

## hoopla® Digital Media Agreement

This hoopla Digital Media Agreement ("Agreement") is made as of this 7th day of November, 2023 ("Effective Date") by and between Lee County Board of County Commissioners (the "Library"), and Midwest Tape, LLC.

WHEREAS, Midwest Tape's hoopla Digital Media Platform ("hoopla," the "Platform," or the "hoopla Platform") allows participating libraries to provide their users with access to digital media content using smart phones, tablets, computers, streaming devices, and web browsers; and

WHEREAS, the Platform is designed to be accessible 24/7 and offers various licenses to media content in multiple formats, including, without limitation, movies, television programs, music, audiobooks, eBooks, and comics, subject to circulation limits (if any) and other settings established by the user's library system; and

WHEREAS, the Library wishes to make hoopla available to its authorized users ("Patrons");

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Library and Midwest Tape (each a "Party" and collectively the "Parties") agree as follows:

1. **DEFINITIONS.** The following definitions apply wherever these terms appear in this Agreement, including the Appendices:

1.1 **"Digital Media Platform"** means one or more computer programs or applications owned, maintained, and/or used by Midwest Tape to provide access to Digital Titles and/or to allow the Library to manage its offering and Patron use of Digital Titles, including the hoopla Application, hoopla Website, and Library Administration Website.

1.2 **"Digital Titles"** means any and all digital media content that Midwest Tape makes available to the Library and its Patrons via the Digital Media Platform during the Term of this Agreement.

1.3 **"Flex Borrow" or "Flex Circulation"** means an OCOU Circulation, as defined in Appendix 2 to this Agreement. As set forth in the attached Appendix 2, a Flex Borrow occurs when a Patron uses the hoopla Application or hoopla Website to borrow a Digital Title that is at that time available to that user in the form of a one-copy/one-user ("OCOU") license owned or controlled by the Library.

1.4 **"Flex License"** means a one-copy/one user license ("OCOU License"), as set forth in the attached Appendix 2.

1.5 **"hoopla Application"** means one or more computer applications maintained, owned, and/or used by Midwest Tape to provide access for limited periods to Digital Titles (including the ability to browse, borrow, stream, download, and/or return such titles) using certain streaming devices, smart phones, tablets, and/or other mobile devices.

1.6 **"hoopla Website"** means a Midwest Tape website (currently [www.hoopladigital.com](http://www.hoopladigital.com)) that may be used to access, browse, borrow, stream, and/or return Digital Titles.

1.7 **"Instant Borrow" or "Instant Circulation"** means a PPU Circulation, as defined in Appendix 2 to this Agreement. As set forth in the attached Appendix 2, an Instant Borrow occurs

when a Patron uses the hoopla Application or hoopla Website to borrow a Digital Title (or to obtain access to a "Binge Pass") pursuant to a pay-per-use ("PPU") license that is paid for by the Library.

**1.8 "Instant License"** means a pay-per-use license ("PPU License"), as set forth in the attached Appendix 2.

**1.9 "Intellectual Property Rights"** means all rights in and to patents, trademarks, service marks, trade names, copyrights, trade secrets, technology, software, designs, algorithms, know-how, as well as moral rights and all other intellectual and proprietary rights of any type under any applicable laws.

**1.10 "Library Administration Website"** means one or more Midwest Tape website(s) (currently available at [www.midwesttapes.com](http://www.midwesttapes.com)) that may be accessed and utilized by the Library to obtain OCOU Licenses, manage content available to Patrons in the Platform, and administer Library policies in regard to Patron use of the Platform.

**1.11 "Library Online Catalog"** means the website(s) owned, maintained, and/or used by or for the Library for the purpose of providing information to Patrons and/or the general public about the Library and its various content offerings, policies, objectives, initiatives, and procedures.

**1.12 "Marks"** means any trademarks, service marks, trade names, logos, designs, icons, characters, cover art, styles, trade dress, or other indicators of source associated with any Digital Titles, including without limitation all translations or transliterations of the foregoing in any language, or any colorable imitations or modified versions thereof.

**1.13 "Midwest Tape"** means Midwest Tape, LLC and any of its parents, subsidiaries, or affiliated entities that are engaged in the business of selling and distributing media content in digital form to libraries and library users via the Platform.

**1.14 "Pre-Owned Content"** has the meaning set forth in Appendix 2.

**1.15 "Service Partners"** means any third parties that provide digital storage, webhosting, IT services, data analysis and processing, or distribution or other services to Midwest Tape in connection with the Platform.

