MidTown Publishing, Inc

**PUBLISHING AGREEMENT**

This Publishing Agreement (“Agreement”) entered into on the date of the last electronic signatory hereto (the “**Effective Date**”) by and between MidTown Publishing Inc., a New York Corporation, with corporate offices at 1330 Avenue of the Americas, FL 23A New York,

NY **10019-5419** (“**PUBLISHER**”) and, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_ zip\_\_\_\_\_\_\_(“**AUTHOR**”), for the publication of Author’s manuscript and Author’s Artwork as more particularly described herein (“**AUTHOR’S CONTENT**”) into digital and print formats (“**AUTHOR’S WORK**”).

1. **DEFINITIONS** Capitalized words and phrases used in this Agreement have the following meanings:

(a) “**AUTHOR’S CONTENT**” means print, text, Authorized Artwork, and underlying works that AUTHOR has designated for digital distribution and/or print by PUBLISHER, an affiliated company, e-Book Aggregator, or Licensee Any such print, text, Authorized Artwork and underlying works are owned, licensed to, or controlled by AUTHOR, and may be used for all purposes specified herein.

(b) “**AUTHOR’S DERIVATIVE RIGHTS**” include, but are not necessarily limited to: (a) translation rights: (b) abridgement rights; (c) serial rights; (d) merchandising rights: (e) stage, film, television, video, radio, and dramatization and documentary rights; (f) picture book rights; (g) electronic publishing rights; (h) publication, sale, and distribution rights in relation to AUTHOR’S WORK and/or any part thereof in all editions and in all languages; (i) exploitation rights in relation to AUTHOR’S WORK in any other form as may be invented in the future; (j) and the right to sell, resell, license or re-license to anyone any or all of the foregoing. Certain of AUTHOR’S DERIVATIVE RIGHTS are specifically licensed to PUBLISHER.

(c) “**AUTHOR’S INTELLECTUAL PROPERTY**” includes the cover art, book cover layout, final approved manuscripts in Digital Text, any sell sheets, press materials, press releases, and any other product created by PUBLISHER for AUTHOR with the exception of Kindle and *ePub* files that remain the property of PUBLISHER.

(d) “**AUTHOR’S OWNERSHIP RIGHTS**” shall mean AUTHOR’S right, title, and interest in and to AUTHOR’S CONTENT, AUTHOR’S WORK, including all copyrights, trademarks, AUTHOR’S DERIVATIVE RIGHTS, and AUTHOR’S INTELLECTUAL PROPERTY.

(e) “**AUTHOR’S WORK**” means the aggregation of AUTHOR’S CONTENT into a finished product, whether Digital Product or Print Product.

(f) “**AUTHORIZED ARTWORK**” means any artwork relating to AUTHOR’S CONTENT that AUTHOR provides to PUBLISHER. All such artwork will be deemed to have been properly cleared and/or licensed by AUTHOR for all purposes, unless AUTHOR provides PUBLISHER with written notice to the contrary.

(g) “**AUTHORIZED TERRITORY**” means worldwide.

(h) “**COPYRIGHT MANAGEMENT INFORMATION**” as defined by Section 1202(c) of the Digital Millennium Copyright Act (“DMCA”) means, in pertinent part, the title and other information identifying the work, including the information set forth on a notice of copyright, the name of, and other identifying information about, the author of a work, the name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright , terms and conditions for use of the work, identifying numbers or symbols referring to such information or links to such information, such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

(i) "**DIGITAL TEXT PRODUCT**" means a copy or copies of AUTHOR’S WORK in digital and electronic form.

(j) “**E-PUBLISHING SERVICES**”means those services provided by PUBLISHER for the sale, distribution or licensing of AUTHOR’S CONTENT and other contents online through the PUBLISHER’S Website, PUBLISHER’S Imprint Websites, or through websites operated by or on behalf of Licensees.

(k) “**LICENSEE(S)**” means any third-party Licensee(s) such as Amazon®, Apple Books®, Barnes & Noble®, or others that PUBLISHER may authorize to carry out the marketing, distribution and sale or other use of AUTHOR’S WORK pursuant to the terms of this Agreement.

(l) “**NET ROYALTIES**” means those royalties earned from AUTHOR’S WORK after trade discounts taken by wholesalers, distributors, and online retailers, returns, shipping/downloading expenses incurred by PUBLISHER, PUBLISHER handling fees and credit card fees.

(m) “**ON-SALE DATE**” shall mean that date AUTHOR'S Digital Text Product or Print Product is first available for sale through any distributor.

(n) “**PRINT PRODUCT**” means AUTHOR’S WORK produced from Print Publishing Services.

(o) “**PRINT PUBLISHING SERVICES**” means those services offered by PUBLISHER to print AUTHOR’S CONTENT and convert to a Print Product, to distribute through the Website, or through websites and distribution services operated by or behalf of Licensees, to list books printed from AUTHOR’S WORK with Bowker®, a leading provider of global book information and decision-support solutions through services that promote an efficient supply chain to publishers, book sellers and libraries.

(p) “**PUBLISHER NET ROYALTY**” means the royalty payment received by PUBLISHER from the sale of AUTHOR’S WORK on PUBLISHER’S Website, PUBLISHER’S Imprint Website, third party e-bookstore websites, bookstores, wholesalers, or distributors, after returns, special sales discounts, bookseller trade discounts, and service fees from distributors.

