

## **PUBLISHING AGREEMENT**

THIS AGREEMENT (hereinafter called the Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_ (hereinafter called the "Publisher") and \_\_\_\_\_ (hereinafter called the "Author," which term shall be deemed to include the Author's executor, devisees, heirs, and literary assigns).

WHEREAS, the Author desires the Publisher to publish the Author's work titled \_\_\_\_\_, (hereinafter called the "Work"), and Publisher desires to publish the Work;

NOW THEREFORE in consideration of the promises hereinafter set forth and for valuable consideration, receipt whereof is acknowledged, the parties agree as follows:

### **1. Grant of Publishing Rights**

A. The Author hereby grants and assigns to the Publisher, its successors, representatives, and assigns, the sole and exclusive right to publish (i.e., print, publish, and sell) the Work in the English language in all forms in the United States of America, its territories and dependencies, and Canada, during the full term of copyright and any renewals and extensions thereof, except as provided herein.

B. The Publisher shall have the sole and exclusive right to publish or to license the Work for publication in the English language or in any other language in the United Kingdom and in any other foreign country, except as provided herein.

C. The Author shall execute and deliver to the Publisher any and all documents which the Publisher reasonably deems necessary or appropriate to evidence or effectuate the rights granted in this Agreement.

D. If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her or its name. Notwithstanding the foregoing, the Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

E. Nothing contained in this Clause shall be construed as limiting, modifying or otherwise affecting any of the rights granted to the Publisher under this Agreement.

### **2. Copyright**

Copyright of the Work, if not heretofore registered, shall be registered by the Publisher, upon first publication, in a timely manner in the name of the Author, in the United States and in such other countries as the Publisher deems feasible or desirable, and the proper copyright notice or notices necessary to protect copyright to and in any work shall be printed on the reverse side of the title page or in another appropriate place, in every copy thereof, in the name of the Author. The Publisher shall also have the right to effect any renewals of copyright provided by law and the right to any assistance from the Author or Author's heirs, successors, or assigns, essential thereto.

### **3. Author's Warranties and Indemnity**

A. The Author warrants to the Publisher and its licensees that she is the sole Author and proprietor of the Work; that the Work has not heretofore been published in book form; that she is the owner of all the rights granted to the Publisher, and has full power to enter into this agreement, and that said rights are not subject to any proper agreement, lien, or other claim or rights which may interfere with the rights herein granted; that the Work is original and not in the public domain; that it does not violate the right of privacy of any person; that it contains no libelous, obscene, or other unlawful matter; and that it does not infringe upon the copyright or violate any other right of any person or party. The Author agrees to hold the Publisher harmless against any damages, including attorney's fees, finally sustained in any suit involving the Publisher or its licensees by reason of a violation of any of these warranties.

B. If any such suit is instituted, the Publisher shall promptly notify the Author and may withhold payments due to the Author under this Agreement, until such suit has been settled or withdrawn. If a final adverse judgment is rendered and is not discharged by the Author, the Publisher may apply the payments so withheld to the satisfaction of such judgment. The Author undertakes for herself, her successors and assigns, to execute at any time, on request of the Publisher, any document or documents to confirm or continue any of the rights defined herein, and to take all proceedings necessary to enforce copyright in the United States and elsewhere.

C. If the Author unreasonably disapproves of any out-of-court settlement recommended by the Publisher and the claim or suit proceeds to trial, the Author shall be liable for all the Publisher's fees, costs, damages, and expenses connected with such trial regardless of outcome. The Publisher shall have the right to reasonably extend the benefit of the indemnities to any person, firm, or corporation at any time, and the Author shall be liable thereon as if Author's warranties were originally made to such person, firm, or corporation.

D. The provisions of this Section 3 shall survive the termination of this Agreement.

### **4. Delivery of New Work Manuscript**

A. The Author agrees to deliver to the Publisher one (1) copy of the final manuscript of the Work, in content and form satisfactory to the Publisher, on or before \_\_\_\_\_, 20\_\_, (hereinafter referred to as the "Initial Delivery Date"), in proper shape for the press. The Author agrees that one (1) additional copy shall be delivered on floppy disks, formatted to be compatible with Microsoft Word, Version \_\_\_\_\_. The Author agrees to make and keep at least one (1) complete copy of the manuscript and such disk. Failure to deliver in all respects as defined herein shall be just cause for the Publisher to terminate this agreement.