**1.16 "Title Summary and Promotional Data"** means, with respect to each Digital Title, the following information and data that is made available to Library pursuant to this Agreement: (i) title; (ii) author(s), publisher, illustrator(s), narrator(s), actor(s), director(s), producer(s), studio(s), and similar descriptive information; (iii) if commercially used, the digital object identifier; (iv) narrative description or summary of the work; (v) cover art and image, graphics, and other images; (vi) copyright notice; and (vii) any other identifying information.

**1.17 "Vendor"** means any supplier to Midwest Tape of (i) Digital Title(s); (ii) Title Summary and Promotional Data; and/or (iii) technology or services necessary for Midwest Tape to provide the Platform to the Library.

## **2. Library RIGHTS & OBLIGATIONS.**

**2.1 Rights.** During the Term, and subject to all the terms and limitations set forth in this Agreement, Midwest Tape grants to the Library the non-exclusive and non-transferrable right to display and access the Platform and Title Summary and Promotional Data for the limited purpose of: (a) allowing Patrons to access, view, and borrow Digital Titles through the Platform and

pursuant to this Agreement; (b) promoting awareness and authorized use of the Platform, including via postings on the Library Online Catalog; and (c) establishing and implementing Library-specific policies in regard to use of the Platform by the Library and Patrons, consistent with this Agreement and the requirements of the Platform.

**2.2 Limitations.** Except for the limited, non-exclusive, non-transferrable rights expressly granted to Library under this Agreement, Library shall have no right in or to, or ownership of, the Platform, Digital Titles, hoopla Application, hoopla Website, Library Administration Website, Marks, Title Summary and Promotional Data, or any other artwork or materials delivered by or on behalf of Midwest Tape. The Library shall have no right to access, use, modify, or reproduce any portion of any source code relating to the Platform, or to make, sell, or distribute any variations or derivative works of the Platform. The Library agrees to the support and protection of Intellectual Property Rights (including but not limited to copyright and trademark protections), to discourage copyright or trademark infringement, to use its best efforts to prohibit Patrons or others from engaging in such infringement (including by immediately notifying Midwest Tape of any known or suspected violations of Intellectual Property Rights relating to use of the Platform or the Digital Titles), and to refrain from facilitating such activity. In addition, the Library will comply with all other requirements communicated by or on behalf of Midwest Tape with respect to any Intellectual Property Rights and the Marks.

**2.3 No Public Performance Rights.** The Library shall have no public performance rights in the Digital Titles under the terms of this Agreement. Accordingly, the Library may not offer any Digital Titles as a performance to Patrons or the general public, sponsored by the Library or otherwise.

**2.4 General Obligations.** To facilitate the successful introduction of the Platform to Patrons, and the use of the Platform by Patrons, the Library shall: (a) regularly communicate to staff, Patrons, and the general public served that the Platform is available to Patrons; (b) provide suitable training opportunities to appropriate Library staff members, so that they understand the Platform and can assist in the promotion and the use of the Platform by Patrons; (c) regularly feature prominent links and references to popular Digital Titles and the hoopla Website on the Library Online Catalog's homepage; (d) incorporate MARC record data regarding Digital Titles in the Library's catalog to enhance the discoverability of key content available in the Platform; (e) manage all funds designated or appropriated for use of the Platform; (f) participate in the implementation of the Platform, including without limitation by providing Midwest Tape with sufficient and accurate information to identify Patrons of the Library who are authorized to utilize the Platform; (g) provide Primary Support, as defined below; (h) perform requested linkage between the Platform and the Library Online Catalog, as well as reasonable technical services to support and maintain the Platform during the Term; and (i); notify Midwest Tape at least three (3) business days before any change in any RSS links, ILS configuration, URL updates, or other equipment or technology that could adversely impact the Platform and/or the use of the Platform, including any changes that could impact the process of Patron authentication.

**2.5 Network Connectivity.** The Library is responsible for providing a suitable network and Internet system for integration of the Platform into the Library Online Catalog or other systems.

**2.6 Use of the Library Administration Website.** The Library agrees that it is solely responsible for managing its use of the Library Administration Website and using that website as designed and in accordance with the Terms and Conditions posted on that website, including by establishing, verifying, and maintaining any settings and controls regarding use of the Platform by Patrons (e.g., limitations on circulations, content restrictions, reporting preferences, etc.).

**2.7 Library Online Catalog.** The Library is solely responsible for all aspects of catalog integration, operation, training, support, and/or maintenance necessary for the operation of the Library Online Catalog. This may include obtaining a SIP2 or similar protocol software license(s) from a third-party vendor in order to support direct integration of the Platform with the Library's own Library Online Catalog or other systems, as well as the cost for customized MARC records it may obtain from a third-party supplier such as OCLC. The Library shall keep its hoopla account information current with Midwest Tape and promptly alert Midwest Tape to any significant changes relating to the Library Online Catalog, including but not limited to changes of personnel that could impact the support, functionality, and/or performance of the Platform.

