The Fundamentals of Advising Your Client in the Literary World

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THE FUNDAMENTALS OF
ADVISING YOUR CLIENT IN THE LITERARY WORLD

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AMERICAN BAR ASSOCIATION FORUM/UNIVERSITY OF MIAMI LAW SCHOOL LEGAL SYMPOSIUM ON MUSIC, FILM & SPORTS
April 7, 2016

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DISCUSSION OUTLINE

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KEY TERMS IN BOOK PUBLISHING AGREEMENTS

1. **Title** (just a working title at this point)

2. **Rights**
   - A. Hardcover, trade paperback, mass market
   - B. Territory (worldwide or other) / Language
   - C. Subsidiary rights which to give to Publisher/which Author to keep
   - D. Try not to give away movie/television rights

3. **Copyright** (generally in Author’s name but Publisher registers it)

4. **Delivery of Manuscript**
   - A. Date
   - B. Form (# of words, # of copies, on disk or hard copy)
   - C. Acceptability clause (“in form and style acceptable to Publisher”) (decision should be made promptly and Author should be given an opportunity to make corrections before work is found unacceptable.
   - D. Photos, indexes, permissions, etc. (generally Author must provide at Author’s own expense)
   - E. Put time constraints on acceptance – don’t make it open ended.
   - F. If you get an oral extension for delivery – get in writing
G. If book is not acceptable, you want Publisher to specify in writing why it is not acceptable
H. Never accept a clause which allows cancellation because publishing climate is changed or competitive

5. Advance
A. When paid
B. Repayment v. First Proceeds
C. Joint Accounting/cross collateralization issues
D. 

6. Publication of Book
A. Date (usually within 18 months of acceptance)
B. Specification of initial edition
C. Approval rights with respect to style, production, price, marketing, title, jacket, cover?
D. Alterations/Editorial control

7. Royalties
A. Rates (regular or special; escalating)
B. Splits for subsidiary rights (50/50 or better)
C. Pass through money (for subsidiary rights; this is a way to get these proceeds as soon as rights are sold without having to wait for semi-annual royalty statements; only happens after advance has been earned back)
D. Reduced royalties should not apply to books in normal trade channels. Thus, study deep discount clauses.
E. Electronic Books and digital media

8. Warranties/Indemnities
A. All claims or only those finally sustained by a court/settlement approval
B. Liability insurance

9. Revision Clause
A. When is a revision a new book
B. Author’s ability to pick substitute
C. First Author’s credit and money
D. Revision under same or new terms—note cumulative sales

10. Publicity and Promotion Clause
A. Author's obligation to render promotional services.
B. Publisher's promotional commitment.

11. Statements and Payments
A. Frequency (typically twice a year)
B. Details:
   1. Number of copies printed
2. Number of copies shipped
3. Number of copies sold
4. Number of copies returned
5. Reserve on returns – limit
6. Details of sub right licenses, including copies of contracts

12. **Examination of Account** (Author’s right to examine Publisher’s financial records as they relate to the sale of this book)
   A. When (usually no more than once per year, during regular business hours after notice)
   B. How (with CPA or other representative; how far back can audit go)
   C. Who pays?

13. **Conflicting Publications** (limits Author’s freedom to write on same or similar subject) – want to delete or limit as much as possible to books directly competing with this one.

14. **Option Clause** (gives this Publisher an option on Author’s next book; often not exercisable until this book is published) – want to delete or limit

   **Limits**
   1. Detailed proposal not manuscript
   2. Limit time period for decision
   3. If cannot agree on terms, no further limits on Author’s ability to sell to another Publisher

15. **Bankruptcy Clause** (termination of contract and reversion of rights to Author in the event Publisher files for bankruptcy or otherwise liquidates the business)
    Must also have default clause (specifying that Publisher is in default for failure to perform, e.g., by failing to pay royalties on time) [under current bankruptcy laws, a contract will not automatically terminate upon the filing of bankruptcy unless a party is in default at the time]

16. **Out of Print/Remainder Clause** (allowing for termination of contract and reversion of rights if book goes out of print; also guaranteeing that Author can buy remaining copies and printing plates if out of print or book is remaindered)
   A. Define terms (when is book “out of print”?)
   B. Time frames (should be specified and limited, giving Publisher option to bring back into print or have contract terminate)
   C. Right to Buy Plates and Inventory (at cost?)