B. The Author shall deliver to the Publisher, not later than the Initial Delivery Date unless otherwise designated by the Publisher, each of the following materials:

i) The Author shall deliver to the Publisher, at the Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art and illustrations) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted or depicted in the Work (hereinafter collectively called the "Permissions"). If the Author does not deliver the Permissions, the Publisher shall have the right, but not the obligation, to obtain such Permissions on its own initiative, and the Author shall reimburse the Publisher for all expenses incurred by the Publisher in obtaining such Permissions.

ii) The Author acknowledges and confirms that the Publisher shall have no liability of any kind for the loss or destruction of the Manuscript or any other documents or materials provided by the Author to the Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

C. If the Publisher, in its sole discretion, reasonably deems the Manuscript, and/or any other materials delivered by the Author to be unacceptable in form and substance, then the Publisher shall promptly advise the Author by written notice, and the Author shall cure any defects and generally revise and correct the Manuscript and/or other materials to the reasonable satisfaction of the Publisher, and deliver fully revised and corrected Manuscript and/or other materials promptly after receipt of the Publisher's notice.

D. If the Author fails to deliver the Manuscript or other materials required under this Agreement, and/or any revisions and corrections thereof as requested by the Publisher, on the dates reasonably designated by the Publisher, or if the Author fails to do so in a form and substance reasonably satisfactory to the Publisher, then the Publisher shall have the right to terminate this Agreement by so informing the Author by letter sent by certified mail, return receipt requested, to the address of the Author set forth herein. Upon termination by the Publisher, the Author shall, without prejudice to any other right or remedy of the Publisher, immediately repay the Publisher any sums previously paid to the Author, and upon such repayment, all rights granted to the Publisher under this Agreement shall revert to the Author.

## **5. Author Changes to the Work**

The Publisher agrees to allow the Author to make changes in the Work, at the final proof stage, costing up to an amount of Two Hundred Fifty dollars (\$250), other than for corrections of compositor's errors. Should the cost of such alterations exceed this sum, the balance will be charged to the Author's royalty account, provided, also, however, that the Publisher shall promptly furnish to the Author an itemized statement of such additional expenses, and shall make available the corrected proofs for inspection by the Author. The Author agrees to correct and return, no later than ten (10) days after the receipt thereof, proofs provided by the Publisher. The Author agrees to deliver to the Publisher final revised copy satisfactory to the Publisher in content and form.

## **6. Style, Price, Promotion, Distribution**

A. After consultation with the Author, the Publisher shall have the right, but not the obligation, to publish and re-publish the Work at its own expense in such format and style, cover or covers, manner, and advertisement, and at such price, as it deems suitable except that the initial publication shall be with a title and price agreed to by the parties in writing.

B. If the Publisher wishes to make editorial changes or deletions in the Work manuscript, it shall consult with the Author prior to publication about these changes, and if the Author and Publisher cannot agree on the changes or deletions, the issues at question shall be decided upon by a mutually chosen third party. The Publisher reserves the right to reject the Work for any reason, up until \_\_\_\_\_, 20\_\_\_, with written notice to the Author.

C. The Publisher agrees to publish the Work within eighteen (18) months from the date of this contract. In case of delays from causes beyond the control of the Publisher, or in case the Author fails to return proofs within ten (10) days after they have been delivered to her, the period shall be extended to cover such delays. Should the Publisher fail to publish the Work before the expiration of said period, except as provided herein, its failure to do so shall be deemed cause for the Author, if he so desires, to terminate this Agreement.

## **7. Advertising and Promotion**

A. The Publisher shall have the right to use, and to license others to use, the Author's name, image, likeness and biographical material for advertising, promotion, and other exploitation of the Work and the other rights granted under this Agreement provided the Publisher has obtained the Author's approval which shall not be unreasonably withheld to said use and exploitation.

B. The Publisher shall have the right to determine the time, place, method and manner of advertising, promotion and other exploitation of the Work provided the Publisher has consulted with the Author, and provided that for any exploitation requiring the Author's presence the Author's approval, which shall not be unreasonably withheld, shall be obtained.

## **8. Subsidiary Rights**

Additional rights which the Author grants to the Publisher in the languages and within the territories specified above are:

- Reprint of the entire Work and of selections and shortened versions in anthologies and other volumes;
- first serial rights and reprint of selections and shortened versions in any magazine or newspaper;
- second serial rights and reprint of selections and shortened versions in any magazine or newspaper (provided these rights have not been retained by the purchaser of the first serial rights);
- recording and photographic reproduction of all or part of the text; dramatic (stage, radio, television, motion picture) commercial visual and/or sound presentation, reproduction, recording;
- developing or licensing for use in all other mechanical or electronic visual and sound reproducing rights of the Work now known or later invented; and
- reproduction of the text for the physically handicapped.

