

## **CONTRACT NAME: AGREEMENT BETWEEN OVERDRIVE, INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is an amendment to the agreement approved at the September 15, 2016 BOE meeting. This amendment will allow more schools to take advantage of the service between OverDrive, Inc. and DJUSD to provide a digital management system for students to access ebooks, audiobooks, music and video titles. Librarians will work with OverDrive to design a plan that allows students to see online publications of their texts and to read non-fiction and fiction publications.

The purpose of this system is to build a more robust library and to allow staff access to titles which will allow them to teach the same works simultaneously in lieu of a hard copy rotation.

The additional cost of this service is \$2,310 and will be funded with the allocated library budgets of participating schools. No additional funding is being requested.



## School Digital Library Order Form

### School Information

Name of School (Building) or District: Davis Joint School District (SDL Service for Full District Use)

Address: 526 B Street

City/State/Zip Code: Davis, CA 95616

### Primary Contact

Name: Marcia Bernard

Title: Director of Instructional Technology and Learning

Telephone: 530-757-5300

Email: [mbernard@djsd.net](mailto:mbernard@djsd.net)

### Accounting Information

Name:

Title:

Telephone:

Email:

Bill To Address:

City/State/Zip Code:

### Annual Fee

Period of SDL Service	Annual Fee
Initial Term	<b>\$ 9,309.68 (includes \$9,309.68 content credit)</b> OverDrive acknowledges School Account has previously been invoiced an Annual Fee of \$7,000 and has paid \$5,000 of that invoice. OverDrive shall invoice \$4,309.68 (\$1,000 to Chavez Elementary, \$1,000 to Holmes Jr. High, \$1,500 to Patwin Elementary, and \$809.68 to Harper Jr. High) upon receipt of signed Order Form
All subsequent 12-month renewal Terms	<b>\$4,000 (includes \$4,000 content credit)</b>

### Term Length

Initial Term of SDL Service under this Agreement shall be for a twelve (12) month term, effective upon launch of SDL Website. Any and all subsequent renewal terms shall be for a twelve (12) month period following the then-current term.

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.

#### **Terms and Conditions:**

- OverDrive® products and services for schools are licensed pursuant to the OverDrive School Digital Library Access Agreement, the terms of which are attached hereto and incorporated herein.
- The Annual Fee is non-refundable. The remaining portion of the Annual Fee will be invoiced upon receipt of signed order form.
- At the start of the Initial Term, this School Digital Library Order Form shall supersede and replace the School Digital Library Order Form executed by School Account on September 16, 2016.

#### **Acknowledgement and Acceptance:**

On behalf of my institution, my signature below indicates acceptance of the OverDrive School Digital Library Access Agreement, as well as my authority to enter into a legally binding agreement.

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

Name (Print) \_\_\_\_\_ Date \_\_\_\_\_

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

#### **Service Features included with Annual Fee:**

**Collection**

- Custom collection
  - Annual Collection Credit to select from OverDrive's "Marketplace" catalog of 500,000+ eBooks, audiobooks, & video.
  - Selections may be made by title or via convenient lists by grade, reading level and subject.
- Thousands of free classic eBooks

**Services**

- Reporting module
- Authentication options
- Live, web-based staff training
  - Group sessions
    - Collection development tools and purchasing
    - Service overview covering basics about your new service and preparing staff for user questions
  - Additional sessions, other topics and customized training for your school on an as-needed basis
- Online Learning Center with recorded presentations and promotional & educational materials
- Marketing resources and templates to promote service to faculty & students
- Maintenance, hosting & support services
- Secondary user support

**Technology**

- Secure website with custom collection
- OverDrive apps for eBooks, audiobooks, music & video
- Compatibility with Kindle® (Available in the U.S. Only), Nook® and iPad®, plus all major devices
- Configuration and third-party licenses fees for digital rights management

*If you have any questions, please contact the OverDrive Sales team at +1 216-573-6886 or [sales@overdrive.com](mailto:sales@overdrive.com).*

## School Digital Library Access Agreement

OverDrive, Inc. and its affiliates (“OverDrive”, “we”, “us”, or “our”) provides digital content, software applications, technology services and hosted websites for third parties, including entities or institutions that subscribe to OverDrive’s School Digital Library service (“School Account”). This Access Agreement (“Agreement”) applies to School Account’s use of the OverDrive-hosted websites, applications, software, technologies and services related to the School Digital Library (collectively referred to as “SDL Service”).

