



**INDIVIDUAL INSTITUTION ORDER FORM FOR PURCHASES
OF OCLC NETLIBRARY AUDIO BOOKS AND AUDIO BOOK
SUBSCRIPTIONS**

DATE

Page 1 of 8

NEW ORDER REORDER ADDRESS/CONTACT CHANGE _____

FULL-TEXT BILLING CHANGE

Authorization

MAILING ADDRESS (Library accessing collection)

Institution Name		OCLC Partner Organization	OCLC Symbol (if applicable)
Contact Name (first name, surname)		Department or Library	
Street Address		P.O. Box	Building (when appropriate)
City	State or Province	ZIP or Postal Code	Country or Region
Telephone Number	Fax Number	E-mail Address	

BILLING ADDRESS (If different from above)

Institution Name		OCLC Partner Organization	OCLC Symbol
Contact Name (first name, surname)	Job Title	Department or Library	
Street Address		P.O. Box	Building (when appropriate)
City	State or Province	ZIP or Postal Code	Country or Region
Telephone Number	Fax Number	E-mail Address	

MARC RECORD CONTACT INFORMATION LIBRARY ADMINISTRATOR INFORMATION (If different from above)

<p>Please enter your MARC Record contact information:</p> <p>Name: _____ Email: _____</p> <p>Do you require customization? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If so, please explain _____</p>	<p>Please enter the contact information of the administrator of the collection. This person will be able to run usage reports, manage users, and view titles:</p> <p>Name: _____ Email: _____</p>
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LIBRARY INFORMATION

<p>LIBRARY TYPE Indicate type and membership (check one):</p> <p><input type="checkbox"/> Public Library <input type="checkbox"/> K-12 Library</p> <p><input type="checkbox"/> Academic Library <input type="checkbox"/> Corporate Library</p> <p><input type="checkbox"/> Community College Library (2 or 3 yr Academic) <input type="checkbox"/> Federal/Military</p>	<p>LIBRARY SIZE Indicate population served, FTE, or number of potential users for desired collection.</p> <p>LIBRARY CATEGORY (To be completed by OCLC representative)</p>
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For new NetLibrary Accounts:

INTERNET PROTOCOL / AUTHENTICATION INFORMATION

I want to connect to NetLibrary using the following IP Addresses or secure referring URL's:

BRANDING INFORMATION

We would like to brand your OCLC NetLibrary Web site with a logo or graphic so your users will recognize your OCLC eContent as part of your collection. You may have up to two logos on the page, and you may link your library's logo to a URL of your choice. The dimensions must not exceed a width of 120 pixels and a height of 65 pixels on a white (non-transparent) background. Your logo or graphic can be in either *.jpg or *.gif file format.

Do you wish to have your Web site branded? Yes No If so, please attach a copy of your logo to this sheet or email them to orders@oclc.org.

Logo: Description: _____ URL to link to: _____

Logo: Description: _____ URL to link to: _____

This order is subject to the following terms and conditions ("Agreement").

A. Definitions.	3
B. Member and Patron Usage.	4
C. Termination.	4
D. Limited Warranty.	4
E. Warranty Disclaimer.	5
F. Indemnity	5
G. Limitation on Liability.	5
H. Payment Terms.	5
I. Other Provisions.	5
Exhibit A – Audio Book Subscription Purchase	6
A. Subscriptions to Audio Book Collection(s).	6
B. Purchase of Platform Services for Subscriptions.	6
C. Additional Subscription Terms for Audio Book Collection(s).	6
Exhibit B – Audio Book Purchase	6
A. Audio Book Purchases.	6
B. Purchase of Platform Services for Purchased Audio Books.	6
Exhibit C – Platform Services	7
A. Provision and Delivery of Platform Services.	7
B. Support for NL Website and Member’s NL Website.	7
Exhibit D – Guidelines for the Use and Transfer of OCLC-Derived Records	7

A. Definitions.

Terms defined within this Agreement have the respective meanings attributed to them throughout this Agreement or in this Section A. Any defined term may be used in the singular and in the plural, as appropriate in the context.

