

## Electronic Publishing Agreement

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## **General Information**

### **Electronic Publishing Agreement**

This Electronic Publishing Agreement is between an author and an electronic publisher who desires to publish and market the author's work. This agreement sets out the details of the arrangement including the title of author's work, services the publisher will provide and author's warranties. It also includes how any royalties from the book's sale will be paid to the author.

It is imperative that this publishing agreement be set forth in writing and not left to oral interpretation. A written Electronic Publishing Agreement will be beneficial in the event there are disagreements, misunderstandings or litigation between the author and the publisher.

## Instructions and Checklist

### Electronic Publishing Agreement

- The parties should read the document carefully.
- Insert all requested information in the spaces provided on the form.
- This form contains the basic terms and language that should be included in similar agreements.
- This form includes an exhibit which should be attached and incorporated as part of this agreement. This exhibit should specifically describe the work to be published.
- Read the "Royalty" provision carefully. If the structure is complicated or ambiguous, describe it fully and include examples to remove as much ambiguity as possible.
- Read the "Grant of Rights" provision carefully. If there are disagreements, they will likely focus on this provision.
- This agreement must be signed by the author and the electronic publisher.
- The parties should retain either an original or copy of the signed promissory note.
- All legal documents should be kept in a safe location such as a fireproof safe or safe deposit box.

**DISCLAIMER:**

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## ELECTRONIC PUBLISHING AGREEMENT

**THIS ELECTRONIC PUBLISHING AGREEMENT** is made and executed on this the \_\_\_\_\_ day of \_\_\_\_\_, (Month), \_\_\_\_\_ (Year) by and between:

**PARTIES:**

1. \_\_\_\_\_, an individual, residing at \_\_\_\_\_ having Social Security Number \_\_\_\_\_ (hereinafter referred to as “Author”).

**AND**

2. \_\_\_\_\_, a company registered in accordance with the laws of \_\_\_\_\_ having its registered office at \_\_\_\_\_ represented by \_\_\_\_\_ (hereinafter referred to as the “Electronic Publisher”) which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include all persons deriving title under the Electronic Publisher.

**RECITALS:(Please change the recitals in accordance with your needs)**

- A. **WHEREAS**, the Author has written a book which is entitled as \_\_\_\_\_ (hereinafter referred to as “Work”) which is more specifically described in the Schedule A to this Agreement and has all the copyrights in the literary work;
- B. **WHEREAS**, the Electronic Publisher is involved in the business of publishing and has expressed his desire to publish and market the digital version of the Work;
- C. **WHEREAS**, the Author has agreed to grant to the Electronic Publisher the exclusive rights for publishing and marketing the digital version of the Work
- D. **WHEREAS**, based on the same this agreement is entered into between the Author and the Electronic Publisher.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the reasons set forth and in consideration of the covenants and promises of the parties hereto, parties agree as follows:

**1. INTERPRETATIONS**

Unless the context of this Agreement otherwise requires:

- 1.1 The headings of the clauses to this Agreement are for convenience only and shall be ignored in construing this Agreement;

- 1.2 The singular includes the plural and vice versa;
- 1.3 References to a party or the parties are references to either the Author or the Electronic Publisher or both, as deem and appropriate.
- 1.4 References to other agreements and documents shall be deemed to be references to such agreements and documents as amended, replaced, substituted, assigned, novated, supplemented or otherwise modified from time to time; and the words "include" and "including" shall be deemed to be qualified by a reference to "without limitation."

## **2. EFFECTIVE DATE AND TERM OF THIS AGREEMENT**

- 2.1 The effective date of this Agreement shall be \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ and all rights and obligations of the parties hereunder shall be effective as of that date.
- 2.2 This Agreement is valid and shall remain in full force and effect for a term of \_\_\_\_\_ (Days / Months/ Years) starting from the effective date till \_\_\_\_\_ unless terminated prior to such date by either of the parties in accordance with Clause on termination specified herein.

