

# CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT TRACKING NO.

CM1575

## CONTRACTOR INFORMATION

Name: OVERDRIVE, INC

Address: 8555 SWEET VALLEY DRIVE STE N CLEVELAND, OHIO 44125  
City State Zip

Contractor's Administrator Name: SONNY MAZZOLINI Title: CONTRACT & LICENSING ATTORNEY

Tel#: 216.573.6886 ext. 219 Fax#: 216.573.6888 Email: amazolini@overdrive.com

## CONTRACT INFORMATION

Contract Name: DIGITAL LIBRARY RESERVE Contract Value: \$10,000.00

Brief Description: SOFTWARE THAT WILL ALLOW RESIDENTS TO USE ELECTRONIC RESOURCES FROM THE LIBRARY SYSTEM IN DOWN LOADABLE FROMAT INCLUDING AUDIO BOOKS, E-BOOKS, VIDEOS AND MUSIC

Contract Dates \_\_\_\_\_ to \_\_\_\_\_ Status: XX New \_\_\_ Renew \_\_\_ Amend# \_\_\_ WA/Task Order

How Procured: \_\_\_ Sole Source XX Single Source \_\_\_ ITB \_\_\_ RFP \_\_\_ RFQ \_\_\_ Coop. \_\_\_ Other \_\_\_\_\_

### If Processing an Amendment:

Contract #: \_\_\_\_\_ Increase Amount of Existing Contract: \_\_\_\_\_ No Increase \_\_\_\_\_

New Contract Dates: \_\_\_\_\_ to \_\_\_\_\_ TOTAL OR AMENDMENT AMOUNT: \_\_\_\_\_

### APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

- |    |  |                        |   |                |
|----|--|------------------------|---|----------------|
| 1. | <u>[Signature]</u><br>Department Head Signature                  | <u>3/8/10</u><br>Date  | <u>01711571-552646</u><br>Funding Source/Acct # | <u>\$5,000</u> |
| 2. | <u>Charlotte Young</u><br>Contract Management                    | <u>4-6-10</u><br>Date  | <u>01712571-566100</u>                          | <u>\$5,000</u> |
| 3. | <u>[Signature]</u><br>County Attorney (approved as to form only) | <u>4-23-10</u><br>Date |   |                |
| 4. | <u>[Signature]</u><br>Office of Management & Budget              | <u>4/23/10</u><br>Date |   |                |

Comments: \_\_\_\_\_

INTERIM COUNTY COORDINATOR - FINAL SIGNATURE APPROVAL

[Signature] 4/23/10  
Date  
~~Edward Sealover~~ Ted Selby

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2010 MAR -9 AM 10: 14

### RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department
- Office of Management & Budget
- Contract Management
- Clerk Finance

Nassau County Board of County Commissioners  
Sole Source/Single Source Certification Form

Vendor Name: OVERDRIVE Department: NCPLS  
Address: 8555 Sweet Valley Drive Ste N Department Head Signature: \_\_\_\_\_  
Cleveland, Ohio 44125

Phone: 216-573-6886 Date: 04/07/10  
Contact Name: Sonny Mazzolini  
Account: 01711571-552646 & 566100 Cost: \$10,000.00

Description of Commodity:  
Software that will allow Residence to use Electronic Resources from the Library System in Down loadable format including Audio Books, E-Books, Videos, and Music

Check one (1) of the following two (2) choices:

XXX Sole Source: The goods or services can be legally purchased from only one source.

Single Source: The goods or services can be purchased from multiple sources, but, in order to meet certain functional or performance requirements, there is only one economically feasible source for this purchase.

Please check all of the following that apply:

XXX Purchase can only be obtained from original manufacturer-not available through distributors.

Only authorized area distributor of the original manufacturer.

Parts/Equipment are not interchangeable with similar parts of another manufacturer.

XXX This is the only known source that will meet the specialized needs of this department or perform the intended function.

This source must be used to meet warranty or service maintenance requirements.

This source is required for standardization.

None of the above apply.

Comments/Explanations: (required)

Overdrive allows residents of the county to borrow library materials via download at their convenience remotely

Approval:

Dawn Postwick 4/7/10  
County Coordinator Date

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2010 APR -8 AM 10:34



Dawn S. Bostwick, Library Director  
Janet W. Loveless, Assistant Director

**Nassau County Public Library System**

25 N. 4<sup>th</sup> Street  
Fernandina Beach, FL 32034  
Phone: 904-277-7365 Fax: 277-7366

<http://read.nassau.lib.fl.us>

**To: Charlotte Young, Contract Services**

**From: Dawn S. Bostwick, Library Director**

**Date: 29 March 2010**

**Re: Downloadable Books**

Charlotte,  
After further investigation I find Digital Library Reserve to be the sole source provider of Overdrive; the platform that makes thousands of ebooks, audiobooks, music and videos available to the general public. I have attached their sole source letter.

