

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

- (a) Confidential Information. "Confidential Information" means, subject to the exceptions set forth in Section 10(c) hereof, any information or data, regardless of whether it is in tangible form, disclosed by either party (the "disclosing party") that the disclosing party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the "receiving party") or which would be apparent to a reasonable person, familiar with Disclosing Party's business and the industry in which each operates, to be of a confidential or proprietary nature the maintenance of which is important to the Disclosing Party; provided, however, that reports and/or information related to or regarding a disclosing party's business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information of the disclosing party even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 10(c) hereof. For purposes of clarification, the parties agree that Audio Book content is not considered Confidential Information.
- (b) Use and Disclosure of Confidential Information. The receiving party acknowledges that it will have access to the disclosing party's Confidential Information. The receiving party agrees that it will not:
- (i) use any such Confidential Information in any way, for its own account or the account of any third party, except for the exercise of its rights and performance of its obligations under this Agreement, or
 - (ii) disclose any such Confidential Information to any party, other than furnishing such Confidential Information to
 - (a) its employees who are required to have access to the Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement and
 - (b) professional advisers; provided that such employees and professional advisers are bound by written agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 10.

The receiving party agrees that it will not allow any unauthorized person access to disclosing party's Confidential Information, and that receiving party will take all action reasonably necessary to protect the confidentiality of such Confidential Information, including implementing and enforcing procedures to minimize the possibility of unauthorized use or copying of such Confidential Information. In the event that the receiving party is required by law to make any disclosure of any of disclosing party's Confidential Information, by subpoena, judicial or administrative order or otherwise, the receiving party will first give written notice of such requirement to the disclosing party, and will permit the disclosing party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the disclosing party in seeking to obtain such protection. Upon the termination of this Agreement, at the request of the Disclosing Party, and unless otherwise permitted by this Agreement, the Receiving Party will destroy or return to the Disclosing Party all originals, copies, and summaries of documents, materials, and other tangible manifestations (including media on which machine-readable versions of Confidential Information are stored) of Confidential Information in the possession or control of the Receiving Party.

- (c) Exceptions. Information will not be deemed Confidential Information hereunder if such information:
- (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
 - (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party.

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- (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or
- (iv) is independently developed by the receiving party.

(d) The rights and obligations set forth in Section 10 will survive for three (3) years after termination of the Agreement.

11. General Provisions.

- (a) Entire Agreement. This Agreement and any exhibits and addenda incorporated herein set forth the entire agreement between the parties and supercede and replace all prior and contemporaneous discussions and agreements. Modification or amendment of any provision of this Agreement must be in writing and signed by a duly authorized representative of each party. In the event of a conflict between the terms of this Agreement and the terms of any Exhibit to this Agreement, the terms of the Exhibit will control. All amounts due and payable under this Agreement are recorded and invoiced, and due and payable, in U.S. dollars.
- (b) Assignment. Neither party may assign this Agreement or any of its rights or obligations without the prior written consent of the other party, provided that no consent will be required for an assignment by either party to any party that acquires all or substantially all of the assets of the party to which this Agreement relates. This Agreement will be binding upon and inure to the benefit of any permitted successors and assigns of the parties.
- (c) Governing Law, Venue, and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of New York, U.S.A. (without reference to its choice of law rules). NetLibrary and Recorded Books irrevocably consent to exclusive personal jurisdiction and venue in the state and federal courts located in any state where either party has a principal place of business with respect to any actions, claims or proceedings arising out of or in connection with this Agreement, and agree not to commence or prosecute any such action, claim or proceeding other than in the aforementioned courts. The United Nations Convention on Contracts for the International Sale of Good, however designated, shall not apply to this Agreement.
- (d) Severability. If any provision of this Agreement is held invalid, unenforceable, or illegal for any reason, that provision will be deemed to apply only to the maximum extent permitted by law, and the remainder of this Agreement will remain valid and enforceable in accordance with its respective terms.
- (e) Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable under this Agreement) to the extent said failures or delays are proximately caused (i) by causes beyond that party's reasonable control and occurring without its fault or negligence, or (ii) by the failure of the other party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty will give the other prompt written notice, with full details, following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
- (f) Waiver. No term of this Agreement will be deemed waived, and no breach consented to, unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. No waiver of any rights or consent to any breaches will constitute a waiver of any other rights or consent to any other breach.
- (g) No Partnership. The relationship of the parties is that of independent contractors, and no agency, employment, partnership, joint venture, or any other relationship is created by this Agreement.
- (h) No Third Party Beneficiaries. This Agreement is not intended to confer any benefit on any person or entity not a party to this Agreement.

