

EXHIBIT A

This Agreement is a draft and is subject to change until it is fully executed.

ECONTENT PRODUCTION AND DISTRIBUTION AGREEMENT

THIS ECONTENT PRODUCTION AND DISTRIBUTION AGREEMENT (this "Agreement") is between netLibrary, a division of OCLC Online Computer Library Center, Inc., an Ohio nonprofit corporation, whose primary business address is 4888 Pearl East Circle, Suite 103, Boulder, CO 80301 U.S.A. ("netLibrary"), and Recorded Books LLC, a Delaware limited liability company whose primary business address is 270 Skipjack Road, Prince Frederick, MD 20678 ("Recorded Books").

Recorded Books has proprietary rights to various types of content (defined below as "Publisher Products") which may include, but are not limited to audiobooks. netLibrary has proprietary rights to a system (defined below as "the NL System") for the distribution of eContent, including audiobooks. The parties desire to use the NL System to market, sell, and distribute to Recipient(s) Subscriptions to Bundled Collections of NL Electronic Versions of the Publisher Products on the terms set out below.

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This Agreement is a draft and is subject to change until it is fully executed.

1. Purpose of Agreement and Exhibits.

- (a) This Agreement authorizes Recorded Books and netLibrary to market, sell, and distribute Bundled Collections of NL Electronic Versions of Publisher Products.
- (b) Exhibit A authorizes netLibrary to perform the actions necessary to create electronic versions of the Publisher Products in the form distributed by netLibrary (defined above as "NL Electronic Versions")
- (c) Exhibit B describes the steps netLibrary will take to use the NL System to host and provide access to Bundled Collections of NL Electronic Versions of Publisher Products.
- (d) Exhibit C describes the business terms upon which Recorded Books and netLibrary have agreed to market, sell, and distribute Bundled Collections of NL Electronic Versions of Publisher Products.

2. Definitions

- (a) Definitions. As used in this Agreement:

- (i) "Annual Revenues" means the combined gross sales of Subscriptions by both Recorded Books and netLibrary during a 12 month period following the Effective Date of the Agreement or, in the case of Renewals, a 12 month period following the applicable anniversary of the Effective Date of the Agreement.
- (ii) an "Audio Book File" means a digital electronic version of the Publisher Product that meets netLibrary's file format specifications for Audio Book Files. Acceptable Audio Book File input formats include MP3, WMA, WAV, CD, or DVD.
- (iii) "Bundled Collection(s)" means a combined collection of NL Electronic Versions of Publisher Products that netLibrary and Recorded Books have agreed in writing to group together for sale as a Subscription
- (iv) "Customer Support" means the support provided by netLibrary to Recipients in response to Tier 1 and Tier 2 Customer Support Queries and/or technical problems. Tier 1 Support Queries are routine and basic inquiries, and include FAQs, order inquiries, billing inquiries, payment inquiries, credit inquiries, and related inquiries of a similar scope. Tier 2 Support Queries are service effecting inquiries, and include interruptions in service, system failure, and related inquiries of a similar magnitude.
- (v) "Effective Date" means September 10, 2004.
- (vi) a "NL Electronic Version" means each Publisher Product that is compatible with the NL System, including the applicable Media reader.
- (vii) the "NL System" means the certain online website, computer equipment, software programs, database systems, the applicable Media reader, and related technical processes, know-how, and documentation that netLibrary uses to offer Products and Services.
- (viii) "Production" means the process by which a Publisher Product is transformed into a "NL Electronic Version."
- (ix) "Publisher Products" means specific content controlled by Recorded Books that are jointly selected by Recorded Books and netLibrary for distribution under this Agreement. Publisher Products may include, but are not limited to audiobooks or other types of electronic content as mutually agreed upon by the parties.
- (x) a "Recipient" means a public, school, or university library, military base, or any library associated with these institutions. If netLibrary or Recorded Books wants to sell a Subscription to some other organization, then it must obtain written consent to the sale from an authorized representative of the other party.
- (xi) "Revenues" means the combined gross sales of Subscriptions by both Recorded Books and netLibrary.

