

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, RATIFYING CONTRACT AMENDMENT NO: 01 WITH OVERDRIVE, INC, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE CONTRACT AMENDMENT NO: 02 TO INCREASE THE ANNUAL MAXIMUM COMPENSATION TO \$250,000 UNDER THE SOLE/SINGLE SOURCE AGREEMENT NO: 20-20 WITH OVERDRIVE, INC.

RECITALS

WHEREAS, on July 01, 2020, the County entered into an agreement, with Overdrive for purchase of eBook/eAudiobook platform materials for St. Johns County Libraries under a single/sole source posting, which received no competitive or contending responses; and

WHEREAS, in 2023, County Staff and Overdrive agreed to change the renewal period from two years to five years, due to the continue increase in demand for these services. Additionally, as the demand for digital library resources continues to grow, the SJC Library Services has requested for the annual amount available for this contract be increased to \$250,000 per year, as budgeted, to meet the demands of its customers; and

WHEREAS, a subsequent single/sole source notice was posted in order to comply with Florida Statute and County Ordinance, with no contenting responses being received; and

WHEREAS, the services are currently budgeted and are intended to be funded annually by the SJC Library Services Department; and

WHEREAS, the County finds that ratifying Amendment No: 01 and executing Amendment No: 02 serves a public purpose;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. Upon approval by the Board of County Commissioners, Contract Amendment No: 01 is hereby ratified to exercise a five (5) year extension of the Contract, through July 1, 2028.

Section 3: Additionally, upon Board approval, the County Administrator, or designee, is hereby authorized to issue and execute Contract Amendment No: 02, increasing annual not-to-exceed to \$250,00.00 for the remaining contract term of four (4) years of the contract term.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 3rd day of September, 2024.

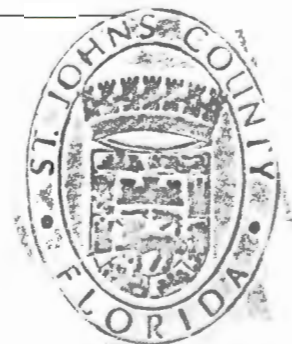
BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: [Signature]  
Sarah Arnold, Chair

ATTEST: Brandon J. Patty,  
Clerk of the Circuit Court & Comptroller

By: [Signature]  
Deputy Clerk

Rendition Date SEP 03 2024





**CONTRACT AMENDMENT NO: 02**

SS 20-20 No. 02; OverDrive eBook Audiobook Platform and Materials  
Master Contract No: 20-SA-OVE-11950

June 20, 2024

OverDrive, Inc.  
1 OverDrive Way  
Cleveland, OH 44125

Contract Amendment No: 02 is hereby issued to amend the above referenced Master Contract as follows:

1. Increase the maximum compensation amount by One Hundred Thirty-Nine Thousand Dollars (\$139,000.00) for the purchase of ebooks and digital content, which revises the maximum compensation to Two Hundred Fifty Thousand Dollars (\$250,000.00) per year for the remainder of the Contract Term.
2. No other changes are granted for this Amendment.

St. Johns County shall compensate the vendor based upon the terms as stated in the Master Contract dated July 1, 2020, as amended thereafter.

With the exception of the amendments, changes, modifications and revisions noted in this Amendment, all other terms and conditions contained in the Master Contract, as previously amended, shall remain in full force and effect. The County and the Contractor acknowledge that any further changes, amendments, modifications or revisions to the Contract shall be in writing and executed by duly authorized representatives of each party.

In Witness Whereof, authorized representatives of the County and Contractor have executed this Amendment on the dates below noted.

