

**Workshop on Intellectual Property Issues
in the Publishing Industry**

New Delhi, India, February 15 and 16, 2007

SAMPLE PUBLISHING AGREEMENT WITH COMMENTS*

TRADENET PUBLISHERS LLC – PUBLISHING AGREEMENT

AUTHOR: _____

DATE: _____

PRELIMINARY TITLE: _____

This is a Publishing Agreement ("Agreement") between Tradenet Publishers LLC, a _____ ("Tradenet") and the undersigned author or authors ("Author") as to the work having the above preliminary title (the "Work").

PREAMBLE

- A.** Tradenet publishes business and general reference books, and desires that Author write and Tradenet publish a timely and high quality book.
- B.** Author is a writer and desires to write a book for Tradenet's publication.
- C.** Author and Tradenet desire to enter into this Agreement to set forth their rights and responsibilities as to the Work.

* Prepared by Jon Tandler of Isaacson Rosenbaum P.C., Denver, Colorado. This contract form was presented at the Workshop on Intellectual Property Issues organized by the World Intellectual Property Organization in cooperation with the Ministry of Human Resource Development and the Federation of Indian Publishers. This form is based on U.S. law and practice. It has been prepared for teaching and presentation purposes only. It contains material applicable to some publishing and editorial models, and material not applicable to other models. This form is illustrative only, does not serve as legal advice or create an attorney client relationship, and should not be used or adapted without the services of suitable legal counsel or other qualified person. For purposes of this presentation, "Tradenet Publishers LLC" and "Tradenet" are solely made-up, fictional names and are not intended to refer to or bear any resemblance to the name of an actual business or enterprise.

AGREEMENT

1. **Definitions.** Unless otherwise defined in this Agreement, capitalized terms herein have the meanings in this Section 1.

"Agreement" means this Agreement, as amended.

"Author Created Materials" means all original Materials Author creates for the Work.

"Author's Account" means the bookkeeping account Tradenet maintains as to Author, the Work, Author's advance and royalties earned, and other items.

"Tradenet's Brand" means [[the Work's title]], Tradenet's trademarks, trade name, trade dress, logos, icons, and the style, design, imprint, and look and feel of Tradenet's series of works and publications, as the same may be reproduced or displayed (i) on or in the Work and other literary works of Tradenet, (ii) in Tradenet's exercise of the Rights, and (iii) in Tradenet's marketing and promotional materials. **ED. NOTE: THIS PROVISION IS APPLICABLE TO A PUBLISHER SELLING BOOKS IN A SERIES WITH SIMILAR BRANDING/IMPRINT AND AUTHOR WRITING FOR THE SERIES, ON A ROYALTY BASIS OR NOT. THIS PROVISION IS PROBABLY NOT NECESSARY FOR ONE – OFF BOOKS WITH TOTALLY DISTINCTIVE IMPRINT, EXCEPT FOR A PROVISION AS TO OWNERSHIP OF PUBLISHER'S TRADEMARK(S).]]**

"Confidential Information" means Tradenet's confidential and proprietary assets, including employee information, customer and supplier information, production and publishing information, market and industry information, web publishing plans, retail, pricing and cost information, advance, royalty and commission information, other proprietary information as to Tradenet, and the terms and provisions of this Agreement. The term "Confidential Information" does not include information that is (i) independently known or developed by Author, (ii) lawfully obtained by Author from a third party, or (iii) known or available to the public.

"Contributor(s)" means free-lance writer(s) or other contributor(s) with whom Tradenet enters into contracts to provide any Materials.

"Copyright Law" means the U.S. Copyright Act of 1976, as amended, and case law thereunder.

"Days" means calendar days.

"Derivative works" include all print works based on the Work, including anthologies, selections, digests, abridgments, localized editions, or other modifications or adaptations.

"Direct Costs" means Tradenet's actual out-of-pocket costs to take certain actions under this Agreement, including to obtain Permissions, pay Contributors, and indexing costs.

