

**ACX INDEPENDENT CONTRACTOR AGREEMENT:
STUDIO ENGINEERING SERVICES**

Version 1.0 (03.09.11)

This **ACX Audiobook Studio Engineering Services Agreement** ("Agreement") is entered into effective as of the date of the later of the signature dates below by and between _____ (**Producer Name**) ("Producer") and _____ (**Engineer Name**) ("Engineer") and applies to the performance of studio engineering services by Engineer for Producer in connection with an audiobook Producer is creating through the audiobook production service and rights marketplace available at www.acx.com ("ACX").

1. **Engagement to Perform Services.** Producer engages Engineer to perform studio engineering services in connection with the audio recording of the work, _____ (**Name of Title**) by _____ (**Name of Author**) (the "Work"), in the _____ (**Language**) language (such services, the "Services") for purposes of the production of a finished audiobook of the Work ("Audiobook") for commercial sale and distribution.
2. **Production Schedule and Guidelines.** Engineer will appear and perform the Services on the date(s) and time(s), and at the location(s), designated by Producer, including 4 follow-up sessions, and such number of additional follow up sessions as Producer may request to the extent Producer or Rights Holder determines that further revisions are necessary. Engineer will perform the Services in accordance with the ACX Rules for Studio Engineers set forth in the ACX Rules for Audiobook Production, the current version of which is attached to this Agreement as Exhibit A. Producer may hire third parties to assist in the production and recording of the Audiobook, including editors, other studio engineers, and narrators or vocal performers. Engineer agrees to work cooperatively and professionally with any such third parties.
3. **Producer Approval.** Producer will have the right to approve or reject the Services at any stage of production and upon completion. Producer agrees to work with Engineer in good faith in connection with Producer's right of approval, including making timely and constructive suggestions to help Engineer deliver the Services to Producer's specifications.
4. **Payment Terms.** As full consideration for the Services performed by Engineer under this Agreement, and provided Engineer is not in breach of this Agreement, Producer will pay Engineer the amount of \$_____ per hour of scheduled Services time for which Engineer appears, not to exceed a total payment to Engineer for all Services of \$_____, within 30 days of Engineer's completion of the Services and Producer's final approval thereof. If Engineer appears to perform the Services on a date and time designated by Producer and Producer is not ready for Engineer to commence performing Services for any reason, Engineer will still be paid the per hourly rate set forth in this Section 4 for the total number of hours on that date for which Engineer is present and scheduled to perform Services. If Engineer appears late for any reason to perform the Services on a date and time designated by Producer or leaves early for any reason, Engineer will only be paid the per hourly rate set forth in this Section 4 for such time as Engineer is present and performs Services. If Engineer fails to appear to perform Services on a date and time designated by Producer for any reason, Engineer will not receive any payment. If Engineer quits at any time before the Audiobook is completed or fails to meet the specifications set forth in the ACX Rules for Studio Engineers, Engineer will not receive any payment. Unless specified otherwise in writing by the Producer,

Engineer is responsible for all of Engineer's own costs and expenses in performing the Services.

5. **Termination.**

a. **By Engineer.** Engineer may terminate this Agreement by giving Producer 48 hours written notice prior to the date on which Engineer is scheduled to commence services. In such case, Producer will owe no payment to Engineer.

b. **By Producer.**

i. **Termination with no Termination Fee.** Producer may terminate this Agreement by provision of written notice of termination to Engineer and will owe no payment to Engineer in the event that: (A) Engineer fails to confirm in writing (including in an email sent to Producer at an email address designated by Producer), by _____ (**Date**), Engineer's commitment to appear to perform the Services on the dates and in the locations specified by Producer, or (B) Producer is not satisfied with the initial 15 minutes of the raw recording of the Work, provided that, if Producer uses any of the initial 15 minutes of audio produced by Engineer in the Audiobook, Producer must pay Engineer for Engineer's Services in connection with recording such audio, based on the per hourly fee set forth in Section 4.

ii. **Termination with Termination Fee.** In addition to the rights of Producer to terminate this Agreement without payment of fees pursuant to Section 5(b)(i), Producer may terminate this Agreement by provision of written notice of termination to Engineer if Producer is not satisfied with the final studio engineered recording of the Audiobook, subject to payment of a termination fee equal to 50% of the cost of Engineer's Services based on the per hourly fee set forth in Section 4, provided that if Producer uses more than 50% of the finished audio engineered by Engineer in the Audiobook, Producer must pay Engineer the full amount for Engineer's Services performed under this Agreement, based on the per hourly fee set forth in Section 4.

