

Digital Book Distribution to Libraries
Terms of Sale
Effective November 15, 2016

Definitions

Digital Books: Electronic book titles, but not electronic audiobook titles, published under imprints of Hachette (and beginning April 2017, including electronic book titles published by imprints of Perseus Books, LLC, a subsidiary of Hachette Book Group, Inc.) and/or by third party publishers that are distributed by Hachette or its affiliate HBG International Sales Co (collectively “Hachette”), but excluding electronic book titles published by Hachette UK Limited or and/or published by third party publishers that are distributed by Hachette UK Limited (collectively, the “Digital Books”) that Hachette makes available for Sale to Permitted Library(ies). ISBNs for the library editions of Digital Books are different from the ISBNs for Digital Books sold to retail consumers.

Distributor: A company in the business of distributing and selling copies of Digital Books to Permitted Library (ies), complies with these Terms, and is in good standing with and approved by Hachette’s credit department. A new Distributor, i.e., one that has never purchased Digital Books before the effective date of these Terms of Sale, shall first obtain approval from Hachette’s credit department before purchasing Digital Books under these Terms.

Library Digital Price or “LDP”: The Library Digital Price is the suggested price established by Hachette for the Sale of a Digital Book to Library (ies), in United States Dollars and Canadian Dollars. The LDP, and changes to the LDP, will be communicated to Distributor via Hachette’s library ONIX feed. For purposes of countries in the Territory other than the United States and Canada, Distributor may provide Permitted Libraries located in those other countries LDPs to convert the LDPs into the applicable local currency as long as it is understood that Distributor’s payments and reporting to Hachette must be in United States Dollars.

Library(ies): A not-for-profit public, school, college/university, military or research library which maintains a collection of digital books that it lends, but does not sell, for reading and research for its library members via timed access/lending policies. Other kinds of libraries, including without limitation, corporate libraries and for-profit libraries are not “Libraries” under these Terms.

Patron: Person presenting evidence of membership in a Permitted Library.

Permitted Library(ies): Libraries that meet the requirements set forth in paragraph 3 below.

Sale: A transaction in which Distributor permits access to a copy of the content of a Digital Book file (whether by download, wireless transmission or any other electronic, magnetic or digital means of delivery including but not limited to a web-browser or similar application) to a Library’s Patron, in exchange for which Distributor receives payment from the Library. If Distributor receives additional payment from a Library for giving Library Patrons the right to access additional copies of the content of the same Digital Book file, each such additional payment will be deemed an additional Sale.

Territory: Distributor may only sell Digital Books to Permitted Library (ies) in (1) the United States, including its territories, possessions and United States military installations; and (2) the additional country (ies) listed in Exhibit A attached in which Hachette has the right to sell a particular Digital Book title, as indicated by Hachette’s library ONIX Feed.

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1. Distributor Purchase Price; Discount: Distributor may purchase a Digital Book file from Hachette at a discount of thirty percent (30%) off the LDP in US Dollars for each copy Sold to a Library.
2. Sales: Distributor will Sell Digital Books, i.e., provide access only to Patrons of Permitted Library(ies) in the Territory.
3. Permitted Library Requirements: Permitted Libraries must meet the following requirements:
 - (a) Permitted Library may loan, not sell, the Digital Book to its own Patrons within the Territory.
 - (b) Permitted Library may not lend, share or sell Digital Books to any other library, including, but not limited to a library that is part of a consortium or cooperative, or is part of a for-profit organization or corporation, without first obtaining Hachette's written approval in each instance.
 - (c) Permitted Library must follow a one-Patron-at-a-time access policy for each copy of a Digital Book Sold to the Library.
 - (d) Permitted Library must cooperate with Distributor in making aggregate information via links, buttons and information described in paragraph 7 available to Distributor and Hachette.
 - (e) Permitted Library must cooperate with Distributor in Distributor's applying digital rights management technology to the Digital Books that will, among other things, restrict a Patron's transfer of each Digital Book borrowed to no more than six supported devices total at any one time per "check out" period.
4. Additional Distributor Obligations:
 - a) Metadata. Distributor must use Hachette's library ONIX feed as its primary source of title metadata. In order to remain a Distributor in good standing, Distributor is required to make Hachette's metadata, including, without limitation, the LDP and any change in the LDP, and On Sale date, available in an accurate and timely manner to Permitted Libraries through its System (see Paragraph 9 below).
 - b) Retail "Buy-now" Functionality. Distributor will make available to Permitted Libraries the opportunity for Patrons, through a Buy-now button or other method to purchase a copy of a Digital Book directly from authorized digital book retailer(s). A Distributor which does not have the software to include for Permitted Libraries a retail "Buy-now" button or other method to purchase a copy of a Digital Book directly from authorized digital book retailers(s) will within thirty (30) days after it begins Sales under these Terms notify Hachette and provide Hachette with development plans and a reasonable expected date for compliance. (If a Permitted Library which is a school library for Patrons in kindergarten through 12th grades is not permitted to provide a "Buy now" functionality on legal privacy grounds and because of system requirements, please seek Hachette's prior written approval.)

