

## Publishing Agreement

Made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_  
residing at \_\_\_\_\_  
(hereinafter the "Author") and Casperian Books, LLC, a California Limited Liability  
Company, with its principal offices at \_\_\_\_\_  
(hereinafter the "Publisher") for the print version of \_\_\_\_\_  
(the "Work").

In consideration of the mutual covenants herein contained, the parties agree as follows:

### 1. Grant

The Author grants to the Publisher for a period of \_\_\_\_\_ (\_\_) years from the date of first publication the sole and exclusive right to publish and sell an English language trade paperback edition of the Work throughout the United States, its territories and possessions, and Canada. Upon the expiration of this agreement \_\_\_\_\_ (\_\_) years from the date of original publication, the Publisher shall have first option to conclude an agreement with the Author for continued publication rights to the Work on terms to be mutually agreed upon. Should no such agreement be concluded within sixty (60) days of the expiration of this agreement, all rights to the Work shall automatically revert to the Author.

### 2. Representations and Warranties

Author represents and warrants the following:

- a. the Author is the exclusive owner of the Work, and has the full power, legal authority and right to enter into this Agreement;
- b. this Agreement does not conflict with any arrangements, understandings, or agreements between the Author and any other person or entity;
- c. the Work is not in the public domain and is entirely original except for portions thereof for which legally effective written licenses or permissions have been secured by the Author;
- d. the Work and all rights therein are free of liens, claims, interests or rights of others of any kind;
- e. the Work as submitted, and its publication by the Publisher, do not and will not violate or infringe upon any personal or proprietary rights, including without limitation copyrights, trademark rights, trade secret rights, contract rights, privacy rights, or publicity rights of any other persons;
- f. the Work is not libelous or obscene, or in any other way illegal;
- g. all information contained in this Agreement and its attachments is accurate and correct.

Publisher: \_\_\_\_\_ Author: \_\_\_\_\_

### **3. Indemnification**

Author agrees to fully indemnify, defend and hold harmless the Publisher, its agents, Affiliates (as defined below in this Section 3), and any retailers against any losses, lost profits, damages, liabilities, judgments, awards, decrees, settlements, or expenses (including without limitation reasonable attorney's fees and court costs) arising from, connected with, or by reason of any breach or alleged breach of the representations and warranties set forth above, including but not limited to claims of third parties regarding ownership, libel, slander, plagiarism, privacy violations, copyright infringement, and misappropriation arising from publication of the Work.

The Author shall not be liable for any matter inserted in the Work by the Publisher or its licensees.

All warranties and indemnifications made by the Author herein shall survive termination of this Agreement or any license hereunder.

"Affiliates" means owners, shareholders, officers, directors, employees, parents, subsidiaries, affiliated companies, licensees, distributors, advertisers, Internet service providers, attorneys, and accountants and any other person or entity to whom Publisher extends its license or warranties to in connection with the production, dissemination, transmission, promotion, publication, or distribution of the Work or the exercise of any rights therein or derived therefrom.

### **4. Royalty Payments and Statements**

The Publisher does not guarantee any volume of sales for the Work.

The Publisher will pay the Author royalties in the amount of sixty-six percent (66%) of net receipts, which equal the payments the Publisher receives from sales of the Work, less production costs, credit card charges, shipping and handling charges, chargebacks, discounts or disputes. Direct sales to Author, as defined in Section 6 below, are exempt from royalty payments.

The Publisher shall forward to the Author royalty statements to be computed as of March 31, June 30, September 30 and December 31 of each year of this Agreement within thirty (30) days following such respective dates along with any payments indicated to be due thereby.

Author shall have the right, upon reasonable notice and during usual business hours but not more than once each year, to engage a certified public accountant to examine the books and records of Publisher relating to the Work at the place where such records are regularly maintained. In the event discrepancies between royalty statements and the Publisher's accounts are found to be in the Author's favor, the Publisher shall tender

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such monies due to the Author within ten (10) days. Publisher shall not be liable for any expenses incurred by the Author as a result of the auditing procedure.

## **5. Taxes**

Author acknowledges and agrees that this Agreement does not constitute an offer of employment and that Publisher is not a partner or employer/employee of Author. Author further agrees that unless specifically stated otherwise in this Agreement, Author is solely responsible for paying all taxes on royalty payments.

Author agrees to complete IRS form \_\_\_\_\_ attached hereto, and further agrees to provide Publisher with updated forms as requested.

Publisher shall forward to author a form \_\_\_\_\_ for the purposes of declaring income from royalty payments and withheld US income tax, if applicable, by January 31st of each year of this Agreement.

## **6. Author Discount and Author Sales**

Author may purchase up to a total of twenty-five (25) copies of the Work at cost plus sales tax (if applicable) plus shipping/packaging plus a handling fee of ten percent (10%) of order value or ten dollars (\$10), whichever is less. Author will pay for such purchases in advance by either check, money order, or electronic funds transfer.

For the duration of this Agreement, Author may purchase copies of the Work at wholesale price plus sales tax (if applicable) plus shipping/packaging plus a handling fee of ten percent (10%) of order value or ten dollars (\$10), whichever is less. Author will pay for such purchases in advance by either check, money order, or electronic funds transfer.

No royalties will be paid on discounted direct sales to Author.

Author may re-sell copies of the Work purchased at Author Discount at will. Author is responsible for collecting all sales taxes and other taxes and fees on behalf of local, state and federal authorities on any copies of Work resold by Author.

## **7. Subsidiary Rights**

The Author shall retain in full the exclusive right to sell or license the Work for publication, in whole or in part, in English or in any foreign language, in any way, shape, edition, or form not in conflict with the rights granted to the Publisher under this agreement, and shall further retain the full and exclusive rights to license the Work for use in other media.

