

## **SERVICES AND DISTRIBUTION AGREEMENT**

By signing this Services and Distribution Agreement, You engage Get Publishing! LLC (a Delaware limited liability company), a subsidiary of Author Solutions, LLC doing business as WestBow Press ("We," "Our" and "Us") to provide certain creative, design, illustration, publishing, and editorial services ("Publishing Services"), marketing and promotional services ("Marketing Services"), as well as book sale and distribution services ("Distribution") [collectively referred to as the "Services"], with the objective of publishing, selling and/or distributing a literary work in print, digital, video, and/or audio format (the "Work"). The specific Services purchased by You may be purchased individually or bundled into a "Publishing Package," and will be set forth in one or more separate "Service Orders." This Agreement applies to and governs all Services provided by Us while this Agreement is in effect, as well as any acts incidental to the fulfillment of the Services or other responsibilities under this Agreement or applicable law. This Services and Distribution Agreement includes and incorporates by reference those additional terms and conditions included in Service Orders, receipts, and communications from Us, as well as Our Privacy Policy, any additional policies and/or legal notices included on Our websites, Content Guidelines, submission and approval forms, and any terms of use governing the use of Our websites and "My Account" (collectively referred to as the "Agreement"). The Agreement will continue in effect from the date it is first signed by You, until terminated as described below ("Term").

### **1. RIGHTS AND LICENSES**

The Work is made up of intellectual property that may fall into five categories: (1) Your Manuscript; (2) Custom Illustrations; (3) Our Work Product; (4) Our Property; and (5) Third Party Property.

Your Manuscript includes the text of the Work, in its original form as submitted by You and as edited by Us during the fulfillment of editorial Services purchased by You, and graphics or other materials, all owned or authorized in writing by the owners to be submitted by You to be incorporated into the Work. **YOU WILL REMAIN THE SOLE AND EXCLUSIVE OWNER(S) OF ALL RIGHT, TITLE, AND INTEREST, INCLUDING COPYRIGHT, IN AND TO YOUR MANUSCRIPT.**

You are and will remain the sole and exclusive owner of all custom illustrations that We create pursuant to this Agreement ("Custom Illustrations"), which are deemed work for hire. Custom Illustrations do not include Third Party Property, as described below.

Our Work Product includes the book design, book cover design, graphics, and other content that We or Our Contractors (defined as third party publishers, agencies, vendors, retailers, distribution channels, and suppliers with which We contract) create in the process of fulfilling the Services. Our Work Product does not include the Manuscript or Custom Illustrations. Our Property includes Our intellectual property, such as imprint logos, imprint names, trademarks, barcodes, and ISBN's. As between You and Us, We remain the sole and exclusive owner of all right, title and interest, including copyright, in and to Our Work Product and Our Property.

Third Party Property includes content, graphics, images, and/or material that is owned or controlled by third parties that either We license, or You license or otherwise have permission to use in the Work. If Your use of Third Party Property is subject to any restrictions (such as a limit on the number of reproductions of an image), You are responsible to ensure that You comply with those restrictions. All right, title and interest in Third Party Property shall remain with the respective Third Party. **Third Party Property licensed to Us may be used only in the version of the Work (in any format) that We create, and may not be removed or used in any other versions of the Work or other products or materials.**

During the Term of this Agreement and for the purpose of fulfilling the Services purchased by You and complying with Our obligations under this Agreement, with respect to the Work, Your Manuscript and Third Party Property licensed to You for use in the Work, You authorize, consent to and grant to Us and Our Contractors the following:

- The worldwide rights and license to display, exhibit, reproduce, digitize, modify, license, and otherwise use the information that You provide to Us about You (such as Your name or chosen pen name, image, likeness, appearance, voice, video footage, biographical and personal information, etc.) and information about the Work (such as the title, Your description of the Work, excerpts and images from the Work, etc.), in all materials created by Us or on Our behalf that incorporate any of the information above, in any format and in all media;
- The worldwide rights and license to send free review copies of the Work to members of media and other potential book reviewers or book sellers, in Our sole discretion;
- The worldwide rights and license to make excerpts or previews of the Work available for preview on websites or via other media, including the websites of certain unaffiliated third party retailers, such as Amazon, Google, and Apple, in Our sole discretion;

