

College Digital Library (Consortium) 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 College Digital Library service (each a “Participating College Account”). This Access Agreement (“Agreement”) applies to Participating College Account’s use of the OverDrive-hosted websites, applications, software, technologies and services related to the College Digital Library (collectively referred to as “CDL Service”).

1. CDL Service License

1.1 OverDrive grants each Participating College Account (collectively referred to as the “Consortium”) and its’ authorized employees, staff, students, and other users that Participating College Account authorizes to access, use, and connect to the CDL Service (collectively “End Users”) a limited, revocable, non-exclusive, non-transferable license to access and make personal non-commercial use of the CDL Service. OverDrive reserves the right to prohibit any conduct involving the CDL Service, including but not limited to Participating College Account allowing unauthorized access to the Consortium 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 Participating College Account to use an alternative authentication method to access the CDL Service and/or termination of this Agreement.

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

2. Digital Content License

2.1 OverDrive grants Participating College Account and its’ 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 Consortium may access and/or download the Digital Content:

- (a) On College-issued devices or College computers with exclusive and individual unique user accounts.
- (b) On College-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 End User personal devices directly;
- (d) On shared College, 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); or
- (e) 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 Participating College Account shall not access or download Digital Content on any College media center, classroom computer, library device or any other College-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.

2.4 Participating College 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, Participating College Account 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 Participating College 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. The catalog of available Digital Content is subject to change; Digital Content titles may be added or removed at any time.

2.6 The license granted to Participating College 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, Consortium-designated, limited duration ("Lending Period"). At the end of the Lending Period all rights to access the Digital Content expire and terminate, and End Users should 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 Participating College Account, OverDrive, or a rights holder determine End Users of the CDL Service are violating the terms of this Agreement, Participating College Account and/or OverDrive reserves the right to suspend or terminate End Users' ability to use the CDL Service and/or to borrow Digital Content.

3. OverDrive CDL Service

3.1 OverDrive shall create and host a single website for Consortium and End Users' use of the CDL Service ("Consortium Website"). Participating College Accounts shall implement and maintain commercially reasonable measures to ensure that only authorized End Users have access to the CDL Service and Digital Content.

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

3.3 OverDrive shall create an administrative account in OverDrive's content selection platform, OverDrive Marketplace, for each Participating College Account to select Digital Content to make available at the Consortium Website to End Users and to access reports. 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. Participating College Accounts shall maintain the confidentiality of the administrative account and login credentials. Participating College Accounts shall implement and maintain reasonable measures to ensure that only authorized End Users have access to the administrative account in the CDL Service.

3.4 OverDrive, with approval by the Participating College Account, may purchase Digital Content on the Participating College Account's behalf to make available at the Consortium Website. Any such purchases shall only be made with a Participating College Account's content credit portion of the Annual Participation Fee.

3.5 In each Participating College Account's discretion, it may purchase Digital Content to make available to their designated End Users only ("Digital Book Account") by executing the then-current Digital Book Account Enrollment Form. Purchases for Digital Book Accounts cannot be made utilizing a Participating College Account's Annual Participation Fee. Digital Book Accounts are subject to the terms and conditions of the OverDrive Digital Book Account Enrollment Form.

3.6 The CDL 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.

3.7 Any current OverDrive College Digital Library customer shall not be eligible to join the Consortium. Notwithstanding the foregoing, OverDrive shall have sole discretion to approve any and all new entities that seek to join Consortium and to determine the terms and conditions for such Consortium membership.

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 CDL Service or Digital Content made by anyone other than authorized OverDrive employee spokespersons acting in their official capacities.

5. Technical Support Services

5.1 Participating College 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 CDL Service or for any issues arising from the use of the CDL Service ("Primary Support"). Participating

College Account shall assign personnel with appropriate skills and expertise in computer, data processing, and related services to enable operation of the CDL Service and to provide Primary Support.

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

5.3 OverDrive shall provide Secondary Support to Participating College Account. "Secondary Support" shall consist of technical support services by email and phone in the English language to Participating College Account, including reasonable efforts to assist College 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 CDL Service perform substantially in accordance with the product description, as it may exist from time to time. However, Participating College Account acknowledges that inevitably some errors may exist in the CDL 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 CDL 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 Participating College 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 a Participating College Account or End Users, OverDrive may, in its sole discretion, temporarily suspend and/or permanently terminate End User's and/or Participating College Account's access to the CDL Service and/or Digital Content.

7.2 Participating College 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 CDL Service. This includes reasonable steps to protect its password and access to the administrative account for management of the CDL Service.

8. Copyright, Trademark, and Intellectual Property Ownership

8.1 The laws of copyright protect the Digital Content that is made available through the CDL 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. Participating College 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. Participating College 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 Participating College Account's CDL Service are owned by OverDrive or third parties, and the CDL 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 CDL 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, Participating College 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 CDL 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 CDL SERVICE AND THEIR USE BY THE PARTICIPATING COLLEGE ACCOUNT AND/OR END USERS.

10.2 IN NO EVENT SHALL OVERDRIVE BE LIABLE TO PARTICIPATING COLLEGE ACCOUNT OR END USERS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE CDL 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 CDL SERVICE. IN NO EVENT SHALL OVERDRIVE'S LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE FROM PARTICIPATING COLLEGE ACCOUNT UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED.

11. Term, Termination and Payment

11.1 Unless otherwise agreed, the term for each Participating College Account's access to the CDL Service shall be for a period of twelve (12) consecutive months starting upon Participating College Account's live integration in the Consortium Website. The CDL 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 Participating College Account obtains certain rights and access to use the Digital Content and CDL Service for the term of its agreement with OverDrive. At the end of such term, all the licenses granted to Participating College Account shall be terminated immediately, including Participating College Account's access to the CDL Service and any and all Digital Content. If a Participating College Account withdraws from CDL Service, all Digital Content purchased for the Consortium Website with the Participating College Account's monetary and in-kind contributions shall remain with the Consortium.

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

11.4 This Agreement is a commitment of the current revenues of the Participating College Account and its governing body. If Participating College Account's College board 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) Participating College Account shall give OverDrive immediate notice of such non-appropriation event and provide written evidence of such failure by Participating College 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 CDL 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 Participating College Account's Agreement and all CDL Services thereunder shall terminate on the first day of the fiscal year in which funds are not appropriated.

12. General Provisions

12.1 This Agreement shall be governed by the laws of the State of Ohio, United States of America without regard to any conflict of laws principles. Any dispute regarding this Agreement or the

relationship that has been established by this Agreement shall be brought in the state or federal courts residing in the State of Ohio, USA, and the local laws of Ohio will apply to any such action related to the above without regard to any conflicts of laws principles. Both parties submit to venue and jurisdiction in these courts.

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 a Participating College Account nor any duty hereunder be delegated by Participating College 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 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. Participating College Account acknowledges that Participating College Account's continued use of the CDL Service means that Participating College Account agrees to be bound by such changes.

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