

Terms & Conditions

Terms of Use

Effective as of March, 2015

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PLEASE READ THESE TERMS CAREFULLY, AS YOU ARE BOUND TO COMPLY WITH THE PROVISIONS HEREIN.

YOU MAY WISH TO PRINT THIS PAGE FOR REFERENCE. THESE TERMS ARE A LEGALLY BINDING AGREEMENT BETWEEN YOU AND RECORDED BOOKS. BY USING THE SERVICE YOU ARE INDICATING THAT YOU HAVE READ THESE TERMS, THAT YOU UNDERSTAND THEM, AND THAT YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, YOU SHOULD CEASE USING OR ATTEMPTING TO ACCESS THE SITE, SITE CONTENT AND DIGITAL SERVICE.

RECORDED BOOKS RESERVES THE RIGHT TO CHANGE OR MODIFY THESE TERMS AT ANY TIME WITHOUT NOTICE TO YOU - IT IS YOUR OBLIGATION TO REVIEW CHANGES IN THESE TERMS, AND YOU AGREE THAT YOUR CONTINUED USE OF THE SITE, SITE CONTENT AND/OR SERVICE AFTER THE POSTING OF ANY REVISED TERMS CONSTITUTES YOUR AGREEMENT TO BE BOUND BY ANY SUCH REVISED TERMS. YOUR SOLE AND EXCLUSIVE RIGHT WITH RESPECT TO ANY DISSATISFACTION WITH ANY MODIFICATIONS TO THESE TERMS AND/OR THE SITE, SITE CONTENT AND/OR SERVICE IS TO NOT USE OR CEASE USING THE SITE, SITE CONTENT AND SERVICE.

I. OWNERSHIP AND INTELLECTUAL PROPERTY

1. Ownership

(a) Site, Site Content and Service.

Except for the limited rights granted in Section II.1(a), Recorded Books and/or its licensors own and/or control all right, title and interest (including, without limitation, all copyrights) in and to the Site, Site Content and Service. “Site Content” means any and all files, text, graphics, hyperlinks, interlinks, search engines, images, software, illustrations, photos, animation, video, audio, audiovisual works, designs or logos, information and other works of authorship made available to you through the Site and/or Service. You agree and acknowledge that you shall not acquire any ownership rights by accessing or using the Site, Site Content or Service. You acknowledge and agree that modification of the Site Content or use of

the Site Content for any other purpose is a violation of Recorded Books' and possibly other third parties' copyright and proprietary rights.

(b) Trademarks.

"RECORDED BOOKS", "ZINIO FOR LIBRARIES", "RBdigital Gateway" and other trademarks indicated as owned by Recorded Books are each trademarks of Recorded Books. Other trademarks used or displayed in connection with the Service may be owned by third parties, including, without limitation, any of Library/School/Company trademarks. Third party trademarks used on the Site or in connection with the Service are used with the permission of such trademark owners and all of their rights are reserved. You shall acquire no right to use any of the foregoing without the prior written approval of Recorded Books or the owner(s) of such other trademarks. Any use of Recorded Books' trademarks shall inure to the sole and exclusive benefit of Recorded Books. Any unauthorized use of the Recorded Books' trademarks or any third party trademark is strictly prohibited.

2. Copyright Complaints.

If you believe that your copyrightable work of authorship has been copied and is being made accessible on the Site in such a way that would give rise to a claim for copyright infringement, you must provide the following to the Agent for Claims listed below:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed upon;
- A description of where the material that you claim is infringing is located on the Site, including, without limitation, any information, documentation or web address(es) which would assist Recorded Books in locating that material;
- Your address, telephone number and e-mail address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or permissible by law;
- A statement by you under the penalty of perjury that the information in your notice is accurate that you are the copyright owner or authorized to act on the owner's behalf.

Agent for Claims: Recorded Books Inc.

270 Skipjack Road Prince Frederick, MD 20678

Attention: Neil Tress

Facsimile: (410) 535-2761

e-Mail: ntress@recordedbooks.com

II. THE SITE, SITE CONTENT AND SERVICE

1. Access and Use.

(a) Rights Granted.

Subject to these Terms, Recorded Books grants to you a non-exclusive, personal, non-transferable, non-sublicensable, limited and revocable right to access, use and view the Site and Site Content solely (i) for your own personal use, or on your Library's premises. (b) Verification of Identity.