\_\_\_\_\_  
Signature of County Representative

\_\_\_\_\_  
Date

Jaime Locklear, Purchasing Director  
Printed Name & Title – County Representative

\_\_\_\_\_  
Signature of Consultant Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

**End of Amendment No: 02**



## NOTICE OF SINGLE OR SOLE SOURCE PROCUREMENT

St Johns County, FL  
Purchasing Division  
500 San Sebastian View  
St. Augustine, FL 32084  
Office: (904) 209-0150

**Sole/Single Source No: SS No: 20-20R**

**Date Posted: Friday, July 15, 2024**

**Written Response due: Monday, August 5, 2024 1:00 PM EST**

---

### **RESPONSES SUBMITTED TO:**

**Name: Kayla Miller, Procurement Coordinator**

**Email Address: [kmiller@sjcfl.us](mailto:kmiller@sjcfl.us)**

**Phone Number: 904-209-0164**

---

This is NOT a formal solicitation (RFB, RFP, RFQ) and there are no solicitation documents available. A contract or purchase order is proposed for the product(s) or service(s) identified below. St Johns County, FL, intends to negotiate and award a PO or contract to the Supplier indicated in accordance with Florida State Statute 287.057(5)(c) and 120.57(3). Any responses received as a result of this Notice shall be considered solely for the purpose of determining whether an equivalent product or service can be provided by alternative source(s), which may warrant a competitive solicitation. Responses will NOT be considered as proposals, bids or quotes.

**PRODUCT/SERVICE REQUIRED:** OverDrive, Inc.

### **DESCRIPTION:**

OverDrive uniquely provides a series of services and digital content materials that enable public libraries to lend popular audiobooks, eBooks, streaming video, magazines and other digital content via the library's website on a single platform. Uniquely available only from OverDrive as a sole source provider, they offer a system that combines:

- A customized website service for accessing and downloading digital materials integrated with the library's ILS system for real-time patron authentication

**Purchasing Division**  
500 San Sebastian View, St. Augustine, FL 32084  
904.209.0150 | [sjcfl.us](http://sjcfl.us)



- OverDrive is the only digital library vendor selling high quality fixed format and read-along ePUB3 content from top trade houses
- 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'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 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, Nooks, Windows Mobile, as well as all generations of Amazon Kindle (*exclusive to OverDrive*)
- OverDrive's proprietary browser-based formats (OverDrive Read and OverDrive Listen) are the industry's only browser-based formats that are able to 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
- OverDrive apps for Windows and MACs, a single integrated desktop client software application for use of download audiobooks, music and video
- Download audiobooks with accessibility features for the blind and visually impaired
- OverDrive MP3 Audiobooks compatible with MAC/OS, iPods and other Apple devices

**INTENDED SOLE/SINGLE SOURCE CONTRACTOR/VENDOR:** OverDrive, Inc.

**PROPOSED COST:** \$111,000.00 annual for 4 years

**PROPOSED CONTRACT/PURCHASE TERM:** Intent is for Agreement to continue renewal period of 4 years.

**JUSTIFICATION FOR SOLE/SINGLE SOURCE:**

Preferred vendor due to being sole provider to libraries for the following services: OverDrive uniquely provides a series of services and digital content materials that enable public libraries to

**Purchasing Division**

500 San Sebastian View, St. Augustine, FL 32084  
904.209.0150 | sjcfl.us



lend popular audiobooks, eBooks, streaming video, magazines and other digital content via the library's website on a single platform.

**RESPONSE TO SOLE/SINGLE SOURCE:**

Suppliers who are capable of providing an equivalent product and/or service as stated herein may submit the following, in writing: Company Name, address, point of contact, contact information (phone #, email, etc.) and statement, description and/or capability to provide an equivalent product/service. Responses shall be submitted to the Point of Contact shown above, by or before the due date provided herein. Responses received after the provided due date shall not be considered.

**ATTACHMENTS:** N/A

**Purchasing Division**  
500 San Sebastian View, St. Augustine, FL 32084  
904.209.0150 | sjcfl.us



# St. Johns County Board of County Commissioners

Purchasing Division

### CONTRACT AMENDMENT No: 01

SS 20-20 No. 01; OverDrive eBook Audiobook Platform and Materials Master  
Master Contract No: 20-SA-OVE-11950; OverDrive Digital Library Reserve Order Form  
("Master Contract")

February 2, 2023

OverDrive, Inc.  
One OverDrive Way  
Cleveland, Ohio 44125

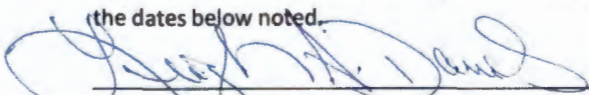
Contract Amendment No: 01 is hereby issued to extend the above referenced Master Contract as follows:


1. Contract Extension is hereby being exercised by St. Johns County ("County").
2. The Master Contract is hereby extended for a period of five (5) years, from July 1, 2023 through and until 11:59pm Eastern Daylight-Saving Time (EDST) on June 30, 2028.
3. No increases to the Master Contract are granted by this Amendment.
4. This Contract Amendment shall become effective upon signature by all parties, and shall be in effect for a contract term of five (5) years, commencing on July 1, 2023 through June 30, 2028.
5. Total Annual Materials Circulations: 1,103,491 Print + 325,696 Electronic = 1,434,187 for fiscal year 2022.

St. Johns County shall compensate OverDrive, Inc. ("Contractor") based upon the terms as stated in the Master Contract executed by and between Contractor and St. Johns County Public Library on July 1, 2020. For the avoidance of doubt, the Annual Fee will be invoiced each year of the five (5) year term, commencing on July 1, 2023 through June 30, 2028.

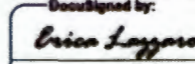
With the exception of the amendments, changes, modifications and revisions noted in this Amendment, all other terms and conditions contained in the Master Contract, as previously amended, shall remain in full force and effect. The County and the Contractor acknowledge that any further changes, amendments, modifications or revisions to the Master Contract shall be in writing and executed by duly authorized representatives of each party.

In Witness Whereof, authorized representatives of the County, and Contractor have executed this Amendment on the dates below noted.

  
\_\_\_\_\_  
Signature of County Representative

  
\_\_\_\_\_  
Date

Leigh A. Daniels CPPB, Purchasing Manager  
Printed Name & Title – County Representative

DocuSigned by:  
  
\_\_\_\_\_  
Signature of Contractor Representative

2/7/2023  
\_\_\_\_\_  
Date

Erica Lazzaro Executive Vice President, Publisher Services & General Counsel  
\_\_\_\_\_  
Printed Name & Title

End of Amendment No: 01

ST JOHNS COUNTY  
FEB 08 '23  
PURCHASING



### OverDrive® Digital Library Reserve Order Form

Library Information	
Name of Library: St. Johns County Public Library	
Address: 6670 US 1 South	
City, State/Province, Postal Code: St. Augustine, FL 32086	Country: USA
Total Annual Materials Circulations: 1,364,507 Print + 234,695 Electronic =1,599,202 for fiscal year October 2018-2019	
Primary Contact	
Name: Jae Bass	Title: Technical Services Manager
Telephone: (904)827-6924	Email: jbass@sjcfl.us
Accounting Contact (all invoices will be emailed to the contact listed below):	
Name: Keith Dembek	Title: Acquisitions Librarian
Telephone: (904) 827-6922	Email: kdembek@sjcfl.us
Bill To Address: 6670 US 1 South	
City, State/Province, Postal Code: St. Augustine, FL 32086	Country: USA

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 \$11,000 (USD) within thirty (30) days from the Effective Date of this Order Form. The Annual Fee includes an allocation of \$5,000 (USD) to use toward the selection of Digital Content. The County shall compensate OverDrive for ebooks and digital content purchased à la carte ranging between \$1 – 115, with the average price being \$20. The maximum amount available as compensation to OverDrive under this Agreement shall not exceed one hundred eleven thousand dollars (\$111,000.00) annually. All payments to OverDrive are due within thirty (30) days of presentation of invoice.

#### OverDrive Terms and Conditions:

The initial term of this Agreement shall be for three (3) years, commencing on July 1, 2020, with one (1) two (2) year renewal option, upon mutual agreement by both 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.

This Order Form and The Rider 1 supersede and replace the Digital Library Reserve Content Service Plan Application Services Agreement signed by and between Library and OverDrive on June 13, 2011.

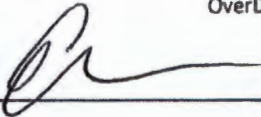
#### Acknowledgement and Acceptance:

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. IN WITNESS THEREOF, the parties have executed this Agreement as the Effective Date.

