

THIS CONTRACT is made, and entered into this the 1st day of July, 2026, by and between the **COUNTY of DURHAM**, a political subdivision of the State of North Carolina, (hereinafter referred to as “COUNTY”), and **OVERDRIVE INC.**, a Corporation, authorized to do business in the state of North Carolina, (hereinafter referred to as “CONTRACTOR”).

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES.

(a) **CONTRACTOR** hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions and specifications identified in “**Attachment 1**” (hereinafter collectively referred to as “Services”). **Attachment 1** is hereby incorporated herein and made a part of this contract. In the case of a conflict between this base contract and any attachment, the terms of this base contract will control. Time is of the essence with respect to all provisions of this contract that specify a time for performance. The COUNTY will perform on-going contract monitoring to ensure that the terms of this contract are complied with. **CONTRACTOR** agrees to cooperate with the COUNTY in its monitoring process and provide documentation and/or information requested during the term of this Contract for the purpose of monitoring the services provided by **CONTRACTOR**. **The Services proposed to be delivered pursuant to the terms of this Contract may be generally described as as the sale and hosting of digital books, digital audiobooks, digital magazines and digital streaming content.**

(b) **GOODS:** If this contract includes the provision of goods or materials to COUNTY, the following terms apply:

- (1) The terms of this Contract related to the provisions of goods do not bind either party to any obligation until there is a properly approved and executed Purchase Order.
- (2) No charges of any kind not appearing in this contract will be accepted or paid by COUNTY. It is COUNTY's discretion to accept items shipped in excess of the quantity ordered and any over shipment may be returned at **CONTRACTOR's** expense.
- (3) Shipments received prior to delivery date without previous approval by COUNTY may be returned or stored at **CONTRACTOR's** expense. The Parties agree and acknowledge that any and all payments described herein are contingent upon prior budgetary approval by the Durham County Board of Commissioners (the Board) for the fiscal year during which delivery of goods required by this contract are rendered. The Parties agree and acknowledge that if this contract is signed prior to budgetary approval being granted, that COUNTY may terminate the Contract if the requisite approval is not given, pursuant to Section 8.c below.
- (4) A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all crates, packages, packing slips, invoices, and correspondence shipped or mailed to COUNTY. All items will be accompanied by assembly instructions and operating and repair manuals, as applicable. COUNTY's count will be accepted as conclusive on all shipments not accompanied by a packing slip.

- (5) The parts, material, and workmanship of all items are subject to inspection, testing and counting by COUNTY. COUNTY may reject for full credit or require prompt correction or replacement at CONTRACTOR's expense, including the expense of unpacking, examining, repacking, storing and transporting of any item defective in material or workmanship or otherwise not in conformity with Bid No N/A (if applicable) or specifications provided by COUNTY. Goods will be delivered to the COUNTY in new condition and undamaged (unless otherwise specified by COUNTY).
- (6) This order to CONTRACTOR is not transferable or assignable without the written permission of COUNTY. CONTRACTOR is an independent contractor and is not an agent or employee of COUNTY.
- (7) CONTRACTOR warrants that it is the sole owner of the described goods and that it has the unrestricted right to convey a clear title to the COUNTY free and clear of all encumbrances.
- (8) COUNTY reserves the right to change, modify and/or cancel this order upon issuance of a change order. If COUNTY is not notified to the contrary in writing within 10 days after the issuance of the change order, the changed and/or modification and/or cancellation is considered accepted by CONTRACTOR.
- (9) CONTRACTOR expressly warrants that all goods, provided or used by CONTRACTOR will: conform to the drawings, specifications, samples or other descriptions furnished by COUNTY or by CONTRACTOR; meet requirements detailed in the scope of work; be of good materials and workmanship and free from defect. This express warranty shall not be waived by reason of acceptance of the goods or payment made by COUNTY. CONTRACTOR also warrants that all items sold or furnished under this order have been produced, sold, delivered and furnished in compliance with all applicable laws and regulations.

CONTRACTOR WARRANTS THE MERCHANTABILITY QUALITY OF THE GOODS SOLD HEREUNDER AND THAT SUCH GOODS ARE FIT FOR THE PURPOSES FOR WHICH THEY WERE PURCHASED. SUCH WARRANTIES ARE IN ADDITION TO ALL EXPRESS WARRANTIES AND WILL RUN TO THE BENEFIT OF COUNTY. CONTRACTOR'S PERIOD OF WARRANTY WITH RESPECT TO EACH ITEM WILL BE AT LEAST AS LONG AS THAT OF THE MANUFACTURER OF SUCH ITEM, AND CONTRACTOR WILL HONOR SAME.