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- c) Circulation Data Collection: Except as set forth in the next sentence, Distributor will track, collect and report “Circulation Data” (defined in paragraph 7) in the aggregate to Hachette or make available to Permitted Libraries software permitting them to track, collect and report Circulation Data to Distributor so that Distributor may report the Circulation Data to Hachette under paragraph 7 below. A Distributor which does not have the software to track, collect and report “Circulation Data” will within thirty (30) days after it begins Sales under these Terms notify Hachette and provide Hachette with development plans and reasonable effective date for compliance.
- d) Marketing: Distributor may, in order to market and promote Digital Books, offer to Permitted Library(ies) and their Patrons at no charge a DRM-free excerpt of no more than 10% of a Digital Book or the first chapter (whichever is greater) to view before borrowing, in addition to the Digital Book’s cover images, flap copy, front matter and back matter. Any “preview,” “look-inside,” “read-inside,” or other similar preview functionality must have security measures such as limited page views, timed access, or other security measures approved by Hachette.
- e) On Sale Dates/Embargoes: Distributor shall not give access to copies of the content of a Digital Book to any Library Patrons before its On Sale Date, although Distributor may collect “pre-orders” of a Digital Book before that Date. Distributor shall adhere to any “embargoes” with respect to Sales of designated Digital Book titles.
5. Amount Payable to Hachette for each Digital Book Sold: Distributor will owe and pay Hachette seventy percent (70%) of the LDP for each Sale of a Digital Book to a Library.
6. Statements and Payments to Hachette; Audits:
- a) Distributor will segregate and maintain separate records of Sales of Digital Books and amounts payable to Hachette under these Terms. (*See paragraph 12 regarding Distributor’s obligation to segregate Sales under these Terms from sales to consumers acting as Hachette’s agent.*) Distributor will account and send statements of all Sales and amounts payable under these Terms (“Statement(s)”) *separately from statements and payments for sales to consumers when Distributor is acting as Hachette’s agent* to Hachette, both in US Dollars and (if applicable), the local currency, on a monthly basis, by the 15th day of each calendar month, for all Sales occurring in the preceding calendar month. All Statements must state the following information separately for each Digital Book title, by country within the Territory and by Permitted Library: author, title, ISBN, LDP in US Dollars, (if applicable), the LDP in local currency, with applicable exchange rates used, and total amount payable to Hachette.
- (b) Payment to Hachette shall be made in US Dollars for the amounts payable for Sales, as reflected by the Statement(s), and will be due to Hachette no later than 45 days after the close of the preceding calendar month All payments must include a copy of the applicable Statement, and shall be sent to Hachette Digital, Inc. c/o Hachette Book Group, Inc., 53 State Street, 9th Floor, Boston, MA 02019, Attn: VP, Customer Financial Services.
- (c) Distributor shall maintain complete and accurate books and records covering all Digital Book transactions with Permitted Libraries under these Terms of Sale. Upon thirty (30) days’ written notice and during regular business hours, not more than once every twelve months, Hachette and/or its authorized representatives shall have the right to inspect, analyze, audit, and copy Distributor’s

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business records that relate specifically to Distributor's purchases from Hachette, Sales and Circulation Data (Paragraph 7 below), and to verify the accuracy of Distributor's Statements and payments, at the place where Distributor keeps such statements and records or, if outside the United States, Distributor will make true copies of such statements and records available to Hachette at Hachette's office. The expense of any such audit shall be borne by Hachette unless errors in accounting in Distributor's favor amounting to 5% or more of the sums paid to Hachette during the audited period are found, in which event such reasonable expenses shall be borne by Distributor.