St. Johns County Representative: (signature) Leigh A. Daniels Title Assistant Purchasing Manager

Name (Print) Leigh A. Daniels Effective Date July 1, 2020

OverDrive Representative: (signature)



Title EVP + General Counsel

Name (Print) Erica Lazzaro

Effective Date July 1, 2020

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

<b>Collection</b>
Annual Collection Credit
Thousands of classic eBooks from Project Gutenberg – free
Web-based staff training to use collection development tools in OverDrive’s Marketplace catalog of 700,000+ popular & educational eBooks, audiobooks, & video
<b>Services</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>Technology</b>
OverDrive apps for eBooks, audiobooks, 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

ST JOHNS COUNTY

MAY 12 '20

PURCHASING

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!



## RIDER 1

### St. John's County Supplemental Terms and Conditions

1. The following St. Johns County Supplemental Terms and Conditions are hereby incorporated into the OverDrive Digital Library Reserve Order Form between St. Johns County, FL ("County") and OverDrive, Inc. ("OverDrive") as Rider 1. In the event of a conflict or inconsistency between this Rider 1 and the OverDrive Digital Library Reserve Order Form, the provisions of Rider 1 shall prevail. The parties agree as follows:
2. Compensation:
  - A. The County shall compensate OverDrive an annual amount of eleven thousand dollars (\$11,000.00), which shall be paid in advance each year and includes an allocation of five thousand dollars (\$5,000.00) to use toward the selection of Digit Content, for services to be provided in accordance with the mutually agreed to OverDrive Digital Library Reserve Order Form and this Rider 1. The County shall compensate OverDrive for ebooks and digital content purchased à la carte ranging between \$1 – 115, with the average price being \$20. The maximum amount available as compensation to OverDrive under this Agreement shall not exceed one hundred eleven thousand dollars (\$111,000.00) for the first year, and one hundred eleven thousand dollars (\$111,000.00) each additional year which shall be the amount budgeted by the St. Johns County Library Department for services delivered in accordance with the Contract Documents.
  - B. It is strictly understood that OverDrive is not entitled to the above-referenced amount of compensation. Rather, OverDrive's compensation shall be based upon OverDrive's providing the Services, detailed in the Contract Documents, which are not the subject of a good faith dispute.
  - C. The County reserves the right to pro-rate or refuse payment of any submitted invoice where services were not performed in accordance with the terms of the Contract Documents.
3. Availability of Funds.

The County's obligations under this Agreement are subject to the availability of lawfully appropriated funds. While the County will make all reasonable efforts, in order to provide funds needed to perform under this Agreement, (and the County agrees that it shall not execute and submit an Order Form for the purchase of any products or services from OverDrive unless it has properly secured funding for such purchase), the County makes no express commitment to provide such funds in any given County Fiscal Year. Moreover, it is expressly noted that OverDrive cannot demand that the County provide any such funds in any given County Fiscal Year.
4. Permits and Licenses.

To the extent that OverDrive needs to obtain/require, and maintain permits, certifications, and/or licenses, in order to perform the Services noted in this Agreement, then OverDrive shall be responsible for securing, obtaining/acquiring, and maintaining, at OverDrive's sole expense, any, and all, permits, certifications, licenses, and/or approvals required by Federal, State, and/or County law, rule, regulation, or ordinance.
5. Independent Contractor Relationship.

OverDrive is, and shall be, in the performance of all work services and activities under this Contract Agreement, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to OverDrive's sole direction, supervision, and control.

OverDrive shall exercise control over the means and manner in which it and its employees perform the work, and in all respects OverDrive's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. OverDrive does not have the power or

authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

**6. Amendments to this Contract Agreement.**

Both the County and OverDrive acknowledge that this Agreement constitutes the complete agreement and understanding of the parties. Further, both the County and OverDrive acknowledge that any change, amendment, modification, revision, or extension of this Agreement (other than termination, as noted elsewhere in this Agreement) shall be in writing, and shall be executed by duly authorized representatives of both the County, and OverDrive.