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- (i) **Notice.** Any notice or other communication required or allowed under this Agreement will be in writing and will be deemed given: (i) upon actual delivery to an officer of the receiving party, if delivery is by hand, (ii) upon receipt by the transmitting party of confirmation or answer back if delivery is by telex, telegram, facsimile, or electronic mail or (iii) upon deposit with the public mail if sent by registered mail or certified, return-receipt-requested mail, postage prepaid. Mailed or transmitted notices will be sent to the parties at the addresses set forth below:


	If to netLibrary:	If to Recorded Books:
	netLibrary, a division of OCLC Online Computer Library Center, Inc.	Recorded Books LLC
Address:	4888 Pearl East Circle, Suite 103	270 Skipjack Road
Address:	Boulder, Colorado 80301	Prince Frederick, MD 20678
Attention:	Publishing	Brian T. Downing
Telephone:	(303) 415-2548	(410) 535-5590 ext. 1142 (800) 638-1304
Facsimile:	(303) 381-8600	(410) 535-0257
e-mail address:	publishing@netlibrary.com	downingbt@aol.com
With a copy to:	General Counsel	Neil Tress
Facsimile:	(303) 381-8999	(410) 535-2761


or at such other address as the parties may designate by notice given under this Section.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Agreement as of the Effective Date set forth below:

Recorded Books

netLibrary, a division of OCLC Online Computer Library Center, Inc.


 Name: Neil Tress
 Title: Chief Financial Officer
 Telephone: 410-231-5590 x1107
 Fax: 410-535-2761
 Address: 270 Skipjack Rd. Prince Frederick MD 20678
 e-mail: ntress@recordedbooks.com
 Date: 9/16/04


 Name: Richard L. Rosy
 Title: OCLC Vice President, netLibrary
 Telephone: _____
 Fax: _____
 Address: _____
 e-mail: _____
 Date: 9-16-04



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Exhibit A – Production of NL Electronic Versions of Publisher Products

1. Delivery of Publisher Products.

- (a) Formats. Recorded Books may deliver Publisher Products to netLibrary in any of the following formats: (1) an Audio Book File or (2) a Third-Party File, or (3) a format mutually agreed upon by the parties. Recorded Books will also provide metadata and other information, including bibliographic information, territory restrictions, and rights information, in a format specified by netLibrary. The metadata submission form is available electronically at http://www.netlibrary.com/extranet/Recorded_Books/specifications/.
- (b) Rights. If Recorded Books delivers a Publisher Product to netLibrary without specifying any rights that have not been cleared or that are otherwise restricted, then Recorded Books is representing that all rights to the Publisher Product have been cleared and that netLibrary is authorized to take all actions with respect to the Publisher Product and related NL Electronic Version that are contemplated by this Agreement.
- (c) Shipments. Recorded Books will deliver Publisher Products electronically to netLibrary by using netLibrary's Title Track submission interface, FTP, or other suitable electronic transfer means specified by netLibrary. Unless otherwise requested, Recorded Books should send Publisher Products on tangible media to netLibrary at the following address:

4888 Pearl East Circle, Suite 103
Boulder, CO 80301
Attn: Production

Recorded Books will bear shipping costs.