- (10) In addition to any other termination provisions, COUNTY may, by written notice, terminate this contract in whole or in part, for failure of CONTRACTOR to perform, including failure to deliver as and when specified. If so terminated, CONTRACTOR shall be liable for all damages, including, without limitation, (1) the excess cost of re-procuring similar goods or services, (2) shipping charges for any items COUNTY may at its option return to CONTRACTOR, including items already delivered but for which COUNTY no longer has any use because of default, (3) amounts paid by COUNTY for any items it has received but returns to CONTRACTOR, and (4) any other damages permitted by applicable law. COUNTY shall have the right to pursue any remedies provided by applicable laws.

2. **EFFECTIVE DATE AND TERM OF CONTRACT.** The "effective date" of this Contract shall be the date first set forth above in the preamble to this Contract, irrespective of the date of execution by the parties. The first date written above is **July 1, 2026**. All renewal or non-renewal periods or deadlines stated in this Contract, if any, shall be calculated based on the "effective date" indicated above.

The Term of this contract for services is from July 1, 2026 to June 30, 2030, unless sooner terminated as provided herein.

3. **PAYMENT TO CONTRACTOR.**

(a) COUNTY shall not pay any amount exceeding Six Hundred Fifty Thousand Dollars (\$650,000.00) for the provision of Services and/or materials during the term of the Contract. COUNTY shall pay CONTRACTOR only upon the following conditions:

No payment shall be made pursuant to this Contract unless there is a properly approved and executed Purchase Order. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to COUNTY by the end of the month during which Services are performed and/or materials are provided. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to COUNTY. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY.

(b) The Parties agree and acknowledge that any and all payments described herein are contingent upon prior budgetary approval by the Durham County Board of Commissioners (the Board) for the fiscal year during which services required by this Contract are rendered. The Parties agree and acknowledge that if this contract is signed prior to budgetary approval being granted, that COUNTY may terminate the Contract if the requisite approval is not given, pursuant to Section 8.3 below.

4. **INDEPENDENT CONTRACTOR.** COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

5. **CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE.** CONTRACTOR acknowledges and agrees that, in the course of its engagement with COUNTY, CONTRACTOR or its licensors, subcontractors or suppliers in connection with the services to be rendered under this Contract may receive or have access to "confidential information" or "personal identifiable information".

CONTRACTOR or its licensors, contractors or suppliers has obtained or may need to obtain confidential information from the COUNTY in connection with the provision of services to the COUNTY or the discussions of such a proposed relationship.

The COUNTY and CONTRACTOR desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

(a) **DEFINITIONS.** As used in this Contract, the following terms shall have the meanings set forth below:

Confidential Information. The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

- (1) Trade Secrets. For purposes of this Contract, trade secrets consist of information of the COUNTY or CONTRACTOR or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

- (2) Highly Restricted Information. CONTRACTOR acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) CONTRACTOR will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
 - (A) Information of the COUNTY or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”
 - (B) Information relating to criminal investigations conducted by the COUNTY, and records of criminal intelligence information compiled by the COUNTY.
 - (C) Information contained in the COUNTY’s personnel files, as defined by NCGS §153A-98. This consists of all information gathered by the COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
 - (D) Citizen or employee social security numbers collected by the COUNTY.
 - (E). Computer security information of the COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
 - (F) Local tax records of the COUNTY that contained information about a taxpayer’s income or receipts.
 - (G) Any attorney/client privileged information disclosed by either party.
 - (H) Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
 - (I) The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
 - (J) Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

Personal Identifiable Information. The term “Personal Identifiable Information” shall mean information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked to a specific individual.

