

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**ADDENDUM TO OVERDRIVE, INC.'S AGREEMENT**

THIS ADDENDUM ("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., ("OverDrive"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, subject to the changes herein, the parties have executed and accepted OverDrive's Digital Library Reserve Access Agreement, Quote (Quote Number: Q-1317-0001-2022) and OverDrive Digital Library Reserve Order Form (collectively the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for a specified library annual fee and digital content purchases (collectively the "Services"); and

WHEREAS, County desires that OverDrive provide Services as will be more specifically described in this Agreement; and

WHEREAS, OverDrive represents that it is qualified and desires to perform such Services; and

WHEREAS, the Texas County Purchasing Act, § 262.024(a)(7) Texas Local Government Code, exempts from competitive bidding contracts items that can be obtained from only one source; and

WHEREAS, OverDrive is the sole source provider of the Services as indicated by the letter attached hereto as Exhibit "B" and incorporated fully by reference; and

WHEREAS, the Fort Bend County Commissioners Court specifically finds that this Agreement is a sole source agreement and therefore grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

1. **Term.** The term of the Agreement is effective January 23, 2023, and shall expire no later than January 22, 2024, unless terminated sooner pursuant to the Agreement. This Agreement shall not automatically renew, but may be subsequently renewed in writing upon agreement of the parties.
2. **Scope of Services.** Subject to this Addendum, OverDrive will render Services to County as described in the attached Exhibits.

3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. Overdrive may submit invoice(s) electronically in a form acceptable to County via: [apauditor@fortbendcountytexas.gov](mailto:apauditor@fortbendcountytexas.gov). 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. 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. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.
4. **Limit of Appropriation.** OverDrive clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Two Hundred Forty-Three Thousand and 00/100 dollars (\$243,000.00), specifically allocated to fully discharge any and all liabilities County may incur. OverDrive does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that OverDrive may become entitled to and the total maximum sum that County may become liable to pay to OverDrive shall not under any conditions, circumstances, or interpretations thereof exceed Two Hundred Forty-Three Thousand and 00/100 dollars (\$243,000.00). In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
5. **Public Information Act and Open Meetings Act.** OverDrive 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 OverDrive 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. The terms and conditions of the Agreement are not proprietary or confidential information.

Overdrive expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.
6. **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 OverDrive or any other party for any reason are hereby deleted.

7. **Applicable Law; Arbitration; Attorney Fees.** 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. 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. County does not agree to pay any and/or all attorney fees incurred by OverDrive in any way associated with the Agreement.
8. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, OverDrive hereby verifies that OverDrive and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
  - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, OverDrive does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
  - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, OverDrive does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
  - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, OverDrive does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
9. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

10. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, OVERDRIVE ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
11. **Use of Customer Name.** OverDrive may use County's name without County's prior written consent only in any of OverDrive's customer lists, any other use must be approved in advance by County.
12. **Product Assurance.** OverDrive represents and warrants that its hardware, software and any related systems and/or services related to its software and/or hardware (collectively, the "Product") furnished by OverDrive to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. OverDrive 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 OverDrive's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and OverDrive's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the parties.
13. **Performance Warranty.** OverDrive warrants to County that OverDrive has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and OverDrive will apply that skill and knowledge with care and diligence to ensure that the services provided hereunder will be performed and delivered in accordance with the highest professional standards.  
  
OverDrive warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibits.
14. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict.
15. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
16. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
17. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

18. **Compliance with Laws.** OverDrive shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, OverDrive shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

19. **Termination.**

19.1. Termination for Convenience. County may also terminate this Agreement at any time upon thirty (30) days written notice.

19.2. Upon termination of this Agreement, County shall compensate OverDrive in accordance with § 3, above, for those Services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. OverDrive's final invoice for said services will be presented to and paid by County in the same manner set forth in § 3 above.

19.3. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to OverDrive.

19.4. If County terminates this Agreement prior to the termination date, County shall not be subject to any early termination fee or other penalty.

20. **Independent Contractor.** In the performance of work or services hereunder, OverDrive shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of OverDrive or, where permitted, of its subcontractors. OverDrive and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

21. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

22. **Notices.**

22.1. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in

each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

- 22.2. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Libraries  
Attn: Library Director  
1001 Golfview  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
301 Jackson Street  
Richmond, Texas 77469

Contractor: OverDrive, Inc.  
Attn: Erica Lazzaro  
One OverDrive Way  
Cleveland, Ohio 44125

- 22.3. A Notice is effective only if the party giving or making the Notice has complied with subsections 22.1 and 22.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

22.3.1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

22.3.2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY


\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

ATTEST:

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

Reviewed:

  
\_\_\_\_\_  
Clara J. Russell  
Fort Bend County Libraries

OVERDRIVE, INC.