**2.8 Primary Support.** The Library is responsible for providing its Patrons with "Primary Support," which includes assisting Patrons with the use of the Platform, responding to Patron questions regarding the functionality and technical requirements of the hoopla Website and the hoopla Application, and helping Patrons with the process of communicating with Midwest Tape where necessary and appropriate to obtain additional support and technical assistance.

**2.9 No Warranties or Representations to Others.** The Library represents and agrees that, except for the representations, warranties, and promises made to Midwest Tape in this Agreement or under the Terms and Conditions applicable to the Library Administration Website, neither the Library nor any of its employees, agents, or others acting under its direction has made or will make any representations or warranties, express or implied, to anyone concerning the Platform, Digital Titles, hoopla Application, hoopla Website, and/or Library Administration Website.

**2.10 Compliance with Applicable Laws and Regulations.** The Library will comply with all applicable laws, ordinances, rules, regulations, and other legal requirements in connection with its performance under this Agreement.

**2.11 Costs and Expenses.** The Library is responsible for all of its own expenses and costs related to its performance under this Agreement. Midwest Tape has no obligation to reimburse the Library for any expenses or costs incurred by the Library related to this Agreement or to the performance of the Library's obligations, including but not limited to any expenses and costs incurred in the preparation, systems integration, or use of the Digital Media Platform, Library Administration Website, hoopla Website, and hoopla Application.

### **3. FEES, PAYMENTS & REPORTING.**

**3.1 Invoicing and Payment.** Except for purchases of Flex Licenses (which will be invoiced to the Library by Midwest Tape after each purchase), Midwest Tape will invoice the Library by Invoice Period. "Invoice Period" means a calendar monthly period in which transactional activity occurs. Payment of each invoice will be due within thirty (30) days from the date of the invoice. During any period in which Midwest Tape is holding an Advance from the Library, Midwest Tape will apply the Advance funds toward payment of the invoice upon issuance.

**3.2 Reporting.** Through the Library Administration Website, the Library will have access to certain reports summarizing Patron usage, circulation data, and purchase activity for the Digital Titles.

**3.3 Taxes.** The Library is required to provide a sales tax exemption certificate, if applicable, to Midwest Tape as part of the on-boarding process. If the Library is not exempt or does not do so, Midwest Tape will add (and collect) sales taxes to any purchases made pursuant to this Agreement.

**4. TERM AND TERMINATION.**

**4.1 Term.** The term of this Agreement (the "Term") begins on the Effective Date and continues for a period of 36 months thereafter.

**4.2 Termination.** This Agreement may be terminated in either of the following ways:

**By Notice.** Either Party may terminate this Agreement, with or without cause, at the end of the Term by providing the other Party with sixty (60) days' advance written notice prior to the end of the Term.

**Due to Breach.** Either Party may suspend its performance or, at that Party's sole option, terminate this Agreement by providing the other Party with written notice of such action in the event of (i) the other Party's material breach of this Agreement, which breach continues uncured for a period of thirty (30) days after written notice of such breach; or (ii) the Library's failure to perform its payment obligations under this Agreement for a period of at least thirty (30) days. If any period of such suspension exceeds 30 days, the non-breaching Party may terminate this Agreement by providing the other Party with written notice of such action.

Upon termination of this Agreement, the Library shall immediately (i) cease distribution and use of the Platform, hoopla Application, hoopla Website, Digital Titles, Marks, Title Summaries and Promotional Data; and (ii) pay all amounts due to Midwest Tape. Once the Library satisfies these obligations, any unapplied portion of an Advance payment will be refunded within thirty (30) days.

**5. MIDWEST TAPE RIGHTS & OBLIGATIONS.**

**5.1 The hoopla Platform.** During the Term, Midwest Tape and/or its Service Partners will provide for the following: (a) hosting of and support for the Platform as provided in this Agreement; (b) designation of an implementation specialist ("hoopla Coordinator") to be available for customer support to the Library in connection with the launch and implementation of the Platform; and (c) Library access to the Library Administration Website, which offers tools to enable the Library to manage use of the Platform, including in regard to its inventory, Patron borrowing limits, lending policies, title blocking, ratings and user-advisory settings, usage dashboard, and reporting.

**5.2 Ownership of Vendors' Intellectual Property.** Subject to the provisions of this Agreement, hoopla Vendors retain all of their Intellectual Property Rights in and to their Digital Titles, Metadata, Marks, and Promotional Postings, artwork, and other property that may be utilized or accessed in connection with the Platform.