1. “Audio Book(s)” mean NetLibrary’s electronic versions of certain audio books and other works in which NetLibrary has acquired certain rights.
2. “Audio Book Collection(s)” means a collection of Audio Books that NetLibrary has grouped together for Subscription sales.
3. The “Audio Book License” means a license to use the relevant Audio Books(s).
4. The “Audio Book License Fee” means a one-time-only fee for the Member’s Audio Book License and is based on the Audio Book List Price.
5. The “Audio Book List Price” means the price established by NetLibrary for the license to use the relevant Audio Books(s).
6. Unless otherwise specified on the OCLC Order Form, the “Effective Date” of this Agreement means the latest execution date set forth on the signature block above or the date on which Member or any Patron may first access Audio Books, whichever date occurs first.
7. “Member’s NL Website” means the Website operated by NetLibrary and open to Member and Patrons in order to access and use Audio Book Licensed to Member.
8. A “MARC Record” means an electronic record containing metadata and other relevant information about the corresponding Audio Book.
9. “NL Website” means the Website operated by NetLibrary and open to the general public in order to provide information about NetLibrary’s products and services.
10. “Patrons” mean Member’s registered faculty, members, patrons, students, and other authorized users, including both onsite users and remote users. Patrons are individuals and may not be corporations or other entities.
11. The “Shared Collection(s)” means a collection(s) of Audio Books licensed to Consortium for access and use by Consortium and its participating Members and Patrons (as such terms are defined in the applicable Consortium Audio

Book Agreement) under the terms and conditions of the Consortium Audio Book Agreement with respect to Shared Collection(s) and this Agreement; nothing in this Agreement is intended to grant Member any rights in the Shared Collection(s) without completion of appropriate paperwork and payment of related fees.

12. “Platform Fee” means the fee Member pays to maintain Member’s NL Website and to maintain and upgrade the Existing Platform and bandwidth. Platform Fees include Platform Services. Member may opt to pay the Platform Fee as an “Annual Platform Fee” or as a “Prepaid Platform Fee,” as further described in Section B. of Exhibit B.
13. “Platform Services” mean NetLibrary’s services related to Member’s ongoing access to and use of purchase Audio Books or Audio Book Collections, or both, via the Internet and Member’s NL Website, as further described in Exhibit C.
14. The “Reinstatement Fee” means the fee (10% of the Audio Book List Price) associated with reinstating Platform Services for an Audio Book for which Platform Services were previously terminated, as further described in Section A.5. of Exhibit C.
15. A “Subscription” means an annual license for access to the Audio Book Collection on the basis described in Exhibit A.
16. “Subscription Price” means the price established for the annual license for access to the Audio Book Collection.
17. Unless otherwise specified on the OCLC Order Form, the “Term” of this Agreement commences on the Effective Date and continues in effect until February 28, 2011. The Term will renew on March 1st of each year for another year unless this Agreement is terminated according to Section C.1 below.
18. A “Unique Collection” means a collection of Audio Books chosen by a Member and licensed to the Member under the terms and conditions of this Agreement. The Unique Collection remains separate from the Shared Collection(s). The Unique Collection is only accessible by Member and its Patrons; the Unique Collection is not accessible by Consortium or by nonpurchasing Members and Patrons (as such terms are defined in the applicable Consortium Audio Book Agreement).
19. “Consortium” means the State of Washington.

20. "Consortium Audio Book Agreement" means the Consortium Audio Book Agreement executed between Consortium and NetLibrary.

21. "Member" means the institution listed on the 1st page of this form.

B. Member and Patron Usage.

1. Copyrighted Works.

a. Member acknowledges and agrees that the copyright to each Audio Book is owned by or licensed to NetLibrary and the respective publisher thereof. All Rights Reserved. By purchasing a license to an Audio Book, Member obtains certain rights to access and use a copy of the Audio Book under this Agreement, but Member does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the Audio Book. Member agrees that any use of Audio Book by Member and its Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Member acknowledges that it and its Patrons have no right to make copies of any Audio Book, or any portions thereof, except to the extent permitted by applicable copyright laws.

b. Member acknowledges and agrees that repeated violations by Member or Patrons of copyright or other intellectual property right of NetLibrary or any third party will give NetLibrary the right to terminate this Agreement for cause.

