

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

Version 1.0 (03.09.11)

This **ACX Audiobook Mastering 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 mastering 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 mastering 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 Mastering 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 mastering 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 Mastering 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 mastered 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 Mastering Engineers

Excerpted from: ACX RULES FOR AUDIOBOOK PRODUCTION

Once the book is fully edited and the QC process complete, the audiobook should be mastered. Mastering is the process of adjusting the sound to make it more even and "listenable."

- 1. Mastering:** To make the audiobook levels louder and more-even throughout is vital. Typically, this process is achieved by RMS normalization around -20db, or compression/limiting. Compression should be applied with a fast attack and release, around a ratio of 3:1. A hard limiter may also be used, and audiobooks are EQ'd during this time, to sweeten the sound and make it more pleasing to the ear. Often, muddled low-end and mid-range is cut to make the audiobook sound more clear and smooth.
- 2. Format:** We recommend that all files should be saved as 192 kbps MP3's, and in mono. (It's important that all files are not converted to stereo, so that we are not unnecessarily doubling the file size.)