By accessing and/or using the OverDrive SDL Service, School Account agrees to be legally bound by this Agreement, our [Terms and Conditions](#), general [Privacy Policy](#), [Privacy Policy for Children](#), and the [OverDrive Marketplace Local Content Terms and Conditions \(if applicable\)](#) which are expressly incorporated herein by reference and made a part of this Agreement. The terms and conditions in this Agreement and all incorporated agreements, terms, and policies take precedence over any and all School Account terms and conditions listed on purchase orders or other School Account documents sent to OverDrive.

### 1. SDL Service License

1.1 OverDrive grants School Account and authorized employees, staff, students, and other users that School Account authorizes to access, use, and connect to the SDL Service (collectively “End Users”) a limited, revocable, non-exclusive, non-transferable license to access and make personal non-commercial use of the SDL Service. OverDrive reserves the right to prohibit any conduct involving the SDL Service, including but not limited to School Account allowing unauthorized access to the SDL Website, that it deems to be in violation of this Agreement in its sole reasonable discretion. If OverDrive makes the determination that any prohibited conduct in violation of this Agreement has occurred, OverDrive may take all necessary remedial measures, up to and including requiring the School Account to use an alternative authentication method to access the SDL Service and/or termination of this Agreement.

1.2 School Account and/or End Users shall not copy, rent, lease, sell, repair, transfer, assign, sublicense, disassemble, reverse engineer or decompile, modify or alter the SDL Service including, but not limited to, translating or creating derivative works of any portion of the SDL Service without the prior written consent of OverDrive and/or its suppliers.

### 2. Digital Content License

2.1 OverDrive grants School Account and End Users a non-assignable, non-transferable, limited license to use the digital content provided by OverDrive’s suppliers (“Digital Content”) for personal, non-commercial use.

2.2 End Users and/or School Account may access and/or download the Digital Content:

- (a) On school-issued devices or school computers with exclusive and individual unique user accounts. This restriction is not applicable End Users and/or School Accounts while accessing the K5 Quickstart package;
- (b) On school-issued, shared devices that are issued to students under a one-to-one device program where each device is assigned to or borrowed by a single student at a time;
- (c) On school-issued devices which are circulated in accordance with the [OverDrive Test Drive](#) program;
- (d) On End User personal devices directly;
- (e) On shared school, classroom or media center computers which employ an application that restores the computer to its original configuration after use by an individual student (e.g. Deep Freeze, Windows

SteadyState, or other similar application). This restriction is not applicable End Users and/or School Accounts while accessing the K5 Quickstart package; or

(f) For any use consistent with the relevant fair use doctrine or similar law in your jurisdiction, which may include projecting Digital Content on a classroom whiteboard, Smart Board, or other similar technology, or listening and/or watching Digital Content in the classroom.

2.3 School Account shall not access or download Digital Content on any school media center, classroom computer, library device or any other school-issued device that multiple End Users may access under a single log-in or account unless the computer or device is restored to its original configuration after each use or the device is circulated in accordance with the OverDrive Test Drive program. This restriction is not applicable End Users and/or School Accounts accessing the K5 Quickstart package

2.4 School Account and/or End Users may copy, transfer and burn the Digital Content only for personal, non-commercial use where permitted. OverDrive reserves the right to prohibit any conduct involving Digital Content that it deems in violation of this Agreement in its sole reasonable discretion.