The competitor, NetLibrary, is now owned by Ebsco. NetLibrary's collection of materials is different and non-comparable, to what can be offered through Overdrive. NetLibrary has reference materials only, the book must be in PDF format only in order to download, they do not offer music or video for download, they sell titles in sets rather than by individual title. There is a yearly fee based upon how much is purchased each year.

Thank you.

**Callahan**

450086 SR 200  
Callahan, FL 32011

**Hilliard**

37177 Hilliard, FL 32046

**Yulee**

76548 Wm Burgess Blvd  
Yulee, FL 32097

**Bryceville**

7280 Motes Rd  
Bryceville, FL 32009

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2010 MAR 30 AM 10:43



Dawn S. Bostwick, Library Director  
Janet W. Loveless, Assistant Director

## **Nassau County Public Library System**

25 N. 4<sup>th</sup> Street  
Fernandina Beach, FL 32034  
Phone: 904-277-7365 Fax: 277-7366

<http://read.nassau.lib.fl.us>

**To: Ed Sealover, County Coordinator**

**From: Dawn S. Bostwick, Library Director**

**Date: 2 March 2010**

**Re: Overdrive/Downloadable books**

Mr. Sealover,

This last year we have had many requests for downloadable books. I even have a written request from a Georgia resident who insists she will buy a library card at our library if we can offer downloadable books.

The main company that offers this service is called Overdrive. Their software is easy to use, it will integrate with our current browser catalog and circulation system, and they have quoted us a reasonable price. The cost is \$10,000 a year, they will hold the price for us for three years, and half of the price goes towards purchasing titles each of the three years. They have audio books, electronic books, videos and music. The company also offers free online training for all staff.

We have ebooks currently from the competing company, NetLibrary. These books are used, but not as much as they are more of a reference collection and those titles that are in the public domain. Overdrive offers current book and music titles.

This type of program is successful with bringing in non-library users and it appeals to our younger audience; which supports our current long range plan. The program has been very successful in our neighboring counties.

We have the funds for the materials, and will transfer our state aid funds for the licensing portion. I have listed the contract as a single source purchase as this is like our online databases. There is another that provides this service (NetLibrary) but Overdrive's software and materials selection is different. There isn't a way to compare apples with apples.

### **Callahan**

450086 SR 200  
Callahan, FL 32011

### **Hilliard**

37177 Pecan St  
Hilliard, FL 32046

### **Yulee**

76346 Wm Burgess Blvd  
Yulee, FL 32097

### **Bryceville**

7280 Motes Rd  
Bryceville, FL 32009

# OverDrive®

leading digital media services

Valley Tech Center ▪ Suite N ▪ 8555 Sweet Valley Drive ▪ Cleveland, OH 44125 ▪  
216.573.6886 ▪ www.overdrive.com

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March 25, 2010

Dawn Bostwick  
Nassau County Public Library  
25 North 4th Street  
Fernandina Beach, FL 32034

RE: OverDrive as a sole source provider

Dear Ms. Bostwick:

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

***Uniquely available from OverDrive as a sole source provider***, we offer a system that includes:

- A customized website service for download digital materials integrated with the library's ILS system for real-time patron authentication
- Control for the library to set digital book lending policies and manage access and usage of materials
- OverDrive Media Console for Windows, Windows Mobile, MAC, Android, Blackberry using a single integrated client software application for use of download audiobooks, music and video
- Download audiobooks and music with accessibility features for the blind and visually impaired patrons
- OverDrive MP3 Audiobooks compatible with MAC/OS and direct transfer to iPods and other Apple devices
- Digital audio and eBook materials from Brilliance Audio, Hachette, HarperCollins, Weston Woods, Phoenix Audio and other publishers only available from OverDrive
- Download video materials including documentaries, travelogues, feature films and concerts for use with the same integrated desktop client that supports audiobook and music titles
- Real-time circulation and other statistics for library staff, accessible 24/7 via a web portal
- Library collection development services including the ability to pre-order eBooks and audiobooks, create Download Standing Order plans and Holds Manager for waiting lists

As a result of the combination of the above referenced items as well as OverDrive's patents, copyrights and secret processes, OverDrive is the only vendor to offer these services and materials and we have enjoyed adoption and success as the sole source supplier of the foregoing to many leading public libraries around the world. Please do not hesitate to contact me for further information.