(q) “**PUBLISHER WEBSITE**” means [www.midtownpublishing.com](http://www.madisonavenuepublishing.net)

(r) “**PUBLISHER WIDGET**” means a (i) software application available on PUBLISHER’S Website or PUBLISHER’S Imprint Websites that AUTHOR or someone authorized to act on AUTHOR’S behalf may embed on third-party websites, (ii) link, code, script or any other software or instruction that AUTHOR or someone authorized to act on AUTHOR’S behalf may embed or place on a third-party website, including, but not limited to, social media websites such as Facebook®, that permit a user of such third-party website to access content hosted and/or streamed from servers owned or controlled by or on behalf of PUBLISHER, including YOUR WORK, or (iii) standalone software available for use on mobile devices, smartphones, such as iPhone® and Android® phones, tablet computers ,such as iPad®), set-top boxes, and other hardware now known or hereafter developed (collectively, "**Hardware**"), that facilitates or enables the public performance, communication to the public or other transmission of AUTHOR’S WORK via the Internet or any other transmission medium through such third-party websites or on or through any Hardware. PUBLISHER’S Widget may provide access to all of AUTHOR’S WORK or such portions of AUTHOR’S WORK that AUTHOR wishes to be available through third-party websites. PUBLISHER may choose such third-party websites as it deems most beneficial for transmission of AUTHOR’S WORK, in PUBLISHER’S sole discretion.

(s) "**PUBLISHING SERVICES**" means the e-Publishing Services and Print Publishing Services provided by PUBLISHER.

(t) “**SOFT PROOF**” means a pre-press paperless proofing method utilizing downloads or online preview technology

(u) “**USER**” means anyone who uses the products and services offered by the PUBLISHER or a PUBLISHER Imprint Website.

**2. AUTHORIZATION: E-BOOK AND PRINT PUBLISHING**

**a. For e-Book and Print Publishing Services [as applicable]**

AUTHOR hereby appoints PUBLISHER as AUTHOR’S authorized representative for the sale and other distribution of AUTHOR’S WORK. While distributing AUTHOR’S WORK through PUBLISHER is non-exclusive, the rights granted by AUTHOR to PUBLISHER under this Agreement to distribute to PUBLISHER’S e-Book Aggregators and affiliates is exclusive. Accordingly, AUTHOR grants to PUBLISHER the exclusive right with PUBLISHER’S e-Book distributors, and affiliates and to each Licensee the non-exclusive right during the Term hereof and throughout the Authorized Territory, to:

(a) Reproduce, format, and convert AUTHOR’S CONTENT into Digital Text Products and Print Products (collectively, AUTHOR’S WORK);

(b) Distribute and make available, for promotional purposes and without remuneration to AUTHOR, portions of AUTHOR’S WORK ("Samples") in any form of media, including but not limited to digital media, printed media and audio, and via PUBLISHER’S Widget, AUTHOR or any person authorized by AUTHOR may place on any website, to promote the license, sale and distribution of AUTHOR’S WORK;

(c) Promote, sell, license, distribute, and deliver AUTHOR’S WORK and associated metadata to purchasers and resellers who may use AUTHOR’S WORK in accordance with usage rules approved by PUBLISHER;

(d) Use and authorize others to license the use of and sale of AUTHOR’S WORK in connection with all manner of e-Book and audio book services, such as, but not limited to, sales or licenses of AUTHOR’S WORK as digital files, audio downloads and streams (including, without limitation, permanent downloads, conditional downloads, and streams to mobile devices);

(e) Authorize PUBLISHER’S Licensees, including, but not limited to, Amazon®, Apple Books®, Barnes & Noble®, Sony Reader Store®, Rakuten Kobo® and such other online e-publishers as are make available AUTHOR’S WORK from time-to-time in all territories in which Licensees deliver, distribute, or sell digital literature including audio Books or electronic Books.

(f) Use so-called "kiosks" to distribute, market, and promote AUTHOR’S WORK, including, without limitation, by allowing a copy of AUTHOR’S WORK to be transferred to personal devices;

(g) Use and authorize others to make non-permanent copies of AUTHOR’S WORK to be distributed as so-called "conditional" downloads, whether tethered to a device, time-limited, use-limited or otherwise;

(h) Make available and authorize others to make available non-permanent copies of AUTHOR’S WORK via a PUBLISHER Widget, and within physical brick-and-mortar stores owned or operated by its Licensees;

(i) Allow and authorize others to allow limited sharing of AUTHOR’S WORK between existing and potential customers for promotional purposes;

(j) Use and distribute Copyright Management Information as embodied in AUTHOR’S WORK;

(k) Display and electronically fulfill and deliver Authorized Artwork used in connection with AUTHOR’S WORK for personal use, solely in conjunction with AUTHOR’S WORK;

(l) Use AUTHOR’S CONTENT, Authorized Artwork, and metadata as may be reasonably necessary or desirable for PUBLISHER to exercise our rights under this Agreement;

(m) Authorize Licensees to remove or modify the cover artwork, metadata and product description AUTHOR provides for AUTHOR’S WORK for any reason without notification.

(n) Make necessary changes to this Agreement to comply with Licensees' rules and regulations not otherwise set forth herein; and

(o) Authorize PUBLISHER’S e-Book Aggregators or Licensees to perform any one or more of the activities specified herein.

**b. Author & Title Information**

During the term of this Agreement, PUBLISHER may post, or cause to be posted through e-Book Aggregators, pertinent information about AUTHOR and AUTHOR’S WORK on PUBLISHER's website, PUBLISHER’S Imprint Websites, and Licensee websites. Such information may include the e-book and print cover of AUTHOR’S WORK, AUTHOR'S name and picture, description of AUTHOR’S WORK and other related information

**c. Storage and Handling of AUTHOR’S WORK**

During the term of this Agreement, AUTHOR grants PUBLISHER the right to store, use, transmit, and distribute electronic copies of AUTHOR’S WORK as required to facilitate the printing and distribution process. This grant includes PUBLISHER’S vendors, distributors, wholesalers, third-party retailers, and Licensees. For the first year commencing with the On-Sale Date, there is no charge for storage and distribution of AUTHOR’S WORK. Commencing one year next following the On-Sale Date, there shall be an annual renewal fee (“Renewal Fee”) of $19.95 that shall be due and payable at the commencement of the first renewal year, and each renewal year thereafter.