2.5 Unless otherwise permitted, School Account and/or End Users shall not redistribute, repackage, transmit, assign, sell, broadcast, publicly display, rent, share, lend, modify, extract, reveal, adapt, edit, sub-license and/or otherwise transfer or misuse the Digital Content. All rights, title, and interest in the Digital Content are reserved by its owners and School Account and/or End Users do not acquire any ownership rights in the Digital Content as a result of downloading and/or accessing the Digital Content.

2.6 The license granted to School Account and/or End Users to use the Digital Content is for a one-time, limited right to borrow and/or access the Digital Content for a specific, school-designated, limited duration ("Lending Period"). End Users agree and acknowledge that at the end of the Lending Period all rights to access the Digital Content expire and terminate. At the end of the Lending Period, End Users shall delete and/or destroy any and all copies of the Digital Content, including any copies that may have been transferred to, or created on portable devices, storage media, removable drives, CDs, and/or DVDs. In the event School Account, OverDrive, or a rights holder determine End Users of the SDL Service are violating the terms of this Agreement, School Account and/or OverDrive reserves the right to suspend or terminate End Users' ability to use the SDL Service and/or to borrow Digital Content.

### **3. OverDrive SDL Service**

3.1 OverDrive shall create a single website for School Account's and End Users' use of the SDL Service. If School Account is utilizing the K5 Quickstart package for multiple school buildings within its' district, each individual school building that orders the K5 Quickstart package shall be required to establish its own authentication method for access to the platform (e.g. separate single-sign on passwords). School Account shall implement and maintain commercially reasonable measures to ensure that only authorized End Users have access to the SDL Service, Digital Content, and/or K5 Quickstart package (if applicable).

3.2 OverDrive has the right, at any time, to make modifications to the operation, performance, or functionality of the SDL Service to improve the quality of the SDL Service, in OverDrive's sole reasonable discretion. OverDrive has the right, at any time, to discontinue distribution of any or all components of the SDL Service or Digital Content, to add and/or remove supported services or Digital Content from the SDL Service, or to provide new versions, updates, or corrections for any software, hardware, or operating system.

3.3 OverDrive grants School Account access to an administrative account in the SDL Service where School Account may run reports and manage Digital Content. The grant for access to the administrative account is non-transferable. Login credentials to the administrative account are confidential and may not be disclosed to any third party. School Account shall maintain the confidentiality of the administrative account and login credentials. School Account shall implement and maintain reasonable measures to ensure that only authorized End Users have access to the administrative account in the SDL Service.

3.4 The SDL Service and/or Digital Content may require the use of third party applications or services that are subject to their own, separate license agreements and/or terms and conditions not under OverDrive's control. OverDrive expressly disclaims any and all risks and liabilities associated with the use of any such third party offerings.

#### **4. Third Party Content**

OverDrive is a distributor of Digital Content supplied by third parties, including publishers and others. Accordingly, any opinions, advice, statements, offers, services, or other information or content expressed by third parties are those of the respective author(s) and not OverDrive. OverDrive neither endorses nor is responsible for the accuracy or reliability of information in the SDL Service or Digital Content made by anyone other than authorized OverDrive employee spokespersons acting in their official capacities.

#### **5. Technical Support Services**

5.1 School Account agrees to perform primary support services to its End Users, including day-to-day help, support, technical aid, and other assistance for End User's use of its SDL Service or for any issues arising from the use of the SDL Service ("Primary Support"). School Account shall assign personnel with appropriate skills and expertise in computer, data processing, and related services to enable operation of the SDL Service and to provide Primary Support.

5.2 School Account shall perform requested installation, upgrades, and reasonable technical services for Primary Support of the SDL Service pursuant to installation and support procedures and policies as developed by OverDrive and as modified from time-to-time. OverDrive shall provide School Account with documentation regarding Primary Support.

