

PUBLICATION AGREEMENT

This publication agreement ("Agreement") made this 3rd day of October, 2017, between _____, whose address is _____ ("Author") and Köehler Books ("Publisher") with respect to the work provisionally entitled _____ ("Work").

Article One **Rights Granted To Publisher**

Section 1.1 The Author grants to the Publisher during the Term (as defined below) of this Agreement the exclusive right to:

- A. Publish and market the Work in printed book form ("Book Form") including soft and hard cover, throughout the world;
- B. Publish and market the Work in electronic book form ("eBook Form") throughout the world;
- C. License the Work for publication and sale in Book Form in any translation throughout the world;
- D. Store, use, transmit and distribute electronic copies of the Work as required in facilitating the printing and distribution process, such right to extend to Publisher's vendors and affiliates;
- E. Make no more than twenty percent (20%) of the Work viewable on the Publisher's website, or partner websites that have entered into agreement with the Publisher, in order to facilitate sales of the Work;
- F. Post pertinent information regarding the Author or the Work, including elements of the author questionnaire or additional information that will help promote the Author or Work.
- G. Decide on the final public release date, with input and consideration from the Author, within one year of the execution of this contract. Tentative publication date for the Work is _____.

Any of the above uses may be made for publicity purposes without charge to benefit the sale of the Work.

Section 1.2 Author will retain copyright ownership in the Work and does hereby license to Publisher the rights described above.

Section 1.3 All rights in the work not specifically granted to the Publisher are reserved by the Author. Further, Author retains rights to any derivative Work arising from the original Work including but not limited to screenplays, adapted screenplays, teleplays, television serials/series and stage plays.

Article Two **Publication and Procedure**

Section 2.1 The Publisher agrees to publish the Work in print and eBook in the manner and format, and at the prices, the Publisher may deem appropriate, subject to the following procedure:

- A. Galley or page proofs, or both, shall be forwarded to the Author for the Author's corrections and changes within a reasonable timeline.
- B. Author shall complete and execute all relevant additional instruments reasonably requested by Publisher, including preparation of the work according to the Publisher's style guide, the Author Questionnaire, and proofing and review of cover and text layouts.
- C. Author will be part of the Publisher's Emerging Authors Program and shall to the best of the author's ability publicize the Work on the Author's website and use social media, acquire endorsement quotes and reviews and actively market and publicize the Work in partnership with the Publisher, using the items listed on the Publisher's website marketing page as well as other separate marketing the author engages.
- D. Publisher shall publicize the Work on their website and through numerous methods mentioned on the Marketing page of the Publisher's website. These include Ingram's Title Management System and catalogs, a book webpage and inclusion on the Author's page, a tip sheet, assistance with Advanced Review Copies and Endorsements, Ebook campaigns, Vote the Cover campaigns, audio and foreign rights distribution by an agent, as well as coaching of the Author on all aspects of the Author's marketing program, including website and social media, events, Facebook Forum and more.
- E. If the Work sells 3,000 or more combined copies of print, ebook units, and books bought by the author, the Author shall receive a traditional publishing deal from the Publisher on his next acceptable work of equal or greater value than this Work.
- F. This agreement will be void after _____ unless it is signed or an extension is agreed to in writing by both parties.
- G. If the Author makes any alterations after the Work has gone to the printer, the Author shall incur change fees of \$299 for either the cover or text files or both, per each instance of new printing.

Article Three **Author's Royalties**

Section 3.1 The Publisher agrees to pay the Author royalties as follows:

- A. Royalties due and owing shall be determined on the Net based on the Publisher's paid invoices for the Work, less printing, return fees, and a reasonable reserve for returns from all sales. Royalties shall be computed under the following categories:
 - i. On the sale of the Work in printed Book Form, the Publisher will pay the Author 60% of the Net Receipts
 - ii. On the sale of the Work in eBook Form, the Publisher will pay the Author 60% of the Net Receipts

- iii. On the sale of the Work via foreign rights translation, the Publisher will pay the Author fifty percent (50%) of the Net Receipts.

Example of a typical book and how royalties work (prices may vary depending on number of pages, list price, etc):

210-page 6x9 softcover book with black and white interior, color exterior

\$16.95 – suggested list price

\$7.96 – wholesale price (53% wholesale rate)

\$3.52 – print price (author price is \$5.28)

\$4.45 – Net

\$2.67 – Author’s royalty per 60% rate

Ebook version

\$7.99 – suggested list price

\$3.20 – Net

\$1.92 – Author’s royalty per 60% rate

- B. The Publisher shall pay no royalties on copies furnished gratis to the Author or other persons, or furnished to Author at the discounted prices as outlined in Section 3.4.