Your access to and use of the Site, Site Content and Service is subject to your Library/School/Company verifying your authority to so access and use the Site, Site Content and Service, whether by remote username and password identification or live identification checks. In addition, Recorded Books may issue you (or you may create) a username and/or password for access to the Site. You shall hold and secure any username and password or identification card that provides you access to the Site as strictly confidential, and you shall not allow any other person access to or use of such username and password or identification card. You are responsible for any and all activity related to the Site, the Service and any Site Content accessed or used via your account. You shall (i) immediately notify Recorded Books in accordance with Section VI.3 of any unauthorized use of your username and password or identification card and (ii) ensure that you properly exit the Site and cease using the Site Content and Service at the completion of your session. **Account information and usage history is protected on a secure server and shall not be shared with third-parties in any manner, including purposes of marketing and/or soliciting of services.**

2. Streaming/Downloading of Site Content.

(a) *In General.* Certain of the Site Content may be available on a streaming basis and/or download basis, as determined by Recorded Books in its sole discretion from time to time. Depending upon your geographic location, the equipment that you are using to access the Site, the bandwidth available to you and other factors, you may not have access to streaming and/or downloadable Site Content. You are responsible for all charges associated with connecting to the Site, including, without limitation, all Internet access charges, networking and computer equipment costs and any service fees necessary to access the Site.

(b) Download Restrictions.

Recorded Books may in its sole discretion make certain Site Content available for your download to an Authorized Device (such Site Content, the "Download Content") in accordance with this Section II.2(b) and subject to the remainder of these Terms. If you choose to download the Download Content, you may store and use such Download Content on an Authorized Device in accordance with these Terms and the applicable Usage Rules (as defined in Section II.4(a)) during the period of time during which you are expressly permitted by Recorded Books to use such Download Content (such period, the "Use Period"). Without limiting the provisions of Section II.3 below, you shall not, at any time, copy, export or otherwise move the Download Content from its originally stored location on the Authorized Device to a different location on such Authorized Device or any other device. You shall not access, use such Download Content upon or after the expiration of the Use Period and you acknowledge that any expired Download Content will be automatically deleted from your or your Library/School/Company's hard drive without further notice to you. 3. Restrictions on Your Use of the Site, Site Content and Service. Except as set forth in Section II.1(a),

- (i) you shall not use or exploit any portion of the Site, Site Content or Service, and any such usage or exploitation shall constitute an act of copyright infringement and
- (ii) you shall not, by way of example, without limitation, take any of the following actions without the prior written authorization of Recorded Books, which authorization shall be granted in Recorded Books' sole discretion:
 - (a) copy, reproduce, sublicense, alter, adapt, transmit (including, without limitation, pursuant to a remote listening device), publicly perform or display, distribute, customize, modify, translate, reverse engineer, decompile, disassemble, create derivative works based upon, add to or delete from the Site or Site Content;
 - (b) sell, rent, lease, transfer or otherwise assign any rights to the Site, Site Content or Service to any third party;
 - (c) publicly display, link, frame or forward any web address to the Site or any portion thereof;
 - (d) copy or paste the Site Content or any portion thereof to any other website or web page;
 - (e) remove any proprietary notices or labels on the Site or Site Content;
 - (f) use the Site, Site Content or Service, or any portion thereof, for any purposes which are unlawful in any nation or jurisdiction in the world or for any commercial purpose whatsoever;
 - (g) use the Site, Site Content or Service in conjunction with any device or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction;
 - (h) use the Site or Service to invade the privacy of, or obtain personal information about, any other user of the Site;
 - (i) use the Site, Site Content or Service to violate any legal right of any third party, including, without limitation, any publicity or privacy right, copyright or other intellectual property right, or to take any action that is harassing, libelous, defamatory, abusive, tortuous, threatening, harmful or otherwise objectionable;
 - (j) use any metatags or any other "hidden text" utilizing Recorded Books' name or trademarks;
 - (k) interrupt, or attempt to interrupt, the operation of the Site or Service in any way; or
 - (l) permit unauthorized individuals to use or access the Site, Site Content or Service.