"Dramatic Rights" means all rights to exploit the Work throughout the world in all languages in motion pictures, television programs and series, live or broadcast dramatic, theatrical and/or musical productions, documentaries, video recordings, audiovisual recordings, and all prequels and sequels thereof. **ED. NOTE: THIS PROVISION IS LESS APPLICABLE TO TRADE/NON-FICTION BOOKS, IN CONTRAST TO BOOKS THAT ARE FICTION/DRAMATIC WITH POTENTIAL FOR DRAMATIC COMMERCIAL PUBLISHING.]]**

"Electronic Rights" means all rights to exploit the Work throughout the world in all languages in all electronic, digital, magnetic, optical and laser-based information, storage and retrieval systems and media, including e-books, i-books, and reading devices therefor, the Internet, Tradenet's Internet Sites, floppy disks, software, compact discs, silicon chip, CD ROM, DVD, and DVD ROM, electronic display through online, electronic, satellite-based and other such transmission systems, and any other device or medium for electronic or digital reproduction, publication, distribution, or transmission, whether now known or hereafter devised.

"Tradenet's Internet Sites" means Tradenet's own web site(s) or other sites through which Tradenet or its licensees publish the Work.

"Literary Rights" means all rights to publish the Work throughout the world in all languages in hardcover, soft cover, trade, trade paperback, limited editions, deluxe editions, condensations, serializations, foreign translations, chapter books, activity books, and audio books.

"Materials" has the meaning set forth in Section 2(c).

"Merchandising Rights" means all rights to exploit the Work throughout the world in all languages in merchandise of all kinds, including in calendar, prints, posters, puzzles, board games, dolls, and toys.

"Net Cash Receipts" means Tradenet's actual receipts from licenses of rights in and to the Work [[less Tradenet's Direct Costs in generating the licenses – **[[ED. NOTE: PUBLISHER CAN DETERMINE WHETHER OR NOT IT WANTS TO DEDUCT**

COSTS OF FINDING AND NEGOTIATING A LICENSE WITH A LICENSEE AGAINST AUTHOR'S ROYALTY ACCOUNT.]] Net Cash Receipts do not include sums Tradenet receives for production or fulfillment services it performs or arranges, including reimbursed manufacturing costs.

"Net Revenues" means amounts actually received from Tradenet's customers (i) from copies of the print version of the Work sold, and (ii) from Tradenet's direct exercise (rather than through licensing arrangements) of the Rights. For copies of the Work distributed in foreign countries, Net Revenues means amounts invoiced to Tradenet's customers in U.S. dollars for the number of copies sold and distributed after deducting Direct Costs. Net Revenues do not include sums received for shipping and handling.

"Permissions" means the necessary licenses, consents, and permissions from Third Party Owners to use Third Party Materials.

"Proprietary Assets" means the Confidential Information and Tradenet's Brand.

"Revised Edition" means a revised, print edition of the Work that contains at least approximately twenty percent (20%) of new Materials and a new ISBN.

"Rights" means, collectively, the Dramatic Rights, Electronic Rights, Literary Rights, and Merchandising Rights.

"Third Party Materials" means any Materials in the Work which are not Author Created Materials (e.g., the copyright and/or other intellectual property rights to which are owned by a Third Party Owner), or the publication of which Tradenet conditions upon obtaining a Permission.

"Third Party Owner" means those persons or entities who own or otherwise have the right to license the copyright and other intellectual property rights to any Third Party Materials proposed to be used in the Work, or to otherwise provide a Permission which Tradenet requires as a condition to publishing the Work.

"Work" means the literary work comprised of the Materials and Tradenet's Brand, as the same may be reproduced or displayed in any form or media whatsoever, whether now known or hereafter devised.

2. Description of The Work and Materials.

a. Title. The Work's preliminary title is set forth above. The Work's final title will be determined by Tradenet in consultation with Author.

b. **Subject Matter Description.** The subject matter of the Work is _____
_____.

c. **Materials.** The Materials means the following:

- (i) Bibliography
- (ii) Charts
- (iii) Drawings and Photographs
- (iv) Glossary
- (v) Graphics and Illustrations
- (vi) Table of Contents
- (vii) Text
- (viii) Other: _____

The Materials include all Author Created Materials and Third Party Materials.

d. **Text Specifications.** The Text submitted by Author will be approximately ___ words and _____ pages, ___ trim size, and be published in [[hardcover/softcover]].