Very truly yours,

Steve Potash, CEO  
OverDrive, Inc.  
spotash@overdrive.com  
(216) 573-6886 ext. 201

**Digital Library Reserve  
Content Service Plan  
Application Services Agreement**

**1. INTRODUCTION**

This Agreement is made and entered into this 4th day of May 2010 by and between OverDrive, Inc., (hereinafter referred to as "OverDrive"), a Delaware corporation, Valley Tech Center, 8555 Sweet Valley Drive, Suite N, Cleveland, OH 44125 USA and the following company, person, or entity (hereinafter referred to as "Library"):

Library Name: Nassau County Public Library

Virtual Branch Name: \_\_\_\_\_

Library's Primary Contact: Dawn Bostwick

Address: 25 North 4th Street City: Fernandina Beach State: FL Zip: 32034 Country: USA

Phone: (904) 548-4862

Email Address: dbostwick@nassaucountyfl.com

Attached and incorporated in this Agreement are the following Schedules:

- Schedule "A-1" – Digital Library Reserve Application Services and Fee Schedule
- Schedule "A-2" – Digital Library Reserve Content Service Plan Fee Schedule
- Schedule "B" – Digital Library Reserve and Library Website Guidelines

WHEREAS, OverDrive is a provider of digital book technology and services including those related to the management and copyright protection of content in eBook, audio book, and multimedia in digital formats; and,

WHEREAS Library is seeking to utilize as part of its operation certain outsourced software and website services for the aggregation, management, copyright protection and distribution of Digital Products and related services; and,

WHEREAS Library seeks to license the use of and deploy software products, technology and services including those licensed to OverDrive by Microsoft® Corporation, Adobe® Systems Inc. or other vendors of Digital Rights Management (DRM) technologies.

THEREFORE, the parties agree as follows:

**2. DEFINITIONS**

As used in this Agreement, the following definitions shall apply:

- 2.1 "Agreement" shall mean this Agreement between OverDrive and Library and all Schedules and attachments.
- 2.2 "Application Services" or "Application(s)" shall mean the DLR®, OverDrive®, Microsoft® Corporation, Adobe® Systems Incorporated, Adobe Benelux, B.V. and any other third party products or services identified in Schedule "A-1" attached to the Agreement.
- 2.3 "Application Services Fees" shall be the amounts payable by Library to OverDrive in accordance with the terms of this Agreement. A schedule of the current Application Services Fees is attached to this Agreement as Schedules "A-1" and "A-2".
- 2.4 "Content" or "Digital Products" shall consist of digital files and titles available for loan to Patrons at the Library Website distributed using the Application Services.

2.5 "Content Reserve" shall mean the Digital Product and Content distribution service operated by OverDrive which enables Library to browse, select and license rights to Digital Products for re-distribution and lending to Library Patrons.

2.6 "Digital Library Reserve" or "DLR" shall mean the OverDrive and integrated services utilizing OverDrive, Microsoft, Adobe or other third party software applications and services that relate to the Library Website operated by the Library for managing the Digital Products.

2.7 "Digital Library Reserve Guidelines" shall mean the terms and conditions of utilizing the Digital Rights Management Application Services.

2.8 "Effective Date" shall mean the date upon which both parties have signed the Agreement.

2.9 "Library" shall mean the organization or entity identified in the Introduction to this Agreement.

2.10 "Library Website" shall mean the Internet-based Digital Product application operated by the Library that provides Patrons access to Digital Products operated in association with the Digital Library Reserve and as a component of the Library website address (URL) designated by Library in the Introduction to this Agreement.

2.11 "OverDrive" shall mean: OverDrive<sup>®</sup>, Inc., a Delaware Corporation.

2.12 "Patron(s)" shall mean those persons that Library authorizes to access, use, and connect to the Library Website via the Internet, and download products from or otherwise utilize the Application Services and/or access Digital Products from the Library using the Application Services.

2.13 "Primary Support" shall mean services provided by Library to its Patrons for its day-to-day support, technical aid, help and other assistance for Patron's use of the Library Website, Applications or for any issues arising from the use of its Library Website.

2.14 "Secondary Support" shall mean technical support services to be provided by OverDrive to Library including reasonable efforts to assist Library in providing Primary Support, reasonable efforts to correct, fix, or circumvent errors, and in the discretion of OverDrive, provide updates, enhancements, and new versions of the Application Services.

### **3. DIGITAL LIBRARY RESERVE APPLICATION SERVICES**

3.1 OverDrive shall provide the Digital Library Reserve Application Services to the Library under the terms and conditions of this Agreement and the associated license agreements from its DRM or Digital Product and Content suppliers. This right is non-transferable and applies solely to the server-based operation, management and use of the Digital Library Reserve applications in unaltered, object code form. Nothing under the terms and conditions of this Agreement, including any of the Attachments and Schedules, grant any right to Library to the use of, or access to, any Application Services source code. This grant does not include any right to reproduce the Application Services, to distribute copies or versions of any modules of the Application Services to any third parties including its Patrons, or to make and/or sell variations or derivative works of the Application Services. Library shall be permitted to customize portions of the Application Services specifically the patron-facing User Interface on its website or otherwise to custom integrate the Application Services into its operational offerings. Sole ownership of copyrights and other intellectual and proprietary rights to the Application Services shall remain solely with OverDrive or its suppliers.