- The **exclusive**, transferable, worldwide license to manufacture, store, use, display, execute, reproduce (in whole or in part), transmit, modify (for example, for formatting purposes or to create authorized derivative works), import, make, have made, offer to sell, print, publish, market, sublicense, distribute, and sell (individually or as part of compilations of collective works), and license for use via any subscription model or lending model, through all distribution channels available now or as may become available in the future, in any language, in any format, and via any medium, now known or hereafter devised, selected in Our sole discretion and consistent with the Services You purchase, the Work;
- The perpetual, non-exclusive, irrevocable, royalty-free, worldwide license to use, store, display, reproduce, transmit, sell, print, publish, market, distribute, and sub-license, the Custom Illustrations;
- During the transition period of ninety (90) days after termination of this Agreement, the **non-exclusive**, worldwide license to engage in the activities set forth above; and
- The right and license to compile and use statistical information regarding sales of the Work.

After this Agreement is terminated, We grant to You a non-exclusive, worldwide license to manufacture, store, use, display, execute, reproduce, transmit, import, make, have made, offer to sell, print, publish, market, sublicense, distribute, and sell Our Work Product and Third Party Property provided by Us **only as it is incorporated into the version of the Work that was created by Us.** The re-sale of copies of the Work purchased previously by You or a third party is not subject to the terms of this Agreement.

You acknowledge and consent to Our use of artificial intelligence systems or tools (“AI”), including machine learning algorithms, natural language processing, and other AI technologies, to perform Our obligations under this Agreement and fulfill certain Services. We will ensure all uses of AI will not be used in any way will violate Our Privacy Policy. We will conduct a human review of any AI-generated data, information, or AI-informed decisions relating in any manner to the performance of this Agreement, the Services, and any of Our work product.

## **2. INSTALLMENT PAYMENT PLANS**

This Section applies only if You elect to purchase Services on an installment payment plan.

**Non-refundable processing fee.** You agree and authorize a non-refundable processing fee of \$75.00 USD (“Processing Fee”) to be assessed at the time that You purchase the Services. If You later seek, or become eligible, for a Refund, the Processing Fee will not be refunded and will be deducted from the amount of any Refund issued to You. Exchange rates to Your local currency may fluctuate and vary depending on the time of conversion, so the final price displayed may differ slightly when You make Your payment.

**Payment Schedule.** The total amount for the Services You purchase (the “Total Amount Due”) will be divided equally into the number of installments that You choose (“Installments”). The first Installment will be due at the time of purchase. The remaining Installments are due and payable every month, starting one (1) month from the date of the first Installment, and continuing each month thereafter until the Total Amount Due is paid in full. You may not skip or change Installment payment dates.

**Authorization to Charge/ Payment Information Changes.** You authorize Us to charge Your supplied payment method (ACH, credit or debit card, etc.) the amount of each Installment on the applicable due dates. You represent that You have the full right and authority to so authorize Us to utilize the payment method that You have supplied. Your rescission of such authorization is only binding upon Us if communicated to Us in writing. You agree to indemnify and hold Us harmless for any claims arising from Our use of the payment method that You have supplied to Us for purposes of the Installment Payment Plan. If You want to update Your payment method is required, You may do so directly through Your Centz account, or contact Us at (888) 519-5121 at least two (2) business days prior to Your scheduled payment date to ensure that payment is not missed. We are not responsible for any fees that You may incur due to insufficient funds at the time We process payment through the payment method You have supplied to Us.

**Declined/ Missed/Incomplete Charges.** In the event that a charge is declined, delayed, incomplete, or missed for any reason other than Our exclusive fault, You will be assessed a non-refundable Service Fee in the amount of the greater of: (a) \$30.00; or (b) the assessment imposed on Us as a result of the declined, delayed or incomplete charge. In the event of non-payment, You should immediately contact the Payment Center to ensure that full payment, including the applicable Service Fee, is promptly paid at: (888) 519-5121. We will not fulfill any Services pursuant to any Service Order until all Installment payments are made. Exchange rates to Your local currency may fluctuate and vary depending on the time of conversion, so the final price displayed may differ slightly when You make Your payment.