**7. Duration & Renewal.**

This Agreement shall become effective upon signature by all parties, shall be in effect for an initial contract term of three (3) calendar years, commencing on July 1, 2020, with one (1) two (2) year renewal option, upon satisfactory performance by OverDrive, mutual agreement by both parties, and the availability of funds. While this Agreement may be renewed as stated in this Article, it is expressly noted that St. Johns County is under no obligation to renew or extend this Agreement. It is further expressly understood that the option of renewal is exercisable only by St. Johns County, and only upon the County's determination that OverDrive has satisfactorily performed the Services noted in the Contract Documents.

**8. Public Records**

- A.** The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.
- B.** In accordance with Florida law, to the extent that OverDrive's performance under this Agreement constitutes an act on behalf of the County, OverDrive shall provide access to all public records made or received by OverDrive in conjunction with this Agreement. Specifically, if OverDrive is expressly authorized, and acts on behalf of the County under this Agreement, OverDrive shall:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services described herein;
  - (2) Provide the public with access to public records related to this Agreement on the same terms and conditions that the County would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida States, or as otherwise provided by applicable law;
  - (3) Ensure that public records related to this Agreement that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and
  - (4) Meet all requirements for retaining public records, and transfer at OverDrive's sole cost and expense, all public records in the possession of OverDrive upon termination of this Agreement. OverDrive shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements in accordance with applicable State and Federal provisions. Any public records stored electronically must be provided to the County in a format that is compatible with information technology systems maintained by the County.
- C.** Failure by OverDrive to grant such public access shall be grounds for immediate, unilateral termination of this Agreement by the County. OverDrive shall promptly provide the County notice of any request to inspect or copy public records related to this Agreement in OverDrive's possession and shall promptly provide the County a copy of OverDrive's response to each such request.

7. Severability.

If any word, phrase, sentence, part, subsection, section or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement/Contract, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

8. Termination.

This Agreement may be terminated by the County without cause upon at least thirty (30) calendar days advance written notice to OverDrive of such termination without cause. This Agreement may be terminated by the County with cause provided that OverDrive does not cure such deficiency within thirty (30) days of written notice by County of OverDrive's breach. Such written notice shall indicate the exact cause for termination.

9. Notice of Default / Right to Cure

- A. Should OverDrive fail to perform (default) under the terms of this Agreement, then the County shall provide written notice to OverDrive, which such notice shall include a timeframe of no fewer than five (5) consecutive calendar days in which to cure the default. Failure by OverDrive to cure the default, or take acceptable corrective action within the timeframe provided in the notice of default (or any such amount of time as mutually agreed to by the parties in writing), shall constitute cause for termination of this Agreement.
- B. It is expressly noted that, should the County issue more than one notice of default to OverDrive during the term of this Agreement, such action shall constitute cause for termination of this Agreement.
- C. Consistent with other provisions in this Agreement, OverDrive shall be paid for Services authorized and due under this Agreement signed between the parties. If the County terminates because of an OverDrive breach, OverDrive will refund any unused and prepaid fees. If the County terminates without cause, OverDrive will not refund any prepaid fees.
- D. Upon receipt of notice of termination, except as otherwise directed by the County in writing, OverDrive shall:
  - 1. Stop work on the date to the extent specified.
  - 2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
  - 3. This not a works for hire arrangement. Customer is not receiving any work product from OverDrive.
  - 4. Continue and complete all parts of the work that have not been terminated.

10. Personnel.

OverDrive represents that it has, or shall secure at its own expense, all necessary personnel required to perform the Services as noted in the Contract Documents. It is expressly understood that such personnel shall not be employees of, or have any contractual relationship with the County. All of the Services required hereunder shall be performed by OverDrive, or under its supervision. All personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under federal, state and local law to perform such Services. Any changes or substitutions in OverDrive's key personnel must be made known to the County's representative and written approval granted by the County before said change or substitution can become effective. OverDrive warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

11. Subcontracting.

The County reserves the right to approve the use of any subcontractor, or to reject the selection of a particular subcontractor to perform any Implementation Services work described in the Contract Documents. OverDrive is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a

subcontractor fails to satisfactorily perform in accordance with the Contract Documents, and it is necessary to replace the subcontractor to complete the Implementation Services work in a timely fashion, OverDrive shall promptly do so. The County reserves the right to disqualify any subcontractor, vendor, or material supplier based upon prior unsatisfactory performance.