2. File Assessment.

- (a) In order to host and offer Publisher Products for sale, netLibrary must create a NL Electronic Version of the Publisher Products. The format in which Recorded Books delivers Publisher Products will affect what action netLibrary must take in order to create a NL Electronic Version of the Publisher Products. netLibrary may reject any file or copy that does not comply with the applicable netLibrary file format specification or that netLibrary, in its reasonable discretion, determines is not suitable for distribution or Production.
- (b) Recorded Books is solely responsible for the accuracy of the content in, and the condition of, any file or copy that it provides to netLibrary; the format, layout, and style of the content in any file or copy that it provides to netLibrary; and the compliance of any file or copy with the netLibrary file format specifications. Recorded Books will promptly correct or replace any part of a Publisher Product which is defective, damaged, or does not conform to a netLibrary file format specification.

3. Production.

- (a) Production Authorization. Recorded Books authorizes netLibrary to perform the Production services necessary to convert the Publisher Products into NL Electronic Versions of the Publisher Products that comply with the applicable netLibrary file format specification.
- (b) Production Activities. netLibrary will perform the Production necessary to create the NL Electronic Version from the Publisher Product and load the NL Electronic Version onto netLibrary's platform for display to authorized Recipients
- (i) Audio Book Production requires several activities. These steps include, but are not limited to:
- Recorded Books will submit Audio Book(s) in a mutually agreed upon format.

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- netLibrary will create a WMA Version of the Audio Book(s) submitted by Recorded Books.
 - netLibrary will encode the WMA Version of the Audio Book(s) to create two versions of the source file – a low bit rate version and a high bit rate version ("Audio Book Production File(s)")
 - netLibrary will use Microsoft SDK Software to create DRM protected versions of the Audio Book Production File(s).
 - netLibrary will load the Audio Book Production File(s) to the Publisher Extranet.
 - netLibrary and Recorded Books will perform QA of the Audio Book Production File(s).
 - netLibrary will load the Audio Book Production File(s) to the live-site.
 - netLibrary will load the Audio Book Production File(s) to the Archive.
- (ii) netLibrary will use reasonable commercial efforts to load the NL Electronic Version onto the NL Platform within a commercially reasonable time after netLibrary's receives Publisher Product(s) that comply with the applicable netLibrary file format specification.
- (c) Third-party Vendors. netLibrary may engage third-party vendors of its choice to perform some or all of the work necessary to perform the Production Activities. Neither Party will disclose any Confidential Information of the other Party to such third-party vendor(s), except in accordance with Section 10(b) of this Agreement. Nothing in this Agreement will restrict Recorded Books from granting to any third party the right to convert Publisher Products into electronic versions using a third-party conversion vendor or third-party format.
- (c) Quality Assurance. netLibrary will perform quality assurance as appropriate to assure that electronic files produced under this Agreement conform to the netLibrary file format specifications. netLibrary will promptly correct or replace any part of a NL Electronic Version of a Publisher Product which is defective, damaged, or does not conform to a netLibrary file format specification and is the result of the netLibrary Production Process. netLibrary will not otherwise modify the electronic files without Recorded Books approval.
- (e) File Review. netLibrary will provide Recorded Books with a complementary account to the Publisher Extranet, available at www.netlibrary.com/extranet/publisher ("Publisher Extranet"). Recorded Books can view the NL Electronic Version(s) of Publisher Products through the Publisher Extranet.
- (i) netLibrary will not upload NL Electronic Version(s) to netLibrary's platform for 5 days after netLibrary uploads the NL Electronic Version(s) to the Publisher Extranet ("File Review Period"). Notwithstanding the preceding sentence, netLibrary will not upload NL Electronic Version(s) of Publisher Products submitted to netLibrary between September 1, 2005 and October 31, 2005 to netLibrary's platform for 15 days after netLibrary uploads the NL Electronic Version(s) to the Publisher Extranet. Recorded Books will approve or reject new NL Electronic Version(s) during the File Review Period. If Recorded Books rejects a new NL Electronic Version(s) during the File Review Period, then Recorded Books will notify netLibrary in writing and provide a reason for the rejection. NetLibrary will investigate, and, if necessary, correct the problem.
- (ii) The live date of NL Electronic Versions of the Publisher Products will occur upon the earlier of Recorded Books' approval or the end of the File Review Period. If Recorded Books does not reject a new NL Electronic Version(s) by the end of the File Review Period, then Recorded Books is deemed to have approved the NL Electronic Version(s) and netLibrary may upload the NL Electronic Version(s) to netLibrary's platform.