### **3. FULFILLMENT OF SERVICES**

Before We are required to begin fulfillment of the Services, You must submit to Us: (a) a fully completed Title Submission Form or other forms requested by Us; (b) Your Manuscript; and (c) full payment for the Services. We are not responsible for the loss of or damage to Your Manuscript while in transit or while in Our possession. We are not obligated to preserve or return Your Manuscript or any other submitted materials to You. You should NOT send Us an original or sole copy of Your Manuscript, photographs or any other items.

**Your Manuscript and Work must comply with Our Content Guidelines (set forth on Our website and available upon request) and all applicable laws and regulations.** If You have questions regarding Your Manuscript or the Work's compliance with applicable laws and regulations, such as copyright laws, rights of privacy and publicity, and libel/ defamation, You should consult an attorney for legal advice.

We reserve the right to conduct a content evaluation on Your Manuscript and the Work ("Content Evaluation") solely and exclusively for Our internal purposes. You may not rely on the Content Evaluation, or any results We may share with You for any purpose whatsoever. If We have reason to believe that Your Manuscript or the Work does not comply with Our Content Guidelines, in Our sole discretion, We may require that You revise the Manuscript or Work in order to bring it into compliance, and We may remove the Work from distribution until such revisions are made. If You choose not make the necessary revisions to comply with Our Content Guidelines, You or We may terminate this Agreement.

You agree that We will determine the price at which to sell the various formats of the Work ("Suggested Retail Price"), unless You have purchased the Set Your Own Price Program. PLEASE NOTE THAT THE SUGGESTED RETAIL PRICE AND SET YOUR OWN PRICE ARE NOT NECESSARILY THE PRICE OF THE WORK TO THE END CUSTOMER, WHICH IS SET BY THE RETAILER.

When We have created the Work, We will provide You with an electronic copy for Your complete and thorough review prior to publication. If, upon review, You are satisfied that each and every aspect of the Work is accurate, complete and meets Your expectations, and You acknowledge and accept the Suggested Retail Price, You will sign all requested forms to indicate Your "Final Approval" and return them to Us. After Your Final Approval is given, You waive any and all claims against Us or Our Contractors arising from or related to any alleged errors, omissions or other content or pricing issues discovered in the Work after Final Approval. You are responsible for the Fees for any subsequent changes, corrections or other Services requested by You after Final Approval.

Upon Final Approval of the Work, We will make the Work available through Our website and Our Contractors, consistent with the Services purchased by You ("Title Live"). The Work may be sold individually in any format, or may be distributed in one or more of the following models: (i) divided with only certain portions of the Work sold; (ii) combined, in whole or part, with other works and sold as part of a bundle; (iii) combined, in whole or in part, with other works and sold as part of a subscription service; or (iv) combined, in whole or in part, and sold as part of a lending service. We do not warrant that any particular Contractor will offer the Work for sale, as this is in the sole discretion of the Contractor, or that We will continue to use any particular Contractor. If We receive a complaint from You or a third party regarding the Work, We may discontinue the distribution of the Work while We resolve the complaint.

You are responsible for the payment of shipping and handling fees applicable to the shipment of copies of the Work to You, whether included with the Service(s) or Publishing Package, provided free-of-charge, or otherwise purchased by You from Us.

### **4. ROYALTIES**

Royalties will be paid to You on all sales of the Work, EXCEPT: (a) sales of used copies of the Work; (b) sales of the Work directly from Us to You; (c) sales of offset print run copies of the Work ("Offset Books"), whether such sales are made by You directly or by Us on Your behalf; and (d) copies of the Work given to any person or entity free of charge.