4. Other Restrictions and Limitations.

(a) Security. You understand that digital rights management or other copyright protection technologies or mechanisms may be embedded or associated with, or certain technology and/or rules may alter, the Site Content (including, without limitation, the Download Content) in order to protect digital information from access and use (collectively, the "Security Technologies") and the Security Technologies may limit or restrict your access to and usage of the Site Content in accordance with usage rules established by Recorded Books and/or its licensors from time to time ("Usage Rules"). You agree to comply with such Usage Rules. Usage Rules may be controlled and monitored by Recorded Books for compliance

purposes, and Recorded Books reserves the right, in its sole discretion, to modify and/or enforce the Usage Rules with or without notice to you at any time. If you become aware of any unauthorized use of Site, Site Content or Service by any person or entity, you shall immediately notify Recorded Books and reasonably cooperate with Recorded Books to prevent further unauthorized use. YOU HEREBY ACKNOWLEDGE THAT THE SECURITY TECHNOLOGIES ENABLE RECORDED BOOKS TO ENFORCE CERTAIN RESTRICTIONS RELATING TO YOUR ACCESS TO AND USE OF THE SITE CONTENT (E.G., ENFORCEMENT OF THE USE PERIOD AND RESTRICTIONS AGAINST COPYING) AND THAT SUCH SECURITY TECHNOLOGIES MAY BE USED BY RECORDED BOOKS TO ENFORCE SUCH RESTRICTIONS.

(b) No Right To Continued Service.

You acknowledge that Recorded Books licenses some or all of the Site Content under agreement(s) with third parties, and that Recorded Books and its service provider(s) are constantly administering the Site, including, without limitation, to comply with the Usage Rules. Recorded Books may add, delete, remove, modify, disable, suspend or restrict some or all of the Site, Site Content and/or Service in its sole discretion without notice to you, and you acknowledge that as a result of such actions: (i) you may no longer be able to use the Site, Site Content and/or Service to the same extent, or at all, as prior to such actions, and (2) that Recorded Books shall have no liability to you or any third party(ies) in such case. Recorded Books shall not be liable in any event for the addition, deletion, removal, modification, disabling, suspension or restriction of access to or use of any or all of the Site, Site Content and/or the Service.

(c) Software.

As part of the Service, in order to access the Site and/or the Site Content now or in the future, you may be required to download, install and run certain software, and updates and upgrades thereto, owned or controlled by Recorded Books and/or its service provider(s). Such software shall be governed by the accompanying software or end-user license agreement, and you shall comply with the terms thereof, the terms of which are incorporated herein by reference.

5. Age Restrictions.

Certain of the Site Content may be appropriate only for persons over the age of eighteen (18) years ("Age Restricted Content"). Those persons who are younger than 18 years of age, or such other age as may be required in your jurisdiction, are referred to herein as "Minors". Not all content on the site may be appropriate for all age groups. Access to the site is not limited by age; monitoring of a minor's use of the collection is the responsibility of the parent/guardian.

III. LINKS; THIRD PARTY COMMUNICATIONS

1. Links to the Site.

You may not link to the Site from any pornographic, obscene, profane, defamatory, libelous, threatening, unlawful or other website or material which could constitute or encourage unlawful conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law or regulation. Notwithstanding the fact that Recorded Books or other parties involved in creating, producing, or

delivering the Site may monitor or review any links to the Site, Recorded Books and such parties assume no responsibility or liability which may arise from the content thereof.

2. Links to Third Party Sites.

Although the Site may link to other websites ("External Sites"), Recorded Books is not, directly or indirectly, implying any approval, association, sponsorship, endorsement, or affiliation with any External Site, unless otherwise specifically stated herein. By entering the Site you acknowledge and agree that Recorded Books has not reviewed the External Sites and is not responsible for the content contained on any External Site. Your access and use of any External Site is at your own risk.

3. Third Party Postings.

The Site may contain information or advertising for third parties. Recorded Books expressly denies any endorsement, sponsorship, approval, or agreement with any third party communication made available via the Site. Recorded Books shall not be deemed to have considered, reviewed, screened or approved of any such third party communication.

IV. DISCLAIMERS

1. Transmission of Information.

As with any online interaction and electronic communication, there is an inherent risk involved in transmitting any information via the Internet. Recorded Books does not and cannot guarantee that the system of Recorded Books or its service provider(s) is or will be free from hackers or viruses or that information provided by you or any other users to Recorded Books will not be stolen or otherwise surreptitiously obtained. Recorded Books will take every reasonable measure to ensure security of the user's information. Recorded Books is not responsible or liable to you or any third party for any infections or contamination of your system or delays, inaccuracies, errors, or omissions arising out of your access to or use of the Site, Site Content or Service. You hereby acknowledge and understand that such risk is inherent in interacting with any website, content or service, including, without limitation, the Site, Site Content and Service, and you take full responsibility for any harm, danger or damage that ensues due to any such breach in security. Recorded Books expressly disclaims any such liability. In addition, you agree to be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for access to and use of the Site, Site Content or Service and you shall be responsible for all charges related thereto.

