | One OverDrive Way | Cleveland, Ohio 44125 USA  
P +1.216.573.6886 | F +1.216.573.6888 | [www.overdrive.com](http://www.overdrive.com)

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Potash", followed by a horizontal line.

Steve Potash, CEO  
OverDrive, Inc.  
spotash@overdrive.com

# OverDrive Digital Library Reserve Access Agreement

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## 1. Digital Library Reserve Application Services

1.1 OverDrive will 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 (collectively referred to as the "Agreement").

1.2 OverDrive shall 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 OverDrive will 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 OverDrive will use commercially reasonable efforts to provide Secondary Support to Library.

1.5 OverDrive shall 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 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.

1.7 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 Library Website.

## 2. Library Website

2.1 Library shall use commercially reasonable efforts to ensure that use of the Applications Services, the Library Website and the Digital Content are in compliance with this 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 OverDrive grants 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 which 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.

2.3 Library shall reasonably 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.

2.4 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.

2.5 Library agrees to 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.

2.6 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.

2.7 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.

### **3. Payments**

3.1 Library shall make payment to OverDrive for all Application Services fees and Digital Product costs according to OverDrive within thirty (30) days from Library's receipt of valid invoice. OverDrive, in its sole discretion, may require payment by Library of any initial or outstanding invoices before OverDrive will set the DLR Service live. In the event of Library's late or non-payment of any and all amounts due to OverDrive for Application Services fees and cost of Digital Content, OverDrive may suspend access to the Application Services until such time as Library's account becomes current, or in OverDrive's sole discretion, terminate access to the Application Services.

3.2 This Agreement is a commitment of the current revenues of the Library. If Library's governing body or similarly related entity fails to appropriate sufficient funds in any fiscal year for payments due under this Agreement, then a non-appropriation event shall be deemed to have occurred. If a non-appropriation event occurs, (1) Library shall give OverDrive immediate notice of such non-appropriation event and provide written evidence of such failure by Library's applicable governing body and (2) on or before sixty (60) days from OverDrive's receipt of notice of non-appropriation, the parties shall cooperate to determine an appropriate course of action as it relates to the OverDrive services provided under this Agreement. In the event that after such sixty (60) day period, no determination is reached on payment and continued provision of services is not possible, then the Agreement and all services hereunder shall terminate on the first day of the fiscal year in which funds are not appropriated.

### **4. Term and Termination**



4.1 The Term of the Agreement shall be governed by the OverDrive Digital Library Reserve Order Form between OverDrive and Library.

4.2 Either party shall have the right to terminate this Agreement as a result of a material breach of the Agreement by the other party that is not cured within thirty (30) days after written notice of such breach.

4.3 Upon termination of this Agreement, the access granted to Library by this Agreement shall be terminated immediately and Library shall make no further use of all or any part of the Application Services, or any confidential information received from OverDrive.

## **5. Warranties**

5.1 The parties represents and warrants to that each has the necessary permissions, ownership and intellectual property rights and licenses related to performance under this Agreement.

5.2 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.

## **6. General Terms**

6.1 Confidential Information. The parties acknowledge that each will receive confidential information from the other relating to the Application Services, technical and operational affairs of the other. Subject to any state and/or federal laws and regulations permitting public access to documents and information that are considered public, each party agrees that all confidential information of the other party shall be held in confidence and shall not be disclosed to any third party. Library shall not share its passwords and login credentials of Library's account in OverDrive's content selection portal with anyone, including any third party. Library shall take reasonable steps to prevent unwarranted intrusion into such information.

6.2 Taxes. Library shall at its own expense comply with all applicable laws in connection with the use of the Application Services. The payment obligations under this Agreement are exclusive of any federal, state, municipal or other governmental taxes, sales taxes, excise taxes or tariffs now or hereafter imposed on the production, storage, sale, transportation, import, export, licensing or use of the Application Services.

6.3 No Waiver. The failure of either party to exercise any right or the waiver of either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement.

6.4 Notice. All notices required to be given pursuant to the Agreement shall be in writing and shall be deemed to have been given, if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to OverDrive at its' current address, Attention: General Counsel or addressed to Library at the address provided on the Order Form, Attention: Primary Contact (as designated on the Order Form), or as otherwise agreed by the parties.

6.5 Assignment. OverDrive may assign this Agreement. This Agreement may not be assigned by Library, nor any duty hereunder delegated by Library without the prior written consent of OverDrive, which shall not be unreasonably withheld. 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.

6.6 Entire Agreement. The Order Form and this Access Agreement constitutes the entire Agreement and understanding of the parties and supersedes all prior and contemporaneous Agreements, understandings, negotiations and proposals, oral or written. Section headings are provided for convenience purposes only

and do not provide any modifications or substantive meaning to the terms and conditions of this Agreement. OverDrive may modify the Order Form and Access Agreement from time to time.

6.7 All Disputes Arising From the Agreement. This Agreement shall be governed by the laws of the State of Ohio, United States of America without regard to any conflict of laws principles. Any dispute regarding this Agreement or the relationship that has been established by this Agreement shall be brought in the state or federal courts residing in the State of Ohio, USA, and the local laws of Ohio will apply to any such action related to the above. Both parties submit to venue and jurisdiction in these courts.

## **7. Definitions**

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

7.1 "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.

7.2 "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.

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

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

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

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

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

7.8 "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 Digital Content.

7.9 "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 Primary Support.



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2016-145601

Date Filed:  
12/13/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

OverDrive, Inc.  
Cleveland, OH United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

18270  
OverDrive Services Application Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



**MICHAEL KERTESZ**  
Attorney At Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission Has  
No Expiration Date  
Section 147.03 O.R.C.

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Erica Lazzaro, this the 13<sup>th</sup> day of December, 2016, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Michael Kertesz  
Printed name of officer administering oath

Contracts & Licensing Attorney  
Title of officer administering oath