e. **Photographic/Other Specifications.**

3. Delivery of Materials and Permissions. [[ED. NOTE: DETAILED PROCEDURAL PROVISIONS ARE MORE COMMON IN TRADE AND TECHNICAL PUBLISHING. DEPENDING ON THE TYPE OF WORK, MANY PUBLISHERS TAKE THE MANUSCRIPT AS A WHOLE AND THESE PROVISIONS WOULD NOT BE NEEDED – AN EXAMPLE WOULD BE TEXT FOR A CHILDREN’S ILLUSTRATED BOOK – IT MIGHT NOT BE APPROPRIATE TO HAVE THE MATERIAL DELIVERED IN INSTALLMENTS. ONE COULD SEE A SITUATION, HOWEVER, WHERE PUBLISHER CONTRACTS FOR ILLUSTRATIONS FOR CHILDREN’S BOOK AND REQUIRES INSTALLMENT DELIVERY SCHEDULE FROM ILLUSTRATOR. A PUBLISHING AGREEMENT SHOULD BE CUSTOMIZED TO A PUBLISHER’S EDITORIAL AND BUSINESS MODEL, NOT FROM A FORM. THIS ED.’S EXPERIENCE IS THAT CLIENT AGREEMENTS ARE DIFFERENT FROM EACH OTHER BASED ON PARTICULAR NEEDS.]]

a. Deliveries. Author will deliver all Materials via e-mail, unless any Materials cannot be so delivered in which event they will be delivered in print via overnight courier to Tradenet. Author will retain an electronic and print copy of all Materials. Tradenet will not be responsible for loss or damage to Materials. If Author does not, for any reason, timely deliver any installment of Materials, the parties will follow Section 3(f). Author will delivery the Materials as follows:

- i.** The Table of Contents no later than _____.
- ii.** The first one-third (1/3) of the Materials no later than _____.
- iii.** The second one-third (1/3) of the Materials no later than _____.
- iv.** The third one-third (1/3) of the Materials no later than _____.

b. Permissions and Indexing. Author will obtain and deliver all Permissions by not later than the required delivery date for the associated Materials. In the event Tradenet incurs Direct Costs in obtaining a Permission(s) Tradenet will be authorized to charge Author's Account therefor. Tradenet will index the Materials and charge its Direct Costs of indexing to Author's Account.

c. Acceptability. The content, accuracy and style of each installment of Materials, and of the Materials as a whole, must be acceptable to Tradenet. Materials will not be acceptable in event that Tradenet, in its [[sole judgment/commercial reasonableness]], determines that they (i) vary from the approved Table of Contents, (ii) do not adhere to the specifications in Section 2, (iii) do not appear, after customary editing, that they will conform to the quality of other Tradenet publications, or (iv) breach Author's representations. Tradenet will promptly notify Author of changes to Materials necessary to render them acceptable. Although Author is responsible for the Materials' accuracy and completeness, Tradenet has final authority as to the final form and content of the Work.

d. Unacceptable Materials. In the event (i) Author delivers any installment of Materials not acceptable under the above standards, or (ii) within thirty (30) days after Tradenet receives the final installment of Materials Tradenet advises Author that the Materials as a whole are not acceptable, the parties will follow Section 3(f).

e. Author Review Obligations. Not later than ____ () days after Tradenet's delivery of the edited Materials back to Author, Author will review and return them with any final changes and responses to Tradenet's questions (if any). In the event Author does

not timely return the edited Materials, Tradenet may itself make or hire a Contributor to make changes it deems appropriate and publish the Work. If Tradenet sends printed page proofs to Author, Author will review and revise them as necessary for accuracy and completeness, and return them to Tradenet within _____ (____) days. [[If alterations to printed page proofs amount to more than _____ of the costs of original composition, Tradenet will charge the excess to Author's Account.]]

f. **Author's Failure to Meet Delivery Obligations.** In the event Author does not timely meet Author's delivery obligations under this Section 3, and Author does not cure within _____ (____) days after Author's receipt of Tradenet 's notice to Author, Tradenet will have the right to (i) extend the delivery date(s), (ii) itself prepare or provide or contract with a Contributor(s) to provide any undelivered or unacceptable Materials and charge Tradenet 's Direct Costs to Author's Account, or (iii) terminate this Agreement.