6. **Ownership.** Engineer understands and agrees that all right, title, and interest in the Work is owned and controlled by _____ (**Rights Holder Name**) ("**Rights Holder**"). Engineer further understands and agrees that the Services have been specially ordered and commissioned by Producer on behalf of Rights Holder. Engineer agrees that all work product produced by Engineer while performing the Services, including any unfinished audio recording and the Audiobook (collectively, the "**Work Product**") is a "work made for hire" to the full extent permitted by law, with all copyrights in the Work Product owned by Rights Holder. Engineer agrees that all right, title, and interest in and to such Work Product will be owned, immediately upon creation, exclusively by Rights Holder. To the extent that any Work Product of Engineer would not qualify as a work made for hire under applicable law, Engineer hereby assigns to Rights Holder all right, title and interest Engineer may have in and to such Work Product, including all copyright, rights of authorship or rights of publicity in the Work Product. Engineer will execute any additional documents required by Producer or Rights Holder to establish such ownership or assignment to Rights Holder. In the event of any termination of this Agreement prior to Engineer's completion of the Services, the provisions of this Agreement regarding ownership will apply with respect to any portion

of the Services that might have been completed prior to such termination.

7. **Right of Publicity Grant.** Engineer agrees that Producer, Rights Holder and Audible will have the right to use Engineer's name, likeness, and biographical information in marketing for the Audiobook in any media without time or use restrictions. Engineer will, promptly on request, provide Producer an image and brief written biography suitable for use by Producer, Rights Holder and Audible in the marketing of the Audiobook.
8. **Representations and Warranties.** Engineer represents and warrants that: (a) Engineer is free to enter into the Agreement and to perform Engineer's obligations as required by this Agreement, (b) Engineer has made no agreements or commitments that prevent or interfere with the performance of Engineer's obligations under the Agreement, and (c) neither the Services nor the materials used to provide the Services will infringe upon or violate the intellectual property rights or any other statutory or common law rights of any third party. Engineer warrants, for the benefit of Producer, Rights Holder and Audible, that Engineer has all rights required to perform the Services pursuant to the Agreement and for Rights Holder and Audible to make the Audiobook available for production and distribution.
9. **No Obligation to Use Engineer's Services.** Nothing in this Agreement will require Producer to use Engineer's Services or to produce or exploit the Audiobook or to make any use whatsoever of the Work Product. Producer will have the absolute right to elect not to use Engineer's Services pursuant to this Section 9. Without limiting any rights or remedies, at law or in equity, that may otherwise be available to Producer and without prejudice to such rights and remedies, in the event Producer does not wish to use Engineer's Services for any reason, Producer's only continuing obligation to Engineer will be payment of fees owed to Engineer under Section 4 for Services completed and approved by Producer which, when paid, will be deemed payment in full of all compensation payable to Engineer under this Agreement. Thereafter, Producer will be released and discharged from any and all further obligations which Producer may have to Engineer.
10. **Engineer's Remedies.** The rights and remedies of Engineer in the event of any breach by Producer of this Agreement will be cumulative and the exercise of one will not preclude the exercise of any other remedy for the same or any other default; provided, however, that in any event, Engineer's remedies will be limited to Engineer's right to recover damages, if any, in an action at law, and Engineer unconditionally waives any right or remedy in equity, including any right to terminate this Agreement, or to rescind Rights Holder's right, title and interest in and to any Work Product created by Engineer hereunder or the results and proceeds of Engineer's Services or any other rights granted to Producer or Rights Holder hereunder, or to enjoin or restrain the distribution of the Audiobook or the use, publication or dissemination of any advertising or publicity in connection therewith.
11. **Independent Contractor.** Engineer will provide the Services to Producer on an independent contractor basis. Engineer is solely responsible for the payment of all taxes applicable to all sums paid to Engineer hereunder. Engineer will have no authority to bind Producer, Rights Holder or Audible in any way or to make any commitments to anyone on behalf of Producer, Rights Holder or Audible without their prior written consent.

12. **Assignment.** Producer may assign its rights in the Agreement in whole or in part to any person, firm or corporation, and such rights may be assigned by any assignee thereof, but no such assignment will relieve Producer of any of Producer's obligations under the Agreement. Engineer's services are of a unique, extraordinary, and personal character which gives them a peculiar value, and therefore may not be assigned by Engineer. Any purported assignment by Engineer will be null and void.

13. **General.** This Agreement, together with the attached Exhibit, constitutes the entire understanding between Producer and Engineer with respect to the subject matter hereof, supersedes all other agreements and understandings between the parties, and may not be modified or amended, except by a writing signed by both parties. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement. A waiver by either party of any term or condition of this Agreement in any instance will not be deemed a later waiver of such term or condition, or of any later breach thereof, or as a waiver of any other term or condition in this Agreement. This Agreement, and all rights and duties of the parties, will be governed by and enforced in accordance with the laws of the State of New York, excluding any conflict of laws provisions. Except to the extent that both Producer and Engineer are ACX participants and the ACX Dispute Resolution Procedures set forth in the current version of the ACX Account Holder Agreement may otherwise specifically provide, all disputes with respect to matters under this Agreement or with respect to the Agreement will be subject to the exclusive venue and jurisdiction of the courts of the State of New York, located in New York City. All notices that either party is required or desires to serve on the other will be in writing and given either by personal delivery or by registered mail (postage prepaid) to the other party at the address on this signature page below, or such other address as either party may designate from time to time in writing. The date of personal delivery, or the date that is 24 hours following the date of registered mailing, as applicable, will be deemed the date of service or delivery. This Agreement may be executed by facsimile and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute the same instrument.