## **3. GRANT OF RIGHTS**

The copyright in the Work remains the property of the Author. In recognition of the payments due under this Agreement, the Author grants to the Electronic Publisher the following rights:

- 3.1 To produce and publish and sell the whole or any part of the Work, including in serialization and in magazine formats, in the \_\_\_\_\_ language in any electronic format and in the other ancillary forms and media specifically included or referred to in this Agreement; and
- 3.2 To produce and publish and sell the whole or any part of the Work in the \_\_\_\_\_ language in printed volume form (i.e. as books or similar volumes and including sales of unbound sheets) and in the other subsidiary rights and ancillary forms and media specifically included or referred to in this Agreement; and
- 3.3 To exploit and sell the volume and other subsidiary and ancillary rights in the Work specifically included in this Agreement.
- 3.4 This Agreement does not grant the Electronic Publisher to create, publish or market the digital version of the Work in any language other than the language specified in Clause

3.1.

**3.5** These rights are granted exclusively to the Electronic Publisher's throughout the \_\_\_\_\_ (insert the name of the territories)

#### **4. SERVICES OF THE ELECTRONIC PUBLISHER**

Electronic Publisher agrees to provide the following services under this Agreement:

- 4.1** The Electronic Publisher will produce the Work in electronic format to a professional standard and will make the Work available for sale on the Internet.
- 4.2** The Electronic Publisher is entrusted to Editing, typesetting, layout, graphic design, photo scanning/editing of \_\_\_\_\_;
- 4.3** Page Count of the said Work is to be restricted to \_\_\_\_\_ pages;
- 4.4** Publish the final digitized version of the Work by \_\_\_\_\_ (days / weeks / months) of the Work and other related materials being handed over to the Electronic Publisher by the Author;
- 4.5** To perform all other necessary and related tasks in order market the electronic digital version of the Work.

#### **5. ELECTRONIC PUBLISHER'S OBLIGATIONS**

- 5.1** The Electronic Publisher is placed under an obligation to take reasonable measures and store the Author's Work in a secured manner, but cannot be held liable for any loss or damage to the same even after reasonable security measures are taken.
- 5.2** If the Work requires illustration and the Author has not provided such Illustrations then the Electronic Publisher shall provide such illustration required for the preparing the electronic version of the Work.
- 5.3** The Electronic Publisher's shall include the Author's name in the publication and in all appropriate publicity material.
- 5.4** The Electronic Publisher will include a copyright notice in every copy of the Work issued by them; and they will stipulate in all contracts with sub-licensees that the sub-licensees' editions will include that copyright notice.

## **6. ROYALTY**

- 6.1** It is agreed herein that, on all copies of the Work sold by the Electronic Publisher, the Electronic Publisher will pay the Author the royalties as appropriate to the edition and format concerned, unless different royalties are mutually agreed in writing.
- 6.2** Royalties, based on the listed retail price of \_\_\_\_\_% on all copies in electronic file format sold via the Internet.
- 6.3** Commissions or other payments payable on sales of the Work on any Internet websites
- 6.4** Royalties on sales of unabridged or abridged audio-cassette, mini-cassette, compact disc and DVD recordings of the Work to be negotiated separately, if and when the work is made available in these formats.
- 6.5** All the payments so due under this Agreement are to be made by the mode of \_\_\_\_\_ and by \_\_\_\_\_ of each calendar month.

## **7. BOOKS AND RECORDS**

- 7.1** After publication of the Work the Electronic Publisher shall prepare royalty statements annually unless no sales have taken place or less than \_\_\_\_\_ has been earned in a year.
- 7.2** If no sales have taken place or less than \_\_\_\_\_ has been earned in a year, no statement will still be sent and any amount due will be carried forward to the next royalty statement in the subsequent year.
- 7.3** If more than \_\_\_\_\_ has been earned in a year, a statement will be sent by email or post to the Author.

## **8. TERMINATION**

- 8.1** Any Party may terminate this Agreement for any breach of the conditions specified herein by giving a written notice of \_\_\_\_\_ days to the Party against whom this Agreement stands terminated.
- 8.2** When the Agreement is terminated then all the exclusive rights so granted herein shall also terminate but the Electronic Publisher can offer for sale the of the electronic



digital version of the Work so created by the Electronic Publisher and the Author cannot raise any objections in this regard.