2. Limiting Access Measures.

Member will be solely responsible for determining which Patrons will have access to Member's NL Website under this Agreement. Member agrees to implement appropriate measures to limit the use of Audio Books through access by Patrons ("Limiting Access Measures") within a reasonable time frame. Limiting Access Measures may change from time to time and include, but are not limited to, remote patron authentication applications, authentication through protected IP addresses, a patterned identification check and privileged user accounts. NetLibrary, in its sole discretion, may discontinue Consortium's, Member's, and Patrons' access to Member's NL Website if Member fails to implement Limiting Access Measures within a reasonable timeframe. Except for standard fees charged by Member to Patrons, Member will not charge any Patron for use of Member's NL Website.

3. Terms of Use.

The use of Member's NL Website by Member and Patrons will be governed by the "Terms of Use" currently available at <http://www.netlibrary.com/TermsOfUse.aspx>, as they may be amended from time to time, which are incorporated in this Agreement by reference. If a Member or a Patron violates the Terms of Use, NetLibrary reserves the right, in its sole discretion, to suspend Member's or the Patron's access to and use of Member's NL Website. Member acknowledges and agrees that, in the case of repeated or persistent violations, NetLibrary may terminate this Agreement. As between NetLibrary and Library, the terms of this Agreement will prevail over any inconsistent provision of the Terms of Use, and no change in the Terms of Use will be applied to materially adversely affect Library's rights under this Agreement.

4. MARC Records.

NetLibrary and Member agree that all MARC Records are the property of OCLC; Member may use MARC Records only for its own internal purposes as further described in Exhibit D.

a. If Member makes an Audio Book Subscription purchase under Exhibit A, then as part of the relevant Subscription Price; NetLibrary will provide Member with one copy of the MARC Record that corresponds to each piece of Audio Book included in the Subscription purchased by Member.

b. If Member makes an Audio Book purchase under Exhibit B and - as part of the purchase – pays a CSS Fee, then as part of the relevant CSS Fee; NetLibrary will provide Member with one copy of the MARC Record that corresponds to each Audio Book license purchased by Member.

5. Shared Collections.

a. Shared Collection(s) Access. NetLibrary will only permit access to and use of Consortium's Shared Collection(s) by a Consortium Member and the Member's Patrons if: (i) Consortium has executed a Consortium Agreement with NetLibrary, (ii) Consortium has given NetLibrary written notice that Consortium is willing to allow the Member to access a particular Shared Collection, and (iii) the Consortium Member has executed an Agreement. Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit any Member of Consortium to access any Shared Collection of Consortium.

b. Shared Collection(s) Parameters. At the time of purchase the Shared Collection closes. NetLibrary will provide access to a Consortium Shared Collection to a Consortium Member that Consortium has authorized to access the Consortium Shared Collection by giving NetLibrary written notice within 30 days after the Consortium Shared Collection closes. NetLibrary will not provide access to a Consortium Shared Collection to any Members that Consortium has not authorized to access the Shared Collection by giving NetLibrary written notice within 30 days after the Shared Collection closes.

6. Agency.

Member designates Consortium as its agent for purchasing Subscriptions to Audio Book Collection(s) and Licenses to Audio Books on behalf of Member under the Consortium Audio Book Agreement and with the authority to act on behalf of Member under this Agreement and the Consortium Audio Book Agreement. NetLibrary is authorized to rely on this designation and to recognize Consortium as an agent of Member. Member agrees to comply with and be bound by all the provisions of the Consortium Audio Book Agreement applicable to "Members" as defined in the Consortium Audio Book Agreement.

C. Termination.

1. Termination Without Cause.

Either party may terminate this Agreement without cause effective upon the conclusion of the then current Term, by giving the other party at least 60 days prior written notice of its intent to do so.

2. Termination for Cause.

Either party may terminate this Agreement for cause at any time by providing the other party with prior written notice of the occurrence of any of the following events:

- a. a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 10 days of the notice; or
- b. a party breaches any material provision of this Agreement provided that the breach cannot be, or is not, cured within 60 days of the notice.

3. Survival.

All terms of this Agreement that are intended to survive termination for any reason of this Agreement will so survive, including without limit Section(s) B.1., B.2., B.3., D., E., F., G., I.5., and I.12. .