4. Grant of Rights; Term. [[ED. NOTE: COPYRIGHT OWNERSHIP PROVISIONS SHOULD BE TAILORED TO PUBLISHER'S BUSINESS MODEL – IT MAY NOT BE NECESSARY OR APPROPRIATE TO BIFURCATE COPYRIGHT IN AUTHOR CREATED MATERIALS VS. COPYRIGHT IN THE WORK – THIS FORMAT IS MORE THE EXCEPTION THAN THE RULE; THIS WOULD BE MORE LIKELY AND APPROPRIATE IF THE AUTHOR IS WRITING A TRADE OR TECHNICAL TEXT PUBLISHED AND BRANDED UNDER AN IMPRINT, OR POSSIBLY AN ARTISTIC OR ILLUSTRATED WORK WHERE PUBLISHER DOES AND BRANDING.]]

a. **Copyright.** Subject to the rights Author grants to Tradenet in this Agreement, Author will own all right, title and interest in and to the Author Created Materials, including the copyright therein throughout the world. Tradenet will own all right, title and interest in and to the Work, including the copyright therein throughout the world. The copyright notice in the Work will specify that Author owns copyright to the Author Created Materials and Tradenet owns copyright to the Work, as follows:

2007 © Tradenet Publishers LLC

20[] © Text and _____, copyright [Author's Name]

ALTERNATE PROVISION:

Copyright. Author hereby grants, transfers and assigns to Tradenet all right, title and interest in and to the Author Created Materials including the copyright therein throughout the world. Tradenet will own all right, title and interest in and to the Work, including the copyright therein throughout the world. Tradenet may register the Work for copyright at

Tradenet 's expense in Tradenet 's name in the United States and elsewhere as Tradenet deems appropriate. Author agrees to execute such additional instruments, if any, that Tradenet considers necessary or advisable to perfect, evidence, or defend Tradenet's ownership as set forth herein.

b. Publishing Rights. Author hereby grants to Tradenet the sole and exclusive rights throughout the world to (i) exercise the Rights and in so doing to publish, print, promote, reproduce, display, perform, modify, revise, sell, distribute, transmit, license, and merchandise the Work, in whole, in part and in excerpts, in all languages, in collective and derivative works, in any and all formats, forms or media now known or hereafter devised, and (ii) transfer or license the Rights to third parties.

c. Publicity and Promotional Rights. Author hereby consents to Tradenet's use of Author's name, likeness and pertinent biographical data in the Work and in promotional materials therefor.

d. Term. Unless otherwise terminated, this Agreement will continue in full force and effect during the term of copyright in the Work or any revision or adaptation thereof under the Copyright Law. If the laws or conventions of a foreign country provide a longer term of copyright and rights are granted to exploit the Work in such foreign country, this Agreement will continue in effect with respect to such foreign country until the end of the term of copyright protection therein.

5. Advance Against Royalties. **[[ED. NOTE: THIS SECTION IS VARIABLE, BASED ON WHETHER PUBLISHER WILL PAY AN ADVANCE, AND IF SO IF IT WOULD PAID IN INSTALLMENTS OR OTHER.]]** Tradenet will pay to Author an advance of _____ **[[in installments]]** as set forth in this Section 5, based on Tradenet's receipt and acceptance of acceptable Materials in conjunction with each installment to be paid of the advance. In the event there is more than one "Author" herein, each payment will be split among the persons whose names are set forth in the signature block for Author.

Schedule of Installments: **[[THIS COULD BE TIED TO THE DELIVERY OF MATERIALS AS PROVIDED IN SECTION 3.]]**

6. Royalties on Tradenet's Exercise of Literary Rights. **[[ED. NOTE: ROYALTY AND STATEMENT SECTIONS 6, 7, AND 8 SHOULD BE PREPARED BASED ON PUBLISHER'S BUSINESS MODEL. NOTE THAT THE LANGUAGE BELOW DOES NOT ACCOUNT FOR HARDCOVER VS. SOFTCOVER, OR IF PUBLISHER ELECTS TO ITSELF COMMERCIALIZE DRAMATIC OR MERCHANDISING RIGHTS.]]**