- (b) **RESTRICTIONS.** CONTRACTOR shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- (1) Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY in writing.
 - (2) Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or CONTRACTOR of the COUNTY or CONTRACTOR having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY and CONTRACTOR, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. CONTRACTOR shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.
 - (3) Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
 - (4) Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
 - (5) Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
 - (6) In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, CONTRACTOR shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
 - (7) All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.
 - (8) Restrict employee access to the Confidential Information to those employees who have a need to know for purposes of their jobs.
 - (9) Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.
- (c) **EXCEPTIONS.** The COUNTY agrees that CONTRACTOR shall have no obligation with respect to any Confidential Information that CONTRACTOR can establish was:
- (1) Already known to CONTRACTOR prior to being disclosed by the COUNTY;
 - (2) Or becomes publicly known through no wrongful act of CONTRACTOR;
 - (3) Rightfully obtained by CONTRACTOR from a third party without similar restriction and without breach hereof;
 - (4) Used or disclosed by CONTRACTOR with the prior written authorization of the COUNTY;

(5) Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, CONTRACTOR shall first give to the other party notice of such requirement or request;

(6) Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that CONTRACTOR shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

(d) REMEDIES. CONTRACTOR acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY's proprietary interests therein. Accordingly, it is agreed that if CONTRACTOR breaches its obligations hereunder, the COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

(e) DATA SECURITY. The CONTRACTOR shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

The CONTRACTOR shall report a suspected or confirmed security breach to the COUNTY Department within twenty-four (24) hours after the breach is first discovered, provided that the CONTRACTOR shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the CONTRACTOR to give written notice of a security breach to affected persons, the CONTRACTOR shall bear the cost of the notice.

(f) TRAINING AND NON-DISCLOSURE. Upon request by the COUNTY, CONTRACTOR agrees to ensure compliance and the security of "confidential information" and "personal identifiable information", by having its employees, agents and subcontractors take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. CONTRACTOR, at the request of COUNTY, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

(g) PUBLIC RECORDS. It is expressly understood that as a governmental entity, the COUNTY is subject to the North Carolina Public Records Act and information related to this contract may be requested pursuant to same. In response to any request for information which has been properly labeled as a Trade Secret or Confidential Information, the COUNTY will assert that those are exempt as a Trade Secret or Confidential Information under that Act. Proper labeling will include annotating the bottom of any written document (on the cover and each individual page containing such information) or e-mail with the following footer in at least 12-point bold face type "**Confidential Information**". Any material labeled as Confidential Information constitutes a representation by CONTRACTOR that it has made a reasonable effort in good faith to determine that such material is, in fact, confidential as defined in N.C. Gen. Stat. § 132-1.2. The COUNTY has no duty or obligation to limit access to information which is not explicitly marked in accordance with this provision.

Should the requestor initiate legal action to compel production, the COUNTY shall notify CONTRACTOR of the action and offer it the opportunity to intervene and defend same. The COUNTY shall have no duty to defend the action, and CONTRACTOR agrees to fully indemnify COUNTY for all costs related to such

litigation. Should the COUNTY receive a subpoena or court order for the protected information, it will contact CONTRACTOR and afford it the opportunity to intervene in the action under the same terms and conditions as noted above.

6. **INDEMNIFICATION.** To the fullest extent permitted by law, CONTRACTOR, including its agents shall indemnify and save harmless the COUNTY and its officers, agents, servants, and employees from and against all claims, losses, damages, liabilities, fines, penalties, costs, and expenses, including reasonable attorney fees, litigation expenses, and court costs, arising out of or resulting from CONTRACTOR's performance under this Agreement, including any negligent or intentional act or omission of CONTRACTOR or its agents, employees, subcontractors, vendors, or invitees. CONTRACTOR acknowledges and agrees that it is responsible for satisfying any claim for damage to, or theft of or from, COUNTY property to the extent such damage, theft, or claim arises out of or relates to CONTRACTOR's performance under this Agreement.

COUNTY shall be entitled to recover its legal expenses, including attorney fees, litigation expenses, and court costs, as well as any actual damages or losses suffered by the COUNTY, if CONTRACTOR is determined to be a cause of such damages or losses arising out of CONTRACTOR's performance during the execution of this Contract. Nothing in this section shall be construed to waive, limit, or modify any rights the COUNTY may have under this Agreement, under applicable law, or under any applicable insurance policy. This indemnification obligation shall survive the expiration or termination of this Contract.

7. **INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company. CONTRACTOR's insurance shall be primary, and any insurance or self-funded liability programs maintained by the COUNTY shall not contribute with respect to the CONTRACTOR's insurance.