**12. Governing Law and Venue.**

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

**13. Insurance.**

OverDrive, at its sole expense, shall secure and maintain insurance coverage in the types and amounts provided in the attached Insurance Requirements for the duration of this Agreement.

OverDrive shall not commence work under this Agreement until it has obtained all insurance required under this section. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. OverDrive shall furnish proof of Insurance to the County prior to the commencement of operations. The Certificate(s) shall clearly indicate OverDrive has obtained insurance of the type, amount, and classification as required by contract and that it will provide written notice within thirty (30) days of a material change or cancellation of the insurance. Compliance with the foregoing requirements shall not relieve OverDrive of its liability and obligations under this Agreement.

Certificate Holder Address:

St. Johns County, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084

OverDrive shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate to protect OverDrive from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by OverDrive or by anyone directly employed by or contracting with OverDrive.

OverDrive shall maintain during the life of this Agreement, Technology Errors & Omissions/Professional Liability with minimum limits of \$3,000,000 per occurrence and aggregate. The Technology Errors & Omissions/Professional Liability Insurance shall cover OverDrive and third parties, at a minimum, the following: Liability for Technology Products/Services, Data Breach, Media Content, Privacy Liability, and Network Security. Coverage retro date shall be prior to commencement of job.

OverDrive shall maintain during the life of this Agreement, Cyber Liability & Data Storage Insurance or Umbrella/Excess Liability with minimum limits of \$2,000,000 per occurrence, \$3,000,000 aggregate. The Cyber Liability Insurance shall cover, at a minimum, the following: Data Loss and System Damage Liability; Security Liability; Privacy Liability; and Privacy/Security Breach Response Coverage, including Notification Expenses. The Cyber Liability Insurance may be included as part of the Professional Liability Insurance required above.

OverDrive shall maintain during the life of this Agreement, Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect OverDrive Group, Inc from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned vehicles, including rented/hired automobiles whether such operations be by OverDrive or by anyone directly or indirectly employed by a OverDrive.

OverDrive shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as is required by the law for all of its employees per Florida Statute 440.02.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

14. Indemnification.

OverDrive shall indemnify, defend and hold harmless the County and its officers and employees from claims, liabilities, damages, losses, and costs, including court costs, expert witness and professional consultation services, and attorneys' fees, arising out of OverDrive's errors, omissions, or negligence. OverDrive shall not be liable to, nor be required to indemnify the County for, any portions of damages arising out of any error, omission, or negligence of the County or its officers and employees.

15. Successors & Assigns.

The County and OverDrive each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor OverDrive shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other, which consent not to be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and OverDrive.

16. Remedies.

Unless expressly stated, no remedy herein conferred upon any party is intended to be exclusive, or any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or nor or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees as may be awarded by a court of competent jurisdiction.

17. Conflict of Interest.

OverDrive represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of services required hereunder. OverDrive further represents, to the best of its knowledge, that no person having any interest shall be employed for said performance. OverDrive shall promptly notify the County in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence OverDrive's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that OverDrive may undertake and request an opinion of OverDrive, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by OverDrive. The County agrees to notify OverDrive of its opinion by certified mail within 30 days of receipt of notification by OverDrive. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by OverDrive, the County shall so state in the notification and OverDrive shall, at his/her option enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by OverDrive under the terms of this Contract Agreement.

18. Excusable Delays.

OverDrive shall not be considered in default by reason of any delay in performance if such delay arises out of

causes reasonably beyond OverDrive's control and without fault or negligence. Such cases may include, but are not limited to: acts of God; the County's omissive and commissive failures; natural or public health emergencies; freight embargoes; and severe weather conditions. If delay is caused by the failure of OverDrive's subcontractor(s) to perform or make progress, and if such delay arises out of causes reasonably beyond the control of OverDrive and its subcontractor(s) and is without the fault or negligence of either of them, OverDrive shall not be deemed to be in default. Upon OverDrive's request, the County shall consider the facts and extent of any delay in performing the work and, if OverDrive's failure to perform was without its fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the County's right to change, terminate, or stop any or all of the Work at any time.

