

Terms and Conditions, valid from January 25, 2024 – December 16, 2024

This Services Agreement (the "Agreement") is by and between NetGalley LLC (hereinafter referred to as "NETGALLEY"), of 44 Merrimac Street, Newburyport, MA 01950 USA, and an individual or entity (hereinafter referred to as "CLIENT"). The natural person clicking the <I have read and agree to the Terms and Conditions> button on the [Plans and Pricing page](#) warrants that they are authorized to sign contracts on behalf of, and to thereby bind, CLIENT to the Agreement as of the date hereof (the "Effective Date").

1. ENGAGEMENT AND SERVICES:

- a. NETGALLEY shall provide CLIENT access, via a CLIENT account, to its NETGALLEY hosted sites NetGalley.com and NetGalley.co.uk, collectively known as the "Platform". CLIENT will select and upload digital content files, in PDF, EPUB, and/or MP3 format, or other digital format agreed upon by the Parties (each such instance referred to herein as a "Title").
- b. NETGALLEY will maintain the Platform allowing for access by reviewers, librarians, booksellers, educators, and media, and others that are granted access (collectively, "Members"). NETGALLEY shall condition a Member's access to Titles on acknowledgment of terms of use, which terms shall state in words or substance that any use of Titles is for non-commercial use only and that the Member may not sell or distribute such Titles.
- c. NETGALLEY shall be responsible for all storage, hosting, and delivery costs associated with NETGALLEY's provision of Titles under this Agreement.
- d. NETGALLEY will perform all work in a professional and efficient manner in accordance with the highest standards of the industry.

2. CLIENT RESPONSIBILITIES:

- a. CLIENT will select availability and Reading Options (see Appendix A) for each Title. CLIENT has exclusive control over which Titles are available on the Platform, and full ownership of those Titles. CLIENT has the exclusive right to designate which Members can view the Titles, through approval of requests or specific invitations.
- b. CLIENT shall be responsible for the content submitted to the site. NETGALLEY reserves the right to remove content and any Title from the Platform if either (i) is proven to be false, misleading or defamatory; (ii) is assessed by an independent third party expert to be harmful, threatening, or intimidating to any individual; (iii) contains hate messages or personal attacks against others; (iv) violates another person's or entity's intellectual property rights, privacy rights, or other legal rights.
- c. CLIENT will not interact with Members in a way that (i) is harmful, threatening, or intimidating; (ii) contains hate messages or personal attacks against others; (iii) is defamatory or libelous (iv) constitutes or contains unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of unauthorized solicitation. NETGALLEY reserves the right to terminate this Agreement if it finds that CLIENT or their representatives, including employees or authors, have engaged in actions of this nature.

- d. If CLIENT uses, or attempts to use, the Platform for purposes other than for which it is expressly designed, including but not limited to tampering, hacking, modifying, or otherwise corrupting its security or functionality, CLIENT's account will be terminated and CLIENT will be subject to legal action, be liable for damages and other penalties including criminal prosecution where and if applicable.