Section 3.2 The Publisher shall make quarterly royalty payments and statements to the Author beginning four months after date of publication, so long as there are Proceeds available for payment to the Author. If the amount due for any accounting period shall be less than \$100.00, the balance shall be applied to the next calendar quarter until the royalty payment due equals or exceeds \$100.00. The Publisher may deduct any overpayment to the Author from any royalties due and owing the Author on the Work.

Section 3.3 The Author shall have the right to examine, through the Author's accountant and at the Author's expense, the Publisher's books and records containing entries relating to the Author's rights under the terms of this Agreement. This right may be exercised no more than once annually, with thirty (30) days notice to Publisher, during Publisher's regular business hours. This right shall extend twelve (12) months past the termination date of this Agreement.

Section 3.4 The Publisher shall present to the Author 20 softcover copies of the Work for the author's use. Publisher shall permit the Author to purchase further copies at print cost plus 50%, which do not count as sales or pay royalties. Unless otherwise agreed to in writing by the parties hereto, all fees and compensation due and owing as a result of performance under this Agreement are quoted and payable in U.S. Dollars. All orders must be prepaid and are non-returnable or refundable. Shipping charges are not included. If Work is taken out of print, Author may purchase inventoried books at cost.

Article Four **Copyrights**

Section 4.1 The Publisher shall (subject to the representations and agreements of the Author) imprint a proper United States copyright notice in the name of the author in each copy of the Work sold or offered for sale by the Publisher in the United States, in compliance with the United States copyright law and the Universal Copyright Convention. The Author may choose to get a Library of Congress certificate, which the Publisher shall include on the copyright page.

Section 4.2 If the Publisher supplied artwork at its own expense, it shall own it and may copyright the artwork in its own name. The Author may use the cover art in any manner that is related to the marketing of the Work.

Section 4.3 If the copyright in the Work is infringed by a publication or production of a kind that invades any of the rights in which the Publisher has a financial interest under the provisions of this agreement, Publisher shall have the right to commence an action for infringement of the copyright ("Action"). Either party shall not commence any Action without the other party's prior consent. Action pursued by the Author or Publisher shall share expenses and settlement equally. If the Publisher shall elect to join in the Action, all expenses and the net amount of any recovery or settlement resulting from the Action shall be shared equally. These rights shall extend twelve (12) months past the termination date of this Agreement.

Article Five **Warranties and Indemnification**

Section 5.1 The Author warrants, to the best of the Author's knowledge, as follows:

- A. That the Work is entirely original, except for portions thereof for which legally effective written licenses or permissions have been secured, or verified to be in the public domain;
- B. That Author is the sole owner of all the rights granted to the Publisher in this Agreement, and that Author has the full right and power to enter into this Agreement;
- C. That this Agreement does not conflict with any arrangements, understandings, or agreements between the Author and any other person or entity;
- D. That if published it will not infringe upon any proprietary right at common law or any statutory copyright or any other right whatsoever of third parties;

- E. That the Work is not defamatory or obscene, and contains no matter that is libelous, in violation of any right of privacy or is otherwise in contravention of law, and will not be injurious to any reader, user, or third person.

Section 5.2 The Author agrees to indemnify and hold the Publisher and its Affiliates harmless from any claim, demand suit, action, proceeding or prosecution (and liability, loss, expense or damage in consequence regarding text and material provided by Author) asserted or instituted by reason of the publication or sale of the Work or the Publisher's exercise or enjoyment of any of its rights under this agreement or by reason of any warranty or indemnity made, assumed or incurred by the Publisher in connection with the exercise of any of its rights under this agreement. The Publisher shall have the right at its option either to defend the claim, demand, suit, action, proceeding or prosecution by counsel of its selection, or to settle the same on terms it deems advisable; or, with the prior written approval of the Publisher, the Author may defend or settle. The rights and obligations in this Section 5.2 survive the termination date of this Agreement.

Article Six **Termination and Breach**

Section 6.1 The Author may terminate the agreement if the Publisher fails to publish the Work in print and eBook within 1 year of the execution of this agreement, or sold no copies of print and eBook through Publisher's distribution. Upon termination all rights revert to the Author. If the Publisher fails to publish the Work the Author shall be refunded payments made less reasonable expenses used to prepare the work for publication. In the event that occurs the Publisher shall provide the Author with all art and files pertaining to the Work.