17. **Pseudonym of Author** (if applicable)

18. **Author’s Free Copies**
   A. How many
   B. % for purchase of more
   C. Resale OK or for personal use only
19. **Arbitration/Mediation Clause** (allowing for less formal means of resolving disputes that may arise between Author and Publisher other than litigation)

20. **Agent Clause** (allowing for payments to be made by Publisher through agent to Author)
   A. 15% usually standard domestic commission
   B. Association of Agents and Author’s Representatives in Manhattan

21. **Publicity** (right to use Author's name and likeness in promoting the book)

22. **Assignments** (i.e., the legal right to transfer the interests of either party. Typically, unless changed, a publishing contract can be assigned by the Publisher [transferred to any other Publisher] without approval of the Author)

23. **Governing Law** (the contract will typically specify that its terms are to be interpreted by the law of a specific state, often New York. Sometimes it will also specify that any actions to enforce the agreement can only be brought in the courts of that state.)

24. **Contract Modifications** (Typically, the contract will state that it can be modified only by written agreement of both parties; so any changes that need to be made must be in writing.)

###
PRODUCTION AND PUBLISHING AGREEMENT

Dated as of: __________________________

[Name]
[Address]
[City, State Zip]

Re: [Title]

Dear:

This will constitute the understanding and agreement between [NAME(S)] (jointly referred to as “Creator”) and Archaia, A Division of BOOM! Studios with offices located at 5670 Wilshire Blvd, Suite 450, Los Angeles, CA 90036, (“Publisher”), with respect to development, production and exploitation of one or more comic book series, graphic novels or other literary works (the first such series or volume, the “Published Work”) based upon the above referenced literary work written and/or drawn and/or to be written and/or drawn by Creator tentatively entitled [TITLE]. As used herein, “Property” shall mean the above-referenced literary work, together with the plots, themes, title(s), ideas, characters, characterizations, artwork, translations, treatments, stories, story lines, designs, logos, trademarks and other intellectual property contained therein or pertaining thereto, as well as all other adaptations or versions thereof now existing or hereafter created, whether created by Creator, or as provided for herein, by Publisher or third parties. [As used herein, “Creator” shall refer to both creators, __________________ and __________________, and any action taken by either creator hereunder shall constitute action taken on behalf of both creators collectively]. As more fully described in paragraph 11 below, copyright in the above referenced literary work and the Property shall be held in the name of Creator.

1. GRANT OF RIGHTS. In consideration of all promises made herein and for such good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Creator does hereby grant and assign to Publisher, its successors, licensees and assigns, solely and exclusively, in any and all languages and media, whether now known or hereafter devised, throughout the universe, in perpetuity (but in any event for not less than the period of copyright and any and all renewals, extensions, restorations and resuscitations thereof), all rights in and to the Property, except as expressly reserved to Creator below (the “Reserved Rights”), including without limitation the following:

   (A) Any and all rights in and to the Property except as provided herein (whether now known or hereafter devised) including, but not limited to, all publication, motion picture, television, internet, digital, merchandising, soundtrack, computer software, multi-media, interactive and video game rights, in any and all formats and media, whether now known or hereafter devised (including without limitation, sequel, prequel, and remake rights thereto), audio and/or visual recording and reproduction rights, including commercial tie-in rights using Elements and/or materials of, from or relating to the Property in connection with products and/or services based upon or relating to the Property, live stage rights, and other broadcasting and transmitting rights;

   (B) The right to prepare and use and/or license the use of all “Versions of the Property” as defined below, and any Elements thereof, which Elements may be used alone, together or in any combination, including in combination with Elements from other properties, in any manner as Publisher, in its sole discretion, shall elect subject to the terms hereof and further subject to Creator’s reasonable approval or meaningful consultation with Creator as provided for herein. As used herein the term “Versions of the Property” shall be
defined as any and all tangible expressions of any kind, which are produced pursuant to the rights herein granted to Publisher;

(C) The right to advertise, publicize and promote all Versions of the Property, and the right to use the name, likeness and biography of Creator, and the title of the Property in connection with all Versions of the Property and/or in connection with Publisher; and