3. SECURITY:

- a. NETGALLEY will maintain Titles on a secure database. Titles will be protected using digital rights management (DRM) technology as specified by the CLIENT and outlined in Appendix A. If CLIENT identifies any faults in the DRM applied to Titles, CLIENT shall notify NETGALLEY in writing and NETGALLEY will use commercially reasonable efforts, including but not limited to, removing the impacted Titles from access to additional Members until the defect is resolved. If NETGALLEY is not able to rectify the defect or replace it with alternative DRM within 30 days, CLIENT may suspend or terminate this Agreement on written notice.
- b. NETGALLEY will not translate a Title into other languages whether through the addition of text-to-speech, translation functionality or otherwise. CLIENT and/or its licensors retain all right, title, and interest in all intellectual property rights in its Titles.
- c. NETGALLEY may modify Titles based on the Reading Options CLIENT selects to account for required DRM-enabled file types (such as AZW, ACSM, Social DRM, W3C, or other formats). Such changes shall not alter the textual, audio, or graphic content of Titles.
- d. CLIENT can archive Titles. When this is done, the Title is referred to as an "Archived Title" and becomes unavailable for future access by Members. Archived Titles can be restored to active status at any time by the CLIENT if during the Term described below.
- e. CLIENT acknowledges that options to offer Titles with no DRM protection exist in the Platform. NETGALLEY agrees that CLIENT shall have the sole right to revise DRM options for their account and Titles, including removing DRM from any Title, and NETGALLEY shall not be held responsible for any resulting use of the Platform if CLIENT has expressly chosen this option.
- f. NETGALLEY shall notify CLIENT, within a commercially reasonable period, of any materially significant breaches that occur or of any materially significant vulnerabilities in its internal security system of which it becomes aware, and which relate to the Titles. If NETGALLEY becomes aware of any unauthorized or improper use, including without limitation the unauthorized downloading or sharing of Titles by a Member or third party, NETGALLEY shall, within a commercially reasonable period, (a) notify CLIENT of such unauthorized or improper use, and (b) take commercially reasonable steps to halt such unauthorized or improper use in the future.
- g. CLIENT acknowledges that as a part of the service provided by NETGALLEY, the CLIENT has access to certain personal information of Members that have requested the CLIENT's Titles. CLIENT further acknowledges its responsibility to protect the Members' personal information, and to use it for no other purpose than to communicate with the Member in relation to the Member's activity on the Platform. More specifically, the CLIENT acknowledges that it cannot use Member data for email lists or other marketing activities without specific permission of the Member. CLIENT acknowledges that failure to protect Members' personal information may be subject to legal action.
- h. CLIENT shall be responsible for complying with all local laws and statutes related to the protection and legal use of personal information.

4. TERM:

- a. The term of this Agreement shall commence on the date of CLIENT agreement to the Terms and Conditions and continue for 6 months. Upon expiration of the Term, or termination of the Agreement, NetGalley shall Archive the Title from the Platform.
- b. If CLIENT has not delivered the book title, ISBN, cover image, and interior file to NETGALLEY within six months of the Agreement, NETGALLEY reserves the right to remove access to the CLIENT account and no refund will be issued.

5. COMPENSATION:

- a. In consideration for the performance outlined in Section 1 ("Engagement and Services") and for any rights granted by NETGALLEY under this Agreement, CLIENT agrees to pay NETGALLEY , by credit card payment, amounts billed for fulfillment of the Services specified on the NETGALLEY Plans and Pricing page.
- b. If an optional marketing promotion is purchased on the NETGALLEY Plans and Pricing page, CLIENT is responsible for selecting an available date during the Term, using NETGALLEY's promotional reservation form. If no spots are available during the Term of this Agreement on the Platform, NETGALLEY reserves the right to substitute a marketing promotion of equal or greater value.
- c. If CLIENT opts to participate in additional marketing promotions after this Agreement is signed, full price rates will apply, and all reservations are subject to availability.
- d. All fees paid under this Agreement are nonrefundable.

6. INDEPENDENT CONTRACTOR:

NETGALLEY shall fulfill its obligations under this Agreement solely as an independent contractor. The Parties of this Agreement recognize that the Agreement does not create any actual agency, partnership, or relationship of employer/employee between the Parties. Neither party is authorized to enter into or to commit the other into any agreements, nor shall either party represent itself as the agent or legal representative of the other. The CLIENT shall exercise no immediate control over the means or manner of NETGALLEY's performance under this Agreement, except to the extent that the CLIENT expects NETGALLEY to fulfill its obligations under this Agreement.

7. COVENANT OF CONFIDENTIALITY:

- a. In connection with their performances under this Agreement, the Parties may be exposed to Confidential Information (defined below) which is proprietary to each Party.
- b. "Confidential Information" means all information disclosed to either Party, including but not limited to:
 - i. Any information not publicly known, whether disclosed orally, electronically, visually, or in a written or other tangible form, including without limitation, any unpublished manuscripts, notes, or verbal information treated as proprietary and designated as Confidential Information.
 - ii. Any notes, extracts, abstracts, analyses, or materials prepared by either Party which are copies or derivative work of the Confidential Information.
- c. The Parties, consistent with their procedures for protecting Confidential Information, agree that for the term of this Agreement and thereafter, they will take all reasonable steps to protect

Confidential Information from disclosure to third parties. The Parties shall not disclose, use, copy, or permit others to examine or use Confidential Information without express written consent.