D. Limited Warranty.

NetLibrary warrants that NetLibrary has the necessary authority to license the Audio Books to Member and, if applicable, to provide Platform Services to Member. NetLibrary warrants that

it will use its commercially reasonable efforts to provide Platform Services as described in Exhibit C. of this Agreement.

E. Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION II.B ABOVE, MEMBER'S NL WEBSITE, PLATFORM SERVICES, AND AUDIO BOOKS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NETLIBRARY AND , ITS CONTENT PROVIDERS, AND CONSORTIUM EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NETLIBRARY NOR , ITS CONTENT PROVIDERS, NOR CONSORTIUM WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF MEMBER'S NL WEBSITE OR AUDIO BOOKS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETLIBRARY OR ITS CONSORTIUM OR EMPLOYEES OF EITHER PARTY WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NETLIBRARY'S OBLIGATIONS, AND MEMBER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

F. Indemnity

1. [Deleted by Agreement of the Parties.]

2. NetLibrary will defend, indemnify, and hold Member harmless from any action based solely on a claim that Audio Books furnished under this Agreement and used within the scope of this Agreement infringe any copyright of any third party.

G. Limitation on Liability.

Neither party will claim special, incidental, indirect, or consequential damages; including without limit lost profits, for breach of this Agreement. This limitation will also apply to any claims brought against NetLibrary's content providers. Remedies are limited to claims for amounts due, for injunctive relief only as provided, or for direct damages. A party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount of Audio Book License Fees paid by Member to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose.

H. Payment Terms.

NetLibrary will invoice Member for any fees and other charges due for the purchase of Member's Unique Collection(s) under this Agreement. Consortium will bill Member for amounts due with respect to Shared Collections. All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary may deny Member and Patrons access to Member's NL Website or Consortium's NL Website until the unpaid invoice is paid in full. Member may remit payment via wire transfer or electronic funds transfer pursuant to the following account:

Wells Fargo Bank N.A.
ABA# 121000248
Account name: OCLC
Account number: 4121816060
Swift Number: WFBUIUS6S

I. Other Provisions.

1. Entire Agreement.

All exhibits referred to in this Agreement are incorporated in this Agreement by reference. This Agreement sets forth the entire agreement between the parties with respect to the subject matter of the Agreement. This Agreement governs all orders for purchases of Audio Books, Subscriptions to Audio Book Collections, or both placed by Member during the Term.

2. Modification or Amendment

Any modification or amendment of this Agreement must be in writing and signed by a duly authorized representative of each party. For clarification, no term contained in a purchase order or other similar document submitted to NetLibrary by Member will be binding on the parties.

3. Assignment.

Neither party may sell, assign, transfer or convey this Agreement or any rights and obligations without the prior written consent of the other party, which will not be unreasonably withheld. But, NetLibrary may assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon written notice to the Member.

4. Successors and Assigns.

This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

5. Governing Law. [Deleted by Agreement of the Parties.]

6. Severability.

If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision of this Agreement that is illegal, invalid or unenforceable, there will be added as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

7. Further Assurances.

Member and NetLibrary agree to take the further actions and to execute the further documents as may be necessary or appropriate to effectuate this Agreement and the transactions contemplated in this Agreement.

8. Force Majeure.

Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes; riots; acts of war; power failures; and functions or malfunctions of the Internet, telecommunications services, firewalls, encryption systems, and security devices; or governmental regulations imposed after the Effective Date.

9. Waiver.

The waiver by either party of any right granted under this Agreement will not be deemed a waiver of any other right granted under this Agreement, or a precedent for any subsequent waiver.

10. No Partnership.

As to one another the parties are considered independent contractors. This Agreement is not intended to create and will not be construed to create a partnership, joint venture, agency relationship, or other association.

11. No Third Party Beneficiaries.

This Agreement is not intended to confer any benefit on any person or entity not a party to this Agreement.