## **9. AUTHOR WARRANTIES**

The Author warrants that he/she is the exclusive owner of said Work, and has the legal authority to enter into this agreement and grant publishing rights regarding the Work. Furthermore, the Author states that the Work is free of any counts of libel, copyright infringement, plagiarism, misrepresentation of facts or breach of privacy. The Author also assures the Electronic Publisher that the Work (including all submitted artwork) is completely original (or that the Author has license to use such content), is not in public domain and has not been published in paperback or electronic form under a contract that would conflict with this Agreement. The Author also agrees that he/she is the sole owner of the copyrights of the Work. The Author agrees not to enter any agreement with any person, firm or corporate entity that would conflict with the rights hereby granted to the Electronic Publisher without first terminating this contract.

## **10. ELECTRONIC PUBLISHER WARRANTIES**

The Electronic Publisher warrants that any and all artwork used by the Electronic Publisher (which was not submitted by the Author) is free of copyright infringement. The Electronic Publisher is the sole owner of the rights of said artwork and grants that it is either all original, or that the Electronic Publisher has the license to use it for publication.

## **11. LIABILITY**

If the Author should breach this warranty, the Electronic Publisher will be entitled to injunctive relief in addition to all other remedies which may be available. The Author also agrees that he/she will hold the Electronic Publisher its distributors and any retailer harmless against any recovery or penalty arising out of his/her breach of this warranty. Author will also reimburse the Electronic Publisher for all court costs and legal fees incurred.

## **12. INDEMNITY**

The Author releases the Electronic Publisher from any legal actions that may arise from the Work. The Author will hold the Electronic Publisher and its distributors harmless against legal actions that may arise from plagiarism, breach of privacy, misrepresentation of facts, the authenticity of the Work or copyright infringement. The Author will also pay any and all legal fees and judgments that result from such a suit.

## **13. ASSIGNMENT**

This Agreement shall not be assigned by either of the parties hereto. It shall be binding on and inure to the benefit of the successors, administrators, executors, or heirs of the “Agent” and “Artist”. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.

## **14. RELATIONSHIP BETWEEN PARTIES**

Each party is an independent contractor of the other party. Nothing herein will constitute a Partnership between or joint venture by the Parties, or constitute either Party the Agent of the other.

## **15. NOTICE**

Any notice to be given by one Party to the other under, or in connection with this

“Agreement” shall be in writing, signed by or on behalf of the Party giving it, and addressed to the recipient at the address or facsimile number set out below or to such other address or facsimile number as that Party may notify to the other Party:

To the Author:

Address: (Mention full name and address) \_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile no: \_\_\_\_\_

To the Electronic Publisher:

Address: (Mention full name and address) \_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile no: \_\_\_\_\_

## **16. AMENDMENTS OR MODIFICATION**

No modification of or amendment to this Agreement will be effective unless in writing signed by authorized representatives of both Parties.

## **17. NO WAIVERS**

The rights and remedies of the Parties to this Agreement are cumulative and not alternative. No waiver of any rights is to be charged against any Party unless such waiver is in writing signed by an authorized representative of the Party so charged. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

## **18. SEVERABILITY**

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this “Agreement” will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the Party’s intent.

## **19. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts (which may be exchanged by facsimile), each of which will be deemed an original, but all of which together will constitute the same Agreement.

**20. GOVERNING LAW AND FORUM**

The validity, construction, interpretation of this Agreement shall be governed by and construed in accordance with laws of the State of \_\_\_\_\_, without regard to principles of conflicts of law.

The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in \_\_\_\_\_ for all suits, actions or proceedings directly or indirectly arising out of or relating to this Agreement, and waive any and all objections to such courts, including but not limited to objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the jurisdiction of such courts in any suits, actions or proceedings arising out of or relating to this Agreement.

**21. ENTIRE AGREEMENT**

This Agreement and the Schedule A herein constitutes the entire Agreement between the parties with respect to the subject matter contained herein, superseding all previous Agreement pertaining to such subject matter, and may be modified only by an amendment executed in writing by the authorized officers of both parties hereto. All prior agreements, representations, warranties, statements, negotiations, understandings and undertakings are superseded hereby. Both parties hereto represent that they have read this Agreement, understand it, agree to be bound by all terms and conditions stated herein, and acknowledge receipt of a signed, true and exact copy of this "Agreement".

**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal as of the day and year first written above.

\_\_\_\_\_  
(Signature of the "Author")

\_\_\_\_\_  
(Signature of the "Electronic Publisher")

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

**SCHEDULE A  
WORK**