3.2 Library assumes responsibility for providing a suitable network and Internet system for integration of Application Services into Library's website or other systems. All parties acknowledge that any expenditures or commitments are made at the risk of the party making such expenditures or commitments. Library agrees that it shall be responsible for its own expenses and costs under this Agreement and that OverDrive shall have no obligation to reimburse Library for any expenses or costs incurred by Library in the preparation, systems integration, use of the Application Services, or for any performance of Library's duties hereunder. Specifically, DLR integrates with Library's patron authentication system using SIP2 or similar protocol. Library shall, at its own expense, purchase a SIP2 license, or use an existing such license if available.

3.3 OverDrive will create and implement a Library Website for Library's use of the Application Services as detailed in Schedule "A-1" that will include search function (by title category, author, keyword), multiple categories with multiple listing option, auditing and reporting functions and access to a protected web portal to manage the Library's catalog of Digital Product and Content files. Subject to OverDrive's approval, which shall not be unreasonably withheld, OverDrive will incorporate the Library's name, logos and trademarks in accordance with design suggestions as provided by Library. Library will have the ability to manage and promote Digital Products from a password protected Digital Library Reserve administrative web portal.

3.4 OverDrive may include Library logos and colors on the Library Website. OverDrive reserves the right to display its branding, trademarks, logos, and/or other third party marketing or promotional materials related to the Application Services on the Library Website. OverDrive will implement an inventory data feed from Content Reserve to the Digital Library Reserve inventory management system to permit Library to browse, select and license rights to Digital Products in supported formats and as permitted by OverDrive's publishers and suppliers. OverDrive will create the appropriate download links from the Library's Website for the secure delivery of Content to authorized Library Patrons. All Content available at the Library Website shall have at least a seven (7) day lending period, or other minimum lending period as otherwise required by suppliers or publishers of Content.

3.5 Digital Library Reserve is for remote use only (outside of the Library). Without the use of OverDrive Download Station software, Patrons and all other users of DLR cannot download Digital Content to any Library computers or devices. OverDrive Download Station software licenses are available for an additional fee.

#### **4. FEES AND PAYMENT**

4.1 Schedules "A-1" and "A-2" shall serve as written purchase orders for the Application Services Library seeks to have OverDrive configure and operate under this Agreement. Library shall make payment of applicable fees and or deposits based on the terms and conditions of Schedules "A-1" and "A-2". Library shall make payments to OverDrive in U.S. funds within 30 days of presentation of invoice. OverDrive shall have sole discretion to approve any and all libraries that seek to participate in the DLR service with the organization or entity identified in the Introduction to the Agreement, as well as establish any other terms and conditions related to such expansion.

4.2 Under the terms of this Agreement Library shall receive an annual Content Collection Credit of Five Thousand Dollars (\$5,000) (at suggested list price) toward the selection of digital materials. Anytime during the term of this Agreement Library may select additional titles and material subject to standard terms and pricing. Library shall make payments to OverDrive in U.S. funds for Content selections within thirty (30) days of presentation of invoice.

4.3 The payment obligations stated in this Section 4 are exclusive of any federal, state, municipal or other governmental taxes, sales taxes, duties, excise taxes or tariffs now or hereafter imposed on the production, storage, sale, transportation, import, export, licensing or use of the Application Services or for operation or sales activity of the Library Website. Such charges, shall be paid by Library or, in lieu of payment of any tax, Library shall provide an exemption certificate acceptable to OverDrive and the applicable authority.

#### **5. COPYRIGHT PROTECTION, PATRON AUTHENTICATION AND DATA SECURITY**

During the Agreement Term and any renewal periods, Library will reasonably cooperate with OverDrive to achieve OverDrive's and its Publishers' and suppliers' objectives of protecting certain intellectual property interests relating to OverDrive supplied Digital Products and Content. The Library shall establish policies and procedures to abide by the Digital Library Reserve Guidelines as described in the attached Schedule "B". Library shall provide OverDrive access to a test Patron account for purposes of validating the system's performance relating to the Application Services. Library will reasonably cooperate with OverDrive to correct or adjust systems as may be required to compensate for any errors or omissions disclosed by such test. Any such test will be conducted by OverDrive at its own expense and during regular business hours and in such a manner as not to interfere with Library's normal activities. Nothing in this Section shall entitle OverDrive to any Patron data or information relating to the identity of Patrons accessing any components of the Application Services.



## **6. RESPONSIBILITIES OF LIBRARY**

6.1 Library will assign personnel with appropriate skills and expertise in computer, data processing, and related services to enable operation of the Application Services and the Library Website and to provide Primary Support. Library will use reasonable efforts to operate its Digital Library Reserve and Library Website in compliance with the terms of this Agreement and all Schedules. Upon launch of the service, Library shall include a direct hyperlink and/or logo to the DLR service from Library's home page. Such link or logo shall be featured no less prominently than other electronic resources including but not limited to NetLibrary, Recorded Books and Ingram.