(a) **Commercial General Liability:** Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate. Coverage shall not contain any endorsements(s) excluding or limiting Contractual Liability or Cross Liability.

(b) **Commercial Automobile Liability:** ISO Form CA 00 01 covering any auto with limit not less than **\$1,000,000** per accident for bodily injury and property damage. In the event CONTRACTOR does not own automobiles, CONTRACTOR agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a Durham County site.

(c) **Worker's Compensation and Employers Liability:** CONTRACTOR agrees to maintain Workers' Compensation insurance as required by The State of North Carolina General Statutes Chapter 97, with statutory limits, and Employers Liability Insurance with a limit of no less than **\$1,000,000** per occurrence.

(d) **Umbrella/Excess Liability:** CONTRACTOR may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. Any Umbrella or Excess coverage(s) must follow form behind other coverages required in above sections and shall not contain exclusions more restrictive than those of any underlying coverage.

(e) **Cyber Liability:** When applicable and the box is checked, based on the scope of work, CONTRACTOR shall maintain Cyber Liability coverage with limits of no less than **\$1,000,000**. Coverage shall include breach costs, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, and resulting liability to the COUNTY and others. Coverage shall not include a retroactive date later than the commencement of services under this Contract.

(f) **Professional Liability:** When applicable and the box is checked, CONTRACTOR shall maintain Professional Liability insurance with limits of no less than **\$1,000,000** for each claim. For services involving design consulting, including but not limited to architecture and engineering, CONTRACTOR shall maintain professional liability limits of no less than **\$5,000,000** for each claim. When the scope of work includes medical professional services or otherwise involves exposure to Medical Malpractice liability, CONTRACTOR shall maintain Medical Professional Liability insurance with limits of no less than **\$5,000,000** for each claim. These requirements apply whenever such professional exposure is part of the services provided or when otherwise required by the COUNTY.

(g) **Waiver of Subrogation:** All of the policies required of the CONTRACTOR shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the COUNTY. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation", this contract shall govern.

(h) **Additional Insured:** COUNTY shall **not** be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONTRACTOR. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured", this contract shall govern.

(i) **Certificate of Insurance:** CONTRACTOR agrees to provide COUNTY with a Certificate of Insurance (COI) evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by CONTRACTOR'S insurance. CONTRACTOR shall advise the COUNTY of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration.

The Certificate Holder address should read:

**Durham County
Attn: Risk Management
200 E Main Street, 4th Floor
Durham, NC 27701**

By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR'S liability under the indemnities granted to the COUNTY in this Contract. CONTRACTOR

shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce obligations of the CONTRACTOR to maintain such insurance or to meet its obligations under the indemnification provisions. COUNTY reserves the right to request copies of insurance policies, endorsements, or other proof of coverage at any time. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the COUNTY, which immunity is hereby reserved to the COUNTY.

COUNTY reserves the option to require additional or increased insurance coverages if, in the opinion of COUNTY, such coverage is necessary to properly manage the risk related to this contract. COUNTY shall give notice to CONTRACTOR of any such requirements prior to the execution of this Contract, or within such reasonable time as COUNTY becomes aware of the need for such additional or increased coverages.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the County's Risk Manager.

8. TERMINATION.

(a) EVENT OF DEFAULT. Any one or more of the following acts or omissions of the Contractor shall constitute an Event of Default hereunder:

- (1) Failure to perform the Services satisfactorily or on schedule,
- (2) Failure to submit any report required hereunder; and/or
- (3) Failure to perform or comply with any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, the COUNTY may take one or more, or all of the following actions:

- (4) Give Contractor written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the Contractor written Notice of Termination; and/or
- (5) Deduct any and all expenses incurred by the COUNTY for damages caused by the Contractor's Event of Default; and/or
- (6) Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

(b) TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by COUNTY upon thirty (30) days written notice to CONTRACTOR. This termination notice period shall begin upon receipt of the Notice of Termination.

(c) CONTINGENT FUNDING/NON-APPROPRIATIONS. If, at any time after the execution of this Contract, the required funding for this contract is not approved by the Durham County Board of Commissioners, COUNTY may terminate this contract immediately. COUNTY shall notify CONTRACTOR of the non-approval and termination within 30 days of the Board's decision.

Termination of this Contract, under either section 8.1, 8.2, or 8.3 shall not form the basis of any claim for loss of anticipated profits by either party.