**5.3 Ownership of Midwest Tape's Intellectual Property.** As between the Parties, Midwest Tape owns and retains all Intellectual Property Rights in and to the Digital Media Platform, hoopla Application, hoopla Website, Library Administration Website, Midwest Tape and hoopla and hoopla digital trademarks, and all other Midwest Tape intellectual property, including but not limited to all modifications, updates, or improvements made thereto. The Library acknowledges Midwest Tape's ownership of such Intellectual Property Rights.

**5.4 Modifications to Digital Media Platform.** The Platform, hoopla Application, hoopla Website, Library Administration Website, and other aspects and features of hoopla may be modified at any time by Midwest Tape in its sole discretion, including, without limitation, in order to develop, modify, or improve operations, performance, or functionality.

**5.5 Addition, Removal, and Modifications of Digital Titles.** Midwest Tape has the right to take any or all of the following actions with respect to any Digital Title(s) at any time and in its sole discretion: (a) add or remove Digital Titles to or from the Platform; (b) set or adjust the applicable fees and charges, including, without limitation, PPU Circulation Fee(s), OCOU License Fees, and/or other charges relating to the Platform and/or the media content available on the Platform; (c) replace content files, Metadata, and/or Promotional Postings; and (d) edit or modify editorial content or designs. The Library will be notified by email, the Library Administration Website, or other means of major modifications to the functionality of the Platform.

**5.6 Promotion of the Platform.** Midwest Tape may, at its own expense and in its own discretion, publicize the Platform and communicate with the general public and Patrons regarding the availability, features, and use of the Digital Titles, Digital Media Platform, hoopla Application, and hoopla Website.

**5.7 Support.** To support the Platform, Midwest Tape will (a) maintain help files, information, and other appropriate documentation and training materials; (b) undertake reasonable efforts to help the Library perform its obligation to provide Primary Support to Patrons, including by offering periodic training opportunities to Library staff, updating the Library regarding system changes, and providing the Library with answers to "frequently asked questions" related to the Platform; (c) supply activation support, including assisting with the implementation of any software, and reasonable levels of continuing support to assist the Library in its use of the Platform; and (d) make technical support personnel available for feedback, problem solving, and/or general questions. Technical support services to the Library include: (i) reasonable efforts to identify, correct, and/or circumvent errors in the Platform, hoopla Application, hoopla Website, and Library Administration Website; and (ii) supplying updates, enhancements, and new versions of the Platform as they become available (the "Secondary Support"). It is acknowledged and agreed that Midwest Tape has no obligation to provide Primary Support to Patrons and any support provided to Patrons will be in its sole discretion.

During the Term, Midwest Tape will use reasonable efforts to provide continuous service. Permissible down time includes periodic unavailability due to matters such as: maintenance of the server(s); installation or testing of software, public or private telecommunications services, or internet nodes or facilities; and failure of equipment or services outside its control. Scheduled down time will occur periodically and at times designed, in Midwest Tape's sole discretion, to minimize inconvenience to hoopla users.

## **6. MISCELLANEOUS.**

**6.1 Indemnities.** "To the extent and monetary limits provided in Section 768.28, Florida Statutes," Each Party ("Indemnifying Party") agrees to defend, indemnify, and hold harmless the other Party and its parents, subsidiaries, and Service Partners from and against any and all third-party claims, demands, suits, legal proceedings, and causes of action that arise out of or relate to any breach by the Indemnifying Party of any of its representations and warranties as stated in this Agreement (collectively, "Indemnifiable Claims"), including but not limited to all damages, costs, expenses, reasonable attorneys' fees, judgments, and settlements resulting from such Indemnifiable Claims; provided, however, that no Indemnifiable Claim may be settled without the express written consent of the Indemnifying Party.

**6.2 Indemnity Process.** The Party seeking indemnification must provide prompt written notice to the Indemnifying Party of any Indemnifiable Claim for which indemnification will be sought. The Indemnifying Party may elect to control the defense and settlement of any Indemnifiable Claims with counsel of its choosing. The Party seeking indemnification will

cooperate with the Indemnifying Party's defense against the Indemnifiable Claims. If any Indemnifiable Claim is covered in part but not entirely by a Party's indemnification obligation hereunder, the Indemnifying Party will only be responsible for costs to the extent attributable to the covered portion.

**6.3 DISCLAIMER OF WARRANTIES.** MIDWEST TAPE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

**6.4 LIMITATION OF LIABILITY.** "Except in cases of negligence, gross negligence, or willful misconduct," EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOST BUSINESS OPPORTUNITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. WITHOUT RESTRICTION OF THE FOREGOING, MIDWEST TAPE'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY LIBRARY TO MIDWEST TAPE DURING THE TWELVE MONTHS PRIOR TO THE DATE THAT ANY CLAIM ALLEGEDLY AROSE.