6.2 With the exception of the Application Services configured and hosted by OverDrive, Library is solely responsible for all aspects of catalog integration, operation, training, support and/or maintenance necessary for the operation of the Library Website. Library shall keep its Digital Library Reserve Account information current and alert OverDrive of any changes in its operation of its Library Website including but not limited to changes of personnel. Library will use reasonable efforts to ensure that information or data relevant to the operation of the Library Website will be treated as required by applicable law and reasonable and customary commercial practices.

6.3 Library agrees to perform Primary Support for Patrons using its Library Website. Library will perform requested installation, upgrade, and reasonable technical services for Primary Support of the Application Services pursuant to installation and support procedures and policies as developed by OverDrive and as modified from time-to-time. OverDrive will provide Library with documentation regarding Primary Support and OverDrive support personnel will be available for Secondary Support by e-mail and phone.

6.4 Library will, upon request, promptly cooperate with OverDrive by completing forms, reports, or checklists as OverDrive may require its Library's to complete as part of an installation, upgrade or provision of the Primary Support of the Application Services. Library shall identify and promptly inform OverDrive of any design or programming errors or omissions in the Application Services, of which it becomes aware.

6.5 Library represents and agrees that it will not make any representations or create any warranties, expressed or implied, concerning the DLR Application Services products. Library will take reasonable steps to insure that its employees, agents, and others under its direction, abide by the terms and conditions of this provision and this Agreement.

6.6 Library shall at its own expense comply with all applicable laws, ordinances, rules and regulations, and Library shall obtain any and all permits, licenses, authorization, and/or certificates that may be required in any jurisdiction or any regulatory or administrative agency in connection with the use and/or operations of the Application Services. Regardless of any disclosure made by Library to OverDrive of an ultimate destination for users of the Application Services, Library agrees not to export either directly or indirectly any Application Services or system incorporating such Application Services without first obtaining a license to export or re-export from the United States Government, as may be required and to comply with the United States Government export regulations, as applicable.

## **7. OVERDRIVE'S OBLIGATIONS**

OverDrive will create a Library Website that will be in compliance with the requirements listed in the attachments. As part of the Application Services OverDrive will either implement the required services directly or oversee the necessary procedures to assure compliance with the Digital Library Reserve guidelines. OverDrive will use reasonable efforts to make the Application Services perform substantially in accordance with the product description, as it may exist from time to time. However, Library acknowledges that inevitably some errors may exist in the Application Services, and the presence of such errors shall not be a breach of this provision. OverDrive's sole obligation with regard to such errors shall be to use commercially reasonable efforts to correct such errors and provide Secondary Support as stated in this Agreement. Such services will be provided by phone or email. Such services will be provided at such times as are mutually agreed upon by the parties.

## **8. OVERDRIVE'S OPTION TO MODIFY OR DISCONTINUE APPLICATION SERVICES**

8.1 OverDrive has the right, at any time, to make such modifications to the Application Services as it sees fit to the operation, performance, or functionality of the Application Services or as required by OverDrive's suppliers.

8.2 OverDrive has the right, at any time, to discontinue distribution of any or all Application Services or versions of Application Services, to remove supported Application Services or versions of supported Application Services from OverDrive's supported Application Services list, or to discontinue support, maintenance, or the provision of new versions, updates, or corrections for any Application Services or for any version or for any hardware or Application Services platform or operating system. If such a discontinuance of distribution of the Application Services or of support, maintenance or the provision of new versions, updates, or corrections materially impairs the value of this Agreement to Library, Library shall have the option to terminate this Agreement and receive a pro-rata refund of any Application Service Fees paid; such option to terminate shall expire after sixty (60) days from the date notice of impairment is given.

## **9. WARRANTY**

9.1 OverDrive represents and warrants to Library that it has the necessary rights to enter into this Agreement and that it has the necessary ownership and intellectual property rights and licenses to the Application Services to grant the licenses herein. OverDrive warrants that the Application Services will operate as intended if properly used by Library and Patron. If any errors are discovered, Library shall promptly notify OverDrive in writing as to the description of the problem, whereupon OverDrive shall use reasonable efforts to correct such problems within a reasonable time thereafter. Corrections will be provided to Library with instructions for implementation. The remedies set forth in this Agreement shall be Library's sole remedies for breach of this Agreement.

9.2 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE RIGHTS AND REMEDIES GRANTED TO LIBRARY AND ITS PATRONS UNDER THIS PARAGRAPH CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF LIBRARY AND LIBRARY'S PATRONS AGAINST OVERDRIVE FOR BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR FOR ANY ERRORS OR DEFECTS IN THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE OR ITS SUPPLIERS BE LIABLE TO LIBRARY OR LIBRARY'S PATRONS 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, TRANSFER OR USE OF THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE'S LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE UNDER THIS AGREEMENT.

