

Pen & Publish, Inc. Publishing Agreement (**SAMPLE**)

This Book Publishing Agreement (hereinafter “Agreement”), is entered into on _____, by and between Pen & Publish, Inc. (hereinafter “Publisher”) and _____ (hereinafter “Author”), in order to effect publication of the book _____ containing the writing of Author and/or other participants (hereinafter the “Work”). Author retains copyright and all rights to provided material and Work other than those granted publisher under this Agreement.

RECITALS

WHEREAS, Author is an author who has composed the original work _____ (hereinafter the “Work”); and

WHEREAS, Author seeks publication of the Work; and

WHEREAS, Publisher is a publishing company, seeking to assist authors in the publishing of their original works; and

WHEREAS, Author and Publisher seek to reach an agreement whereby Publisher can assist in effecting publication and print of a perfect bound paperback and eBook versions of the Work.

WHEREFORE, for and in consideration of the mutual promises and covenants herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Publisher and Author hereby agree as follows:

1. Publisher’s Obligations. Publisher’s obligations pursuant to the Agreement shall include:
 - a. Provision of a unique ISBN and bar code for the Work;
 - b. Listing with book wholesalers in the United States and United Kingdom, and R.R. Bowker's Books in Print registration;
 - c. Production of copies of the Work to serve reasonable on-demand wholesale availability and Publisher direct demand;
 - d. Cover and interior book formatting and design, and redesign and/or refinement until PDF “proof” approval by Author of final cover and interior;
 - e. Reasonable promotional and other assistance, as deemed appropriate by Publisher in Publisher’s sole discretion. Assistance may include contacting applicable organizations to propose and negotiate mutually beneficial agreements, direct communication with the press/media, online promotion, and advising author as requested; and
 - f. Replace or refund any product found to be defective as a direct result of the actions of Publisher or another party acting on Publisher’s behalf.

2. Author’s Obligations. Author’s obligations pursuant to the Agreement shall include (and Publisher’s Obligations are conditioned upon):
 - a. Provision of the work after final edits are complete;
 - b. Provision of any submitted graphics must be clear, clean, and on paper or acceptable electronic format (any formats other than .jpg files must be approved in advance by Publisher);

- c. Provision of the Work's interior text in an acceptable electronic file (any formats other than Microsoft Word or rich text format must be approved in advance by Publisher);
 - d. Provision of cover copy and up to two rewrites, with final edit allowed to Publisher; and
 - e. Continuing full and unconditional responsibility and liability for the content of the Work.
3. Author's Representations and Warranties. Author represents and warrants to Publisher, upon which representations and warranties Publisher is specifically relying in entering into this Agreement, that Author has the authority or permission to publish the entire content of the Work, including ownership of the copyright and other rights to the underlying content, and Work content does not defame or impinge on the rights of another in any way. Author shall hold Publisher harmless from and indemnify Publisher against any and all claims or demands arising out of a breach of these representations and warranties, including attorney's fees.
4. Publisher's Rights. Publisher maintains ownership of ISBN and bar code. Author grants Publisher the right to:
 - a. Use materials created for the Work for promotional purposes, which right shall survive termination of this Agreement for one year;
 - b. Prepare, print, market, sell, distribute and ship the Work, and collect and distribute monies for the Work, in accordance with this Agreement; and
 - c. Print books for use as free promotional, review and archive copies, without compensation to Author.
5. Orders, Payment, and Expenses. Author shall pay Publisher fifty (50) dollars, plus forty-five (45) dollars per hour for all services performed to prepare and market Work for publication in print and electronic formats chosen by Author. Any art or graphics purchased at Author request by Publisher to complete the Work will be paid at cost plus ten percent (10%) or Author may purchase required graphics direct and provide to Publisher. Author shall pay a deposit of five hundred dollars (\$500) upon submission of Work. Author shall pay any balance due within fifteen (15) days of final proof approval and receipt of invoice.

Publisher will provide Author purchased copies of the Work at printing cost plus two dollars (\$2.00) for orders of less than two hundred and fifty (250) copies, and printing cost plus one dollar and fifty cents (\$1.50) for two hundred and fifty (250) to five hundred (500) copies, and for single orders over 500 books at printing cost plus one dollar (\$1.00). Royalties will not be paid on copies provided or sold to Author. Book pricing to Author does not include shipping and handling charges.

 - a. Author shall pay Publisher one hundred percent (100%) of the cost of Author purchased copies at time of order;
 - b. Publisher may apply royalty payments owed to Author toward any payment(s) past due from Author arising out of or related to any agreement between Author and Publisher.
6. Author Royalties. Publisher shall pay Author 50% of the Net Receipts for the first two thousand five hundred (2,500) books sold, thereafter 60%. For purposes of this Agreement, "Net Receipts" shall mean the amount received by publisher less book printing costs. Publisher shall provide Author printing cost figures from printer or wholesaler

documentation within 14 days upon written request. “Books sold” shall include Author-purchased copies, but royalties shall not be paid thereon;

- a. Publisher shall pay Author quarterly payments when fifty dollars (\$50.00) or more is due; lesser amounts will be rolled over to the next quarter;
- b. Publisher shall pay quarterly, quarterly roll over, and final payment of funds within sixty (60) days of the end of the calendar quarter in which funds are received from wholesaler or Publisher direct sales;
- c. Publisher shall provide Author with a sales report with quarterly and final agreement payments;
- d. (OPTIONAL Service) Publisher shall make printed books returnable through wholesalers. Author shall pay Publisher a deposit of two hundred dollars (\$200) and Publisher shall withhold twenty percent (20%) of Author royalties from sales to retail booksellers in reserve for six (6) months from date payable to cover return costs. Royalty will not be paid on returned books and reserve will be charged printing cost if designated as destroy. Author shall purchase returned books from Publisher at three dollars (\$3.00) plus shipping if book is designated as return.