You will receive the following Royalties, unless You purchase the Set Your Own Price and/or Author Advantage Royalty Programs, or the Author Advantage Royalty Program is included in Your Publishing Package:

- Ten percent (10%) of the Suggested Retail Price for each sale of the individual Work in print format through one of Our Contractors ("Indirect Sales");
- Twenty-five percent (25%) of the Suggested Retail Price for each sale of the individual Work in print format through Our online bookstore, if such bookstore option is available ("Direct Sales");
- Fifty percent (50%) of the difference of the Suggested Retail Price less promotional discounts, distribution discounts and sales taxes, for each sale of the individual Work in digital format through any distribution channel;



- One hundred percent (100%) of the difference of the Suggested Retail Price less promotional discounts, distribution discounts and sales taxes, for each sale of the individual Work in audio format through any distribution channel;
- Thirty percent (30%) of the revenue received by Us that is attributable to the Work for alternative distribution models (other than an individual sale of the Work in print, audio or digital format) that become available and are selected for Your Work (such as subscription or lending models).

If You purchase the Author Advantage Royalty and/or the Set Your Own Price Programs, or if the Author Advantage Royalty Program is included in Publishing Package, You will receive separate contracts that will set forth the terms of those Services (“Program Agreements”). For the period of time that You are enrolled in the Author Advantage Royalty and/or the Set Your Own Price Programs, You will be paid the Royalties listed in the Program Agreements, rather than the Royalties listed above.

Total sales of the Work and Royalties are calculated on a calendar quarter basis. Royalties due will be paid in United States Dollars (USD) within ninety (90) days after the end of each calendar quarter. **Payment of Royalties can be made only via electronic funds transfer (EFT) to a United States bank account. You must submit accurate bank information to Us in order to be paid Royalties.** Requests for alternative payment methods must be approved by Us, in Our sole discretion. If an alternative payment method is approved, additional fees will apply. We may accrue and withhold payment until the total amount of Royalties earned equals or exceeds seventy-five dollars (\$75). All held Royalties will be paid in full within ninety (90) days after the end of each calendar year. Royalty payments may be reduced by any outstanding amounts You owe to Us, and are subject to garnishment. We reserve the right to determine or change the method of payment, in Our sole discretion.

Royalties may be subject to applicable tax requirements and withholding. You will be solely responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity. In order to determine the appropriate amount of withholding, if any, You will provide Us with all necessary information and documentation requested by Us. If You fail to provide Us with the proper documentation and information, We will withhold those amounts required to be withheld in compliance with the tax code or other governing laws and regulations, and will remit these amount to the appropriate government agency. You have no right to seek reimbursement from Us for such withholdings.

**You are responsible for supplying and maintaining with Us complete and current personal information, including, but not limited to, Your name, address, telephone number, email address, bank information, and tax information.** We are not liable for any damages related to delays or failure to receive notices, tax documents, Royalty payments or other information resulting from Your failure to maintain accurate, current and complete personal information with Us. We reserve the right to place a hold on payment of Royalties if a check is returned because the mailing address You have provided Us is no longer accurate or an electronic payment is rejected because the bank information You have provided Us is no longer valid. We will continue to hold the Royalties until You provide Us with accurate personal, tax and bank account information.

## **5. TERMINATION & REFUNDS**

Either Party may terminate this Agreement at any time, with or without cause, with written notice to the other Party. When this Agreement is terminated, We will notify and demand that all of Our Contractors (such as Amazon, Google and Apple) cease the production, sale and distribution of new copies of the Work. We cannot control the actions or omissions of Our Contractors, or when they choose to comply with Our request. Even after Contractors stop selling the Work, advertisements, listings, previews, and excerpts may be seen on the internet in perpetuity, long after termination. This does not mean that sales of new copies of the Work can be completed. We will not be liable to You for copyright infringement, or in any other way, for the failure of a retailer or Contractor to cease the production, sale and distribution of the Work, or to remove an advertisement, listing, excerpt, or preview of the Work, after this Agreement is terminated, provided that We have given notice of the requested change to such Contractor. You will remain liable for payment of the balance due to Us, subject to the following Refund provisions.

If You terminate the Agreement, Refunds will be issued as follows:

Publishing Packages	Refund Amount
Prior to Submission of Manuscript:	
0-6 months after purchase	100% of Total Paid
6-12 months after purchase	100% of Total Paid, less \$150
More than 12 months after purchase	No Refund
After Submission of Manuscript, but prior to Final Approval:	50% of Purchase Price
After Final Approval:	No Refund

- Submission of Your Manuscript occurs when You first deliver to Us the text and/or images intended for publication.
- Total Paid is the amount You have paid to Us for such Publishing Package or individual Service at the time that You terminate this Agreement. Purchase Price is the full price of the Publishing Package or individual Service at the time of purchase.