**3. TERM OF AGREEMENT; TERMINATION RIGHTS; UPDATES**

Immediately next following the initial term (“Initial Term”) of this Agreement, and subject to termination rights by both parties during the Initial Term, either party may terminate in accordance with the terms and conditions herein.

The "Initial Term" commences upon the Effective Date of this Agreement and continues for one (1) year next following the On-Sale Date. The renewal term (“**Renewal Term**”) commences upon the anniversary of the On Sale Date each year. Upon renewal of this Agreement, next following the expiration of the Initial Term or any subsequent Renewal Term, AUTHOR acknowledges that the Agreement may have been modified or otherwise updated (“**Content Update**”). To the extent there is a Content Update AUTHOR agrees that the payment of any Renewal Fee constitutes agreement to and acceptance of the Content Update at the time of renewal.

1. **Termination by Author**

Within three (3) business days next following the Effective Date, or prior to that date when AUTHOR uploads AUTHOR’S manuscript whichever shall first occur, AUTHOR may terminate this Agreement and receive a full refund of all monies paid. Thereafter, a refund to AUTHOR, full or partial, shall be at the absolute discretion of PUBLISHER.

To terminate, AUTHOR must provide notice to PUBLISHER (“AUTHOR’S Notice of Termination”) to [Publisher@midtownpublishing.com](mailto:Publisher@midtownpublishing.com) .

All refunds shall be processed by PUBLISHER within thirty (30) business days next following receipt of AUTHOR’S Notice of Termination. PUBLISHER shall have ten (10) business days from AUTHOR’S Notice of Termination to remove all online listings under PUBLISHER's control and send all production files to AUTHOR upon AUTHOR'S request.

1. **Termination by Publisher**

PUBLISHER may terminate this Agreement and publication of AUTHOR’S WORK (“For Cause”) as defined in subparagraphs i, ii, and iii below, immediately following notice to AUTHOR (“PUBLISHER’S Notice of Termination For Cause”) via AUTHOR’S e-mail address or mailing address. “For Cause” shall include the following:

i. AUTHOR’S CONTENT may subject PUBLISHER to the risk of litigation or other adverse commercial consequences (“Potential Damage Claims”); or

ii. AUTHOR’S CONTENT violates the common law or statutory copyright laws, the right of privacy of any person, contains libelous or obscene material, promotes hate, violence, or illegal activities (“Offensive Content”); or

iii. AUTHOR’S CONTENT violates any provisions in the *Terms of Use* or *Privacy Policy.*

iv. AUTHOR is in default of any financial obligation to PUBLISHER and has failed to cure such default within ten business days next following notification by PUBLISHER to AUTHOR of such default.

In the event PUBLISHER transmits PUBLISHER’S Notice of Termination for Cause, a refund to AUTHOR, full or partial, shall be at the absolute discretion of PUBLISHER.

In addition to the foregoing “For Cause” termination rights, PUBLISHER may elect to terminate this Agreement for any reason (“Without Cause”) upon the expiration of the Initial Term or any Renewal Term by delivering a notice to AUTHOR, via AUTHOR’S e-mail address on record, a notice of termination (“Notice of Termination Without Cause”) within ten days next before the anniversary of the Initial Term or any Renewal Term . Upon such termination by PUBLISHER, AUTHOR acknowledges and agrees that any and all ISBN, LCCN and Bar Codes affixed to AUTHOR’S Digital Text Product or AUTHOR’S Print Product by PUBLISHER, must be replaced by AUTHOR in order to offer these products for sale by AUTHOR, or by others retained by AUTHOR.

1. **Return of Author's Intellectual Property**

So long as AUTHOR is not in default of any obligations to PUBLISHER (including financial arrangements for payment in advance for the estimated cost of return of AUTHOR’S Print Products), PUBLISHER shall, within ten (10) business days of termination of this Agreement by either party, return Intellectual Property in electronic format (Digital Text Product) via AUTHOR’S e-mail address on record with PUBLISHER**.** Any of AUTHOR’S Intellectual Property in Print Product shall be shipped to AUTHOR at AUTHOR'S sole cost and expense.

(4) **PROOFREADING FOR PUBLICATION**

Proofreading of AUTHOR’S CONTENT is a prerequisite to publication in PUBLISHER’S

“Author-Select” section of PUBLISHER’S e-bookstore at [www.midtownpublishing.com](http://www.madisonavenuepublishing.net). PUBLISHER’S editors will proofread AUTHOR’S CONTENT to identify typographical, linguistic, spelling, coding or positional errors and omissions. This service is done electronically, using *Microsoft* *Word* track changes for marking corrections, or as otherwise determined by Publisher.

(5) **MANUSCRIPT SUBMISSION GUIDELINES**

AUTHOR acknowledges receipt, review, and agreement to be in compliance with PUBLISHER’S *Manuscript Submission Guidelines* that are provided in PUBLISHER’S website. Without limiting the foregoing, AUTHOR acknowledges that AUTHOR’S CONTENT must be delivered to PUBLISHER in *MSWord* (.doc format) only.

(6) **CONVERSION OF MANUSCRIPT TO NDLE FORMAT.**

PUBLISHER causes AUTHOR’S CONTENT to be converted from *MSWord* to Kindle format, and *ePub* format.

PUBLISHER represents that *e-book*onversion services are generally completed in ten (10) working days next following receipt and approval of PUBLISHER’S file containing AUTHOR’S CONTENT.