## **10. INDEMNIFICATION**

10.1 OverDrive agrees to indemnify Library against liability and expense, including reasonable attorney fees, arising from any breach of OverDrive's warranty that it has the required rights to the Application Services and that the Application Services does not infringe any ownership or intellectual property right of a third party, provided that OverDrive: (i) is notified immediately after Library receives notice of such claim; (ii) is solely in charge of the defense of and any settlement negotiations with respect to such claim; (iii) received Library's cooperation in the defense or settlement of such claim; (iv) has the right, upon either the occurrence of or the likelihood (in the opinion of OverDrive) of the occurrence of a finding of infringement, either to procure for Library the right to continue use of the Application Services, or to replace the relevant portions of the Application Services with other equivalent, non-infringing portions. If OverDrive is unable to accomplish either of the options set forth in (iv) above, at OverDrive's option OverDrive shall either remove the portion of the Application Services in issue and refund to Library the value of such portion, or remove the entire Application Services and refund to Library the entire amount paid pro-rata under this Agreement as it relates to the incident that gave rise to the claim.

10.2 OverDrive shall have no obligation to Library to defend or satisfy any claims made against Library that arise from use, marketing, licensing, or disposition of the Application Software by Library other than as permitted by this Agreement. OverDrive shall not be responsible to indemnify Library for claims arising from the use or license of third party software including DRM where OverDrive is not afforded such corresponding indemnification from said third party vendor. In the event a claim arises from use of non-OverDrive technology, where the vendor of such product or technology does not indemnify OverDrive, then OverDrive is not liable to extend indemnification under this section to Library for any such claims.

## **11. TERM AND TERMINATION**

11.1 This Agreement shall take effect on the Effective Date. Unless sooner terminated in accordance with the relevant provisions of this Agreement, or pursuant to the Early Termination provision of Schedule "A-2," the initial term of this Agreement shall be for three (3) years. The Agreement shall automatically renew for successive terms of twenty four (24) months unless either party provides written notice of intention not to renew ninety (90) days prior to the expiration of the then current term.

11.2 In the event of a filing by or against either party of a petition for relief under the United States Bankruptcy Code or any similar petition under the insolvency laws of any jurisdiction, where such filing is not dismissed within thirty (30) days after the date of the filing, or should Library discontinue the operations relevant to this Agreement, then the other party may immediately terminate this Agreement upon written notice.

11.3 In addition to provisions authorizing termination hereunder, 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.

11.4 Upon termination of this Agreement, and except as otherwise provided in this Agreement, the license granted to Library by this Agreement shall be terminated immediately; Library shall make no further use of all or any part of the Application Services, Content or any confidential information received from OverDrive.

11.5 The provisions of this Agreement concerning confidential information and indemnification shall survive the termination and/or expiration of this Agreement, and termination shall not relieve either party of the obligation to pay any amount due to the other.

## **12. GENERAL PROVISIONS**

12.1 Independent Contractor. OverDrive and Library are independent contractors under this Agreement and nothing in this Agreement authorizes either party to act as a legal representative or agent of the other for any purpose. It is expressly understood that this Agreement does not establish a franchise relationship, partnership, principal-agent relationship, or joint venture. Neither party shall have the power to bind the other with respect to any obligation to any third party. Each party is solely responsible for its employees, including terms of employment, wages, hours, required insurance, and daily direction and control.

12.2 Confidential Information. Both OverDrive and Library acknowledge that each will receive confidential information from the other relating to technical, Application Services and operational affairs of the other. Each party agrees that all confidential information of the other party shall be held in confidence and shall not be disclosed, notwithstanding any laws and regulations permitting public access to documents and information that are considered public.

12.3 Announcements. OverDrive and Library may issue, at a mutually agreed upon time and in a mutually agreed upon form, a public announcement relating to this Agreement. OverDrive and Library will each give the other party the opportunity to review and approve, in advance of its issuance, any public announcement or publicity relating to this Agreement or any aspect of the parties' relationship hereunder.

12.4 No Exclusivity. This Agreement is not exclusive and does not impose any obligation on either party with respect to competing relationships or opportunities.

12.5 No Waiver. The failure of either party to exercise any right or the waiver by 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.

12.6 Notice. All notices, requests, demands or other communications required to be given pursuant to the Agreement shall be in writing and shall be deemed to have been given, if sent by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the parties at their place of business or to such other addresses as the parties direct in writing. Notice to OverDrive shall be addressed to OverDrive at the address provided in the Introduction, Attention: President or to such person or to such address as OverDrive may designate. Notice to Library shall be

addressed to the address for Library in the Introduction to this Agreement, Attention to the individual signing on behalf of Library or to such person or to such address as Library may designate.