Individual Services	Refund Amount
Prior to beginning of fulfillment of individual Service(s):	
0-6 months after purchase	100% of Total Paid
6-12 months after purchase	100% of Total Paid, less \$150
More than 12 months after purchase	No Refund
After We begin fulfillment of individual Service(s):	No Refund

- Fulfillment of a Service begins either when You return the author questionnaire, whether or not completed fully or correctly, or when We or a Contractor begin work on the Service, whichever occurs first.
- If We terminate the Agreement, We will Refund the Total Paid for the unfulfilled Service(s), with the following exception:
- If at any time prior to Final Approval, We terminate this Agreement because Your Manuscript and/or Your Work do not comply with Our Content Guidelines and/or applicable laws, and You choose not make the necessary revisions to comply, We will refund the Total Paid for the Publishing Package, less a Content Evaluation processing fee of \$400, as well as the Total Paid for unfulfilled Services.

If, after termination of this Agreement, You request in writing an electronic file(s) of the Work, We will send the PDF file(s) within 30 days, with Our Property removed.

## 6. **REPRESENTATIONS AND WARRANTIES**

You represent and warrant the following:

- You are 18 years of age or older, and You have the full right, power and authority to enter into and fully perform this Agreement and will comply with all terms of the Agreement. You are either the sole author and sole owner of all copyrights, or You are exclusively authorized in writing to represent all co-authors owning all copyrights to Your Manuscript, or Your Manuscript is a work for hire and You own all copyrights in it.
- Prior to Your delivery of Your Manuscript or any other content to Us, You will have obtained all rights that are necessary for the exercise of rights granted under this Agreement; and, if requested, You can and will provide confirmation that You have all rights required to exercise all rights granted under this Agreement (including, without limitation, for use and distribution of any Third Party Property provided to Us).

- Your Manuscript and the Work complies with all Content Guidelines and applicable laws and regulations; and You understand that You are solely responsible for ensuring that the Work complies with Our Content Guidelines and all applicable laws and regulations at all times.
- Your Manuscript and the Work do not and its sale and distribution will not: (i) infringe on any copyright or other intellectual property rights; (ii) violate any right of privacy, publicity or other personal or property right whatsoever; (iii) contain any libelous or defamatory matter or violate any laws or regulations of any jurisdiction; (iv) contain a recipe, formula, or instruction that may be injurious to the user; or (v) contain any information of a third party deemed private by applicable law (such as social security numbers, dates of birth, or private financial or medical information).
- All statements in Your Manuscript or the Work asserted as facts are based on Your careful investigation and research for accuracy.
- There have not been and are not now any pending or, to Your knowledge, threatened claims, litigation, or other proceedings pending against You with respect to the content or title of Your Manuscript or the Work or other claims based on any facts that would constitute a breach of any of Your representations and warranties.
- All information in Your Manuscript or that You submit or communicate to Us is accurate; and You will immediately notify Us to update and/or correct any information which becomes inaccurate.
- You will be solely responsible for accounting and paying any co-authors or co-owners of Your Manuscript, Your Work or any portion thereof any royalties with respect to the uses of the content and their respective shares if any, of any monies payable under this Agreement.

## **7. DISCLAIMER OF WARRANTIES**

**SALES ARE NOT GUARANTEED.** WE CANNOT CONTROL THE SUBJECTIVE PURCHASING DECISIONS OF CONSUMERS OR BOOKSELLERS. WE CANNOT AND DO NOT GUARANTEE SALES OF THE WORK. WE MAKE NO GUARANTEES OR PROMISES AS TO THE MINIMUM SUCCESS OF THE SERVICES OR THE AMOUNT OF BOOK SALES WHICH MAY RESULT FROM ANY OR ALL OF THE SERVICES.