2. Nature of Services.

(a) Information and Data. Recorded Books offers access to the Site, Site Content and Service for personal entertainment purposes only. Recorded Books does not warrant the truth or validity of the information contained on the Site. You acknowledge and understand the possibility of human and mechanical error, mistakes or omissions in the data or information provided, delays or interruptions of the data or information stream from any cause whatsoever, as well as other factors. You further acknowledge and agree that Recorded Books is not responsible for errors in or omissions from the information contained in or accessed through the Site, Site Content or Service.

(b) **Objectionable Material.** You understand that through your use of the Site, Site Content and Service you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as such. You agree to use the Site, Site Content and Service is at your sole risk and that Recorded Books shall have no liability to you for the type of content that you may access, including, without limitation, content that you may find offensive, indecent, or objectionable.

3. **DISCLAIMER OF WARRANTIES.**

THE SITE, SITE CONTENT AND SERVICE ARE PROVIDED ON AN “AS IS”, “AS AVAILABLE” AND “WITH ALL FAULTS” BASIS. SUBJECT TO THE PROVISIONS OF SECTION V.2, RECORDED BOOKS, ITS SERVICE PROVIDER(S) AND LICENSORS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (I) REPRESENTATIONS OR WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SITE, THE SITE CONTENT, THE SERVICE, ANY GOODS OR SERVICES SOLD THROUGH THE SITE OR THE CONTENT OF ANY THIRD PARTY SITE THAT MAY BE LINKED TO THE SITE AND (II) ANY REPRESENTATION OR WARRANTY THAT THE SITE WILL BE UNINTERRUPTED OR ERROR FREE, FREE FROM VIRUSES OR SECURITY BREACHES. THE SITE CONTENT AND ANY INFORMATION CONTAINED ON THE SITE IS NOT GUARANTEED TO BE ACCURATE, TIMELY OR VERIFIED. YOU EXPRESSLY AGREE THAT THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SITE AND THE SERVICE, AND THE ACCURACY OR COMPLETENESS OF THE SITE CONTENT OR INFORMATION MADE AVAILABLE VIA THE SITE OR THE SERVICE, IS ASSUMED SOLELY BY YOU.

V. LIMITATION OF LIABILITY

1. **LIMITATION OF LIABILITY.**

IN NO EVENT SHALL RECORDED BOOKS, ITS SERVICE PROVIDER(S) OR LICENSORS BE LIABLE HEREUNDER (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR LOSS OF PROFITS OR REVENUE, LOSS OR INACCURACY OF DATA, OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY YOU OR ANY THIRD PARTY, REGARDLESS OF WHETHER RECORDED BOOKS, ITS SERVICE PROVIDER(S) AND/OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2. **CERTAIN LIMITATIONS.**

WITHOUT WAIVING SECTION VI.4, RECORDED BOOKS AND YOU EACH ACKNOWLEDGES THAT SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF IMPLIED WARRANTIES OR LIMITATIONS OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. IN SUCH JURISDICTIONS, THE LIABILITY OF RECORDED BOOKS, ITS SERVICE PROVIDER(S) AND/OR LICENSORS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. NOTHING CONTAINED IN THESE TERMS SHALL LIMIT OR EXCLUDE OR PURPORT TO LIMIT OR EXCLUDE ANY LIABILITY WHERE SUCH LIMITATION OR EXCLUSION IS VOID OR UNENFORCEABLE OR OTHERWISE NOT PERMITTED UNDER APPLICABLE LAW.

VI. GENERAL TERMS.

1. Termination.

If you should breach any portion of these Terms, In addition to any other rights of the parties set forth herein, Recorded Books may in its sole discretion restrict, suspend or terminate your access to the Site, Site Content and Service, in whole or in part and without notice, even if your Library/School/Company continues to offer access to the Site, Site Content and Service to its other members or representatives. If Recorded Books terminates your access to the Site, Site Content and/or Service based on a breach of any portion of these Terms, Recorded Books reserves the right to refuse to provide other services to you in the future, even if your Library/School/Company subscribes to such services and offers the benefits of such subscription to its other members or representatives. For the avoidance of doubt, upon any such restriction, suspension or termination, the rights granted to you under Section II.1(a) shall immediately terminate (in the case of a restriction, to the extent of such restriction). Notwithstanding such restriction, suspension or termination, the provisions set forth in Sections I.1, III, IV, V and VI shall remain in full force and effect indefinitely.