12.7 Force Majeure. Neither party shall be deemed in fault of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other causes beyond the control of such party provided that such party gives the other written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses its best efforts to cure the delay. In the event of such Force Majeure, the time of performance or cure shall be extended for a period equal to the duration of the Force Majeure but in no event shall exceed three (3) months.

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

12.9 Limitations of Liability. In the event of failure of either party to fulfill any of its obligations hereunder, the initial remedy of the other party under this Agreement shall be to request performance of such obligation. If such performance is not rendered, the other party may terminate the Agreement pursuant to Paragraph 11.3, and where appropriate, bring an action for any moneys due and payable hereunder for services rendered. However, either party shall be entitled to enforce its rights regarding patents, copyrights, trademarks, or trade names, by any appropriate action, including actions for damages and equitable relief.

12.10 Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information, use of OverDrive's and/or DLR's trademarks, copyright, and other intellectual property rights, and/or Non-competition, will not be adequate for OverDrive's protection, and accordingly OverDrive shall have the right to obtain, in addition to any other relief and remedies available to it, injunctive relief to enforce the provisions of this Agreement.

12.11 Severability. In the event that a court of competent jurisdiction determines that any portion of the Agreement is unenforceable, void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such invalid provisions were deleted.

12.12 All Disputes Arising From the Agreement. Any and all disputes with respect to the parties' dealings shall be governed and interpreted in accordance with the substantive law of the State of Ohio, United States of America.

12.13 Entire Agreement. This 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. This Agreement may be amended or modified only by a subsequent Agreement in writing signed by each of the parties and may not be modified by course of conduct.

12.14 Binding. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors. In the event OverDrive enters into an agreement to sell substantially all the assets of OverDrive, this agreement shall be binding upon the purchaser.

*[signature page follows]*

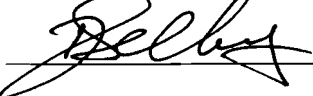
IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

Accepted and Agreed:

**OverDrive, Inc.**  
("OverDrive")  
8555 Sweet Valley Drive, Suite N  
Cleveland, Ohio 44125 USA

**BOARD OF COUNTY COMMISSIONERS, NASSAU COUNTY**  
**Nassau County Public Library**  
("Library")  
25 North 4th Street  
Fernandina Beach, Florida 32034USA

By (signature): 

By (signature): 

Name (Print): Etica Lazzaro

Name (Print): Ted Selby

Title: General counsel

Title: Interim County Manager

Date: 5-9-10

Date: 4/23/10

**Schedule "A-1"**  
**Digital Library Reserve**  
**Application Service and License Fee Schedule - (Content Service Plan)**

The following modules comprise Digital Library Reserve library services for library administration of a circulating digital content collection. All prices are in USD.

Application Service	Service Information	Setup and Configuration Fee	Application License and Hosting Fee
Digital Library Reserve Server (DLR-S)	DLR is the digital content repository and database established for each library. Included is support for delivery and fulfillment of Adobe software compatible with DRM-protected eBooks, Mobipocket PDA titles, and digital audio books. Includes associated copyright protection services (DRM). Included with this fee are all third party software and technology licenses. Services are hosted at the secure DLR hosting center. Access to library-managed services is accomplished via secure admin web services. The library utilizes a PC, Internet connection and Web browser (Internet Explorer 5.5 or higher) to administer its digital collection. No additional hardware or software is required by library.	Per Schedule A-2	Per Schedule A-2
DLR Opening Collection (DLR-OC)	The Opening Collection is comprised of the initial set of digital titles selected by the library for lending to its patrons.	Per Schedule A-2	
DLR Patron Website (DLR-PW)	This is the patron facing website that incorporates the library's look-and-feel. The Patron Website is a complete digital book center providing browsing, searching, promotional and checkout services for patrons to explore and download digital media to their own PC or mobile devices.	Included	
DLR Content Reserve Collection Access (DLR-CRCA)	This module enables the library collection staff to administer approval plans and development profiles to aid in building its digital content collection from Digital Library Reserve. Each account has access to digital media from leading publishers. Digital Library Reserve offers a large collection of best-selling popular, academic, business and educational titles.	Included	
DLR Patron Authentication Integration (DLR-PAI)	OverDrive personnel will work with library automation personnel to integrate its existing patron authentication system. Will support present library card, student ID, or other authentication to insure access of titles is limited to library patrons.	Initial integration of one ILS included	Subsequent integrations may be subject to additional fees
DLR OPAC Record Integration (DLR-OPAC)	OverDrive will assist Library to coordinate access to MARC records for integration into the library catalog for patron searching and direct access to eBook and audio book titles. Included in the record will be a direct link for patrons to view the eBook and audio book title and status for lending. MARC records are available for purchase by Library from OCLC.	MARC Records available for purchase from OCLC	
DLR Open Content Collection (DLR-OPC)	This module permits uploading digital content from other sources into the collection. This permits direct management of supported files and setting DRM to manage copyright protection and circulation of the title. This also enables the library to acquire eBooks and other documents directly from publishers and authors.	Included	
DLR Windows® Media Server (DLR-WMS)	Support for download or streaming of copyright protected digital audio and video using Microsoft® Windows® Media Series 9 and up. * OverDrive reserves the right to limit bandwidth and impose additional hosting fee charges.	Included*	Increased bandwidth subject to additional charges