Section 6.2 If the Publisher gives written notice to the Author of its intention to discontinue publication of the Work, or if the Publisher fails to keep the Work in print, and, the Author having given notice to the Publisher to reprint the Work, the Publisher has failed to do so within six (6) months after receipt of notice, then the Author shall have the right to terminate this Agreement by notice delivered to the Publisher and have all rights revert to Author. The Work shall be deemed in print if it is on sale by the Publisher or under license granted by the Publisher, or if it has sold more than 200 e-book editions or more than 200 books through Print On Demand during any given six month period.

Section 6.3 Either Publisher or Author may terminate this Agreement immediately upon written notice to the other in the event of the other's insolvency, fraud, willful misconduct, filing of bankruptcy or other material breach of this Agreement. In the event of any breach, whether material or not, of any of the Author's warranties or promises or indemnities, the Publisher or Author shall have the option to terminate this agreement by 30 days' advance notice in writing, stating or describing the breach, and indicating Publisher's or Author's intent to terminate if the described breach or default is not cured within that time. In the event of termination by either party, the Publisher shall refund payment to the Author less reasonable expenses used during publication.

Section 6.4 Either Publisher or Author may terminate this Agreement upon mutual agreement of the parties by 30 days' advance notice in writing. The termination of this Agreement under this Section or otherwise shall be subject to:

- A. Any license, contract, or option granted by the Publisher to the Publisher's subsidiaries or to third parties before the termination and the Publisher's right to its share of the proceeds from such grants after the termination; and
- B. The Publisher's continuing right to sell all remaining bound copies and sheets of the Work.

Article Seven **Term**

Section 7.1 The Term of this Agreement shall extend for three years after the publication date, or until the termination of this Agreement in accordance with Article Six, whichever is sooner. Upon the expiration or termination of the term, this Agreement shall automatically terminate and rights will revert to the Author, at which time the Publisher may transfer the Work to the Author's IngramSpark account if agreed to by the Author. This term may be extended if agreed to by both parties.

Article Eight **Miscellaneous**

Section 8.1 Binding Agreement. The terms and provisions of this Agreement are binding on and enforceable by and against the parties, their successors, legal representatives, and assigns. There is no other agreement between the parties that deals with the subject matter of this Agreement.

Section 8.2 Conflict with other Agreements. This Agreement shall alter and amend any other written or oral agreement of the parties as needed to comply with the terms and conditions herein.

Section 8.3 Modification or Amendment. This Agreement may not be modified or amended without the written consent of all persons who are parties on the date of such amendment.

Section 8.4 Notices. All notices required or permitted to be given to the Company under this Agreement must be given in writing, and will be deemed given when personally delivered or, if earlier, when received after mailing by registered or certified U.S. mail, postage prepaid, with return receipt requested.

If to Publisher:

If to Author:

Köehler Books

Section 8.6 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion.

Section 8.7 Waiver. Any term or provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument. The failure by any party to enforce any term or provision of this Agreement shall not affect the validity or enforceability of that term or provision.

Section 8.8 Force Majeure. Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement where such delay or failure arises by reason of any act of God or any government or any governmental body, war, terrorist act, insurrection, the elements, strikes or labor disputes, or other similar or dissimilar cause beyond the control of such party.

Section 8.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 8.10 Attachments. All attachments referred in this Agreement and attached hereto are incorporated in this agreement by reference. Attachment A lists services and costs associated with the pre-publication preparation of the Work.

Section 8.11 Construction of Terms. Wherever the context requires, the singular includes the plural, and the masculine includes the feminine and neuter.

Section 8.12 Headings. Headings are used in this Agreement for convenience only and will not be used to interpret this Agreement or any part of it.

Section 8.13 Assignment. Author may not assign this Agreement, or any rights or obligations hereunder, by operation of law or any other manner, without the Publisher's prior written consent. Upon the death of Author, assignment of Author's rights may transfer to legal heirs.

Section 8.14 Advice of Counsel. The parties acknowledge and agree that each have had the unrestricted opportunity to consult with independent legal counsel of his/her own choosing, that any decision not to be so represented was voluntarily and independently made by that party, and that the provisions of this Agreement will not be construed in favor of either party.

Section 8.15 Arbitration. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the state of Virginia. If arbitration is used, both the Author and Publisher shall agree on the selection of the arbiter. An award of arbitration may be confirmed in a court of competent jurisdiction.

PUBLISHER

Köehler Books

By: _____

Print Name _____

Date: _____

AUTHOR

By: _____

Print Name _____

Date: _____