**GENERAL DISCLAIMER OF WARRANTIES.** EXCEPT FOR ANY WARRANTIES OR REPRESENTATIONS EXPLICITLY SET FORTH IN THIS AGREEMENT, WE MAKE NO OTHER WARRANTY, AND EXPLICITLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM OR USAGE IN THE TRADE, OR OTHERWISE) WITH RESPECT TO THE SERVICES, OR ANY PART THEREOF, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES (INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS, OR SUITABILITY FOR A PARTICULAR PURPOSE, WHETHER OR NOT WE KNOW, HAVE REASON TO KNOW, HAVE BEEN ADVISED, OR ARE OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WARRANTY OF TITLE, AND WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

## **8. WAIVER OF CLAIMS; INDEMNIFICATION**

To the fullest extent permitted by applicable law, You hereby release, waive, discharge and covenant not to sue Us and Our Contractors for any liability to You, Your personal representatives, assigns, heirs, or successors in interest, or for any loss, damage or expenses, or any claims, demands or Actions (as defined below) therefore, arising from or related to, directly or indirectly, Our or Our Contractors' use of the rights and licenses granted in this Agreement to fulfill the Services and other obligations under this Agreement, including, but not limited to, claims for copyright or trademark infringement, infringement of moral rights, defamation, invasion of rights of privacy, rights of publicity, intrusion, false light, public disclosure of private facts, physical or emotional injury or distress or any similar claim or cause of action in tort, contract, or any other legal theory, now known or hereafter known in any jurisdiction throughout the world. For purposes of this Agreement, "Actions" include any litigation, lawsuit or administrative, governmental or other proceeding including, but not limited to, government investigations, inquiries, hearings, and other requests, or any appeal thereof.

You acknowledge that You are solely and fully responsible for the content of the Manuscript and the Work and that We will not be liable to You, or to any third party or other person or entity for the content of Your Manuscript or the Work, regardless of whether We had any knowledge or could have reasonably known of any violation of Your above representations or that the Work or Manuscript otherwise violates law.

To the fullest extent permitted by applicable law, You will fully indemnify and hold harmless Us and Our Contractors, and each such entity's officers, directors, employees, agents, insurers, contractors, successors, and permitted assigns from and against any claim, cause of action, demand, Action, proceeding, losses, liability, cost, expense (including reasonable attorneys' fees) or damages arising out of or resulting from



Your breach or alleged breach of this Agreement, including, but not limited to, any breach or alleged breach of any of Your foregoing representations, warranties, and obligations. Until any claim for indemnity hereunder has been fully satisfied, We may retain all payments due You, including Royalties, if any, and/or We may cease providing any further Services; and You will have no right to receive a Refund of any amounts paid by You to Us. We will be entitled, at Our own expense, to participate in the defense and settlement of the claim or Action with counsel of Our choosing.

## **9. REMEDIES; LIMITATION OF LIABILITY**

We are not liable for any damages related to a Contractor's failure to remove an advertisement, listing, excerpt, or preview of the Work; or to update the version of the Work subject to this Agreement during its Term, provided that We have given notice of the requested change to such Contractor. We will not be liable to You for copyright infringement, or in any other way, for the failure of a retailer or Contractor to cease the production, sale and distribution of the Work, or to remove an advertisement, listing, excerpt, or preview of the Work, after this Agreement is terminated, provided that We have given notice of the requested change to such Contractor. We will continue to pay Royalties for any sales made by Us or Our Contractors after the termination of this Agreement.

In the event that We publish the Work in any format other than the format selected and purchased by You, Your sole remedy will be the payment of Royalties on any sale of the Work in the non-selected format; and, upon written notice from You, We will delist and request that Our Contractors delist such version. The Parties intend that the payment of Royalties if a sale of the Work occurs after this Agreement is terminated or if the Work is published in a non-selected format constitutes Liquidated Damages and compensation, but not a penalty. The Parties acknowledge and agree that any harm to You caused by the publication of the Work in a non—selected format or a sale of the Work after this Agreement is terminated would be impossible or very difficult to accurately estimate at the time of making of this Agreement and at the time of such event occurs, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise. Our payment of the Liquidated Damages is Our sole liability and entire obligation, as well as Your exclusive remedy if such a sale or publication occurs.