Tradenet will pay to Author royalties on Net Revenues from Tradenet's sales of the Work as set forth in this Section 6. Tradenet will withhold _____ percent (___%) of royalties due Author as a reserve from which to deduct current and potential returns; Tradenet may increase or decrease this percentage based on the Work's sell-through experience. **[[ED. NOTE: THE RESERVE IS PROBABLY NOT NECESSARY IF NO WORKS ARE SOLD ON A RETURNS BASIS.]]**

a. United States Book Sales. [[ED. NOTE: THIS IS A STEPPED ROYALTY - COMMON TO SEE 10%, 12%, and 15% OF NET REVENUES, BASED ON UNIT SALES.]]

i. On United States book sales (excluding book clubs) at a discount of _____ percent (___%) or less off of the suggested retail list price:

(1) _____ % of Net Revenues from the first _____ copies;

(2) _____% of Net Revenues from the next _____ copies;

(3) _____% of Net Revenues from copies _____ and up.

ii. _____ % on United States book sales (excluding book clubs) at a discount of _____ % or more off of the suggested retail list price.

b. Internet, Other Direct and Mail Order Sales. _____ % of Net Revenues on sales through Tradenet's Internet site, direct solicitations and mail order.

c. English Language Editions on Sales Outside of the U.S. _____ % of Net Revenues on sales of English language editions outside of the United States, calculated after deducting Tradenet's Direct Costs.

d. Electronic Rights. _____ % of Net Revenues on sales of the Work through Tradenet's exercise of the Electronic Rights.

e. Derivative Works. Fifty percent (50%) of the royalty rate in Section 6(a)(i)(1) above on sales of derivative works of the Work, excluding derivatives covered by Section 7 of the Agreement.

f. Collective Works. On sales of collective works by Tradenet where the Work is used in a work having a number of different contributions assembled into a collective whole, Tradenet will pay a royalty based on the applicable royalty rate, which will in turn be a

percentage of Net Revenues on Tradenet's sales of such collective work equal to the proportion that the portion of the Work so used bears to the entire collective work.

g. Sales Without Royalties. Tradenet will not pay royalties on copies of the Work that Tradenet sells or disposes of at or below bound cost; i.e., the sum of printing, paper, binding, packing and transport. No royalties will be paid as to (i) promotional copies, (ii) copies provided gratis to Author, or (iii) samples, premiums and the like.

7. Royalties on Tradenet's License of Other Rights (Licenses of Literary Rights, Electronic Rights, and/or Merchandising Rights). Tradenet will pay to Author royalties on Net Cash Receipts from Tradenet's licenses of any of the Rights as follows:

a. Foreign Translations, Reprints (Trade Licenses), News Publication and Serial Rights. _____ % of Net Cash Receipts from licenses of the right to publish all or part of the Work in (i) foreign translations, (ii) English language reprints (trade licenses), and (iii) news publication and serial form in English or foreign languages, calculated after deducting Tradenet's Direct Costs. **[[ED. NOTE: OFTEN 50%]]**

b. Independent Book Clubs. _____ % of Net Cash Receipts from licenses of the right to publish and/or sell the Work through book clubs not owned by or affiliated with Tradenet. **[[ED. NOTE: OFTEN 15%]]**

c. Electronic Rights. _____ % of Tradenet's Net Cash Receipts from licenses of the Electronic Rights. If in the exercise of Electronic Rights the Work is published as a collective work, Tradenet will pay a proportional percentage of the applicable royalty rate as calculated in Section 8(f). **[[ED. NOTE: OFTEN 50%]]**

d. Merchandising Rights. _____ % of Net Cash Receipts from licenses of the Merchandising Rights.

e. Dramatic Rights. _____ % of Net Cash Receipts from licenses of the Dramatic Rights. **[[ED. NOTE: THIS IS OVERSIMPLIFIED AND IF THAT IS PART OF A PUBLISHER'S BUSINESS MODEL SHOULD BE ADDRESSED IN MUCH GREATER DETAIL AND PROBABLY BY A SEPARATE AGREEMENT.]]**

f. Handicapped. Tradenet may license, without charge, transcriptions or publications of the Work in Braille and in other forms designed for the physically handicapped. Tradenet will not pay royalties on such copies.