(7) **CONVERSION OF MANUSCRIPT TO *EPUB* FORMAT.**

*ePub* is an acronym for electronic publishing. *ePub* became an official standard of the International Digital Publishing Forum (IDPF) in September 2007. *ePub* is the software that is used by Barnes & Noble NOOK through pubit!™, Google Reader, ™ Sony Reader™, kobo, Copia, Gardners Books, Baker & Taylor, eBookPie, Apple’s iBookstore, [iPad](http://en.wikipedia.org/wiki/IPad), [iPhone](http://en.wikipedia.org/wiki/IPhone), and [iPod Touch](http://en.wikipedia.org/wiki/IPod_Touch) and smartphones that use Android technologies.

Delivery time for e*Pub* files from submission of PUBLISHER’S approved file that contains AUTHOR’S CONTENT is usually within ten (10) business days.

(8) **AUTHOR TO RECEIVE E-BOOK SOFT PROOF FOR REVIEW IN KINDLE READER FOR MOBI/KINDLE FILES, IN ADOBE DIGITAL EDITION FOR EPUB FILES, AND PRINT SOFT PROOF IN ADOBE PDF READER.**

AUTHOR may access the soft proof of AUTHOR’S WORK in each of the three venues:

1. AUTHOR acknowledges and agrees that AUTHOR will receive via e-mail a soft proof of AUTHOR’S CONTENT in the *Kindle* format for review by downloading the *Kindle Reader* at **www.amazon.com/KindleForPC**. Because the “flowing text” in the e-book format varies from reader to reader, it is unlike a soft proof for printed books. PUBLISHER represents that the Digital Text Product will be professionally produced and will meet traditional publisher standards for all e-book venues.
2. AUTHOR acknowledges and agrees that AUTHOR will receive via AUTHOR’S e-mail account a soft proof of AUTHOR’S CONTENT in the *ePub* format for review in the *Adobe Digital Reader.* AUTHOR may download the *Adobe Digital Reader* at **http://www.adobe.com/products/digitaleditions/**. Because the “flowing text” in the e-book format varies from reader to reader, it is unlike a soft proof for printed books. PUBLISHER represents that the Digital Text Product will be professionally produced and will meet traditional publisher standards for all e-book venues.
3. AUTHOR acknowledges and agrees that AUTHOR will be able to download via AUTHOR’S e-mail account, a soft proof of AUTHOR’S CONTENT in the *PDF* Print Format for review in the *Adobe Reader.* AUTHOR may download the *Adobe Reader* at **http://get.adobe.com/reader/**

(9) **DELIVERY OF E-BOOK TO ONLINE E-BOOK RETAILERS**

Once AUTHOR’S CONTENT is formatted for Amazon’s *Kindle*, NOOK*™* by Barnes & Noble, Apple Books and such other e-book retailers as may be added from time-to-time. The e-book formats will be able to be read on [iPad](http://en.wikipedia.org/wiki/IPad), [iPhone](http://en.wikipedia.org/wiki/IPhone), and [iPod Touch](http://en.wikipedia.org/wiki/IPod_Touch) and other reading devices, including smartphones, utilizing the Android technology. Publication dates for the e-book retailers vary.

(10) **CUSTOM E-COVER DESIGN**.

PUBLISHER will produce for AUTHOR a custom e-cover design. Usually within seven (7) business days from AUTHOR’S completion of PUBLISHER’S *Design Questionnaire* and uploading of images (if any), an e-cover design will be available for AUTHOR’S REVIEW via AUTHOR’S e-mail account**.** PUBLISHER’S designers will make up to three revisions of AUTHOR’S e-cover design. Although AUTHOR will be able to print the e-cover, because e-cover graphics are utilized solely for web applications, they are at 72dpi, and will not have the same clarity as book covers designed for Print Products.

(11) **ISBN**

PUBLISHER furnishes AUTHOR with an ISBN number that is affixed to AUTHOR’S WORK. ISBN is an acronym for International Standard Book Number. It is a thirteen-digit number that uniquely identifies books and book-like products. The ISBN number is unique to the print book, and is a different ISBN for hardcover and softcover books. ISBNs do not expire, and there are no renewal fees; however, AUTHOR cannot reuse the ISBN furnished by PUBLISHER once it is assigned to AUTHOR’S WORK.

(12) **CUSTOM BOOK COVER DESIGN [TRADE PAPERBACK & HARDCOVER]**

PUBLISHER will produce for AUTHOR a custom book cover design. Usually within seven (7) business days from AUTHOR’S completion of PUBLISHER’S *Design Questionnaire* and uploading of images (if any), an e-cover and book cover design will be available for AUTHOR’S review in AUTHOR’S e-mail account**.**  The Book Cover design includes full graphic design front and spine, back cover design, up to six hundred (600) words of copy, and an image for author photo.

PUBLISHER’S designers will make up to two revisions of AUTHOR’S e-cover design and book cover design. Each round of revisions may take up to five to seven business days.

AUTHOR is responsible for selecting a trim size, cover finish, and interior paper type that are listed in the *Design Questionnaire*. PUBLISHER’S Standard trim size is 5.5 x 8.5 inches. Other trim sizes are available upon request and approval by PUBLISHER.

The cover designer will also lay out the rest of the cover, including the spine and the back cover. Content and any photos of AUTHOR for the back cover will be provided by AUTHOR. AUTHOR acknowledges that the final layout of the full book cover (front cover, back cover and spine cannot be completed until the interior book layout is completed and AUTHOR provides the content and photos for the back cover.

AUTHOR warrants that AUTHOR has the unequivocal right, title, and interest in any photos or artwork to be used on the cover photos/artwork on AUTHOR’S book cover.