5.3 OverDrive shall provide Secondary Support to School Account. "Secondary Support" shall consist of technical support services by email and phone in the English language to School Account, including reasonable efforts to assist School Account in providing Primary Support. OverDrive shall provide such Secondary Support by email and phone during its normal business hours of Monday - Friday 8:30 AM to 5:30 PM United States Eastern Time.

5.4 OverDrive shall use reasonable efforts to make the SDL Service perform substantially in accordance with the product description, as it may exist from time to time. However, School Account acknowledges that inevitably some errors may exist in the SDL Service, and the presence of such errors shall not be a breach of this Agreement. 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.

#### **6. Privacy**

OverDrive respects the privacy of its visitors, and is especially mindful of protecting the privacy of children under the age of 13 years old who utilize the SDL Service. For more information on OverDrive's privacy policies, please see our general [Privacy Policy](#) and our [Privacy Policy for Children](#).

#### **7. Compliance with Copyright Protection Technologies and Data Security**

7.1 School Account shall respect the Digital Rights Management (DRM) settings on the Digital Content as designated by publishers that may restrict burning, copying, sharing and/or printing of the materials. In the event OverDrive learns of attempts to circumvent such DRM protections either by School Account or End Users, OverDrive may, in its sole discretion, temporarily suspend and/or permanently terminate End User's and/or School Account's access to the SDL Service and/or Digital Content.

7.2 School Account shall take reasonable steps to prevent unwarranted intrusion into data managed or maintained by OverDrive that is acquired in the course of the operation of the SDL Service. This includes reasonable steps to protect its password and access to the administrative account for management of the SDL Service.

## **8. Copyright, Trademark, and Intellectual Property Ownership**

8.1 The laws of copyright protect the Digital Content that is made available through the SDL Service and associated OverDrive services. Copyrights in the Digital Content are held by their respective owners. The Digital Content embodies the intellectual property of a third party and is protected by law.

8.2 The Digital Content and any other copyrighted material shall not be modified, copied, distributed, repackaged, shared, displayed, revealed, extracted, emailed, transmitted, sold or otherwise transferred, conveyed or used, in a manner inconsistent with this Agreement or the rights of the copyright owner. School Account and/or End User shall not redistribute, repackage, transmit, assign, sell, broadcast, rent, share, lend, modify, extract, reveal, adapt, edit, sub-license or otherwise transfer the Digital Content. School Account and/or End User are not granted any synchronization, public performance, promotional use, commercial sale, resale, reproduction and/or distribution rights for the Digital Content.

8.3 The trademarks, logos, and service marks displayed in School Account's SDL Service are owned by OverDrive or third parties, and the SDL Service's trade dress is owned by OverDrive (collectively, "Trademarks"). All Trademarks not owned by OverDrive are the property of their respective owners, and are used with permission. Nothing contained in the SDL Service may be construed as granting, by implication, estoppel, or otherwise, any right or license to use any Trademarks.

8.4 During the Agreement Term and any renewal periods, School Account 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 Content and products.

## **9. Notices of Claimed Copyright Infringement**

OverDrive has appointed an agent to receive notifications of claims of copyright infringement regarding materials available or accessible on, through, or in connection with the SDL Service.

Any person authorized to act for a copyright owner may notify us of such claims by contacting the following agent: General Counsel, OverDrive, Inc., One OverDrive Way, Cleveland, OH 44125; phone: 216-573-6886; fax: 216-573-6888.

In contacting this agent, the contacting person must provide all relevant information, including the elements of notification set forth in 17 U.S.C. 512. For more information, please refer to OverDrive's [Digital Millennium Copyright Act Policy](#).

## **10. Disclaimer of Warranty, Limitation of Liability and Indemnity**

10.1 OVERDRIVE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. OVERDRIVE NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR OVERDRIVE ANY OTHER LIABILITY IN CONNECTION WITH THE LICENSING OF THE DIGITAL CONTENT AND SDL SERVICE AND THEIR USE BY THE SCHOOL ACCOUNT AND/OR END USERS.