12. Notices.

Any notice, demand, request, consent, approval or other communication (collectively, "Notices") required or permitted to be given under this Agreement will be in writing and sent by hand delivery, special courier capable of confirming receipt, United States Mail (certified mail, return receipt requested), or facsimile or e-mail to a non-individual-specific e-mail address if receipt is confirmed. The parties acknowledge and agree that a Notice might not be deemed effective if receipt is not confirmed. Notices will be sent to Member at the Mailing

Address specified on the OCLC Order Form. Notices will be sent to NetLibrary at the following address:

	NetLibrary, a division of OCLC Online Computer Library Center, Inc.
Address:	4888 Pearl East Circle, Suite 103
Address:	Boulder, Colorado 80301
Attention:	Sales Management
Telephone:	(303) 415-2548
Facsimile:	(303) 381-8600
e-mail address:	sales@netlibrary.com

EXHIBIT A – AUDIO BOOK SUBSCRIPTION PURCHASE

A. Subscriptions to Audio Book Collection(s).

1. Purchase of Subscriptions to Audio Book Collection(s).
 - a. During the Term of the Agreement, Member may select and purchase Subscriptions to Audio Book Collection(s) in accordance with NetLibrary’s then current ordering practices. Each final order of Subscriptions to Audio Book Collection(s), as evidenced by an OCLC Order Form, is incorporated in this Agreement by reference.
 - b. As NetLibrary adds additional Audio Book Collection(s) or changes the terms and/or prices for existing Audio Book Collection(s), the NetLibrary Subscription Prices are subject to change. However, in no case will changes to the NetLibrary Subscription Prices be applied retroactively to existing Subscriptions.

B. Purchase of Platform Services for Subscriptions.

1. Payment of the Subscription Fee allows Member to access the Audio Book Collection on Member’s NL

Web-site and receive Platform Services for such Audio Books for 1 year.

C. Additional Subscription Terms for Audio Book Collection(s).

1. All purchases of Subscriptions are final.
2. A Member or other organization that purchases a Subscription will receive an annual license to access the Audio Book Collection. The Member or other organization will not own any other rights in the Audio Book Collection.
3. Except as specified in the Agreement and the OCLC Order Form, there are no other Subscription Terms for Audio Book Collection(s). In the event of a conflict between the Agreement and the OCLC Order Form, the OCLC Order Form will control.

EXHIBIT B – AUDIO BOOK PURCHASE

A. Audio Book Purchases.

1. Purchase of Audio Book Licenses.

During the Term of the Agreement, Member may select and purchase Audio Book Licenses in accordance with NetLibrary’s then current ordering practices. NetLibrary will make the Audio Book Licenses available to Member according to NetLibrary’s agreements with its content providers, and partners. Each final order of Audio Book Licenses, as evidenced by an OCLC Order Form, is incorporated in this Agreement by reference.

B. Purchase of Platform Services for Purchased Audio Books.

Payment of the Platform Fee allows Member to receive Platform Services for each Audio Book for which the Member purchases an Audio Book License. Member will pay the Platform Fee on one of the bases described below.

1. Annual Platform Fee.

- a. The Annual Platform Fee for an order will equal 10% of the Audio Book List Price(s) for all the Audio Book(s) in the order at the time of initial licensing.
- b. Upon payment of an Annual Platform Fee, NetLibrary will host and provide Platform Services for the effected Audio Books for 1 year from the purchase date.
- c. The first payment of the Annual Platform Fee for an order will be due and payable at the time the Member purchases the Audio Book Licenses, and will be included on the invoice for the corresponding Audio Book License Fees.
- d. NetLibrary will calculate and invoice Annual Platform Fees for the second and subsequent years on an annualized basis on a single date each year.

- e. The total Annual Platform Fee in the second and subsequent years will be reduced by the portion of the first year Annual Platform Fee attributable to any Audio Book removed from, and not reinstated to, Member’s Audio Book collection as further described in this Exhibit.
- f. If NetLibrary elects not to continue to support the Existing Platform at any time due to technological obsolescence or cessation of third party vendor support, NetLibrary may charge Member (if Member selected the Annual Platform Fee option) additional fees for migrating the Audio Books for which Member is paying the Annual Platform Fee to a replacement platform, subject to any applicable limitations as set out on Exhibit A.