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- (xii) "Hosted Services" means the non-exclusive services performed by netLibrary in accordance with the terms of this Exhibit, and as described further in Exhibit B and Schedule B-1.
 - (xiii) A "Subscription" means an annual license for access to a Bundled Collection on the basis described in Exhibit C. Section 2.(a).
 - (xiv) "Subscription Price" means the price that netLibrary and Recorded Books mutually agree to charge a Recipient for each sale of a Subscription.
 - (xv) "Technical Specification" means the document attached hereto as Schedule B-1 to Exhibit B and incorporated by reference.
 - (xvi) a "Third-Party File" means a digital electronic version of the Publisher Product in a file format created by Recorded Books or a third party that is not consistent with the applicable netLibrary file format specification.
- (b) During the initial phase of this project, Recorded Books has informed netLibrary that Recorded Books will be delivering Publisher Products to netLibrary on Audio CD(s). As the parties work together to define file format specifications for receiving Audio Books on Audio CD(s), MP3 files, WAV files, WMA files; netLibrary will prepare and provide electronic copies of the file format specifications to Recorded Books. netLibrary will also post the file format specifications and other information on Production; including a metadata submission form; at: http://www.netlibrary.com/extranet/Recorded_Books/specifications/.

3. Distribution Rights.

- (a) Grant of Rights. Recorded Books grants netLibrary the worldwide, nonexclusive right and license to:
 - (i) market, distribute, and sell to Recipients Subscriptions to Bundled Collection(s) of NL Electronic Versions that may be accessed by transmission or communication using the Internet;
 - (ii) produce, convert, or integrate all or parts of the NL Electronic Version from the corresponding Publisher Product, to the extent required to exercise netLibrary's rights under this Agreement;
 - (iii) load, store, use, copy, and reproduce the NL Electronic Versions for distribution and display to Recipients in a mutually agreed upon format (e.g. audiobook, etc.), compatible with the NL System, including any media reader software that netLibrary adopts; and
 - (iv) grant rights to Recipient(s) to download the NL Electronic Versions for temporary use.
- (b) Reservation of Rights. Nothing in Section 3(a) will limit or impair Recorded Books' right to market and sell Subscriptions to Bundled Collections to Recipients in accordance with the terms of this Agreement.
- (c) Digital Rights Management and Security
 - (i) If netLibrary will host NL Electronic Versions of Publisher Products on the NL System; then, as provided in this Section 3(b)(i), during the term of this Agreement, netLibrary will use commercially reasonable efforts:
 - (1) to maintain a secure hosting environment for the NL Electronic Versions;
 - (2) to protect the NL Electronic Versions from copyright infringement or other unauthorized use according to netLibrary's regular digital rights management practices;
 - (3) to ensure that any Recipient that purchases NL Electronic Versions or services or both will comply with the applicable version of netLibrary's form Electronic Content Agreement ("Recipient Agreement"); and
 - (4) to perform the other Digital Rights Management Activities specified in Section 4.(b) of Schedule B-1 to Exhibit B.
 - (ii) A library or other Recipient that wants to purchase NL Electronic Versions of the Publisher Products or netLibrary's services or both must sign an Electronic Content Agreement

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(substantially in the form attached hereto as Exhibit D, and also available at <http://www.netlibrary.com/extranet/publisher/libraryagreement.asp>).

4. Term and Termination.

(a) Term and Termination for Convenience.

(i) This Agreement will have an initial term of three years.

- (1) If Annual Revenues in year 3 are greater than \$5,000,000 dollars, then this Agreement will renew for an additional term of three years.
- (2) If Annual Revenues in year 3 and beyond are greater than \$3,000,000 dollars; then, upon expiration of the term, and unless one party gives the other party 180 days prior written notice of its desire to terminate this Agreement; this Agreement will automatically renew for additional one-year terms.
 - (a) If netLibrary notifies Recorded Books of its desire to terminate this Agreement, then the Agreement will terminate after a one-year phase-out period. During this one-year period, all Section(s) of the Agreement, except Section(s) 1.(a) of Exhibit C and 4.(b) of Exhibit C, will apply.
 - (b) If Recorded Books notifies netLibrary of its desire to terminate this Agreement, then the Agreement will terminate after a three-year phase-out period. During this three-year period, all Section(s) of the Agreement, except Section(s) 1.(a) of Exhibit C and 4.(b) of Exhibit C, will apply.