(D) The rights to edit, alter, revise, fictionalize and make any and all changes in any Versions of the Property, including additions and deletions thereto, subject to Creator's consultation rights, as provided for herein and to combine the same with any other literary or musical work. In this regard, Creator hereby waives the exercise of any provision of law known as "droit moral" or any similar law which may now or hereafter be recognized in any country or place, (including without limitation the so-called right of paternity [Droit de paternité], right of integrity [droit au respect de l’oeuvre], right of withdrawal [droit de retrait or droit de repentir]) and/or right of publication [droit divulgation]) and agrees not to institute, support, maintain or permit any action or proceeding on the ground that any Version of the Property produced or exploited by Publisher or Publisher's successors, licensees or assigns in any way constitutes an infringement of any of Creator's droit moral or is any way a defamation or mutilation of the Property or any part thereof or contains unauthorized variations, alterations, modifications, changes or translations thereof.

2. RESERVATION OF RIGHTS. Creator hereby reserves the following non-exclusive rights:

(A) The right to create and sell original artwork based upon the Property; provided, however, that any such artwork shall have a copyright notice in the name of Creator affixed to it irremovably and in such manner and location as to give reasonable notice to viewers. The foregoing right shall be limited to original pieces of artwork only and in no event shall it include reproduction rights in any such piece of artwork; and

(B) The right to grant interviews to any scholarly or news oriented publication in connection with the “making of” the Property, and, subject to Publisher's prior approval (which shall not be unreasonably withheld), the right to supply such news organization(s) with materials from the Property provided that such materials have been created by Creator.

3. APPROVALS AND CONTROLS.

(A) Notwithstanding the foregoing, provided Creator is not in material default of any term or condition contained herein, Creator shall have the right of prior approval with respect to the following, which approval shall not be exercised in a manner so as to unreasonably frustrate Publisher's development, production and exploitation of the Property or the Published Work:

(i) The final pre-press version of the Published Work or any subsequent Creator-created (i.e., author-written) sequel or prequel based upon the Property (if any);

(ii) Any material edits, alterations, revisions or changes to the first Published Work provided by Creator hereunder, including additions and deletions thereto, except as necessary to comply with any law or governmental regulation. Publisher shall offer Creator the first opportunity to make any material revisions to Creator's artwork and/or writing for the first Published Work; provided, however, that deadlines so permit and the services needed to make any such revisions are services which are provided for herein.

(iii) The form of any copyright notice and/or trademark designation in Creator's name affixed to any material produced hereunder.
In the event that Creator fails to notify Publisher in writing of its disapproval of the foregoing within five (5) business days from Publisher's request with respect thereto, such approval shall be deemed to have been granted.

(B) Provided Creator is not in material default of any term or condition contained herein, Publisher shall meaningfully consult with Creator with respect to the issues set forth below as they may relate to the exploitation of the Property, subject to Creator being reasonably available at such times and places reasonably designated by Publisher, provided that Publisher’s decision with respect thereto shall be controlling:

(i) Creative style and direction of any work based upon the Property, including any advisory or cautionary label to be applied thereto;

(ii) Selection of key creative team members, including pencilers, inkers or process colorists;

(iii) Selection of Joint Creator(s) (if applicable);

(iv) Title, format and projected publication date of the first issue of the Published Work;

(v) Delivery dates in connection with the Delivery Schedule;

(vi) Each product or service based upon the Property, including without limitation, apparel, toys, trading cards, posters, video games or other items of merchandise, which is to be manufactured and distributed by Publisher or by a licensee of Publisher;

(vii) The attachment of any third party actor, writer, director or producer to the motion picture, television and/or live stage rights in the Property;

(viii) Any Spin-Off based upon the Property;

(ix) The license, sale, transfer, assignment or other disposition of the motion picture, televisions, and/or live stage rights in the Property and the terms of any agreement thereof.

No casual or inadvertent failure of Publisher to afford any of the above mentioned approvals or consultations to Creator shall be deemed to be a breach of this Agreement.