Accepted and Agreed:

(Producer Name)

By: _____

Printed Name: _____

Its: _____

Date Signed: _____

Address:

(Engineer Name)

By: _____

Printed Name: _____

Its: _____

Date Signed: _____

Address:

Exhibit A

ACX Rules for Studio Engineers

Excerpted from: ACX RULES FOR AUDIOBOOK PRODUCTION

RECORDING GUIDELINES

In general, the audiobook read should be well-paced, easy to understand, and up to the same professional industry standards found in other audiobooks. If you have not spent much time listening to audiobooks, please do so before embarking on the labor-intensive process of narrating and editing an audiobook.

Format and Method: Audiobooks should be recorded in 16 bit / 44.1 k .wav file format. This is considered CD quality. Generally, audiobooks are recorded by one of two methods:

- **Punch Record:** This is most common. When a mistake is made, go back to the previous sentence or break, and punch in (pick up the read from where you left off). Be careful not to cut off breaths, as the recording should sound clean, and any chopped audio will need to be fixed later. One of the main pros of using this method is that it becomes much quicker to edit, since the book is already put together during recording. One of the cons is that it takes a reasonable amount of audio production experience to be able to “punch” cleanly and correctly, to achieve this.
- **Straight Record:** Less common. When a mistake is made, recording does not stop. The reader simply goes back and re-reads from the previous sentence or break. Later, the takes are edited together (and the mistakes are cut out). One of the pros of this method is that it’s faster to record the audiobook, and there are fewer interruptions. One of the cons is that it will take about three times as long to edit the book.

Room Tone: Room Tone should be recorded at the end of every day of recording, using the same settings that were used to record the narration. This is ‘dead air’, where only the mic is recorded, by itself, capturing the ambience of the room. Later, during the editing process, this Room Tone is added between sentences, and used to mask noises and adjust pacing.

Credits: Please record opening and closing credits for the book. These credits are sometimes read by the book’s narrator, and sometimes by a different person acting as the announcer; it’s up to you.

Opening credits should be placed at the very start of the audiobook (before any narration). Closing credits should be at the tail end. We suggest the following template:

OPENING CREDITS:

“[Company Name] presents... [title of audiobook]
Written by [name of author]
Narrated by [name of narrator]”

or simply:

“[title of audiobook]
Written by [name of author]
Narrated by [name of narrator]”

CLOSING CREDITS:

This has been a [Company Name] production of [title of audiobook]
Written by [name of author]
Narrated by [name of narrator]
Producer: [name]
Editor: [name]
Music by [name of composer] ← *if applicable*
Copyright [year and name of copyright holder]
Production copyright 2010 [or whatever year it was recorded] by [company name]

Common Mistakes:

- **Movement:** Noises caused by the narrator moving around (this can be clothing, jewelry, rustling papers, or rubbing against the chair, for example) should be avoided. These sounds can take the listener 'out of the element', and ruin the experience.
- **Plosives:** Wind from the narrator's mouth can often hit the mic too hard, and cause a plosive. This is an unwanted pop that can occur on any word, but, usually, this most frequently occurs with words that start with the letter "P". Plosives sound bad and are distracting to the listener. If a plosive occurs, the line should be re-read, making adjustments to the position of the narrator and/or force with which the word is read, so that no pop is audible.
- **Audio Distortion:** If the audio is too loud, it will distort. The level meter will usually display this by displaying red or indicating that you have gone over the 'zero' mark. Often, distortion cannot be heard while playing back the audio within the software program that is being used for recording because there is built in 'headroom' that allows you to decrease the volume of that part without having to re-record. But even if distortion is not heard, if the level hits 'zero' (or goes into the red), it will distort once the audiobook is encoded for Audible.com and iTunes. To avoid all distortion in the audiobook, the actual level meter must be constantly monitored, keeping it below zero at all times.
- **Continuity:** An audiobook requires consideration for continuity so that it remains consistent in tone throughout. This includes distinct character voices, accents, or alternate pronunciations. It's always a good idea to add markers during recording (or manually note the time) for anything that may need continuity. This way, it's easy to go back and see how it was read the first time. For example, the narrator may give a minor character a child-like voice in chapter one, but then forget what it sounded like when the character recurs later. Similarly, the narrator may choose how to read a word that has two dictionary-accepted pronunciations. Later, if that word reappears in the text, it needs to be pronounced the exact same way. Markers (or manual notation of the record time) make it easier to locate these kinds of things.
- **Reading Too Fast:** The narrator should read at a pace that can be followed by any reasonable listener of audiobooks. A diverse group of people listen to audiobooks, and many listeners will not be able to follow along if the narrator is reading too fast. A pace that is too quick can also lead to skipping words, sentences, or paragraphs, which can make the editing and QC process take longer.