7. (OPTIONAL Service) Subsidiary Rights-Grant of Rights. Author shall be informed and provide written approval to Publisher before Publisher contracts for sale or licensing of any subsidiary rights.

- a. “First Serial Rights” means the right to use all or any portion of the Work in the English language in newspapers, magazines and other periodicals (whether in one or more parts) before the date the Work is first available for sale to the public in book form, including the right to create for such use abridged, adapted and condensed versions of the work.
- b. “Sound Reproduction Rights” means the rights to create and to use non-dramatic English language readings of all or any portion of the Work (including condensed, adapted and abridged versions), whether in the form of tape recordings, compact discs, electronic media, or other technologies now known or hereafter devised, (“audio editions”).
- c. “Movie and TV Rights” means motion picture and allied rights customarily granted to motion picture producers, television rights (including cassettes and other devices for home play) and all other mechanical or electronic visual dramatic reproduction rights, including all methods and technologies now known or hereafter devised.
- d.. “Foreign Translation” means the right to translate the work into languages other than English, and book publication rights, First Serial Rights, Second Serial Rights, Selection Rights, Microfilm Rights, Electronic Text Rights and Sound Reproduction Rights in languages other than English.

7. Subsidiary Rights-Sharing of Receipts. Author payments for Subsidiary Rights shall be paid with quarterly reports in accordance with 6., based on the following percentages:

	Author	Publisher
a. First Serial Rights	90%	10%
b. Book clubs	60%	40%
c. Sound Reproduction Rights	60%	40%
d. Movie and TV Rights	75%	25%
e. Merchandising Rights	75%	25%

f. Foreign Translation	75%	25%
g. Mass Market paperback	60%	40%

8. Miscellaneous.

- a. Errors. Publisher shall not be held responsible for errors in the Work including, but not limited to spelling, grammar, and punctuation. Author is responsible for submitting a professionally edited manuscript and for proofreading the final proof and approving before publication. Author agrees to pay Publisher for missed corrections at forty-five dollars (\$45) per hour plus an additional seventy dollars (\$70) per file for cover or interior file requiring resubmission to printer. Author agrees to pay Publisher for any additional fees incurred by Publisher for offset run printing charges at Publisher cost plus ten percent (10%).
- b. Publisher paid promotion costs. All promotional effort and expense is the direct responsibility of Author. However, Publisher agrees to send up to ten (10) copies of the Work to media outlets for review upon direct request from the media. Publisher shall contact Author to send additional media copies or agree to reimburse Publisher for any additional copies sent at Publisher printing cost plus shipping and handling
- c. Term and Exclusivity. This Agreement provides publisher exclusive rights to publish the Work and shall extend for three (3) years after the first publication date. The Agreement shall automatically renew for consecutive one (1) year terms if neither party gives at least thirty (30) days advance written notice prior to the end of the current term that it desires to terminate.
- d. Cancellation. Author may cancel this Agreement with thirty (30) days written notice without cause by certified letter. Author shall pay Publisher any amounts owed before cancellation becomes final. Publisher may cancel this Agreement with cause for significant violation of Agreement by Author with thirty (30) days written notice at any time without compensation to Author beyond royalties or other monies earned. All rights in Section 7 revert back to Author upon cancellation of this Agreement except those granted to and governed by other contracts with third parties; and such rights revert to author at the conclusion of each applicable contract. All Agreement clauses relating to Subsidiary Rights remain in effect until the conclusion of all third party contracts.
- e. Construction. Author and Pen & Publish acknowledge that this Agreement has been negotiated between them in good faith, and accordingly agree that in the event of a dispute or of litigation arising from or relating to any of the terms and conditions hereof, neither party hereto shall be considered the drafter hereof.
- f. Severability. If any part of this Agreement is found to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be binding and effective.
- g. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without recourse to conflicts of law principles. Parties agree that any litigation arising out of or related to this Agreement shall be brought and filed in the courts of Monroe County, Indiana, or a federal court of competent and proper jurisdiction in Indiana. The prevailing party shall be entitled to an award of attorneys fees and other reasonable expenses.
- h. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior agreements or communications between the parties concerning the

publishing of the Work in any form. This Agreement may only be amended by an agreement in writing signed by both parties.

Author Name

Author Mailing and Delivery (if different) Address, City, State, Zip Code

Author Signature

Date

Daytime Phone Number(s)

E-Mail Address

Paul Burt, President, Pen & Publish, Inc.

Date

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