4. DELIVERY OF MATERIAL. Creator shall deliver all of the materials at Creator’s sole expense as provided for in the attached “Delivery Schedule”, incorporated herein by reference, in accordance with the time frame(s) provided for therein. Creator shall also deliver endpapers, case wrap, dust jacket, back matter, key art, development sketches, pinups, and other additional production artwork as needed for the work and for marketing and promotional purposes in support thereof. Publisher is not, and shall not, be responsible for any financial obligation(s) entered into by Creator, including without limitation any cost(s) associated with any delivery item set forth in the Delivery Schedule. Creator acknowledges that time is of the essence with regard to the materials to be delivered by Creator.

5. COMPENSATION. In consideration of the mutual promises contained in this Agreement, provided Creator is not in material breach or default of this Agreement, Creator shall be entitled to receive the following:

(A) CONTINGENT COMPENSATION.
(i) For each print publication, which is based entirely upon the Property, published by Publisher for sale to the general public through the newsstand market (as such term is commonly understood in the publishing industry) or one or more of Publisher's customary channels, (excluding sales at conventions), Creator shall be entitled to receive fifty percent (50%) of one hundred percent (100%) of Publisher's Net Receipts derived therefrom.

(ii) For each publication, which is based entirely upon the Property, published by Publisher for sale to the general public (excluding sales at conventions) through other channels, including without limitation, digital downloads, worldwide, or for Licensed Reprint Editions or Licensed Publications, Creator shall be entitled to receive fifty percent (50%) of one hundred percent (100%) of Publisher’s Net Receipts derived therefrom.

(iii) For each product or service based upon the Property, other than those provided above, including without limitation, apparel, toys, trading cards, posters, video games or other items of merchandise, which is manufactured and distributed by Publisher or by a licensee of Publisher through normal wholesale and retail distribution channels for sale to the general public, Creator shall be entitled to receive an amount equal to fifty percent (50%) of one hundred percent (100%) of Publisher’s Net Receipts derived therefrom.

(iv) For each of the following (each a “Derivative Production), Creator shall be entitled to receive an amount equal to fifty percent (50%) of one hundred percent (100%) of Publisher’s Net Receipts derived therefrom:

(a) Any motion picture based upon the Property, which is produced by Publisher or Publisher’s licensee and is released either for theatrical exhibition or broadcast on standard or non-standard television;

(b) Any digital, audio and/or visual recording based upon the Property which is produced by Publisher or Publisher’s licensee and released for sale to the general public; and

(c) Any live stage production, or any digital, audio and/or visual recording of same, based upon the Property, which is produced by Publisher or Publisher’s licensee and is open to the general public for admission.

(B) Subject to the Creator's approval as set forth in Section 3, in the event that Publisher uses or licenses the use of any Versions of the Property that Publisher determines: (i) consist primarily of, or only of “Spin-Off” Elements; and (ii) are published under a substantially different title than the Published Work (if published under any title), then Publisher shall pay Creator royalties based upon Publisher’s pro rata allocation of the amounts set forth above among all Elements used as created by Creator and all Spin-Off Elements. The foregoing allocation (and all other allocations) made by Publisher pursuant to this agreement shall be made in good faith in Publisher's sole discretion. As used herein, “Elements” shall include, without limitation, characters, stories, themes, titles, names, logos, devices, designs, locales, scripts, artwork, and any portion of the foregoing. “Spin-Off” shall mean Elements either: (i) not created by Creator; or (ii) originally created by Creator and later substantially changed or developed by another party.

(C) Commingling of Properties. In the event that Publisher uses, sells or licenses the use of the Property, or any Element thereof, in combination and/or in conjunction with any
other property, then Publisher shall pay Creator royalties based upon Publisher’s pro rata allocation of the amounts set forth above among all such properties.