2. Prepaid Platform Fee.

- a. Member may prepay Platform Fees for an order by making a one-time-only nonrefundable payment equivalent to 55% of the Audio Book List Price(s) for all Audio Book(s) in the order at the time of initial licensing.
- b. Upon payment of the Prepaid Platform Fee, NetLibrary will host and provide Platform Services for the effected Audio Books for the greater of: (a) five years from the purchase date or (b) for as long as NetLibrary continues to support the Existing Platform.
- c. If Member selects the Prepaid Platform Fee payment option and NetLibrary ceases to support the Existing Platform due to technological obsolescence or cessation of third party vendor support at any time before the Platform Commitment Date, NetLibrary will not charge Member any additional fees to migrate Member’s licensed Audio Books for which Member has paid the Prepaid Platform Fee to a replacement platform.

EXHIBIT C – PLATFORM SERVICES

A. Provision and Delivery of Platform Services.

1. If Member has paid the Platform Fee for Audio Books or purchased an Audio Book Subscription; then, subject to the terms of this Agreement, Member will receive Platform Services.
2. Platform Services include:
 - a. establishing and administering Member's NL Website,
 - b. hosting the purchased Audio Books or Audio Book Collection(s), as applicable, on Member's NL Website, and
 - c. providing access - to Member and Patrons - to Member's purchased Audio Books or Audio Book Collection(s), as applicable, through Member's NL Website.
3. Member and Patrons will access Platform Services via Member's Internet connection, which will be Member's expense and responsibility.
4. NetLibrary will provide Platform Services for as long as Member continues to pay the Platform Fee or the Subscription Price, as applicable; NetLibrary continues to support the Existing Platform, and Member has not notified NetLibrary to remove the Audio Books from Member's NL Website.
5. Removing and Reinstating purchased Audio Books
 - a. Member may elect to have any purchased Audio Books removed from Member's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Platform Fees are calculated and invoiced.
 - b. Member may elect to have any purchased Audio Books reinstated to Member's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Platform Fees are calculated and invoiced and by paying the applicable Reinstatement Fee as further described in this Agreement. Platform Fees for reinstated Audio Books are due and payable on the reinstatement date.
6. Notwithstanding any other provision of this Agreement, if NetLibrary terminates this Agreement for cause under Section C.2. of the Agreement, then NetLibrary's obligation to provide Audio Books and Platform Services will expire.

B. Support for NL Website and Member's NL Website.

1. Existing Platform. At the time this Agreement is executed, the NL Website and Member's NL Website are supported by NetLibrary's existing electronic bookshelf technology, which includes a third party operating system, third party database management software, and proprietary NetLibrary software (collectively, the "Existing Platform"). NetLibrary will not charge any fees to continue to support the operation of the Existing Platform, except as may be provided in this Agreement.
2. Platform Commitment Date. Initially, the "Platform Commitment" Date will be July 1, 2012. However, NetLibrary may publish or announce a specific date as the Platform Commitment Date or a change in the practice of determining the Platform Commitment Date, provided that the publication or announcement will only be applicable to purchases of Audio Book Licenses made after the date of the publication or announcement.
3. Migration. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform before the Platform Commitment Date; then, except as may be provided in this Agreement, NetLibrary will not charge Member any additional fees to support the Existing Platform until the Platform Commitment Date or to migrate Member's Audio Books content to a replacement platform before the Platform Commitment Date. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform after the Platform Commitment Date, then NetLibrary may charge fees to support a replacement platform or to migrate Member's Audio Books to a replacement platform.

C. Patron Access.

Member will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, which will control Patrons' access to Member's NL Website.

D. Reports.

Payment of the Platform Fees entitles Member to the standard reports offered by NetLibrary.

EXHIBIT D – GUIDELINES FOR THE USE AND TRANSFER OF OCLC-DERIVED RECORDS

Revision of November 16, 1987

I. GUIDELINES

(See Definitions in Part II below)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.
2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.
 - a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed

either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.

b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or

national programs as well as the maintenance and enhancement of the OCLC database.

c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.

3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline 1 above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.

4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database. OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.

5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.

6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement

establishing broader or narrower rights is made with OCLC relating to a specific product or service.

II. DEFINITIONS

1. The term "member library" means a general member of OCLC as defined in its Code of Regulations.

2. The term "nonmember library" means any library other than a member library.

3. A "member network" is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.

4. A "commercial firm" is any organization permitted, under applicable law, to operate on a for-profit basis.

5. The term "records" means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.

6. The terms "transfer" and "transfer of records" refer to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.