PUBLISHER uses its best efforts to create a professional book cover based on AUTHOR's answers to PUBLISHER’S *Design Questionnaire*. If AUTHOR does not approve the cover concept and/or any revisions of the chosen cover concept created by PUBLISHER, AUTHOR, at AUTHOR’S expense, may hire AUTHOR’S own cover designer or pay PUBLISHER an additional $300.00 (three hundred dollars) for two (2) additional cover concepts by another designer. AUTHOR acknowledges that PUBLISHER can make no guarantees that AUTHOR will approve any of the cover concepts presented.

After AUTHOR approves the final cover design, and/or after the third round of revisions of the chosen cover concept, any future changes to the cover design before AUTHOR approves the Soft Proof of AUTHOR’S WORK will cost $50.00 per hour, with a minimum charge of one hour. Such changes can take five to ten (5-10) business days.

13. **ISBN, LCCN, and BARCODE**

PUBLISHER provides an ISBN and BARCODE and affixes both on the back cover of AUTHOR’S WORK. The ISBN identifies the name and contact information of PUBLISHER. Should AUTHOR or PUBLISHER terminate this Agreement, AUTHOR must remove PUBLISHER's ISBN and BARCODE from any future copies of AUTHOR’S WORK that AUTHOR publishes.

PUBLISHER, through the Preassigned Control Number (PCN) will obtain a Library of Congress Control Number (LCCN) sometimes referred to as Library of Congress Card Number for AUTHOR’S WORK. Once the LCCN is assigned, PUBLISHER prints the number on the copyright page of the softcover or hardcover book.

14. **INITIAL INVENTORY AND SUBSEQUENT BOOK ORDERS\***

**(a) Initial Inventory Order\***

AUTHOR will receive five (5) Trade Paperback or five (5) Hardcover books as a Print Product.

The Initial Inventory Order is sent from the printer directly to AUTHOR (or AUTHOR's designee), to PUBLISHER's fulfillment warehouse (if PUBLISHER is providing fulfillment or other services for AUTHOR), or to a distributor chosen by AUTHOR.

AUTHOR acknowledges that it will take approximately ten working days from the time that the Soft Proofs are approved by AUTHOR to be printed, packed, and shipped to AUTHOR or AUTHOR's designee.

**(b) Reorders\***

Reorders are all orders for copies of AUTHOR'S WORK placed by AUTHOR after the Initial Inventory Order.

On Reorders, AUTHOR acknowledges that PUBLISHER will charge the wholesale print and shipping costs, together with a handling fee of 10% of the total order and the then current transaction fee for credit card processing.

AUTHOR acknowledges that all Subsequent Inventory Orders take approximately ten to twelve (10-12) business days to be printed, packed, and shipped.

\*Notwithstanding any delivery dates set forth above, PUBLISHER is not responsible for printer delays in the delivery of AUTHOR’S WORK with respect to the Initial Inventory Order or any reorder if such delay is occasioned by strikes, fires, accidents, or by causes beyond the control of the printer, including, but not limited to, the unavailability of materials, utilities, or fuel.

15. **LISTING OF PRINTED BOOK WITH ONLINE RETAILERS AND OTHER DATABASES**

AUTHOR acknowledges that PUBLISHER has no control over how long it will take AUTHOR’S WORK to appear on any third-party website. AUTHOR further acknowledges that PUBLISHER has no control over which portions of AUTHOR's Book may be displayed on any third-party website. For example, AUTHOR’S participation in Amazon’s *Search Inside the Book™* Program [SITB] may result in the inclusion or exclusion of portions of the AUTHOR’S WORK that is contrary to the preferences of AUTHOR.

**a. Listing of printed books** **for Sale through Online Retailers**

PUBLISHER shall ensure that AUTHOR's WORK is made available to Amazon.com, Apple.com/apple-books, and BarnesandNoble.com, and other online retailers, when available. AUTHOR acknowledges that PUBLISHER has no control over how long it takes the initial listing of AUTHOR’S WORK to appear on any third-party retailer, or how long it takes any third-party retailer to process any requested changes after AUTHOR’S WORK has been listed.

As part of listing AUTHOR’S WORK on Amazon.com, AUTHOR'S Book will be listed in the *Search Inside the Book*™ [SITB] Program, unless prior to approving the Soft Proof, AUTHOR notifies PUBLISHER in writing that AUTHOR does not wish to appear in the SITB Program.

**b. Listing of Author’s Print Product in Bowker's Books In Print**

PUBLISHER shall list AUTHOR's Print Product in Bowker’s Books In Print upon publication.

**c. Listing of AUTHOR’S WORK in Ingram database; distribution of Print Product**

In the event PUBLISHER utilizes Ingram Content Group, PUBLISHER will list AUTHOR’S Print Product in Ingram’s database upon publication, and AUTHOR’S Print Products shall be distributed by Ingram to retailers who order AUTHOR’S WORK.

16. **EDITING SERVICES**

A Proofreading Edit is included within the scope of PUBLICATION SERVICES. Copy Edits or Line Edits that are optional and, upon AUTHOR’S request, PUBLISHER will provide the names of third-party editors.

17. **NO REPRESENTATIONS AND WARRANTIES BY PUBLISHER WITH RESPECT TO SALES AND DISTRIBUTIONS:**

PUBLISHER makes no guarantees regarding the minimum number of unit sales of AUTHOR’S WORK. In addition, PUBLISHER cannot guarantee that Licensees, retailers, or distributors will perform under any agreement they enter with PUBLISHER for the sale, distribution or licensed use of AUTHOR’S WORK, including the payment of royalties they owe PUBLISHER for the distribution of AUTHOR’S WORK. If a Licensee, retailer, or distributor refuses to pay PUBLISHER for the use of AUTHOR’S WORK, AUTHOR agrees to assume responsibility for collecting any payments that may be due from such non-compliant Licensee, retailer, or distributor for any sale, distribution or licensed use of AUTHOR’S WORK if such third party fails or refuses to pay such amounts to PUBLISHER upon PUBLISHER’S request.