2. Indemnification.

You hereby agree to indemnify, defend and hold harmless Recorded Books, its service provider(s) and its licensors and any of their respective officers, directors, agents and employees (collectively, the “Indemnified Parties”) from and against any and all liability and costs (including, without limitation, attorneys’ fees) incurred by any such Indemnified Parties in connection with your use of the Service, Site or Site Content, including, without limitation, with respect to any claim arising out of any breach or alleged breach of any of your obligations set forth herein. You shall cooperate as fully as reasonably required in the defense of any claim. The Indemnified Parties reserve the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without the written consent of the Indemnified Parties.

3. Notices.

Notices by Recorded Books to you may be given by means of a general posting at the Site or by contacting you at the address, telephone number or e-mail address provided by you to Recorded Books, if any. All notices from you to Recorded Books (including, without limitation, questions, complaints, legal notices or copyright complaints) shall be sent (i) by courier or first-class mail to the address set forth below or (ii) by facsimile or e-mail (in each case with express confirmation of receipt by Recorded Books in writing) to the facsimile number and e-mail address set forth below:

Recorded Books Inc.

270 Skipjack Road

Prince Frederick, MD 20678

Attention: Neil Tress

Facsimile: (410) 535-2761

e-Mail : ntress@recordedbooks.com

4. Governing Law;

Forum Selection; No Export. These Terms shall be governed by the laws of the State of Maryland without regard to the principles of conflicts of law. You hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts sitting in the State of Maryland for the purpose of resolving any dispute relating to your access to or use of the Site, Site Content and/or Service. Recorded Books may seek injunctive or other appropriate relief in any state or federal court in the State of Maryland, and you consent to exclusive jurisdiction and venue in such courts. You agree not to assert, by way of motion, as a defense or otherwise, in any such dispute, that you are not subject personally to the jurisdiction of such court, that any corresponding claim is brought in an inconvenient forum or the like, that the venue of the claim is improper or that these Terms or the subject matter hereof may not be enforced in any such court. Any summons, order to show cause, writ, judgment, decree or other process issued by such court may be served on you at the address which you have provided to Recorded Books or personally outside the State of Maryland, and when so served, you shall be subject to the jurisdiction of such court as though the same had been served within the State of Maryland. No software from the Site, Site Content or Service may be downloaded, exported or re-exported by you into (or to a national or resident of) any countries that are subject to U.S. export restrictions.

5. Relationship Between the Parties;

Third Party Beneficiaries. These Terms shall not be construed to create a partnership, joint venture, agency or other legal relationship between Recorded Books and you. Each of Recorded Books' licensors and content providers, together with their respective successors and assigns, shall be an intended third party beneficiary of these Terms and shall have the right to enforce any and all obligations, restrictions and/or other terms and conditions imposed on you under these Terms to the same extent as if such licensor or content provider were a party to these Terms. These Terms are fully enforceable in every respect, at law or in equity, by each such licensor or content provider as an intended third party beneficiary hereunder.

6. Severability;

Merger; Waiver. Whenever possible, each provision of these Terms shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of these Terms shall be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Terms. These Terms express the entire understanding of you and Recorded Books and supersedes and replaces all prior and contemporaneous agreements between you and Recorded Books with respect to the subject matter hereof. Further, these Terms shall govern your use of the Site, Site Content and Service under any subscription level obtained by your Library/School/Company. Any failure to exercise or delay in exercising any right, power or privilege granted under these Terms shall not operate as a waiver by Recorded Books of such right, power or privilege or preclude any further exercise thereof or the exercise of any other right, power or privilege by Recorded Books.

7. Written Agreement.

These Terms constitute an enforceable written agreement between you and Recorded Books. A printed version of these Terms, and of any notice given in electronic form related to this agreement, shall be admissible in judicial or administrative proceedings to the same extent, and subject to the same restrictions, as other business contracts, documents, or records originally generated and maintained in printed form. You hereby waive any and all defenses you may have based on the electronic form of these Terms and the lack of signing by the parties hereto to execute these Terms.

8. Injunctive Relief.

You agree that a breach of any of the terms and conditions of these Terms may result in irreparable harm and significant injury to Recorded Books, which may be difficult to ascertain. Accordingly, you agree that Recorded Books shall be entitled to equitable relief, including, without limitation, an immediate injunction enjoining any further breach, in addition to all other remedies available to Recorded Books at law or in equity.

9. No Jury Trial.

YOU HEREBY WAIVE YOUR RIGHTS TO A TRIAL BY JURY IN ANY PROCEEDING WITH RECORDED BOOKS.