**6.5 Confidential Information.** "This Agreement is subject to Chapter 119, Florida Statutes, the Florida Public Records Law." "Confidential Information" means any non-public information of either Party that is disclosed to the other Party in connection with this Agreement either directly or indirectly, in writing, orally, electronically, or by inspection of tangible objects, and that is either: (a) designated in writing as "Confidential" at the time of disclosure or within five (5) days thereafter; or (b) confidential by its very nature or that the receiving Party reasonably should know to be confidential. Confidential Information includes, without limitation, the terms of this Agreement, any and all non-public business plans, customer information, pricing, contract terms, available content and sales, marketing and/or finances of the disclosing Party. Each Party agrees to hold the Confidential Information of the other Party in confidence and to refrain from disclosing such Confidential Information to any third party, except: (i) to the extent required to be disclosed pursuant to governmental or judicial process, provided that notice of such process is promptly provided to the disclosing Party in order that it may have every opportunity to intercede in such process to contest such disclosure or seek an appropriate protective order; or (ii) to the receiving Party's professional advisors and contractors on a need to know basis, provided that such advisors and contractors are under an obligation to maintain the confidentiality of the Confidential Information. Confidential Information is the property of the disclosing Party, and the receiving Party will not be deemed by virtue of its access to Confidential Information to have acquired any right or interest in or to any such Confidential Information. This Section 6.5 shall not affect either Party's right to use or disclose information that is not Confidential Information, including information that is in the public domain or that the receiving Party can show was known to it without any confidentiality obligation prior to the disclosure by the disclosing Party.

**6.6 Assignment.** Except as provided herein, neither Party may, by operation of law or otherwise, assign, sublicense, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which may not be unreasonably withheld or delayed. Either Party may assign, transfer, or otherwise delegate any or all of its rights and obligations under this Agreement to any parent or subsidiary entity, any successor carrying on that part of the business to which this Agreement relates, or any purchaser of all or substantially all of the assets or stock of such Party. Each Party may appoint contractors to

perform part of its obligations hereunder, provided that the Party remains fully responsible for such contractor's performance. This Agreement binds, benefits, and is enforceable by and against both Parties and their respective successors and permitted assigns.

**6.7 Notices.** Notices required by this Agreement must be sent by United States mail, as well as by electronic mail (or by facsimile), directed as follows:

To Midwest Tape:

Midwest Tape, LLC:  
1417 Timberwolf Dr.  
Holland, Ohio 43528  
info@midwesttapes.com  
1 (800) 875-2785

To Library:

Lee County Library System/Library Processing  
881 Gunnery Road N., Suite 2  
Lehigh Acres, FL 33971  
RFeinsilber@leegov.com  
239-533-4170

**6.8 Amendment.** No amendment, modification, addendum, or revision to this Agreement is valid unless it is in writing and signed by all Parties to this Agreement.

**6.9 Arms-Length Negotiations.** This Agreement was negotiated at arm's length with each Party receiving advice from independent legal counsel, and has been executed and delivered in good faith. It is the intent of the Parties that no part of this Agreement should be construed against any Party because of the identity of the drafter.

**6.10 Counterparts.** This Agreement may be executed in counterparts, each of which taken together constitutes one single Agreement between the Parties.

**6.11 Entire Agreement/Non-Reliance.** This Agreement constitutes the sole and entire agreement between the Parties and supersedes and merges all prior agreements, proposals, negotiations, discussions, and understandings between the Parties relating to the subject matter of this Agreement. No Party has relied or can rely on any statement or representation that is not expressly contained in this Agreement as an inducement to enter into this Agreement.

**6.12 Force Majeure.** No Party may be considered in default or to have incurred any liability hereunder due to any failure to perform this Agreement should such failure arise out of causes beyond its reasonable control, including, without limitation, work stoppages, fires, riots, accidents, floods, storms, unavailability of utilities or fuel, Internet or other communication failures, or other similar failures or occurrences. The time for performance will be extended for a period equal to the duration of such conditions.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

ACCEPTED AND AGREED

ACCEPTED AND AGREED

(Lee County Board of County Commissioners)

MIDWEST TAPE, LLC

By: Mike Greenwell  
DocuSigned by:  
55F586F7224445A

By: Susan Basov

Print Name: Mike Greenwell

Print Name: Susan Basov

Print Title: chair

Print Title: Vice Pres

Date Signed: 9/11/2024 | 11:10 AM EDT

Date Signed: 10/30/23

**Appendix 2**  
hoopla® Licenses and Distribution Models

The chart below describes the distribution models included in Midwest Tape's hoopla offering as of the Effective Date, including the digital media licenses that are available via the Digital Media Platform.