- d. Notwithstanding the foregoing, the Parties shall have no obligation to treat as Confidential Information, information or data which (i) was already in the possession of either Party prior to the effective date of this Agreement, (ii) is or became known to the public without violation of this Agreement, (iii) is disclosed lawfully by either Party to a third party having the right to the information, (iv) is independently developed by either Party without reference to Confidential Information, (v) is approved in writing by either Party for disclosure, or (vi) is required to be disclosed by court order.

8. INDEMNIFICATIONS:

- a. CLIENT shall indemnify and hold harmless NETGALLEY for any violations of copyrights or territorial rights for Titles that CLIENT puts on the Platform. The CLIENT acknowledges that they bear all responsibility for ensuring that they have sufficient rights or authority to post Titles on the Platform.
- b. CLIENT shall INDEMNIFY AND HOLD NETGALLEY HARMLESS for any complaint, criminal or civil lawsuit, or other proceeding brought by any Member or a government organization against CLIENT with regard to Members' personal information.

9. DEFAULT:

- a. In the event that either of the Parties to this Agreement fails or refuses to comply with any of the terms, conditions, or covenants of this Agreement, and such failure or refusal is not remedied within ten (10) days after written notice is giving to the failing party, or if either party fails to perform as per the terms of this Agreement, the failing or refusing party shall be deemed in default.
- b. In the event that a voluntary or involuntary petition in bankruptcy is filed against either party, that party shall be deemed in default.
- c. NETGALLEY reserves the right to refuse future services to CLIENT should CLIENT be deemed in default at any time.

10. GENERAL TERMS:

- a. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- b. This Agreement is not assignable by either party for the Term of this Agreement.
- c. The waiver by either party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation.
- d. This Agreement represents the entire Agreement between the Parties and replaces any and all previous understandings that may have existed between the Parties; the Agreement may not be amended, changed, or supplemented in any way except by written addendum or future agreement signed by both Parties.

Appendix A

Reading Options for Clients

As CLIENT, you control how Members access your Titles. DRM security options ("Reading Options") can be set at the account level and will be applied by default to each new Title. You can also amend Reading Options for an individual Title at any time.

By uploading digital content files (such as PDF or EPUB), you can offer approved Members multiple options for accessing a Title:

- **NetGalley Shelf app:** Download a temporary or permanent Protected (DRM) file, protected using Radium Licensed Content Protection (LCP). Members may only open Title on the NetGalley Shelf application.
- **Download a temporary Protected (DRM) file,** protected using Adobe DRM. Members may open a Title on any reading application that supports Adobe DRM.
- **Download an Open (DRM-free) file.** Members may open Title on any reading application.
- **Kindle device or app:** Delivered via Amazon's Personal Document Delivery service and protected by Amazon's proprietary DRM. Members may only open Titles on Kindle devices and applications.
- **Download a Social DRM protected file,** protected using Firebrand's proprietary SocialDRM technology. Members may open Title on any reading application.

When you upload an audiobook (a zip file containing a set of MP3 files) to NetGalley, approved Members will exclusively access audio Titles via the NetGalley Shelf app ("the App"). NetGalley combines your audiobook file with the title metadata and cover image to create a new file that can be opened by the App. The file name is obfuscated, making it difficult for users to recognize or open the Title outside of the App.

For more detailed information about Reading Options and DRM, and details about how CLIENT can set or change Reading Options, please reference:

<https://netgalleyclient.zendesk.com/hc/en-us/articles/4414502733975>

For a complete list supported devices and apps, and instructions for use, please reference:

<https://netgalley.zendesk.com/hc/en-us/articles/115003954553>