All sums accruing from the sale of the above rights or materials produced under those rights shall be divided so that the Author receives fifty percent (50%) of the net amount received. The Publisher shall have the sole right to negotiate and sign contracts, in regard to these rights, provided it has consulted with the Author. The Publisher may publish or permit others to publish, free of charge, such brief selections as it thinks proper to benefit the sale of the Work.

## **9. Reserved Rights**

All rights in the Work now existing or which may hereafter come into existence, except those hereby specifically granted to the Publisher are reserved to and by the Author for Author's use.

## **10. Revision**

If at any time while this Agreement continues in force the Publisher deems the publication of a new edition or revision of the Work desirable, it shall notify the Author, by letter. If the Author is able and wishes to undertake the preparation of such a new edition, or revision, he shall so inform the Publisher in writing within thirty (30) days of receipt of said notice. Such new edition or revision, if undertaken by the Author, shall contain such material as the Publisher and the Author agree to be appropriate thereto, and the date of delivery of the manuscript thereof shall also be established by mutual written agreement.

## 11. Competing Works

The Author agrees that during the existence of this Agreement, Author will not prepare or cause to be prepared or published in Author's name or otherwise, any work that shall interfere with or injure the sale or distribution of the Work herein specified.

## 12. Force Majeure

The failure of the Publisher to publish or republish any of the Work shall not be deemed to be a violation of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of government agencies, labor disputes, or inability to obtain the materials necessary for its manufacture, or occurs for any other reason beyond the Publisher's control; and in the event of delay from any such cause, the publication date or reissue may be postponed accordingly.

## 13. Royalties

The Author shall receive a \_\_\_\_\_ advance on royalties consisting of \_\_\_\_\_ Dollars on \_\_\_\_\_, 20\_\_; \_\_\_\_\_ Dollars upon Publisher's acceptance of the manuscript, and \_\_\_\_\_ Dollars upon the book's actual publication date.

Royalties shall be paid to the Author as follows:

A. A royalty of six percent (\_\_\_%) of the Publisher's net revenues for hardcover copies sold of the Work, up to and including 10,000 copies; \_\_\_ percent (\_\_\_%) on hardcover copies sold of the Work, from 10,001 to 25,000 copies, and \_\_\_ percent (\_\_\_%) on hardcover copies sold of the Work, from 25,001 to 50,000 copies, and \_\_\_ percent (\_\_\_%) on all copies sold thereafter. All royalties above shall be reduced by one percent (1%) for any paperback editions sold. There shall be no deduction for cash discounts or bad debts, except as provided below:

B. A royalty of [half of the beginning royalty in A above] percent (\_\_\_%) of the amount of the Publisher's net revenues for the net copies of the Work (less returns, but with no deduction of cash discounts or bad debts), on copies, either bound or unbound, sold as premiums, or otherwise in quantities to organizations outside the regular bookselling channels, provided such sales are made at a discount of sixty percent (60%) or more from the catalog retail price;

C. A royalty of [half of the beginning royalty in A, above] percent (\_\_\_%) of the amount of the Publisher's net revenues for net copies sold of any edition of the Work (less returns, but with no deduction for cash discounts or bad debts), on copies of overstock which the Publisher, after one (1) year from the date of first publication, deems it expedient to sell at remainder prices, i.e., at a discount of seventy percent (70%) or more from the catalog retail price, except when these are sold at or below cost, in which case no royalty shall be paid;

D. Fifty percent (50%) of Publisher's net revenues accruing to the Publisher from the ceding by it to an English, Canadian, or other foreign publisher of the right to publish the said Work on a royalty basis or for an outright sum, in the English language or in any other language;

E. Fifty percent (50%) of all royalties accruing to the Publisher from the sale to recognized book clubs of the right to publish an edition or editions of the Work for distribution to members;

F. Fifty percent (50%) of all royalties accruing to the Publisher from the sale to another publisher of the right to publish a cheap edition or editions of the Work in the languages and within the territories specified in Clause 1A and 1B above. No cheap edition may be published earlier than one (1) year from the date of the original publication, except with the consent of the Author;

G. "Net copies sold" as used in this Agreement, means the sale less returns of any and all copies sold by the Publisher through conventional channels of distribution in the book trade, and does not include promotional and review copies, or copies for which a royalty rate is otherwise set forth in this Agreement.

"Edition" as used in this Agreement, refers to the Work as published in any particular content, length, and format. If the Work is materially revised or redesigned in any manner, or expanded in length or content, then the Work as revised shall be considered a new "Edition" for purposes of this Section.

"Net revenues," as used in this Agreement, refers to funds received by the Publisher, for the sale of copies of the Work, net of returns, after deduction of shipping, customs, insurance, currency exchange discounts, and costs of collection.