9. **COUNTY NOT RESPONSIBLE FOR EXPENSES.** COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing. CONTRACTOR shall provide the necessary labor, security, permits and safety measures required to provide Services hereunder.
10. **EQUIPMENT.** CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
11. **COMPLIANCE WITH LAWS.** CONTRACTOR shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONTRACTOR is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and CONTRACTOR may be declared ineligible for further COUNTY contracts.
12. **HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
13. **NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, sex, national origin or ancestry, martial or familial status, pregnancy, military status, religious belief or non-belief, disability, or any other protected category under local, state, or federal law. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts. **Failure to comply with this provision is a breach of this Contract and grounds for terminating the Contract for cause and without fault or liability to COUNTY.**
14. **EMPLOYMENT ADVERTISING REQUIREMENTS.** CONTRACTOR shall post local job openings, in connection with this Contract, with the NC Works Web Site throughout the term of this Agreement; provided that the foregoing requirement does not limit CONTRACTOR'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.
15. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if CONTRACTOR provides the services to the COUNTY utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

16. AFFORDABLE CARE ACT REQUIREMENTS (Applicable Only to Staffing Agencies). Beginning in 2015, employers with 100 or more full-time equivalent employees (50 or more beginning in 2016) must offer health insurance coverage that is affordable and provides “minimum value” to full-time employees and dependents as defined by the Patient Protection and Affordable Care Act or face penalties. Staffing companies under contract with Durham COUNTY are required to provide affordable minimum essential coverage as defined by the Patient Protection and Affordable Care Act and to indemnify Durham COUNTY against any 4980H penalties that result from their failure to provide the appropriate coverage. By signing this Contract as a Staffing Company, CONTRACTOR shall comply with the aforementioned health insurance coverage requirements of the Affordable Care Act and indemnify the COUNTY against any associated 4980H penalties. **Please complete Exhibit A and return with this contract.**

17. SECURITY BACKGROUND CHECKS.

(a) For Particular Facilities:

- (1) For County Facilities other than Youth Home or Sheriff Facilities: with the exception of the Security contractor security personnel who have completed a Private Protected Services Board (PPSB) background check, the COUNTY is responsible for requesting criminal history checks on all individuals providing services under this contract who will be obtaining COUNTY identification badges and allowed unescorted access to COUNTY facilities.
- (2) Youth Home Facilities: Youth Home public safety classifications background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check falls under the requirements of the North Carolina Criminal Standards and, provided that the criminal history check is done nationwide.
- (3) Sheriff Facilities – Courthouse and Detention Center. The Sheriff’s Office will conduct background investigations for those Contractor employees who will be working at the Courthouse or Detention Center.

(b) General Provisions:

A criminal history will not automatically disqualify a Contractor employee from employment on a COUNTY contract unless explicitly mandated by law.

The Contractor will complete the background check process prior to commencing work at Durham County Government. The results of the check will be reviewed by CONTRACTOR’s County point of contact who will provide them to the Durham County Security Manager. The Human Resources Department will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham County buildings. The Human Resources Department will consult the Legal Office, as needed, on any negative determinations. The Human Resources Department will notify the Contractor's County point of contact of the results of the review. Contractor can appeal a negative determination by the Human Resources Department to the County Manager or the County Manager’s designee for final disposition. Appeals need to be submitted in writing to the County point of contact within 30 days of notice of a decision to remove or deny an individual from working the County contract due to adverse information in the background check.

This information shall be updated annually by the Contractor, 90 days prior to the renewal or extension of the contract and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings disabled.

Additional background screening may be necessary at specific COUNTY buildings. The Contractor shall provide names of all individuals in the Contractor communications log and to the COUNTY point of contact. This information will be reviewed annually.

For those Contractor employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. The Contractor will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Contractor and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings disabled.

18. AUDIT RIGHTS. For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.

19. DISPUTE RESOLUTION PROCEDURE. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between COUNTY and the CONTRACTOR, arising from this Agreement or the services and/or materials being provided by the CONTRACTOR, shall be sent to the Durham COUNTY Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the COUNTY Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or the County Manager's designee, shall notify the Mediator who will conduct a mediation and notify the CONTRACTOR in writing of the decision within forty-five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between parties to the dispute.