10.2 IN NO EVENT SHALL OVERDRIVE BE LIABLE TO SCHOOL ACCOUNT OR END USERS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE SDL SERVICE, OR FOR INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF OPPORTUNITY, LOSS

OF USE, OR OTHER LOSS ARISING OUT OF OR IN CONNECTION WITH THE LICENSE, TRANSFER, OR USE OF THE SDL SERVICE. IN NO EVENT SHALL OVERDRIVE'S LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE FROM SCHOOL ACCOUNT UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. SCHOOL ACCOUNT AGREES TO INDEMNIFY AND HOLD HARMLESS OVERDRIVE AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, BUSINESS PARTNERS, LICENSORS, AND LICENSEES FROM ANY DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ON ACCOUNT OF ANY CLAIM, SUIT, ACTION, DEMAND, OR PROCEEDING MADE OR BROUGHT AGAINST ANY SUCH PARTY, OR ON ACCOUNT OF THE INVESTIGATION, DEFENSE, OR SETTLEMENT THEREOF, ARISING IN CONNECTION WITH SCHOOL ACCOUNT'S USE AND/OR END USERS' USE OF THE SDL SERVICE.

## **11. Term, Termination and Payment**

11.1 Unless otherwise agreed, the term for School Account's access to the SDL Service shall be for a period of twelve (12) consecutive months starting the effective date of service launch. OverDrive, in its sole discretion, may launch the SDL Service sixty (60) days after receipt of the School Account's order form if the SDL Service has not launched before that time. The SDL Service and the terms of this Agreement shall automatically renew for successive terms of twelve (12) consecutive months unless either party provides written notice of intention not to renew at least thirty (30) days prior to the expiration of the then current twelve (12) month term.

11.2 School Account obtains certain rights and access to use the Digital Content and SDL Service for the term of its agreement with OverDrive. At the end of such term, all the licenses granted to School Account shall be terminated immediately, including School Account's access to the SDL Service and any and all Digital Content.

11.3 All payments are due to OverDrive within thirty (30) days of receipt of invoice. OverDrive, in its sole discretion, may require payment by School Account before OverDrive will set the SDL Service live. In the event of a breach of any of its obligations, including but not limited to non-payment or late payment for services, School Account shall remedy the breach within thirty (30) days upon receipt of written notice from OverDrive. If School Account fails to remedy such a breach within the period of thirty (30) days, OverDrive may, in its sole discretion, terminate the Agreement with School Account upon written notice to School Account and/or temporarily or permanently suspend School Account's access to the SDL Service.

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

## **12. General Provisions**

12.1 **Governing Law and Venue.** The Agreement shall be governed by and construed in accordance with the laws of the State of California. Any dispute, claims, demands or actions arising out of or in relation to the Agreement and this Amendment shall be brought in and resolved by the Superior Court of the County of Yolo. In the event of a conflict of terms between the Access Agreement and any of the terms hyperlinked in this Agreement, including the Terms and Conditions, regarding governing law, jurisdiction and/or venue, the terms of the Access Agreement shall govern.

12.2 OverDrive may assign this Agreement. In the event OverDrive enters into an agreement to sell substantially all the assets of OverDrive, this Agreement shall be binding upon the purchaser. This Agreement may not be assigned by School Account nor any duty hereunder be delegated by School Account without the prior written consent of OverDrive which shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors and permitted assigns.

12.3 Neither OverDrive nor its licensors shall be liable or deemed to be in default for any delays or failure in performance resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authority, rain, fire, flood, accidents, earthquake(s), strikes or labor shortages, transportation facilities shortages or failures of equipment, or failures of the Internet.

12.4 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.

12.5 This Agreement, and all incorporated documents herein, constitutes the entire Agreement and understanding of the parties. We may make changes to this Agreement. Please check this page periodically for updates. School Account acknowledges that School Account's continued use of the SDL Service means that School Account agrees to be bound by such changes.

Updated March 2016.