#### **14. Statements & Payments**

A. The Publisher agrees to render semi-annual statements of account in duplicate and to make payments on or before April first and October first of each year covering sales (less returns) to the preceding January first and July first respectively.

B. In making accountings as provided in this Clause 14, the Publisher shall have the right to allow for a reasonable reserve against returns, not to exceed twenty percent (20%) of the amount due in each accounting period. Any reserve against returns withheld in an accounting period will be paid to the Author in the subsequent accounting period.

C. All other royalties or other sums accruing to the Author in accordance with the provisions of this agreement shall be reported as of the accounting periods in which the Publisher receives them.

D. Whenever the Author has received an overpayment of monies under the terms of this agreement, the Publisher may deduct the amount of this overpayment from any sums that may accrue to the Author from any agreement with the Publisher.

E. The Publisher agrees to give to the Author on publication ten (10) copies of the Work and to sell to Author further copies for Author's personal use, not for resale, at a discount of forty percent (40%) from the catalog retail price.

F. If the Author places an order with the Publisher for 100 or more copies of the Work in advance of the first printing of the Work for Author's personal use, then the Publisher will sell Author these copies at a non-returnable discount of fifty percent (50%) from the catalog retail price. The Author will be billed for these copies, payable upon of Author's receipt of them.

#### **15. Termination & Reversion of Rights**

A. If at any time after the expiration of two (2) years from the date of first publication the Publisher shall determine that there are not sufficient sales of the Work to enable it to continue its publication and sale profitably, it shall be privileged to dispose of the copies remaining on hand as it deems best, subject to the provisions with regard to royalty set forth in Clause 13 of this agreement, provided that the Publisher first

notifies the Author in writing addressed to Author's last known address and offers to Author an opportunity to purchase said copies at the Publisher's cost of paper, printing and binding of said copies.

B. If the Work is out of print in the United States of America and if within ninety (90) days of written demand upon the Publisher by the Author, the Publisher does not agree to bring out a new printing within one (1) year, then upon repayment of any overpayment of royalties or other sums due the Publisher this agreement shall terminate without further notice. The Work shall be considered in print if it is on sale by the Publisher or under license granted by the Publisher as provided herein, or if any contract for its publication, granted by the Publisher, is outstanding. In case of delays from causes beyond the control of the Publisher, the period shall be extended to cover such delays.

C. In the event of bankruptcy or liquidation of the Publisher for any cause whatsoever, the rights of publication shall revert to the Author upon payment of fair market value to be determined by agreement or arbitration. Thereafter this agreement shall thereupon terminate without notice.

D. In the event of termination of this agreement, the rights herein granted to the Publisher shall revert to the Author. For thirty (30) days after such termination the Author shall have the right to buy from the Publisher or its successors in interest all copies on hand at the cost of manufacture, or the plates and binder's dies, if any, at one-third (1/3) of their original cost of production, or both. Thereupon the Publisher or its successors in interest shall have the right to sell the remaining copies not purchased by the Author, at the best price it can obtain therefor. Termination of this agreement shall not deprive the Publisher of the right to receive its share of sums due from licenses or contracts granted by the Publisher prior to termination nor relieve Publisher of the obligation to pay to the Author royalties due on such sums.

**16. Notices**

Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the day of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice of in accordance with this section:

_____	_____
_____	_____
_____	_____
_____	_____

**17. Successors and Assigns**

This agreement shall be binding upon and inure to the benefit of the executors, administrators, and assigns of the Author and upon and to the successors and assigns of the Publisher.

**18. Term of Agreement**

Unless previously terminated as provided herein, this agreement shall continue in force, with respect to copyright obtained under the laws of any country covered by this agreement, for the term of the original copyright, renewal, or extension thereof which relates to the Work and which may accrue to the owner of the copyright under the present or any future law of said country.

**19. Waivers**

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, and no waiver by either party, whether written or oral, express or implied, of any rights under or arising from this Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed in writing.

**20. Amendments**

No amendment of, addition to or modification of this Agreement shall be effective unless reduced to writing and signed by the parties hereto.

**21. Laws Applicable**

This Agreement shall be interpreted according to the laws and statutes of the United States of America and of the State of Maine, except that its conflicts of law provisions shall not apply. Any litigation relating to this Agreement shall be pursued in the Superior Court, State of Maine.

**22. Severability**

In the event one or more clauses of this Agreement are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of this Agreement.

**23. Entire Agreement**

This Agreement sets forth the entire agreement of the parties, and replaces and supersedes any previous agreement between the parties on the subject, whether oral or written, express or implied.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written and shall be interpreted under the laws of the State of Maine.

**Publisher**

**Author**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_