The mediation session shall be private and shall be held in Durham COUNTY, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the COUNTY of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

20. EXISTENCE. CONTRACTOR warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State of Ohio and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this Contract.

21. CORPORATE AUTHORITY. By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONTRACTOR.

22. SUCCESSORS AND ASSIGNS. CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.

23. NOTICES. All notices which may be required by this Contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**COUNTY OF DURHAM
COUNTY MANAGER
200 EAST MAIN STREET, 3RD FLOOR
DURHAM, NORTH CAROLINA 27701**

**OVERDRIVE, INC.
ATTN: ERICA LAZZARO
ONE OVERDRIVE WAY
CLEVELAND, OHIO 44125**

24. HEADINGS, WAIVER, SEVERANCE. The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary. An alleged waiver of a term of this Agreement by COUNTY, whether express or implied, on one occasion shall not be construed to operate as a waiver on other occasions or other provisions. If County fails to require strict performance of a term of this Contract, fails to exercise a remedy for a breach of this Agreement, or fails to reject a payment during a breach of this Contract, that failure does not constitute a waiver of that term or breach. If any part of this Contract is held to be illegal or invalid by a court of competent jurisdiction, such provisions shall be considered severed and deleted and such severance shall not affect the validity of the remaining provisions hereof.

25. GOVERNING LAW. This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the COUNTY of Durham and the State of North Carolina.

26. REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS. Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in **Exhibit B – Federal Uniform Guidance Contract Provisions Certification.**

27. Intentionally omitted.

28. ENTIRE CONTRACT. Except for Purchase Orders executed pursuant to this Contract, this contract, including Attachment 1, and if applicable Exhibit A and Exhibit B, shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

The Parties acknowledge that one or more schedules, exhibits, appendices, statements of work, or other documents (each, an “Attachment”) may be attached to or referenced in this Contract. An Attachment, and any terms contained therein, shall be incorporated into and form part of this Contract only to the extent that this Contract expressly identifies a specific document, section, clause, or provision of such Contract by clear and specific reference.

Notwithstanding any provision to the contrary, no terms, conditions, policies, or other provisions that are referenced by hyperlink, URL, website reference, or other electronic means shall be incorporated into this Contract or be binding on the Parties unless such terms are expressly set forth in full within the body of this Contract or attached hereto as a written exhibit. Any reference to online or web-based terms shall be of no force or effect unless expressly agreed to in a written amendment executed by both Parties.

29. LIMITATION ON LIABILITY. To the fullest extent permitted by law, except to the extent covered by insurance maintained by CONTRACTOR pursuant to this Contract, the total liability, in the aggregate, of CONTRACTOR and agents, to the COUNTY and to any party claiming by or through the COUNTY, for any and all claims, losses, costs, damages, attorneys’ fees, expert witness fees, or claim expenses of any nature whatsoever arising out of or relating to this Contract or the services provided hereunder, whether in contract, tort, or otherwise, shall not exceed \$100,000, or the total value of this Contract, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action, however alleged or arising, unless otherwise prohibited by law.

This limitation shall not apply to damages resulting from CONTRACTOR’s gross negligence or intentional misconduct. Furthermore, this limitation shall not apply to the extent that any claim is covered by insurance maintained by CONTRACTOR; in such cases, the limitation shall apply only to amounts in excess of the insurance coverage and shall not apply unless and until payment of such claim has been made up to the required policy limits. Nothing in this section shall be construed to limit the availability of insurance proceeds or the obligations of CONTRACTOR’S insurers under any applicable policy.

This limitation shall not apply (i) if CONTRACTOR fails to continuously maintain all insurance required under this Contract, including all types, limits and durations specified herein; or (ii) to CONTRACTOR’s indemnification obligations in this Agreement. The liability cap may be increased by mutual written agreement of the parties, including in exchange for additional compensation. Nothing in this section shall be interpreted to limit or waive any rights the COUNTY may have under any applicable insurance policy or any rights of recovery from insurance or other third-party sources.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized officer or agent.

COUNTY OF DURHAM

By: _____

Print Name: _____

Print Title: _____

Date of Signature: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Crystally Wright, Durham County Chief Financial Officer

CONTRACTOR

By: _____

Print Name: _____

Print Title: _____

Date of Signature: _____

ATTACHMENTS TO FOLLOW