**Schedule "A-2"**  
**Digital Library Reserve**  
**Content Service Plan Fee Schedule**

1. **Annual Application License and Hosting Fee:** Library shall pay OverDrive an Annual Fee of **\$10,000**. This includes all fees for all services including the DLR System License, configuration and customization of website services, third party software licenses, hosting and maintenance of the application services, training, plus the annual credit for digital content. OverDrive shall submit initial invoice to Library within thirty (30) days from the Effective Date of the Agreement.
2. **Annual Content Credit:** Under the terms of this Agreement, Library shall receive an Annual Content Collection Credit of \$5,000 (SRP) toward the selection of the digital titles. Anytime during the term of this Agreement Library may select additional titles and material subject to standard terms and pricing. Library shall make payments to OverDrive in U.S. funds for Content selections within thirty (30) days of presentation of invoice.
3. **Term:** The initial term of this Agreement shall be for three (3) years. The Agreement shall automatically renew for successive terms of twenty four (24) months unless either party provides written notice of intention not to renew ninety (90) days prior to the expiration of the then current term.
4. **Early Termination:** In addition to the provisions of this Agreement authorizing termination, Library shall have the option to terminate this Agreement without cause, after an initial term of eighteen (18) months from the Effective Date ("Early Termination"). Library shall provide OverDrive ninety (90) days prior written notice of termination. In the event Library exercises Early Termination, Library acknowledges that its access to the Application Services as well as any interest in the Content purchased shall terminate and Library shall make no further use of the Application Services and/or the Content.

**Schedule "B"**  
**Digital Library Reserve and Library Website Guidelines**

**1. Patron Support Resources**

Library will provide Primary Support for its Patrons via e-mail and/or by phone in direct support of all Patron inquiries, issues, and problems relating to the Library Website. Library will post on the Library Website OverDrive supplied Frequently Asked Questions (FAQs) and other support information and links to assist with providing Patrons with answers to frequently asked questions. Library will cooperate with OverDrive to implement practices as recommended by OverDrive to reduce the instances of Patron technical support issues.

**2. Copyright Protection, Patron Authentication and Data Security**

Library will take reasonable steps to prevent unwarranted intrusion into data managed or maintained by OverDrive or on behalf of Library and acquired in the course of Library's operation of Library's Application Services. This includes reasonable steps to protect its password and access to Library's administrative website for management of its Digital Library Reserve and Library Website.

For Digital Products and Content which Library acquires rights from OverDrive's Content Reserve for re-distribution and lending to Patrons, Library agrees to deploy the following practices and methods to respect the Copyright Protection and Patron Authentication terms of OverDrive's Publishers and suppliers:

- A. Library will respect and deploy the DRM protection settings as designated by Publisher that may restrict copying, sharing and/or printing.
- B. Library acknowledges that Digital Product titles selected will not entitle Library to access a copy of the title, but will enable its Library Website the right to provide download access to the title for their Patrons as fulfilled through the Application Services after the DRM services have been applied.
- C. Library is not granted any license to use titles for any "online" use, except for the display of Digital product cover art, excerpts and metadata as designated by Publisher and available from Content Reserve.
- D. Library will be allowed to loan to their patrons or "check-out" Digital Products or Content via a download link from the Library Website. Library acknowledges that all circulating Digital Products will have a predetermined period for an automatic self-expiring use period or "time-out", which shall not be less than seven (7) days or other minimum lending period as required by publishers and suppliers.
- E. A Digital Product in the Library's Website that is checked out by a Patron will not be available for another Patron to check out unless multiple copies of the title have been selected by Library, or until the expiration period of the first Patron's time period has expired.
- F. Library will take reasonable measures to ensure that only authorized Patrons of their Library have access to the Library Website for access to Digital Products or Content.
- G. Access to the Application Services shall be limited to Authorized Patrons. Authorized Patrons will be defined as those Patrons of the library that have the required relation to the Library to receive a library card.

**3. Third Party Logo and Trademark Use Guidelines**

Library acknowledges that its Library Website will utilize and rely upon third party software and technologies provided by OverDrive, Microsoft Corporation, Adobe Systems, Inc., and other technology suppliers. OverDrive shall provide to Library the applicable guidelines for utilizing the registered trademarks, logos, and software products associated with Library's operation of the Library Website. Library agrees to abide by the terms and conditions of these third party suppliers. OverDrive will provide to Library all necessary links, art, logos and instructions to permit Library to comply with this provision.