(D) As used in this Agreement, “Publisher’s Net Receipts” shall mean all gross monies in US currency, actually received and retained by Publisher from the exploitation of the Property and the ancillary and allied rights therein after first deducting all of Publisher’s direct, actual and verifiable costs in connection therewith, including without limitation, the following: (i) any commissions or sales agency fees paid to unaffiliated third parties; (ii) distribution costs and expenses in connection therewith, including without limitation, printing, shipping, advertising and publicity costs; (iii) sales, use and other taxes; (iv) Publisher’s distribution and supervisory fees of up to twenty percent (20%) with respect to merchandising; (v) all costs of production, including without limitation, any sums paid to third parties, including Creator, in connection with development and/or production and/or delivery of the Property and any material based thereon; and (vi) customary discounts, rebates and returns. Publisher shall be entitled to establish a reasonable reserve for returns, damaged or lost goods, not to exceed twenty-five percent (25%), which reserves shall not be included in Publisher’s Net Receipts until such time as they are liquidated, which shall be no less than semi-annually. For the avoidance of doubt, any sums which Publisher may receive from third parties for services it may render in connection with the exploitation of the Property other than its publication of the Property, including without limitation, any producing or consulting fees in connection with any motion picture, television, live stage or other production based upon the Property or supervisory fees in connection with any merchandising based upon the Property, shall not be included in Producer’s Net Proceeds and Creator shall have no interest therein. In calculating Creator’s share of Publisher’s Net Receipts, Publisher shall be entitled to cross collateralize and deduct its costs, as provided for above, in connection with any manner of its exploitation of the Property against and from any sums Publisher actually receives and retains from any other manner of its exploitation of the Property, provided that there shall be no double deductions of any kind. Publisher makes no representation that there will be any Publisher’s Net Receipts and shall have no obligation to develop, finance, produce, distribute, publish, advertise or otherwise exploit the Property except as provided for herein.

(E) Publisher will account and pay to Creator any sums owed hereunder on a calendar quarterly basis in each quarter in which there are any Publisher’s Net Receipts within ninety (90) days of the close of such quarter, except that Publisher shall not be required to provide a statement if no payment is due Creator hereunder. Creator will be entitled to customary audit rights at Creator’s own expense upon reasonable notice with respect to Publisher’s book and records related to Publisher’s Net Proceeds no more than once per year. Each statement issued under this Agreement will be deemed conclusive and binding unless Creator objects thereto to Publisher in writing within one (1) year after the statement is issued and states in detail in such writing the basis for the objection. Creator will be barred from bringing any legal proceeding later than the expiration of the period of the applicable statute of limitations established by law or one (1) year after initially making such objection in writing to Publisher, whichever occurs first.

6. TERMINATION AFFECTING COMPENSATION. In the event of Creator’s uncured material default in connection with paragraph 1 above, without waiving any rights and/or remedies, which may otherwise be available to Publisher, Publisher may reduce the compensation payable to Creator pursuant to paragraph 5 above on a dollar for dollar basis by the amount(s) (if any) that Publisher incurs to complete the Published Work(s) in accordance with the Delivery Schedule; provided, however, that Creator’s contingent compensation shall not be reduced below twenty-five percent (25%) of one hundred percent (100%) of Producer’s Net Receipts. In the event that this agreement is terminated other than by reason of Creator’s default, then Creator shall be entitled to receive one hundred percent (100%) of the compensation payable pursuant to paragraph 5 above for so long as: (i) the Property is published by Publisher; (ii) it is published under the same or a substantially similar title as the Published Work; and (ii)
the Property as then currently published remains substantially as originally created and written or drawn by Creator. In the event that Publisher determines that any one of the above criteria is not met, then the compensation payable hereunder may be reduced in accordance with paragraph 5 above.

7. **REVERSION RIGHTS.** All rights granted to Publisher hereunder shall revert to Creator, upon written request to be received not less than ninety (90) days prior, on that date, which is ten (10) years from the date of this Agreement. Prior to such date, however, if no request is made, all rights granted to Publisher hereunder shall remain in full force and effect and no right to reversion, except as provided for hereunder, shall be available for another period of ten (10) years. Creator shall also have the following reversion rights, which shall be in addition to those granted to Creator under United States copyright law.

(A) **Pre-Publication Reversion:** Upon Publisher’s failure to publish the first issue and/or volume of the Published Work within two (2) years following Creator’s completion of such Work, Creator may request in writing a reversion of the rights granted to Publisher hereunder. If within ninety (90) days following Publisher’s receipt of such written notice, Publisher has not published the first issue and/or volume of the Published Work, Creator shall repay to Publisher all amounts paid to Creator on account of the Property (if any). Such repayment shall be made in accordance with a payment schedule to be determined by the Parties in good faith. Upon Publisher’s receipt of all such amounts, all rights in and to the Property shall revert to Creator.