	<b>Instant Borrows</b>	<b>Flex Borrows</b>
License type	PPU (Pay-Per Use)	OCOU (One-Copy/One-User)
<b>Circulations / Borrows</b>	An <b>Instant Title</b> is a work that is available for simultaneous access by multiple users. Instant Titles may be accessed via <b>PPU Circulations</b> , otherwise referred to as <b>Instant Borrows</b> , each of which allows a user to stream, download, and/or access the chosen Instant Title, or collection of Titles (e.g., a "Binge Pass", described below), for a limited time that terminates upon the expiration of a fixed period or earlier "return" by the user. Instant Borrows are available regardless of whether another user has borrowed the same title for use at the same time. For each Instant Borrow, the Library purchases one <b>Instant License</b> to authorize that particular borrow. A " <b>Binge Pass</b> " is an Instant Borrow that provides the borrower access to a collection of titles, either directly through hoopla or through a third-party website or application.	A <b>Flex Title</b> is only available to one user at a time, via a digital <b>OCOU Circulation</b> , otherwise referred to as a <b>Flex Borrow</b> . If the Library has an available <b>Flex License</b> to a Flex Title, a Patron may activate a Flex Borrow and that license is digitally checked out and considered "in use." Other users cannot access that title during that borrow unless (i) the Library has purchased additional Flex Licenses to the same title, one of which is available at that time, or (ii) the same title also is available as an Instant Title. A Flex Borrow allows a user to stream, download, and/or access the title for a limited time that terminates upon the expiration of a fixed period or earlier "return" by the user.
<b>Available formats</b>	All formats (audiobooks, eBooks, comics, movies, television, music, and magazines). Binge Passes are available only for select titles and may not be available for all formats.	Currently available only for audiobooks and eBooks.
<b>Payment obligations</b>  <i>(continued)</i>	A <b>PPU-Circulation Fee</b> is charged for each Instant Borrow. The fees, which are listed on the Library Administration Website, vary by title and format, and are subject to change from time to time. The fee is charged regardless of whether the borrowed content is actually accessed, viewed, streamed, or	Where available, Flex Licenses may be ordered via the hoopla Digital Library Administration Website. The costs of these licenses vary by title and format. Fees for Flex Licenses are invoiced after each purchase (typically daily).

	<b>Instant Borrows</b>	<b>Flex Borrows</b>
	downloaded by the user. Fees for Instant Borrows are invoiced monthly.	
<b>Borrow priority</b>	To optimize Libraries’ media purchases, Flex Borrows are prioritized over Instant Borrows of Instant Titles when possible. Therefore, if a user requests an Instant Title, and at that time a Flex License to that title is available, the borrow will be fulfilled as a Flex Borrow and no PPU-Circulation Fee will apply. (Note that this priority does not apply to Instant Borrows of Binge Passes. Users may borrow Binge Passes regardless of whether select titles within the Binge Pass may be available as Flex Licenses.)	Same. To optimize Libraries’ purchases, Flex Borrows are prioritized over Instant Borrows of Instant Titles when possible.
<b>Metering restrictions</b>	N/A	A Flex License may be either perpetual, or “metered.” Some publishers do not offer perpetual licenses, but instead offer metered licenses. Metered licenses are limited by time period and/or number of permitted borrows, as described in the Library Administration Website.
<b>Pre-Owned Content</b>	N/A	If the Library has acquired OCOU Licenses from another source ( <b>Pre-Owned Content</b> ), Midwest Tape may be able to include them as Flex Licenses on hoopla for the Library’s use hereunder. The Library is responsible for (1) providing an accurate list of Pre-Owned Content for Midwest Tape’s review (consistent with Appendix 3), and (2) notifying the owner and/or licensor of such Pre-Owned Content when the Pre-Owned Content is to be removed. The format to be used for listing the Library’s Pre-Owned Content, including the required certification, is set forth on Schedule 1 to Appendix 3.