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## **8. Manuscript and Delivery**

The Author agrees to deliver to the Publisher on or before \_\_\_\_\_, \_\_\_\_\_, and in final revised form an English language electronic manuscript of the Work.

If, in the opinion of the Publisher, the manuscript is unacceptable or unsatisfactory to the Publisher, the Publisher may reject it by written notice within thirty (30) days of delivery, in which case this Agreement shall be deemed terminated and there shall be no further obligation upon the Publisher to publish said Work or to make any payment hereunder, and all rights granted to the Publisher under this agreement shall revert to the Author.

## **9. Editing Rights**

No changes, additions, deletions, abridgements, or condensations in the text of the Work or changes of title shall be made by the Publisher, its agents, or employees, without the expressed, itemized, and specific written consent of the Author.

## **10. Galleys and Proofs**

Prior to publication the Publisher upon advance notification shall provide the Author with proofs of the Work, which the Author shall correct and return to the Publisher within twenty (20) days of receiving same. Prior to the printing of the book jacket of the Work, the Publisher shall submit to the Author a proof or other facsimile of the jacket text and design for Author's approval, which shall not be unreasonably withheld.

## **11. Publication**

The Publisher agrees to publish and make available for distribution through its website and other distribution channels said Work within \_\_\_\_\_ (\_\_) months of approval and acceptance of the Author's final manuscript. In the event the Publisher fails to publish the Work by said date, this Agreement shall terminate forthwith, and all rights hereunder shall revert to the Author. However, this mandated publication date may be extended to any other date, and any number of such extensions may be made, upon mutual agreement between the Publisher and the Author. The Publisher shall not be liable for any damages in the event of a delay in publication or production of the Work.

## **12. Publication Format**

The Publisher shall have full discretion as to price, production, appearance and format of the Work.

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The Author acknowledges and agrees that print files created by the Publisher remain the creative work and sole property of the Publisher.

Upon termination of this agreement, the Publisher, at its sole discretion, may permit Author or Author's assignees or agents to purchase said print files, with the exception of ISBN data and bar codes, at a mutually agreed upon price.

If the Publisher ceases operation during the term of this Agreement, the Publisher will furnish the Author or the Author's assignees or agents with the print files to the Work at no charge to the Author.

### **13. Copyright**

The Author acknowledges and agrees that the Publisher acquires no right of ownership to the Work under this Agreement, except as detailed in paragraph 12 above. The Author retains the right, but not the obligation, to register his/her copyright for the completed Work with the Copyright Office, Library of Congress.

### **14. Infringement**

If during the term of this Agreement the copyright is infringed, the Publisher may, at its own expense, take such legal action, in the Author's name if necessary, as may be required to restrain such infringement or to seek damages therefor. The Publisher is not liable to the Author for the Publisher's failure to take such legal steps. If the Publisher does not bring such an action, the Author may do so, in his name at his own expense. Money damages recovered for an infringement shall be applied first toward the repayment of the expense of bringing and maintaining the action, and thereafter the balance shall belong to the Author, provided, however, that any money damages recovered on account of a loss of the Publisher's profits shall be divided equally between the Author and the Publisher.

### **15. Publicity**

From time to time, the Publisher may post and publish pertinent information regarding the Author or the Work. The information may include such elements as an author biographical sketch and description of the Work. The Publisher may also post and publish additional information that will help promote the Author or the Work, including but not limited to, book excerpts, quotes, reviews, cover images, etc.

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## **16. Bankruptcy and Insolvency**

If a petition in bankruptcy is filed by or against the Publisher, or if the Publisher is judged insolvent by any court, or if a Trustee or a Receiver of any property of the Publisher is appointed in any suit or proceeding by or against the Publisher, or if the Publisher makes an assignment for the benefit of creditors or takes the benefit of any bankruptcy or insolvency Act, or if the Publisher liquidates its business for any cause whatsoever, this Agreement will terminate automatically without notice, and such termination shall be effective as of date of the filing of such petition, adjudication, appointment, assignment or declaration or commencement of reorganization or liquidation proceedings, and all rights granted hereunder shall thereupon revert to the Author.

If the Publisher ceases publication during the term of this Agreement, the Publisher will furnish the Author or the Author's assignees or agents with the print files to the Work at no charge to the Author.

## **17. Inheritance**

This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assignees and agents of the Author, and upon and to the successors, assignees and agents of the Publisher.

## **18. Notices**

All notices to the Publisher shall be in writing to Casperian Books LLC, PO Box 161026, Sacramento, CA 95816-1026. All notices to the Author shall be in writing to \_\_\_\_\_.

## **19. Law and Venue**

The laws of the State of California will govern this Agreement. Recognizing the expense, distraction, and uncertainty resulting from litigation of disputes which may arise under this Agreement, the parties have agreed that except as specifically provided herein, they will submit any and all disputes arising in any way under this Agreement to the American Arbitration Association for final disposition in accordance with its rules, provided that the Arbitrator shall have no authority to award punitive damages.

Notwithstanding the foregoing, nothing in this Agreement shall be deemed to deprive a party of the right to equitable relief in a court of competent jurisdiction respecting rights to its intellectual property or use thereof under this Agreement. Any proceeding under this paragraph shall be brought in the federal or state courts in the State of California. A judgment may be entered in a court of competent jurisdiction based on any award

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rendered in arbitration or other proceeding conducted by the parties pursuant to this paragraph.

**20. Complete Agreement**

This written Agreement contains the sole and entire agreement between the parties and shall supersede any and all other prior agreements between the parties. This Agreement may not be modified or amended except in writing signed by the party against whom such modification or amendment is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement as of the date first written above.

Casperian Books LLC

Author

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

\_\_\_\_\_

Member

Author

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

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

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