(ii) If Annual Revenues in year 1 are less than \$750,000, Annual Revenues in year 2 are less than \$2,000,000, or Annual Revenues in Year 3 are less than \$3,000,000; then either party may give written notice to the other party of its desire to modify the Agreement at least 90 days before the end of the Contract year in question. The parties will use good faith efforts to discuss and mutually agree upon necessary program changes in order to meet revenue expectations. If the parties are not able to mutually agree upon necessary program changes during the 90 day period, then, the Agreement will expire, subject to Section 1.(e) of Exhibit B. For purposes of clarifying this Section 4.(a)(ii) and notwithstanding Section 2(a)(i) of the Agreement, "Annual Revenues in year 1" means the combined gross sales of Subscriptions by both Recorded Books and netLibrary from January 1, 2005 until September 9, 2005. Annual Revenues in year 2 and beyond will be calculated as specified in Section 2.(a)(i) of the Agreement.

(b) Termination for Cause. Either party (the non-breaching party) may terminate this Agreement at any time after providing the other party with 60 days' prior written notice of the occurrence of any of the following events, unless the other party cures or remedies the event within the 60-day period following receipt of the written notice (provided that a party must cure a breach for non-payment of amounts due under this Agreement within 30 days following receipt of the written notice):

- (i) A party becomes or is declared insolvent or otherwise unable to pay its debts as they become due, or upon the filing of any proceeding (whether voluntary or involuntary) for bankruptcy, insolvency, or relief from creditors; or
- (ii) A party violates any material provision of this Agreement or otherwise has committed breaches of this Agreement that, in the aggregate, are material. For purposes of this section 4(b)(ii): Sections 3, 5, 7, 9, and 10 of the Agreement; and Exhibits A and B, in their entirety, will be considered "material."

(c) Survival. Sections 3., 5., 6., 7., 8., 9., 10., 11.(c), and 11.(i) and other provisions to the extent expressly provided for therein, will survive termination of this Agreement.

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5. Representations and Warranties.

(a) netLibrary represents and warrants that:

- (i) it owns or has a license to all software and other intellectual property rights necessary to provide the services under this Agreement,
- (ii) it will comply with all applicable federal, state and local laws and regulations,
- (iii) it has the right and authority to enter this Agreement, and
- (iv) it will use its reasonable commercial efforts to market, sell, and distribute Subscriptions to Bundled Collections under this Agreement.

(b) Recorded Books represents and warrants that:

- (i) it owns or has a license to all copyrights, trademarks, and other intellectual property rights associated with the Publisher Products necessary for netLibrary to publish, distribute, reproduce, or otherwise commercially exploit the NL Electronic Versions as contemplated in this Agreement;
- (ii) any limitations on the rights of netLibrary in the NL Electronic Version will be accurately specified in connection with the submission of the Publisher Products under Section 2(b) of Exhibit B;
- (iii) it will comply with all applicable federal, state and local laws and regulations,
- (iv) it has the right and authority to enter into this Agreement and grant netLibrary the rights under this Agreement; and
- (v) it will use its reasonable commercial efforts to market and sell Subscriptions to Bundled Collections under this Agreement.

(c) netLibrary will be solely responsible for providing the Sales and Circulation Reports specified in Section(s) 2.(h)(i) and (iii) of Exhibit C. Recorded Books will be solely responsible for providing the Sales Report specified in Section 2.(h)(ii) of Exhibit C.

(d) Recorded Books will be solely responsible for (i) all royalty, copyright, commissions, or other compensation payments due to the authors or owners of any right, title, or interest in or to the Publisher Products in connection with netLibrary's use of the same under this Agreement and (ii) any inaccuracies or errors in the Publisher Products delivered to netLibrary.