## Pricing (USD)

**Prices for Per Circulation Program:** For each Digital Content Title (title) covered by the Per Circulation Program, Midwest shall charge the Library per “title” circulation, a price in accordance with the following hoopla Per Circulation Pricing Grid:

Per Circulation price list is as of October 2023 and may be subject to change.

hoopla Per Circulation Pricing	
Audiobooks	\$0.00 - \$3.99
Comics	\$0.00 - \$3.99
eBooks	\$0.00 - \$3.99
Movies	\$0.00 - \$3.99
Television	\$0.00 - \$2.99
Music Albums	\$0.00 – \$1.99

MIDWEST TAPE, LLC

MEETING OF THE BOARD OF DIRECTORS  
CERTIFICATE OF AUTHORITY

At a meeting of the Directors of Midwest Tape, LLC duly called and held at 1417 Timberwolf Drive, Holland, Ohio 43528 on the 19th day of September 2023, at which a quorum was present and acting, it was VOICED THAT Sue Bascuk, Vice President and Treasurer, is an official officer of this company and is hereby authorized and empowered to make, enter into, sign, seal and deliver contracts, on behalf of this company, a Contractor for Lee County and it's Public Library by providing hoopla digital.

I DO HEREBY CERTIFY that the above is a true and correct copy of the record, that said authorization has not been amended or repealed and is in full force and effect on this date, and that Sue Bascuk is an official officer of this corporation.



JULIA A. GARDOCKI  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES 12-02-2023

ATTEST:   
Sheref-Abou Donia  
Controller of Midwest Tape, LLC

Notary: 

Dated: 19th Day of September 2023

*[Faint, illegible text]*

*[Handwritten signature]*

LELA CARROLL  
OHIO SUPERVISOR  
COUNTY BOARD OF SUPERVISORS





**AGENDA ITEM REPORT**

**DATE:** November 7, 2023  
**DEPARTMENT:** Library  
**REQUESTER:** Mindi Simon  
**TITLE:** Approve Annual Expenditures with Midwest Tape and Renew Hoopla Agreement

**I. MOTION REQUESTED**

- A) Approve expenditures with Midwest Tape for the purchase, cataloging, and processing of physical materials along with downloadable and streaming content. These expenditures, estimated at \$750,000 are approved in the department’s annual adopted budget.
- B) Approve renewal of the 36-month agreement for Hoopla, a download and streaming content service.
- C) Authorize the County Manager or designee to execute any documents required to complete the purchase on behalf of the Board of County Commissioners.

**II. ITEM SUMMARY**

Approve expenditures with Midwest Tape for physical and electronic materials for library patrons, along with cataloging and processing services. Additionally, approve renewal of the 36-month agreement for Hoopla, a download and streaming content service. During FY22-23, the library system checked out more than 4.3 million items.

The total estimated expenditure for FY23-24 is \$750,000 and is included in the Library System budget. FY22-23 expenditures with Midwest Tape were \$642,318. The increase is in response to an increased demand for downloadable and streaming content, popularity of physical materials, and inflation.

These expenditures fall under Lee County Procurement Ordinance 23-21, Section 3.8(A)(1) which provides exemption from competitive solicitation for these types of purchases; however, purchases of \$100,000 or more require Board approval.

**III. BACKGROUND AND IMPLICATIONS OF ACTION**

- A) Board Action and Other History  
 On January 17, 2023, the Board of County Commissioners approved the purchase of materials from Midwest Tape. Total expenditures for Midwest Tape in FY22-23 were \$642,318.  
  
 On January 18, 2022, the Board of County Commissioners approved expenditures and a 24-month agreement with Midwest Tape for processing of physical materials and use of their download and streaming service
- B) Policy Issues  
 Section 3.8(A)(1), of Lee County Procurement Ordinance No. 23-21 states that the Competitive Procurement process is waived for all books, periodicals, software intended primarily for direct use by the general public, printed materials, photographs, film, disk, or similar materials in either physical or electronic format.
- C) BoCC Goals  
 Providing physical and electronic materials to Lee County Library System customers supports the department’s long-range goals to offer services, materials, and programs to meet the ever-changing needs of new and existing patrons. This aligns with Lee County’s strategic goal to enhance the quality of life for the citizens of Lee County.
- D) Analysis  
 During FY22-23, library customers borrowed more than 4.3 million items, a part of which were Midwest Tape materials. As Lee County continues to thrive and grow, we will utilize data and usage statistics to evaluate the need for materials and formats, and provide funding through the operating budget.
- E) Options

**IV. FINANCIAL INFORMATION**

A)	Current year dollar amount of item:	\$750,000
B)	Is this item approved in the current budget?	Yes
C)	Is this a revenue or expense item?	Expense
D)	Is this Discretionary or Mandatory?	Discretionary
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	No

F)	Fund: Library Program: Lee County Library System Project: Library Materials Account Strings: KG5710114800.506610.181 KG5710114800.506611.181	
G)	Fund Type?	Other: Library
H)	Comments:	

**V. RECOMMENDATION**

Approve

**VI. TIMING/IMPLEMENTATION**

Library material and service purchases are ongoing throughout the fiscal year. The vendors generate invoices for payment of the materials and services. The library pays the invoices once the materials and services are received.