7. Circulation Data; Monthly Reports: "Circulation Data" means aggregate data, not personally identifiable information, collected for each Digital Book title showing how many copies of each Digital Book title have been "checked out"; placed "on-hold;" or purchased by a Patron via a "Buy-now" button. Distributor shall maintain Circulation Data on a calendar month basis, both in the aggregate and separately by title, by country within the Territory and by Permitted Library. Distributor shall provide Hachette with a written report covering such aggregate and separate Circulation Data for each calendar month, within thirty (30) days after the close of the calendar month. Distributor shall not be required to provide Hachette with any personally identifiable information of Patrons and, with Hachette's prior written approval, Hachette may permit an exception for reporting of Circulation Data for a Permitted Library which is a school library for Patrons in kindergarten through 12 grade based on legal requirements applicable to the Permitted Library. Distributor will comply with its stated privacy policy and all applicable privacy laws.
8. DRM Requirements:
 - (a) Distributor must use commercially reasonable efforts to have industry-standard encryption, copyright protection and security DRM technology applied to the Digital Books. In the event that Hachette reasonably determines that Digital Books have been subject to or probably will be vulnerable to breach of Hachette's DRM requirements, then Hachette will notify Distributor in writing and Distributor will cease distribution and/or Sale of the Digital Books until Distributor has resolved the alleged breach to its DRM to Hachette's satisfaction. If compromised security is related to a specific electronic format, Hachette may instruct Distributor to cease all Sales of Digital Books in the compromised format until such time as the matter has been resolved to Hachette's satisfaction.
 - (b) Distributor shall have DRM applied to the Digital Books according to Hachette's functionality limitations, such as limitations on printing, copy, paste, and text-to-speech, as communicated by Hachette in writing.
 - (c) Hachette may itself or by a representative, no more than once per calendar year, upon advance written notice of at least sixty (60) days, examine the effectiveness of Distributor's DRM. Distributor shall use commercially reasonable efforts to cooperate with, provide technical documentation and, if necessary, provide reasonable access to its relevant facilities and systems to enable a comprehensive review and analysis of Distributor's DRM.
9. Order Fulfillment System:
 - (a) Distributor shall maintain a commercially reasonable electronic order fulfillment system, including features for both digital and physical security (the "System"). The System will host

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- and store Digital Books, receive and process electronic orders for Digital Books from Permitted Libraries and transmit Digital Books in encrypted form only, to Patrons of Distributor's Permitted Libraries. The System shall be maintained in a secure environment, pursuant to current, industry-standards and practices for the housing and storage of digital information, so that Digital Books are secure from manipulation, unauthorized copying or transmission, infringement and/or other misappropriation or misuse.
- (b) Upon request, Distributor will furnish Hachette with a written statement signed by an officer that describes with reasonable technical specificity the System used by Distributor for the Sale of Digital Books, the security measures used to limit physical access to servers and networks storing and/or transmitting Digital Books and/or related content and data to authorized personnel of Distributor only, such as videotaping procedures, keeping servers in a locked cabinet or room, requiring card (or token) access, maintenance of recording logs evidencing time and nature of access, and all other methods that may be used by Distributor to protect access to servers and networks through VPN connections, passwords or the like. Distributor shall promptly notify Hachette of any material changes made to the System that would affect its obligations under these Terms. All information furnished pursuant to this subparagraph (b) will be treated as confidential information.

10. Warranties and Indemnities:

- (a) Hachette warrants and represents that (i) it owns or controls the right to distribute the Digital Books in the Territory, and (ii) the Digital Books and related material Hachette provides to Distributor do not infringe any copyright, trademark or other intellectual property of any third party. Hachette shall indemnify and defend Distributor for all third party claims, expenses and liabilities resulting from a breach of the above warranties and representations, provided Distributor notifies Hachette promptly after learning of any such claim.
- (b) Distributor warrants, represents and agrees that: (i) it has no rights under copyright, trademark, or other intellectual property laws with respect to any Digital Books; (ii) the Digital Books are intended for reading purposes and only in the form provided by Hachette, and Distributor shall not itself nor facilitate any other person to alter, enhance, abridge, expand, reconfigure, edit or otherwise modify the content or intended use of any Digital Book in any manner, without the prior written consent of an officer of Hachette; and (iii) Distributor will not permit any advertisement or other material to be combined with or inserted into Digital Book files without the prior written consent of an officer of Hachette. Distributor shall indemnify and defend Hachette for all third claims, expenses and liabilities resulting from a breach or alleged breach of the above warranties; for any third party claim that the technology used by Distributor to Sell and/or distribute the Digital Books infringes upon or violates the copyright, patent, trademark or other intellectual property rights of any third party; and for any third party claim that any privacy rights have been breached or violated. Hachette will notify Distributor promptly of any such claim.

11. Subcontractors: Hachette acknowledges that Distributor may subcontract with one or more third parties to assist with Sales and fulfillment of Digital Books. Distributor shall ensure that all such subcontractors adhere to the terms and conditions of these Terms and comply with the provisions herein, and

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Distributor shall be responsible for any breach of these Terms and for any act or omission by such third parties.