19. Arrears.

OverDrive shall not pledge the County's credit, or make it a guarantor of payment, or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. OverDrive further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. Ownership of Documents.

OverDrive acknowledges that all information provided by County to OverDrive shall remain solely and exclusively owned by County. Finished and unfinished documents or materials prepared by OverDrive under this Agreement remains the property of OverDrive. OverDrive is granting County a license to use the software applications and any documents developed and/or produced in connection with that license, and subject to the software license agreement; such licenses contain confidential or proprietary information and shall remain the property of OverDrive. The rights County will receive under the license agreement are rights to use the OverDrive software license applications and related materials. County is not entitled to any rights to the title or ownership of any source code, object code, design and design documents, flow charts and/or specifications, or any work product produced by OverDrive, such as reports, schedules, displays, exhibits, other documentation, etc. OverDrive claims all rights to its proprietary and confidential information including, but not limited to, its pricing, terms, conditions, specifications, software documentation, the OverDrive terms, and Services Scope Statement, Professional Services Work Order or Statement of Work, or any other similar document.

21. Contingent Fees.

OverDrive warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OverDrive to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for OverDrive, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

22. Access & Audits.

OverDrive shall maintain adequate records to justify all charges, expenses, and costs paid by County under this Agreement for at least three (3) years after completion of this Agreement. The County shall have access to such OverDrive books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the County's cost, upon ten (10) days written notice.

23. Nondiscrimination.

OverDrive warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age or national origin.

24. Entirety of Contractual Agreement.

The County and OverDrive agree that this Agreement, signed by both parties sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein, or are incorporated by

reference into this Agreement. None of the provisions, terms, conditions, requirements, or responsibilities noted in this Agreement may be amended, revised, deleted, altered, or otherwise changed, modified, or superseded, except by written instrument, duly executed by authorized representatives of both the County, and OverDrive.

**25. Enforcement Costs.**

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses even if not taxable as court costs (including, without limitation, all such reasonable fees, costs and expenses incident to appeals), incurred in that action or proceedings, in addition to any other relief to which such party or parties may be entitled, and if awarded by a court of competent jurisdiction.

**26. Authority to Practice.**

OverDrive hereby represents and warrants that it has and shall continue to maintain all license and approvals required to conduct business, and that it shall at all times, conduct its business activities in a reputable manner.

**27. Severability.**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such items or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**28. Florida Law & Venue.**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in St. Johns County, Florida.

**29. Arbitration.**

Neither party shall be obligated to arbitrate or permit any arbitration with respect to resolving any disputes under any of the Contract Documents or in connection with the project in any manner whatsoever.

**30. Notices.**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

St. Johns County Purchasing Department  
Attn: Leigh A. Daniels, Assistant Purchasing Manager  
500 San Sebastian View  
St. Augustine, FL 32084

and if sent to OverDrive, Inc. shall be mailed to:

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

**31. Headings.**

The heading preceding the articles and sections herein are solely for convenience of reference and shall not constitute a part of this Agreement, or affect its meaning, construction or effect.

**32. No Third Party Beneficiaries.**

Both the County and OverDrive explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

**33. Use of County Logo.**

Pursuant to, and consistent with, St. Johns County Ordinance 92-2 and Administrative Policy 101.3, OverDrive may not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal/Logo without express written approval of the Board of County Commissioners of St. Johns County, Florida.

**34. Survival.**

It is explicitly noted that the following provisions of this Agreement, to the extent necessary, shall survive any suspension, termination, cancellation, revocation, and/or non-renewal of this Agreement, and therefore shall be both applicable and enforceable beyond any suspension, termination, cancellation, revocation, and/or non-renewal: (1) Truth-in-Negotiation; (2) Federal and State Taxes; (3) Insurance; (4) Indemnification; (5) Access and Audits; (6) Enforcement Costs; and (7) Access to Records.