**LIMITATION OF LIABILITY.** IN NO EVENT WILL WE OR ANY OF OUR EMPLOYEES, REPRESENTATIVES, OFFICERS, DIRECTORS, OR OWNERS OR CONTRACTORS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT, OR DATA, DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF INFRINGEMENT OR MISAPPROPRIATION OF COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS, BREACH OF CONTRACT, TORT (INCLUDING LIBEL AND NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL OUR OR OUR CONTRACTORS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO INFRINGEMENT OR MISAPPROPRIATION OF COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS, BREACH OF CONTRACT, TORT (INCLUDING LIBEL AND NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS ACTUALLY PAID TO US BY YOU FOR THE APPLICABLE SERVICES, WITH THE EXCEPTION OF CLAIMS FOR ROYALTIES, THE AGGREGATE LIABILITY FOR WHICH SHALL NOT EXCEED THE ACTUAL AMOUNT OF ROYALTIES DUE TO YOU UNDER THIS AGREEMENT.

The exclusions and limitations in this Section will not apply to damages or other liabilities arising out of Our or Our Contractors' gross negligence or willful or intentional misconduct.

## **10. DISPUTE RESOLUTION; CLASS ACTION WAIVER**

If any provision of this Section is found to be unenforceable, that provision will be severed, while all other provisions will still apply.

**MANDATORY ARBITRATION.** Any dispute or claim that arises out of or relates in any way to this Agreement, its termination, validity or breach thereof, the Services, the advertising or Our Services, Your inducement to enter this Agreement, including, but not limited to claims of or relating to deceptive or unfair trade practices, misrepresentation, or false advertising, or Your Work or Manuscript ("Claims"), will be resolved by binding individual arbitration, rather than in court ("Mandatory Arbitration"), except as otherwise provided in this Agreement. This provision includes any Claims against Us or Our Contractors, as well as any Claims that arose before You accepted this Agreement (regardless of whether any prior agreement between You and Us required arbitration). **MANDATORY**



**ARBITRATION REPLACES THE RIGHT TO GO TO COURT. YOU AGREE THAT YOU ARE VOLUNTARILY AND KNOWINGLY WAIVING ANY RIGHT THAT YOU MAY HAVE TO GO TO COURT OR TO HAVE A JURY TRIAL.**

In Mandatory Arbitration, Claims will be decided by a single, neutral arbitrator from the American Arbitration Association (“AAA”), whose decision will be final, except for a limited right of review under the Federal Arbitration Act (“FAA”). The arbitrator will have the power to rule on any challenge to his or her own jurisdiction or to the validity or enforceability of any portion of this Agreement. The arbitrator will conduct the Mandatory Arbitration under the AAA’s Commercial Arbitration Rules. The arbitrator’s award will be final and binding, and may be entered into and enforced by any court of competent jurisdiction.

The AAA rules, as well as information about arbitration filing, procedures and fees, are available at [www.adr.org](http://www.adr.org) or by calling the AAA directly. If Your total Claims are less than \$25,000, any Arbitration hearing will be conducted by telephone unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in Monroe County, Indiana or Marion County, Indiana, unless another location is agreed upon by You and Us.

**You have the right to opt out of Mandatory Arbitration**, which would enable You to litigate disputes in a court before a judge. If You choose to opt out, within thirty (30) days after You sign this Agreement, You must deliver to Us written notice of Your intent to opt out as described in Section 11. If We do not receive Your written notice within this time period, Your right to opt out will terminate and the provisions regarding Mandatory Arbitration will apply.

**JURISDICTION AND VENUE.** If You opt-out of Mandatory Arbitration, or if, for any other reason, a Claim proceeds in court, rather than Mandatory Arbitration, each Party agrees and consents that: (1) **YOU AND WE EACH WAIVE ANY RIGHT TO A JURY TRIAL**; (2) any Action or Claim must be litigated or resolved solely and exclusively in the courts of Monroe County, Indiana, Marion County, Indiana or the Federal courts of the Southern District of Indiana, and any appellate courts therefrom; and (3) You and We each submit to the personal jurisdiction of the State of Indiana.