12. Annual Certification: If Distributor is also an authorized sales agent or digital fulfillment provider for Hachette's sales of digital books to consumers ("Consumer Sales Activities"), Distributor shall segregate all Consumer Sales Activities from Distributor's activities under these Terms and shall provide Hachette with written certification signed by an officer of Distributor in accordance with **Exhibit B** attached), at the beginning of each calendar year. Hachette will have the right to treat a failure to submit such certification or comply with the obligation to segregate activities as a breach of these Terms (without limitation of its other rights and remedies), entitling Hachette in its sole discretion to suspend Distributor or terminate Sales to Distributor on written notice to Distributor.
13. Changes to Digital Books: Hachette reserves the right in its sole discretion at any time, on advance notice, to replace, edit or modify the content of any Digital Book and Distributor will update its System with any such changes within 2 business days after receipt by Distributor of such changed files or for any replacement, edit or modification because of a legal issues, when such changed files are received by Distributor on a Friday, Saturday, Sunday or U.S. Federal holiday, by the end of the next business day.
14. Withdrawal of Digital Book Title(s):
Hachette reserves the right for good faith business reasons to withdraw any or all of the Digital Books from the System. Upon written request, Distributor shall confirm in writing the prompt withdrawal of the Digital Book file(s) requested to be withdrawn from the System (but in no event later than three days after such request). Following withdrawal, Distributor and Permitted Libraries shall not make any further use whatsoever, nor authorize anyone else to make any use whatsoever, of the Digital Book(s) and related material or data, except that Distributor may retain one copy of such Digital Book file on its servers solely for the purpose of Distributor's continuing to provide appropriate customer service to Permitted Libraries which have purchased that Digital Book, for as long as Distributor remains in business.

These Terms of Sale supersede all prior Terms of Sale concerning Digital Books sold to Libraries, the last of which was effective April 15, 2014.

Distributor's purchase from Hachette or sale of Hachette Digital Books to Libraries constitutes Distributor's agreement to all of these Terms of Sale.

All Terms subject to change by Hachette in its sole discretion.

Revised: November 15, 2016

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Exhibit A to Digital Book Distribution to Libraries, Terms of Sale, effective November 15, 2016

AFGHANISTAN	KOREA, DEMOCRATIC PEOPLE'S REPUBLIC OF
ANGUILLA	KOREA, REPUBLIC OF
ANTIGUA AND BARBUDA	KYRGYZSTAN
ARGENTINA	LAO PEOPLE'S DEMOCRATIC REPUBLIC
ARMENIA	MACAO
ARUBA	MALAYSIA
BAHAMAS	MARSHALL ISLANDS
BARBADOS	MARTINIQUE
BELIZE	MEXICO
BERMUDA	MICRONESIA, FEDERATED STATES OF
BOLIVIA, PLURINATIONAL STATE OF	MONGOLIA
BONAIRE, SINT EUSTATIUS AND SABA	MONTserrat
BRAZIL	MYANMAR
BRITISH INDIAN OCEAN TERRITORY	NICARAGUA
BRUNEI DARUSSALAM	NORTHERN MARIANA ISLANDS
CAMBODIA	PANAMA
CANADA	PARAGUAY
CAYMAN ISLANDS	PERU
CHILE	PHILIPPINES
CHINA	SAINT KITTS AND NEVIS
COLOMBIA	SAINT LUCIA
COSTA RICA	SAINT MARTIN (FRENCH PART)
CUBA	SAINT VINCENT AND THE GRENADINES
CURAÇAO	SINGAPORE
DOMINICA	SINT MAARTEN (DUTCH PART)
DOMINICAN REPUBLIC	SURINAME
ECUADOR	TAIWAN, PROVINCE OF CHINA
EL SALVADOR	TAJIKISTAN
GRENADA	THAILAND
GUADELOUPE	TIMOR-LESTE
GUATEMALA	TRINIDAD AND TOBAGO
GUYANA	TURKMENISTAN
HAITI	TURKS AND CAICOS ISLANDS
HONDURAS	URUGUAY
HONG KONG	UZBEKISTAN
INDONESIA	VENEZUELA, BOLIVARIAN REPUBLIC OF
JAMAICA	VIETNAM
JAPAN	VIRGIN ISLANDS, BRITISH
KAZAKHSTAN	
ZIMBABWE	



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**Exhibit B
Certification Letter**

[On letterhead of Distributor]

[Date of Certification Letter]

To: Hachette Digital, Inc.
237 Park Avenue
New York, NY 0017
Attention: _____

Re: Distributor’s Certification for Digital Book Distribution to Libraries – Library Terms of Sale (the “Terms”)

We are required to submit this annual certification pursuant to the Digital Book Distribution to Libraries Terms of Sale because we were either a sales agent or digital fulfillment provider for Hachette for sales of Digital Books to consumers under a separate agreement (“Consumer Sales Activities”) during all or part of the prior calendar year.

This letter is written to certify that for the prior calendar year, or part of that year, during which we conducted Consumer Sales Activities, we segregated all Consumer Sales Activities and records from our activities and records under the Terms, and that all sales, books, records, statements and related information and data we have maintained and reported under the Terms pertain only to our sales under the Terms.

Yours truly,

NAME OF DISTRIBUTOR

By: _____
Signature of Authorized Officer

Print Name

Print Title _____