**VII. FOLLOW UP**

**ATTACHMENTS:**

Description	Upload Date	Type
<a href="#">Certificate of Authority</a>	10/26/2023	Backup Material
<a href="#">Hoopla Digital Media Agreement</a>	10/30/2023	Agreement

**REVIEWERS:**

Department	Reviewer	Action	Date
Library	Tucker, Mary	Rejected	10/25/2023 - 1:08 PM
Library	Maine, Stacy	Approved	10/27/2023 - 2:32 PM
Library	Tucker, Mary	Approved	10/30/2023 - 4:13 PM
Library	Simon, Mindi	Approved	10/30/2023 - 4:14 PM
Budget Services	Henkel, Anne	Approved	10/31/2023 - 8:26 AM
Budget Services	Winton, Peter	Approved	10/31/2023 - 8:32 AM
County Attorney	Fraser, Andrea	Approved	10/31/2023 - 8:44 AM
County Manager	Codie, Robert	Approved	10/31/2023 - 11:25 AM

**Certificate Of Completion**

Envelope Id: E1BEBAA33A814DED843AAEDB7A53726E	Status: Completed
Subject: Board Approved Contract-Routing-OTH-23 - hoopla Digital Media Agreement -Midwest Tape, LLC	
Source Envelope:	
Document Pages: 11	Signatures: 2
Supplemental Document Pages: 6	Initials: 0
Certificate Pages: 5	Envelope Originator: Daniel Goggin
AutoNav: Enabled	2115 Second St, First Floor
Enveloped Stamping: Enabled	Fort Meyers, FL 33901
Time Zone: (UTC-05:00) Eastern Time (US & Canada)	dgoggin@leegov.com
	IP Address: 73.156.194.201


**Record Tracking**

Status: Original 9/10/2024 10:29:42 AM	Holder: Daniel Goggin dgoggin@leegov.com	Location: DocuSign
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**Signer Events**

Andrea Fraser  
 afraser@leegov.com  
 Deputy County Attorney  
 Security Level: Email, Account Authentication (None)

**Signature**

Signed by:  
  
 D7B0A432435E448...  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 64.157.177.193

**Timestamp**

Sent: 9/10/2024 11:11:59 AM  
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 Signed: 9/10/2024 11:32:44 AM

**Electronic Record and Signature Disclosure:**

Accepted: 9/10/2024 11:32:28 AM  
 ID: 99f8217e-968d-440f-9ff8-8196bab399fe

Mike Greenwell  
 dist5@leegov.com  
 Chair  
 Signing Group: District 5 - Chairman  
 Security Level: Email, Account Authentication (None)

DocuSigned by:  
  
 55F586F7224445A...  
 Signature Adoption: Pre-selected Style  
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 Signed: 9/11/2024 11:10:46 AM

**Electronic Record and Signature Disclosure:**

Accepted: 9/11/2024 11:10:39 AM  
 ID: 9c6c13c2-633f-4b13-b824-0d933f9a6598

Rachael Rumer  
 Rrumer@leeclerk.org  
 Deputy Clerk  
 Lee Clerk  
 Signing Group: Minutes  
 Security Level: Email, Account Authentication (None)

**Completed**  
 Using IP Address: 198.184.170.4

Sent: 9/11/2024 11:10:49 AM  
 Viewed: 9/11/2024 12:09:30 PM  
 Signed: 9/11/2024 12:09:48 PM

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
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Erica Temerario  
etemerario@leegov.com  
Lauren Schaefer  
lschaefer@leegov.com

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Tina Boone  
tboone@leegov.com  
Legal Administrative Specialist, Sr  
Lee County BoCC  
Signing Group: County Attorney's Office  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Connie Prevatte  
cprevatte@leegov.com  
Security Level: Email, Account Authentication  
(None)

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Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/10/2024 10:50:51 AM
Certified Delivered	Security Checked	9/11/2024 12:09:30 PM
Signing Complete	Security Checked	9/11/2024 12:09:48 PM
Completed	Security Checked	9/11/2024 12:09:50 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Lee County BOCC-Procurement Management:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [mpatterson@leegov.com](mailto:mpatterson@leegov.com)

### **To advise Lee County BOCC-Procurement Management of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [mpatterson@leegov.com](mailto:mpatterson@leegov.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Lee County BOCC-Procurement Management**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [mpatterson@leegov.com](mailto:mpatterson@leegov.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Lee County BOCC-Procurement Management**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [mpatterson@leegov.com](mailto:mpatterson@leegov.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

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- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Lee County BOCC-Procurement Management as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Lee County BOCC-Procurement Management during the course of your relationship with Lee County BOCC-Procurement Management.