8. Statements, Payments and Examination.

a. Statements. Within ____ (__) months after the date that the Work is first sold at retail not later than _____ and _____ of each year, Tradenet will commence to send Author semi-annual statements showing Author's royalties based on Net Revenues and Net Cash Receipts. Each statement will cover the prior six (6) month period exclusive of the month immediately preceding the statement. Tradenet will discontinue sending statements when there are no royalties due Author under Section 6 or 7.

b. Payments. Tradenet will include payments of royalties with the statements provided above. Tradenet will continue to make payments until Tradenet completes the payment of all royalties and unpaid reserve due Author as reflected in Author's Account.

c. Author's Examination. Not more than once per year, upon written request Author may examine Tradenet 's records directly relating to any statement during the one (1) year period immediately after the date of such statement. The examination will be at Author's expense, unless accounting errors to Author's disadvantage amount to ~~[[5/7.5/10%]]~~ or more of total sums due for the statement examined, in which event Tradenet will promptly pay to Author any sums due plus Author's reasonable examination costs not to exceed the amount of the error.

9. Price and Publication; Cancellation; Author's Copies.

a. Price and Publication. Tradenet has the sole and exclusive right to determine the price of the Work. Tradenet will publish the Work not later than ____ (__) months after the date it accepts the final Materials. If Tradenet is required or otherwise determines to delay publication because of any reason beyond its control, the ____ (__) month period will be extended by the period of delay. Subject to such delay, if Tradenet fails to timely publish the Work Tradenet will provide written notice to Author and, unless otherwise agreed, will (i) assign all of Tradenet's rights to the Author Created Materials to Author, and (ii) terminate this Agreement. In such event, Author will be entitled to retain the Advance.

b. Cancellation - Circumstance Beyond Tradenet's Control. Tradenet will not be obligated to publish the Work if, in Tradenet's sole judgment, any business or other circumstance beyond its control adversely affects the Work's marketability or potential sales. In such event, Tradenet will (i) provide written notice to Author, (ii) assign all of its rights to the Author Created Materials to Author, and (iii) terminate this Agreement. In such event, Author shall be entitled to retain any Advance paid to date.

c. Author's Copies. Tradenet will(i) give Author _____ copies of the Work, and (ii) sell to Author a reasonable number of additional copies at a _____% discount

off of the Work's suggested retail list price, for Author's personal and professional use but not for resale.

10. Revised Editions and Reprints. [[ED. NOTE: THIS SECTION 10 IS PRIMARILY FOR TRADE BOOKS, THAT WOULD/COULD BE UPDATED FROM TIME TO TIME.]]

a. Tradenet's Determination. If Tradenet determines to publish a Revised Edition it will give Author written notice of Tradenet's determination and schedule for publication, and offer Author the first right to prepare the Materials for the Revised Edition. Royalties on each Revised Edition will be calculated and accrue at the same rates applicable to Tradenet's initial publication of the Work and will not be cumulated from edition to edition.

b. Process. Upon receipt of Tradenet's notice to Author of its determination to publish a Revised Edition, Author will have _____ (__) days to submit a written plan and schedule for Author's preparation of the Materials for the Revised Edition. Tradenet and Author will use good faith efforts to negotiate and agree upon the plan, schedule, advance (if any) and other appropriate matters, all of which (conditioned upon mutual agreement) will be set forth in an amendment to this Agreement. Except as set forth in such amendment, the terms and provisions of this Agreement will apply to such Revised Edition.

c. Author's Determination Not to Revise. In the event that, for any reason Author is unable or unwilling to revise the Work, in its sole discretion Tradenet may hire a Contributor and charge its Direct Costs of so doing against Author's Account. **[[ED. NOTE: CONSIDER HOW THAT WILL AFFECT PUBLISHER'S OBLIGATION TO OFFER THE RIGHT TO PREPARE SUBSEQUENT REVISED EDITIONS.]]**

d. Reprints. Sections 10(a) and 10(b) are not intended to cover any reprint or minor revision of the Work with the same ISBN that TRADENET publishes in order to meet market demand, correct any Materials contained within a current edition of the Work, or for any other purpose.