**CLASS ACTION WAIVER.** This Agreement does not allow class or collective arbitrations or actions, and any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated, mass or representative action. **YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER, INCLUDING OUR CONTRACTORS, ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, MASS, OR REPRESENTATIVE PROCEEDING.** Further, unless both You and We agree otherwise, the arbitrator may not consolidate more than one person’s Claims, and may not otherwise preside over any form of a class, consolidated, mass, or representative proceeding related to a Claim. You or We may bring the Action on an individual basis only, and not in a class, consolidated, mass, or representative action, to apply for injunctive remedies.

**11. TIME PERIOD FOR CLAIMS; GOVERNING LAW**

You must file an Arbitration or Action for damages relating to or arising directly or indirectly from this Agreement no later than **one (1) year** after any portion of Your claim has accrued. **YOU HEREBY WAIVE THE RIGHT TO FILE AN ACTION OR ARBITRATION FOR ANY LOSS, DAMAGE OR LIABILITY RELATED TO OR ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT UNDER ANY STATE OR FEDERAL STATUTE OF LIMITATIONS THAT MAY BE LONGER.**

This Agreement, and any legal suit, Arbitration, Action, or proceeding arising out of or related to this Agreement, the Services the Work, Your Manuscript, and, generally, any act or omission involving You and Us and/or Our Contractors will all be governed by and construed in accordance with the FAA, applicable federal law (including with regarding to arbitration) and the laws of the State of Indiana, without giving effect to any choice or conflict of law provision or rule (whether of the State of Your residence or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Indiana with respect to matters of state law or to any rule of construction that allows or directs that ambiguities be construed against the drafter of a contract.



## **12. MISCELLANEOUS PROVISIONS**

- This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior or contemporaneous understandings, agreements, discussions, or representations, whether written or oral.
- **All notices under this Agreement by You to Us must be supplied in writing sent by regular mail to: ATTN: Legal, 1151 W. 2nd Street, Bloomington, Indiana 47403 or by e-mail to [legal@authorsolutions.com](mailto:legal@authorsolutions.com).**
- We may modify this Agreement (except Section 1 and the Royalty percentages set forth in Section 4) at any time, with thirty (30) days' notice to You by email. If You do not accept such modification, You may terminate this Agreement in accordance with Section 5 above.
- The Parties agree that the electronic signatures included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.
- Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither of the Parties will have authority to contract for or bind the other Party in any manner whatsoever.
- This Agreement shall inure to the benefit of and be binding upon the Parties hereto and each of their respective heirs, executors, successors and permitted assigns. You may not assign any of Your rights or delegate any of Your obligations under this Agreement without the prior written consent of Us. Any purported assignment or delegation in violation of this Section is null and void. In Our sole discretion, We may delegate any of Our obligations under this Agreement to any of Our Contractors, or We may assign this Agreement in its entirety to any person or entity acquiring all or substantially all of Our business and assets.
- No waiver of any of the provisions of this Agreement is effective unless explicitly set forth in writing. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof except with respect to provisions which require action within a stated period of time. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- If any term or provision of this Agreement is found to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- The rights and obligations of the parties with respect to Sections 1, 4, 6, 7, 8, 9, 10, and 11 herein as well as any other term, provision or condition required for interpretation of this Agreement or necessary for the full observation and performance by each party of all rights and obligations arising prior to the date of expiration or termination or as a result of such expiration or termination, shall survive any expiration or termination of this Agreement.
- Neither party will be liable or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from any reasonably unforeseeable act or circumstance beyond such party's reasonable control, including, but not limited to, any acts of God, war, riots, acts of terrorism, labor strikes, lockout or other disturbance, the unavailability of labor or materials to the extent beyond the control of the party affected, fire, flood, earthquake, hurricane, tornado or other casualty, pandemics, epidemics, local disease outbreaks, public health emergencies, government imposed quarantines, third party acts or governmental action, or other any other events or circumstances not within the reasonable control of the party affected, with similar or dissimilar to any of the foregoing.

**BY CHECKING THE BOX BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ, YOU UNDERSTAND, AND YOU AGREE TO COMPLY WITH THE TERMS SET FORTH IN THIS AGREEMENT, THE CONTENT GUIDELINES, AS WELL AS APPLICABLE LAWS AND REGULATIONS.**