4. Production Charges, Invoicing, and Payment.

(a) Production Charges

- (i) The Production Charges are set forth in Schedule B-1.

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- (ii) **Note:** netLibrary may amend Schedule B-1 upon 60 days' prior written notice to Recorded Books. If Recorded Books delivered Publisher Products to netLibrary before the date of the notice, then the pre-existing Charges will apply. The amended Charges will apply to all Productions of Publisher Products that occur more than 60 days after the date of the notice.
- (b) **Invoicing and Payment.** netLibrary and Recorded Books have agreed to split the cost of Production. netLibrary will invoice Recorded Books for 50% of the Charges described in this Exhibit A Section 4 on a monthly basis. netLibrary may recoup fees incurred by Recorded Books from amounts netLibrary owes to Recorded Books under this Agreement for aggregate sales of NL Electronic Versions. Unless otherwise agreed in writing, Recorded Books will pay any amounts netLibrary is unable to recoup within 30 days following the end of the invoice month.

5. Archive.

- (a) **Permitted Copies.** netLibrary will make, deposit, and store in archive a copy of each NL Electronic Version. Except as provided in this Agreement, netLibrary will not provide Subscription access to the NL Electronic Versions to a third-party without paying the required fees to Recorded Books. Under this Agreement, the temporary appearance of an NL Electronic Version in the random access memory of a user's computer will not constitute a reproduction for which fees are due.
- (b) Upon termination of this Agreement, then, in addition to Section 1 (e) of Exhibit B; Recorded Books can notify netLibrary in writing to provide Recorded Books a copy of an NL Electronic Version of each Publisher Product.
 - (i) If the NL Electronic Version of the Publisher Product has been available for sale and distribution under this Agreement for at least 3 years, then netLibrary will provide a copy of the NL Electronic Version of the Publisher Products to Recorded Books at no additional charge.
 - (ii) If the NL Electronic Version of the Publisher Product has been available for sale and distribution under this Agreement for 3 years or less, then netLibrary will provide a copy of the NL Electronic Version of the Publisher Products to Recorded Books if Recorded Books pays netLibrary for the balance of the Production Charges associated with the Product (i.e. 50% of the Production Costs).

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Schedule A-1 - Production Charges

1. Production Charges.

Table 1.1

Input / Output Formats and Production Charges	Audio Book File to specification published by netLibrary			
Input Format	Audio Book File (input format is WMA)	Audio Book File (input format is WAV)	Audio Book File (input format is MP3)	Audio Book File (input format is CD or DVD.)
Output Format	Audio Book File (output format is WMA)	Audio Book File (output format is WMA)	Audio Book File (output format is WMA)	Audio Book File (output format is WMA)
Audio Book -- Production Charge	TBD	TBD	TBD	\$150.00 Per File

Recorded Books will deliver Publisher Products to netLibrary in a mutually-agreed upon formats that meets the applicable netLibrary file format specifications. If Recorded Books delivers Publisher Products to netLibrary in a mutually-agreed upon format that meets the applicable netLibrary file format specifications, then Recorded Books and netLibrary will each pay 50% of the cost of the Production Charges for these Publisher Products.

2. Audio Book File Submittal

- (a) Recorded Books has informed netLibrary that it will submit the first 500 titles under this Agreement as CD-Roms and that it will submit the Title Covers for the first 500 titles under this Agreement as electronic jpeg files.
- (b) Recorded Books will use its reasonable commercial efforts to submit subsequent Audio Book titles in a digital file format (i.e. WMA, WAV, or MP3) that complies with the applicable netLibrary specification and the netLibrary Audio Book Submission Guidelines. Recorded Books will complete and submit the standard metadata worksheet for all titles.

3. Cataloging Audio Book(s)

OCLC will catalog the metadata for the Audio Book File(s) and generate MARC records for delivery to Recipients that purchase the Recorded Books/netLibrary Audio Book offering. Recorded Books will submit to netLibrary any information that is reasonably necessary for OCLC to catalog the Audio Book Files.

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