(B) **Post-Publication Reversion:**

(i) Creator may request, in writing, a reversion of all rights granted to Publisher hereunder, within six (6) months of the close of any calendar year (i.e. January - December) which commences at least forty-eight (48) months following publication of the first issue of the Published Work, unless during such calendar year, or at any time thereafter, before Publisher’s receipt of Creators’ reversion request hereunder, Publisher has:

(a) Publisher has failed, during such calendar year or at any time thereafter before Publisher’s receipt of Creator’s reversion request hereunder, to either market the Published Work or has failed to solicit orders from the trade for the Published Work or Spin-off Work based upon the Property (if provided for herein); or

(b) Publisher has allowed the Published Work to be out of print for more than nine (9) months.

(ii) Within six (6) months following Publisher’s receipt of a valid request for a post-publication reversion of all rights, Publisher shall either: (a) commence production of either a new Published Work or Spin-off Work based upon the Property (if provided for herein), or of an additional printing or reprint edition of the Published Work based upon the Property; or (b) pay Creator an advance of one thousand dollars ($1,000.00), which shall be recoupable from any amounts that may become payable to Creator on account of the Property within the twelve (12) month period following Creator’s receipt of such advance; or (c) grant Creator’s request. Notwithstanding the foregoing, Publisher may not on more than one occasion respond to a post-publication request for reversion by advancing payment in accordance with this paragraph 11(B)(ii).

(C) In the event that Creators request and Publisher grants its consent to a reversion of rights, then the following shall apply:
(i) All rights in and to the Property, which are granted to Publisher pursuant to this agreement, including rights to materials that may have been packaged by Creator, shall revert to Creator (the "Reversion Materials");

(ii) All rights in and to any materials based upon or in connection with the Property, which shall have been created by or on behalf of Publisher by a Person other than Creator (the "Reserved Materials") shall remain the property of Publisher. Notwithstanding the foregoing, Publisher shall not use or license the use of such Reserved Materials without Creator's consent;

(iii) Upon Creator's request, Publisher shall assign to Creator all of Publisher's rights and obligations with respect to any Reserved Materials; provided, however, that: (i) Creator shall repay to Publisher all amounts paid by Publisher to the Person(s) who created such Reserved Materials, in accordance with a payment schedule to be reasonably determined in good faith by Publisher and Creator; (ii) Creator shall obtain the written consent of the Person(s) who created such Reserved Materials; (iii) such consent shall be in a form acceptable to Publisher; (iv) Creator shall agree to make any payments required to be made to any third party on account of the use of such Reserved Materials; and (v) Creator shall indemnify Publisher from and against any claims that may arise out of Creator's use of such Reserved Materials. Publisher shall use reasonable good faith efforts to identify for Creator the Person(s) who created such Reserved Materials;

(iv) Publisher shall retain the exclusive right to use and/or license the use of any other Elements prepared by it or on its behalf which may have been incorporated into the Property; provided, however, that Publisher shall have no right to use the Reversion Materials in connection therewith;

(v) Creator or its designee shall have the right to purchase any Technical Materials, which incorporate Reversion Materials and/or Reserved Materials, which have been assigned to Creator. "Technical Materials" shall be defined to include any prints, films, mechanicals, proofs and electronic files then in Publisher's possession, which were used by Publisher to manufacture works based upon the Property. The cost to Creator for such Technical Materials shall be one half (1/2) the cost customarily charged by Publisher at that time for such materials. Creator may use such Technical Materials to manufacture, sell and/or publish works using the Property; provided, however, that neither Creator nor their designee may sell any such works using Publisher's name or any of Publisher's trademarks without Publisher's prior written consent. Publisher shall have no obligation to retain such Technical Materials longer than six (6) months after such reversion is granted; and

(vi) Upon Creators' request, Publisher shall assign to Creator all of its rights to any trademarks that it may have obtained arising out of its use of the Reversion Materials.