6. Warranty Disclaimer.

- (a) RECORDED BOOKS AND NETLIBRARY ACKNOWLEDGE AND AGREE THAT THE NL ELECTRONIC VERSIONS ARE PROVIDED TO THE RECIPIENT "AS IS" WITHOUT CONDITION OR WARRANTY OF ANY KIND.**
- (b) NETLIBRARY AND RECORDED BOOKS EXPRESSLY DISCLAIM ALL IMPLIED CONDITIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NETLIBRARY AND RECORDED BOOKS DO NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE OF THE NL ELECTRONIC VERSIONS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETLIBRARY OR RECORDED BOOKS OR THE EMPLOYEES OF EITHER ORGANIZATION WILL CREATE A CONDITION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS CONDITION OR WARRANTY, AND NEITHER PARTY MAY RELY ON ANY INFORMATION OR ADVICE OF THIS TYPE.**

7. Indemnification.

- (a) netLibrary will indemnify, defend, and hold harmless Recorded Books from any and all losses, damages, liabilities, costs, charges, and expenses, including reasonable attorneys' fees, arising out of (i) any breach of netLibrary's representations and warranties in this Agreement, (ii) any claim against Recorded Books that the NL System infringes rights of third parties, and (iii) any inaccuracy, error, or omission of in a NL Electronic Version introduced by netLibrary during the Production process**

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- (b) Recorded Books will indemnify, defend, and hold harmless netLibrary from any and all losses, damages, liabilities, costs, charges, and expenses, including reasonable attorneys' fees, arising out of (i) any breach of any of Recorded Books' representations and warranties in this Agreement, (ii) any claim against netLibrary that the NL Electronic Versions infringe rights of third parties in the Publisher Products, and (iii) any and all claims arising from any inaccuracy, error, or omission of a Publisher Product reproduced in a NL Electronic Version except for any errors in the NL Electronic Version introduced by netLibrary during the Production process.
- (c) In addition, without limiting the scope of the preceding provisions of this Section, if for any reason Recorded Books retracts any Publisher Product previously authorized for Distribution by netLibrary, Recorded Books will reimburse netLibrary, or netLibrary may claim a credit for, all refunds owing to Recipients with respect to NL Electronic Versions of that Publisher Product, unpaid Production Charges if any, and reasonable costs directly incurred by netLibrary in retracting the NL Electronic Version from its databases (such costs not to exceed \$50.00 per title).

8. Limitation on Damages.

Neither party will claim special, incidental, indirect, or consequential damages, including lost profits, (whether arising under tort, contract or any other legal theory, and regardless of whether a party foresaw such damages) for breach of this Agreement. Except for a breach of a party's representations and warranties, remedies will be limited to claims for amounts due, for injunctive relief as provided under this Section 8, or for indemnification as provided for under Section 7. Notwithstanding any other provision of this Agreement, a non-breaching party may seek injunctive relief in any court of competent jurisdiction to enjoin or restrain the breaching party from continuing to do any act or commit any violation or threatened breach of a material provision of this Agreement, and the prevailing party, if any, on a claim for injunctive relief will be entitled to recover its reasonable attorneys' fees incurred in connection with that proceeding. For purposes of this Section 8, Sections 3, 5, 7, 9, and 10 of the Agreement will be considered "material." Injunctive relief will be without prejudice to any other legal or equitable remedies which may be available to the non-breaching party.

9. Intellectual Property Rights.

- (a) Both parties agree that each has and will retain ownership rights to its own Confidential Information and any intellectual or industrial property rights covered or embodied by such Confidential Information. The parties further agree that, except for the graphical design, specifications, and standards and content templates associated with the Co-Branded Website discussed in Section 3 (b) of Schedule B-1, netLibrary is not providing the Services described in Exhibit B on a work-for-hire basis and that, except for the graphical design, specifications, and standards and content templates associated with the Co-Branded Website discussed in Section 3 (b) of Schedule B-1, Recorded Books will claim no rights in any works prepared by netLibrary under Exhibit B.
 - (i) netLibrary will own all rights in and to the graphical design, specifications, and standards and content templates associated with the Co-Branded Website discussed in Section 3 (b) of Schedule B-1
 - (ii) NetLibrary grants to Recorded Books a nonexclusive and nontransferable perpetual license to use the graphical design, specifications, and standards and content templates associated with the Co-Branded Website discussed in Section 3 (b) of Schedule B-1 for Recorded Books' subsequent business use.
- (b) As between Recorded Books and netLibrary, Recorded Books will own all rights in and to the Publisher Products and the content and copyright to the NL Electronic Version(s) of the Publisher Products. netLibrary will own all other rights in the NL Electronic Version(s) and the technology used to adapt, integrate, host, and serve the NL Electronic Version(s). netLibrary will include in the NL Electronic Version(s) and will not alter or remove any copyright or trademark notices contained in the Publisher Products

10. Confidential Information.