18. **ROYALTIES, PAYMENTS FOR E-BOOKS SOLD BY ONLINE RETAILERS**

AUTHOR earns one-hundred (100%) percent of all Net Royalties on sales of AUTHOR’S WORK.

PUBLISHER provides monthly sales reports to AUTHOR when there is activity in AUTHOR’S account.

AUTHOR acknowledges that AUTHOR must complete and return IRS Form W-9 provided by PUBLISHER, in order that PUBLISHER may remit payments for Net Royalties to AUTHOR.

AUTHOR acknowledges that Net Royalties must meet or exceed fifty ($50.00) dollars (the “Net Royalty Minimum Disbursement”) before PUBLISHER remits payment. If AUTHOR'S Net Royalties are less than the Net Royal Minimum Disbursement in a given month, earnings will accrue until AUTHOR's earnings meet or exceed Net Royalty Minimum Disbursement. Provided, however, in the event AUTHOR’S Net Royalties in a twelve-month period do not meet or exceed the Net Royalty Minimum Disbursement, AUTHOR will be paid the accumulated Net Royalties at the end of the calendar year in which the Net Royalties are earned.

It takes approximately forty-five (45) to one-hundred twenty (120) days for royalties from sales of AUTHOR’S WORK to be disbursed to PUBLISHER. This varies by e-bookstore, and depends on how quickly stores report their sales to PUBLISHER.

PUBLISHER makes royalty payments to AUTHOR that meet or exceed the Net Royalty Minimum Disbursement on the first day of that month next following receipt of royalty payments from any third party. Payments are disbursed by check, ACH deposit, through PayPal, or Zelle at the sole option of PUBLISHER.

19. **ROYALTIES, PAYMENTS FOR PRINTED BOOKS SOLD BY ONLINE RETAILERS**

AUTHOR earns one-hundred (100%) percent of all Net Royalties on sales of AUTHOR’S WORK.

Times vary for the posting of royalties from sales of AUTHOR’S printed books depending on whether or not AUTHOR has utilized wholesale and distribution channels provided through PUBLISHER, or if the sales are from an online bookseller such as Amazon.com.

AUTHOR acknowledges that AUTHOR must complete and return IRS Form W-9 provided by PUBLISHER, in order for PUBLISHER may remit payments for Net Royalties to AUTHOR.

AUTHOR acknowledges that Net Royalties must meet or exceed fifty ($50.00) dollars (the “Net Royalty Minimum Disbursement”) before PUBLISHER remits payment. If AUTHOR'S Net Royalties are less than the Net Royal Minimum Disbursement in a given month, earnings will accrue until AUTHOR's earnings meet or exceed Net Royalty Minimum Disbursement. Provided, however, in the event AUTHOR’S Net Royalties in a twelve-month period do not meet or exceed the Net Royalty Minimum Disbursement, AUTHOR will be paid the accumulated Net Royalties at the end of the calendar year in which the Net Royalties are earned.

PUBLISHER makes royalty payments to AUTHOR that meet or exceed the Net Royalty Minimum Disbursement on the first day of that month next following receipt of royalty payments from any third party. Payments are disbursed by check, ACH deposit (for AUTHORS with US bank accounts), or through PayPal.

20. **BOOK RETURNS FOR PRINTED BOOKS**

AUTHOR acknowledges that the Book Returns Program is included in the Ingram wholesale and distribution packages at no additional charge to AUTHOR; provided, however, AUTHOR acknowledges and agrees that AUTHOR is required to keep a valid credit card on file to cover costs associated with returns, including, but not limited to the wholesale price of AUTHOR’S WORK, any service fees, restocking fees, fees charged for shipping AUTHOR’S printed books back to PUBLISHER or AUTHOR, and other related fees charged by any third-party in conjunction with the returns.

AUTHOR authorizes PUBLISHER to deduct any fees charged for returns from the current royalty payments owed to AUTHOR. Provided, further, if the amount owed for returns exceeds any royalty amount due AUTHOR, PUBLISHER may charge AUTHOR's credit card on file unless AUTHOR makes other payment arrangements satisfactory to PUBLISHER.

AUTHOR agrees to keep a valid credit card on file with PUBLISHER and further agrees that if AUTHOR has a negative sales balance AUTHOR's Account, AUTHOR must pay the balance due within ten (10) business days next following an e-mail notification by PUBLISHER. In the event AUTHOR fails to pay any balance due within the ten (10) days, AUTHOR authorizes PUBLISHER to charge AUTHOR’S credit card on file without providing advance notice to AUTHOR.

In the event AUTHOR does not have a valid credit card on file with PUBLISHER, or PUBLISHER’S attempt to charge AUTHOR’S credit card is denied, and AUTHOR fails or refuses to pay amounts owed to PUBLISHER for returns within ten (10) business days next following written notice to AUTHOR via e-mail**,** PUBLISHER has the option of removing AUTHOR's WORK from distribution, ceasing to fulfill books through PUBLISHER’S Website or PUBLISHER’S Imprint Website, and to pursue such other remedies as are available to PUBLISHER to collect the outstanding indebtedness.