11. Discontinuing Publication.

a. Tradenet's Determination. At any time one (1) or more years after the Work's first publication, Tradenet may discontinue publishing the Work. Tradenet will give Author written notice in such event. Tradenet will dispose of all inventory, including returns, of the Work **[[OFTEN TIMES THE PUBLISHER GIVES THE AUTHOR THE RIGHT TO BUY INVENTORY AND 'PLATES' AT COST]]** and revert to Author all of Tradenet's rights to the Work. It will also promptly pay out any remaining sums due Author under Author's Account.

b. Author's Reprint Request. If (i) Tradenet has not given Author the notice described in Section 11(a), and (ii) and the Work is not available for purchase, Author may in writing request that Tradenet reprint the Work and make it available for purchase. Tradenet may then elect to (i) notify Author of its decision to no longer publish the Work, or (ii) reprint the Work or otherwise make it available for purchase within six (6) months after Author's request.

c. Existing Licensing Arrangements. The termination of this Agreement under this Section 11 will be subject to any extant licensing or other arrangements for the Work. Tradenet will continue to pay royalties on those arrangements for the duration thereof.

12. Competing Works; Restrictions as to Proprietary Assets.

a. Competing Work. Without Tradenet's prior written consent, during the Term of this Agreement Author will not write or publish or assist in writing or publishing any book-length work or other project, regardless of the media in which the same may be published or displayed, that [[in Tradenet's judgment]] (i) involves substantially similar treatment of substantially similar subject matter, (ii) involves a similar product for a similar market, (iii) will cause market confusion, or (iv) will be competitive with the Work. This provision will not apply to Author's other activities, including Author's articles, speeches and other professional writing projects not competitive with the Work. Author will confer with Tradenet when in doubt as to whether or not this provision applies to Author's activities.

b. Restrictions on Author as to Proprietary Assets. Author acknowledges and agrees that (i) Author will keep strictly confidential and not disclose any Confidential Information to any person or entity, provided that Author may disclose the terms of this Agreement to Author's professional advisor (including literary agent or legal counsel) upon condition that such advisor keep such terms strictly confidential, (ii) Tradenet is the sole and exclusive owner, or licensee, of the Proprietary Assets, (iii) Author will have no claim or rights to the Proprietary Assets, and (iv) Author will make no use of the Proprietary Assets at any time other than as is strictly necessary to fulfill Author's obligations under this Agreement.

13. Representations and Warranties.

a. Author. Author represents and warrants that (i) Author has full authority to execute, deliver and perform this Agreement, (ii) neither the execution of this Agreement nor the publication or sale of the Work will breach any written or oral agreement to which Author is subject, (iii) Author is the sole creator and author of the Author Created Materials, (iv) the Author Created Materials are original, have not been previously published and are not in the public domain, (v) the Author Created Materials do not violate or infringe upon any copyright, trademark or any other right of any person or entity, (vi) the Author Created Materials do not

contain defamatory or unlawful statements, or statements that violate any person's or entity's privacy, publicity or other right, (vii) all factual statements and data in the Author Created Materials are true and accurate in all respects, and (viii) the Author Created Materials do not contain information, instructions or content that recommends unlawful activities or could reasonably cause injury to person or property.

b. Tradenet. Tradenet represents and warrants that (i) Tradenet has full authority to execute, deliver and perform this Agreement and (ii) neither the execution of this Agreement nor the publication or sale of the Work will breach any written or oral agreement to which Tradenet is subject.

14. Breach and Termination.

a. Termination Upon Breach. If either party breaches any of its representations, warranties or covenants in this Agreement and such breach remains uncured after ____ () days' written notice from the other party (____ () days for Author's obligations under Section 3), the other party may at its option by written notice to the breaching party terminate this Agreement.

b. Rights Upon Termination. Prior to the Work's publication, if Tradenet terminates this Agreement due to Author's breach, Author will immediately return to Tradenet all advanced amounts Tradenet has provided to Author. Upon Author's return of such amounts, all rights to the Author Created Materials will revert to Author. Such termination and reversion will not prevent Tradenet from publishing another work on the same or similar subject matter and with the same title. If the breach or termination occurs after the Work's publication, subject to Section 14(c) the parties will settle their accounts with each other. The foregoing is not exclusive of any other legal or equitable remedy to which a party may be entitled by reason of the other's breach.