DocuSigned by:  
*Erica Lazzaro*

5DF270DA527A400...  
\_\_\_\_\_  
Authorized Agent – Signature

\_\_\_\_\_  
Erica Lazzaro

\_\_\_\_\_  
Authorized Agent- Printed Name

\_\_\_\_\_  
EVP & General Counsel

\_\_\_\_\_  
Title

\_\_\_\_\_  
2-6-23  
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's Digital Library Reserve Access Agreement, Quote (Quote Number: Q-1317-0001-2022), and Reserve Order Form; and

Exhibit B: Sole Source Letter

# Exhibit A



## **OverDrive Digital Library Reserve Access Agreement**

### **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, magazines 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.



One OverDrive Way  
Cleveland OH 44125  
Phone: (216) 573-6886 Fax: (216) 573-6888  
Website: <http://www.overdrive.com>  
Email: [invoicing@overdrive.com](mailto:invoicing@overdrive.com)

## QUOTE

Quote Number	Q-1317-0001-2022
Date	10/1/2022

Quoted To: Fort Bend County Libraries

Customer ID	Customer Email	Purchase Order No.	Payment Terms
1317-0001			N/A
Description		Amount	
Content Service Plan Fee applied to the following services: Applied to Application License and Hosting Fee Applied to Content Credit purchase  For the 12 month period of January 23, 2023 to January 22, 2024		\$ 4,000.00 \$ 4,000.00	
Total Quote		\$ 8,000.00	

Exhibit A



### OverDrive Digital Library Reserve Order Form

<b>Library Information</b>	
Name of Library: Fort Bend County Libraries	
Address: 1003 Golfview Drive	
City, State/Province, Postal Code: Richmond, TX 77469	Country: USA
<b>Primary Contact</b>	
Name:	Title:
Telephone:	Email:
<b>Accounting Contact</b> (all invoices will be emailed to the contact listed below):	
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.

#### Annual Fee

My Library will be invoiced an Annual Fee of \$ 8,000 (USD). The Annual Fee includes an allocation of \$ 4,000 (USD) to use toward the selection of Digital Content.

In addition to the Annual Fee, Library requests to be invoiced in the amount of \$ \_\_\_\_\_ (USD) to be put on deposit with OverDrive for future Digital Content purchases.

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 a twelve month term, commencing on 1/23/2023. This Agreement shall automatically renew for successive terms of twelve (12) consecutive month terms unless either party provides written notice of intention not to renew ninety (90) days prior to the expiration of the then-current term.

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) \_\_\_\_\_ Date \_\_\_\_\_

Please complete this order form and return by email to your OverDrive Account Manager.

Thank you for your order!

# Exhibit B

Req # 217360

October 1, 2022

OverDrive

Fort Bend County Libraries  
1003 Golfview Drive  
Richmond, TX 77469  
RE: OverDrive as a sole source provider

To Whom It May Concern:

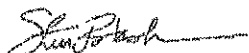
OverDrive uniquely provides a series of services and digital content materials that enable public libraries to lend popular audiobooks, eBooks, streaming video, digital magazines and other digital content via the library's website on a single platform.

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

- A customized website service and the award-winning *Libby* app for accessing and downloading digital materials integrated with the library's ILS system for real-time patron authentication
- OverDrive offers the ability for increasing cooperation with local schools by adding student authentication to the public library's digital catalog
- OverDrive is the only digital library lending provider that offers 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 *uniquely* offers a Local Content feature 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
- Download eBooks capable of operating on portable devices such as iPads, Chromebooks, Windows Mobile, as well as all generations of Amazon Kindle (*exclusive to OverDrive*)
- Digital magazines available through Zinio (*exclusive to OverDrive*)
- Popular and educational streaming video available through Kanopy (*exclusive to OverDrive*)
- Online music lessons from master musicians available through ArtistWorks (*exclusive to OverDrive*)
- Educational, continuing education, and professional development courses available through Universal Class (*exclusive to OverDrive*)
- OverDrive's proprietary browser-based formats (OverDrive Read and OverDrive Listen) are the industry's only browser-based formats that can cache the content for offline usage and does not require active internet connection to read/listen to the digital content
- OverDrive uniquely offers a multi-lingual user interfaces option for the patron to choose from directly on the patron-facing website, with over a 15 different language options available
- OverDrive APIs, available via the OverDrive Developer Portal, allow for deep 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 audiobooks 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.

Very truly yours,



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

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)

Exhibit B