21. ***WE GUARANTEE IT*.**

PUBLISHER’S “*WE GUARANTEE IT*” Program states that the AUTHOR’S WORK as a Digital Text Product and a Print Product will have the same professional appearance as similar products produced by the major publishing houses. PUBLISHER represents to AUTHOR that AUTHOR’S WORK as viewed by the “reasonable man standard” will be comparable with traditional publishing products. With respect to Print Products, comparisons are restricted to Print Products produced by major publishing houses using similar formatting techniques, printing methods, basis weight in paper, with specific reference to generally used standard paper in the printing trade for Trade paperback and similar works, together with similar cover stock. AUTHOR acknowledges that PUBLISHER’S representations and warranties are strictly with respect to physical appearance and not AUTHOR’S CONTENT.

22. **AUTHOR'S WARRANTIES AND INDEMNITIES**

**(a)**  AUTHOR has the full right, power, and authority to act on behalf of any and all owners of any right, title or interest in and to AUTHOR’S CONTENT, Authorized Artwork, and metadata.

**(b)**  AUTHOR owns or controls the necessary rights in order to make the grant of rights, licenses and permissions herein, that AUTHOR have permission to use the name and likeness of each identifiable individual person whose name or likeness is contained or used within AUTHOR’S CONTENT, and to use such individual's identifying or personal information (to the extent such information is used or contained in AUTHOR’S CONTENT) as contemplated by this Agreement. Furthermore, AUTHOR represents that the exercise of such rights, licenses and permissions by PUBLISHER, PUBLISHER’S e-Book Aggregators, and Licensees shall not violate or infringe the rights of any third party.

**(c)** AUTHOR’S CONTENT does not plagiarize or pirate any other work or infringe upon any copyright, trademark or other proprietary right.

**(d)** AUTHOR’S CONTENT does not contain SEO keyword “spam,” either in AUTHOR’S manuscript or AUTHOR’S metadata tags.

**(e)** AUTHOR’S CONTENT does not contain multiple hyperlinks to advertisements or affiliate marketing pages.

**(f)** AUTHOR’S CONTENT does not contain any advertisements of content that is primarily intended to advertise or promote products of services.

**(g)** AUTHOR’S CONTENT does not violate any right of privacy that is libelous or violate any personal right or other right of any kind of any person or entity.

**(h)** AUTHOR’S CONTENT does not violate state and federal laws or advocate illegal activities.

**(i)** AUTHOR’S CONTENT does not advocate hateful, discriminatory, or racist views or actions toward others.

**(j)** Any and all instruction, material, or advice contained in AUTHOR’S CONTENT is not likely to result in injury and AUTHOR’S CONTENT includes appropriate warning and safety precautions concerning any particular hazards that may be involved in the use of any such instruction, material or advice.

**(k)** AUTHOR’S CONTENT is not a public domain work (unless AUTHOR is the true author) and is not sourced or copied, either in part or in entirety, from commercial services, articles, or information sources which have been licensed to others.

23. **INDEMNIFICATIONS BY AUTHOR**

(a) **Indemnification**. AUTHOR agrees to indemnify, save, and hold PUBLISHER harmless from any and all damages, claims, liabilities, costs, losses and expenses including, but not limited to, legal costs and attorneys' fees, (collectively, "Claims") arising out of or connected with any claim, demand, or action which is inconsistent with any of the warranties, representations, covenants or agreements made by AUTHOR in this Agreement, including, but not limited to, AUTHOR’S representations and warranties regarding copyrights or any other rights in and to any other forms of intellectual property. AUTHOR will reimburse PUBLISHER, on demand, for any payment made by PUBLISHER at any time with respect to any damage, liability, cost, loss, or expense arising out of Claims to which the foregoing indemnity applies. Pending the determination of Claims, PUBLISHER may, at PUBLISHER’S election, withhold payment of any monies otherwise payable to AUTHOR hereunder in an amount which does not exceed AUTHOR’S potential liability to PUBLISHER pursuant to the provisions of this paragraph.

(b) **Indemnification Request**. If PUBLISHER makes an indemnification request to AUTHOR under this Section, PUBLISHER may permit AUTHOR to control the defense, disposition or settlement of the matter at AUTHOR’S expense, provided that AUTHOR shall not, without PUBLISHER’S prior written consent, enter into any settlement or agree to any disposition that requires any admission of liability by PUBLISHER or imposes any conditions or obligations on PUBLISHER other than the payment of monies that are readily measurable for purposes of determining AUTHOR’S monetary indemnification or reimbursement obligations to PUBLISHER. If PUBLISHER, in PUBLISHER’S reasonable and good faith judgment, concludes that AUTHOR is not capable of defending AUTHOR’S or PUBLISHER’S interests against any Claims, then PUBLISHER shall have the option to control the defense in any matter or litigation through counsel of PUBLISHER’S choosing to defend against any such Claims, in which event AUTHOR shall be responsible to reimburse PUBLISHER for any and all expenses associated with retention of counsel in defense of such Claims. These warranties and indemnities will survive the termination of this Agreement.

24. **PERMISSION FOR COPYRIGHTED MATERIAL**

If AUTHOR incorporates in AUTHOR’S WORK any copyrighted material, AUTHOR will procure, at AUTHOR’S expense, written permission to reprint the material. AUTHOR agrees to retain all such written permissions. AUTHOR agrees to deliver all such written permissions to PUBLISHER at PUBLISHER's request.

25.  **DIGITAL MILLENNIUM COPYRIGHT ACT**

If AUTHOR contends that any material contained in the PUBLISHER Website or a PUBLISHER Imprint Website infringes AUTHOR’S copyright, AUTHOR may notify PUBLISHER of AUTHOR’S copyright infringement claim in accordance with the following procedure.

PUBLISHER will process notices of alleged infringement that PUBLISHER receives and will take appropriate action as required by the Digital Millennium Copyright Act (DMCA) and other applicable intellectual property laws. The DMCA requires that notifications of claimed copyright infringement should be sent to the PUBLISHER’S Designated Agent who is:

Michael Zealy, Publisher  
Midtown Publishing, Inc.