c. Continuing Rights. Upon any termination of this Agreement after the Work's publication, Tradenet will have the right to sell any of its then remaining inventory of the Work, and fulfill its obligations under any then extant licensing and other arrangements with third parties subject to its payment to Author of royalties from Net Cash Receipts thereon.

d. Survival. Sections _____ will survive termination of this Agreement. Upon any termination of this Agreement, neither party will be under any liability or obligation to the other hereunder except as herein expressly provided.

15. Indemnification and Procedure.

a. Indemnification. Author and Tradenet will indemnify and hold each other harmless from and against all claims, liabilities, damages, awards, settlements, expenses, and reasonable attorneys' fees and costs actually incurred (collectively, "Damages") arising from a breach of their respective representations, warranties, or covenants hereunder.

b. Procedure. To obtain indemnification, the party to be indemnified must (i) give the party from whom indemnification is sought prompt written notice of the claim for indemnification, (ii) cooperate with the indemnifying party at the indemnifying party's expense in the defense and settlement of any such claim, and (iii) obtain the prior written consent of the indemnifying party if the indemnified party wishes to settle such claim, which consent will not be unreasonably withheld.

c. Tradenet's Election. Notwithstanding Section 15(b), upon Tradenet's receipt of a claim arising from a breach or allegation which, if true, would constitute a breach of any of Author's representations, warranties or covenants hereunder, Tradenet may but will not be obligated to undertake the defense thereof and/or settle such claim in its discretion without Author's consent. Tradenet may also withhold from sums otherwise due Author hereunder an amount commensurate with the size of such claim, and if Tradenet undertakes its defense or settlement Tradenet 's anticipated costs until the claim is finally resolved. Author will cooperate fully with Tradenet and at Author's option and expense may be represented by independent counsel selected by Author.

d. Copyright Infringement. Tradenet and Author will notify one another whenever either Tradenet or Author learns that the copyright to the Work has been or is about to be infringed. In such event, at its own cost Tradenet may take such legal action in Tradenet's name, Author's name, or both, as it deems necessary to prevent or terminate such infringement and seek damages. Tradenet will not be liable to Author for Tradenet not taking action.

16. General Provisions.

a. Notices. Notices given hereunder will be given to the following addresses by (i) personal delivery, (ii) overnight courier, (iii) fax followed by first class mail, or (iv) certified mail, return receipt requested, to the addresses set forth in this Section 16. Notices will be effective upon receipt.

Tradenet

Author

b. Independent Contractor. Author is an independent contractor and is not, and will not be deemed to be, an agent or employee of Tradenet. Author is solely liable for payments of Author's FICA, state and federal income taxes, and own insurances.

c. Assignment; Personal Services. Tradenet may assign this Agreement and its rights, duties, and obligations hereunder. This Agreement will bind Author and Tradenet and their respective heirs, successors and assigns. This Agreement is for Author's personal services and Author may not assign or delegate Author's rights, duties or obligations hereunder.

d. Entire Agreement; Amendment. This Agreement represents the entire agreement and understanding between the parties superseding all others, either oral or written, and will be read and construed as one integrated agreement. This Agreement may not be amended and no provision or breach hereof may be waived, except by a written instrument signed by the parties.

e. Partial Invalidity and Headings. If any one or more provisions contained in this Agreement are held by a court or other tribunal to be invalid or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. Section headings are for convenience and ready reference only and will not be used in interpreting any provision hereof. The word "include" means and includes "including without limitation" and words of similar import.

f. Governing Law. Any and all claims or disputes arising out of or relating to this Agreement, the Work, or otherwise between Tradenet and Author will be governed by and construed in accordance with _____ law without regard to conflicts or choice of law rules or principles.

Tradenet and Author have executed this Agreement on the dates set forth below.

TRADENET

TRADENET PUBLISHERS LLC, a _____

Date: _____, _____

By: _____

AUTHOR

[Insert corporate name here if corporation]

Date: _____, _____

[Typed Name, and Title if corporate author]