Notwithstanding anything contained herein to the contrary, any assignment, license or other grant of rights in the Property, which may be in effect at the time of any reversion hereunder of the rights granted to Publisher in the Property, including without limitation an assignment of the motion picture and/or television rights in the Property, shall remain in full force and effect and shall not be assigned to Creator. For the avoidance of doubt, any reversion hereunder shall be subject to the terms of such agreement(s), and Publisher shall retain all of its rights and benefits pursuant to such agreement(s), including without limitation, the right to continue to receive compensation in connection therewith. Publisher shall advise Creator of any such agreement(s), and Creator shall be bound by the exclusivity provisions, if any, of such agreement(s). Additionally, Publisher may continue to sell its remaining inventory of copies of any
versions of the Property on a non-exclusive basis for a period of one (1) year from the date of reversion, subject to the payment of any compensation provided for herein that may become due on account thereof, and otherwise in accordance with all of the terms and conditions of this Agreement.

8. CREDIT.

(A) Publisher shall accord Creator credit as “creator” of the Property on the credits page of all Published Works based upon the Property, which it shall publish in a size and manner consistent with Publisher’s standard practices at the time of publication. Publisher shall use reasonable efforts to cause its licensees to accord Creator a similar credit on Licensed Reprint Editions and, where such a credit is usual and customary, on other products based upon the Property (but not on merchandise such as toys, games and clothing).

(B) Subject to applicable guild agreements, industry standards, and the practice and policy of the purchaser of the motion picture, television and/or live stage rights or its assignee or designee, as may be applicable, Publisher shall endeavor on a best efforts basis that Creator is accorded credit as a creator of the Property on screen in the “main titles” of, and in paid advertising in connection with each motion picture and/or television production based thereon and remake thereof principally based upon characters and concepts created by Creator and included in the Property.

No failure to comply with the provisions of this paragraph nor any failure of any other Person to comply therewith shall constitute a breach by Publisher of this agreement, nor entitle Creator to injunctive relief; provided, however, that upon notice by Creator, Publisher shall use reasonable efforts to prospectively cure any such failure to comply with the provisions of this paragraph.

9. PUBLISHER’S COMMITMENT. Publisher shall provide the minimum marketing and publication commitments as provided for in the attached schedule (“Publisher Commitment”), incorporated herein by reference. Creator shall participate and support such marketing commitments by providing interviews, social media activities, and attending conventions.

10. COMPLIMENTARY COPIES. Publisher shall provide Creator with twenty (20) copies of the Published Work or any subsequent published material based on the Property. Creator may purchase additional copies for Creator’s own use at (60%) off the cover price.

11. COPYRIGHT AND TRADEMARK.

(A) Subject to and in accordance with the rights granted to Publisher hereunder, Creator shall retain the copyright and trademark in and to the Property.

(B) Publisher shall affix a copyright and trademark notice in the names of the Creator to all versions of the Property produced and distributed by Publisher, and shall contractually require any of its licensees to do the same, except to the extent that any such Version of the Property shall have been created or packaged by a Person other than the Creator, in which event notice of copyright shall be in Publisher’s name or in the name of Publisher’s licensee, as appropriate.

(C) Any trademark rights that may obtain as a result of Publisher’s use of the Property shall inure for the sole benefit of Publisher. Subject to Creator’s rights pursuant to paragraph 12 below, Publisher shall own all such trademarks and may register such trademarks in its own name throughout the world.

(D) Creator shall take all steps necessary to validly renew and preserve the validity of such copyrights and trademarks throughout the Universe during the full period of Creator’s
grant of the Rights. To the best of Creator’s ability and to the extent under Creator’s control, future publication of the Property, or any part thereof, in any form shall be with all notice(s) of copyright as shall afford to the Property copyright protection in the United States and all countries adhering to the Berne Convention, the Pan American Copyright Convention and the Universal Copyright Convention. Creator will do all acts necessary to prevent the Property and any portion thereof, now in existence or hereafter created, from falling into the public domain. In any grants or agreements hereafter made or entered into by Creator concerning the Property, Creator will expressly except and reserve all rights granted to Publisher hereunder. In the event that Creator cannot or will not take the necessary steps to renew or preserve valid copyright in the Property, and provided that Publisher has given Creator the first opportunity to take any such necessary steps, Publisher shall have the right as attorney-in-fact for Creator to renew or obtain and register the copyright therein in the sole name of Creator, and to execute and record such documents as Publisher may deem necessary to evidence its rights as a matter of record. Publisher shall timely provide Creator with copies of any documents so executed and/or recorded or registered.