Email publisher@midtownpublishing.com

To be effective, the notification must be in writing and contain the following information (DMCA, 17 U.S.C. §512(c)(3):

1. A physical or electronic signature of AUTHOR as owner or as a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit PUBLISHER to locate the material;
4. Information reasonably sufficient to permit PUBLISHER to contact AUTHOR, such as an address, telephone number, and, if available, an electronic mail address at which AUTHOR may be contacted;
5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
6. A statement, made under penalty of perjury, that the information and the notification is accurate and that AUTHOR is the owner or is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

E-mails sent to [publisher@midtownpublishing.com](mailto:publisher@midtownpublishing.com) for purposes other than communication about copyright claims may not receive an acknowledgement or response.

26. **ADDITIONAL SERVICES BY PUBLISHER**

Any additional services provided by PUBLISHER are governed by terms and conditions respecting such services.

27. **TERMS OF USE/PRIVACY POLICY/TERMS OF USE PROVISIONS INCORPORATED FOR ALL PURPOSES**

PUBLISHER’S *Terms of Use* and *Privacy Policy* are fully incorporated in this Agreement as though fully set forth herein. To the extent there is a conflict between the provisions herein and the provisions therein, the terms herein shall prevail.

1. **MISCELLANEOUS PROVISIONS**

**a. Notices**

All notices required or permitted under this Agreement shall be delivered to AUTHOR’S e-mail accountby PUBLISHER and sent to PUBLISHER from AUTHOR in AUTHOR’S e-mail account. In the event AUTHOR’S e-mail account is no longer available, PUBLISHER may send a written notice to AUTHOR’S mailing address as set forth in AUTHOR’S Account Application.

**b. Entire Agreement**

This Agreement contains the entire agreement between PUBLISHER and AUTHOR, whether oral or written, except for PUBLISHER’S *Terms of Use* and *Privacy Policy* that are incorporated herein for all purposes. This Agreement supersedes any prior written or oral agreements between PUBLISHER and AUTHOR.

1. **Severability**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

1. **Modification**

This Agreement may not be modified or amended except by written instrument signed by PUBLISHER and AUTHOR.

1. **Waiver**

The failure of either PUBLISHER or AUTHOR to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

1. **Applicable Law**

The validity, interpretation. construction. performance, enforcement, and remedies of or relating to this Agreement, and the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York (without regard to the conflict of laws, rules, or statutes of any jurisdiction), and every legal proceeding arising out of or in connection with this Agreement shall be brought in New York, New York, each of the undersigned parties hereby consenting to the exclusive personal and subject matter jurisdiction of said courts for this purpose.

1. **Prevailing Parties**

The prevailing party in any suit brought by either party hereto to enforce the terms hereof shall he entitled to recover from the non-prevailing party all of said prevailing party's reasonable costs, distributions, and attorneys' fees, including all collection costs and attorneys' fees incurred in attempting to collect any judgment obtained arising out of legal proceedings brought hereunder.

1. **Counterparts and Electronic Signature**

This Agreement may be executed in one (1 or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one (1) and the same instrument. The parties may execute this Agreement via electronic signature and such signature will be deemed to be original.

1. **Limitation of Liability; Basis of the Bargain**

(i) PUBLISHER SHALL NOT BE LIABLE TO AUTHOR FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PUBLISHER HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES. PUBLISHER SHALL ALSO NOT BE LIABLE FOR ANY ROYALTIES, FEES, PAYMENTS OR DAMAGES ARISING OUT OF THE FAILURE OF ANY E-BOOK LICENSEE, RETAILER, OR DISTRIBUTOR TO PAY PUBLISHER OR AUTHOR ANY ROYALTIES THAT ARE DUE FOR ANY USE OR MISUSE OF AUTHOR’S CONTENT OR AUTHOR’S WORK, WHETHER PURSUANT TO AN EXISTING, EXPIRED OR TERMINATED AGREEMENT WITH PUBLISHER OR OTHERWISE. PUBLSIHER’S TOTAL LIABILITY TO AUTHOR FOR ANY BREACH OF THIS AGREEMENT SHALL IN ALL INSTANCES BE LIMITED TO THE AMOUNT OF MONIES ACTUALLY PAID TO AUTHOR BY PUBLISHER FOR THE DISTRIBUTION OR LICENSING OF AUTHOR’S CONTENT OR AUTHOR’S WORK DURING THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF AUTHOR’S CLAIM AGAINST PUBLISHER.

(ii) APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO AUTHOR. IN SUCH CASES, AUTHOR AGREES THAT BECAUSE SUCH DISCLAIMERS AND LIMITATIONS OF LIABILITY REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN AUTHOR AND PUBLISHER AND ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN AUTHOR AND PUBLISHER, PUBLISHER’S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. AUTHOR UNDERSTANDS AND AGREES THAT PUBLISHER WOULD NOT BE ABLE TO OFFER ITS SERVICES TO AUTHOR ON AN ECONOMICALLY FEASIBLE BASIS WITHOUT THESE LIMITATIONS AND WOULD NOT OFFER SUCH SERVICES ABSENT A LIMITATION OF LIABILITY.

1. **Currency**

All dollar amounts set forth in this Agreement and those incorporated as part of this Agreement are in U.S. Dollars.

1. **Agreement to Govern AUTHORS WORK for multiple submissions.**

It is the intent of the parties that the provisions of this Agreement shall govern the rights and responsibilities of the parties with respect to any and all transactions between them with respect to publishing services.

The parties have executed this Agreement by Electronic Signature on those dates set forth below.

**MidTown Publishing Inc.**  **Author**

a New York Corporation

By\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ /s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Michael E Zealy Electronic Signature

Its President Print name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_