(E) Publisher shall have the sole and exclusive right, but not the obligation, to take any legal action Publisher in good faith deems necessary in order to protect the Property and/or any Version of the Property against any infringement or violation of any of its rights hereunder. If Publisher shall elect to prosecute any such claim it shall do so at its own cost and expense. Creator shall promptly notify Publisher of all infringements or violations of any of Publisher’s rights in and to the Property of which Creator is aware, and shall cooperate fully with Publisher in the prosecution of any claims relating thereto.

(F) All materials to be published or distributed by Publisher or its licensee hereunder may be branded as part, or in whole, of the Archaia line, with the Archaia Logo, or the logo of any other publishing partner.

12. REPRESENTATIONS AND WARRANTIES. Creator hereby represents and warrants as follows: Creator has the full right, power and authority to enter into this agreement and to grant to Publisher all the rights herein stated to be granted; all materials prepared and/or furnished by Creator hereunder shall be wholly original and shall not infringe upon or violate the copyright, trademark, right of privacy, right against defamation, right of publicity, or any other personal, or proprietary right of any Person; no Version of the Property has heretofore been published, produced, performed, and/or registered for copyright in any country of the world; the Property is not in the public domain in any country of the world which provides for copyright or similar protection; Creator has not granted to any Person nor will Creator grant to any Person any right or the option to acquire any right which would or might conflict with any of the rights granted to Publisher hereunder or which might impair or diminish the value of the rights granted to Publisher hereunder. The representations and warranties of Creator hereunder shall survive the termination or expiration of this agreement.

13. INDEMNITIES.

(A) Creator will indemnify and hold harmless Publisher and Publisher’s shareholders, directors, officers, and the employees, agents, representatives, successors, licensees and assignees of each of the foregoing from and against any and all claims, losses and expenses, including without limitation, attorney’s fees and costs, that any of them may suffer or incur as a result of a breach of any warranty or representation made by Creator herein. Publisher shall have the sole and exclusive right to undertake the defense and/or settlement of any such claim.

(B) Publisher will indemnify and hold harmless Creator and Creator’s licensees, successors, heirs and assigns from and against any and all claims and expenses, including without limitation, outside fees and costs, that any of them may suffer or incur as a result of the
use of any material which Publisher creates or causes to be created and used in any Version of the Property.

14. OTHER DOCUMENTS. For the sole purpose of enabling Publisher to enforce its rights hereunder, Creator shall execute and cause to be notarized the Short Form Assignment attached hereto as “Exhibit A” and, to the extent that Creator may hereinafter engage or create additional materials in connection with the Property, Creator acknowledges that such additional materials shall thereupon be deemed be added to and incorporated into the Property (subject to the above rights of reversion to Creator), and Creator agrees to execute the Certificate of Authorship attached hereto as “Exhibit B” and such additional materials as Publisher may reasonably require to implement the purposes and intentions hereof. If and to the extent that Creator shall fail or refuse to so execute such additional documentation within five (5) days of request thereof, Creator hereby appoints Publisher as his/her attorney in fact to so execute such document in Creator’s name and on Creator’s behalf, which appointment is irrevocable and shall be deemed to be coupled with an interest.

15. ASSIGNMENT. Publisher shall have the right to assign this agreement and any or all of the rights granted to Publisher hereunder, to any Person or entity whatsoever. Creator shall have the right to assign Creator’s right to receive payment hereunder. This agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, administrators, personal representatives, successors, licensees and assigns.

16. NOTICES. All notices or payments which either Party may wish to serve or may be required to serve on the other Party hereunder shall be in writing and shall be sent prepaid by any receipted form of delivery or shall be delivered personally to the respective Parties at their addresses set forth above (or to such other address as either Party may specify by notice duly given). Notices shall be deemed given on the date of mailing thereof or if made by personal delivery on the date thereof.

17. NO OBLIGATION. Nothing contained herein shall be construed to obligate Publisher to produce, publish, complete or exploit, in any media, any work or other Version of the Property.

18. FORCE MAJEURE. Neither Party shall be liable for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by the occurrence of events beyond the control of the failing Party such as fire, explosion, flood, storm or the acts of God, war, embargo, riot, or intervention of any governmental authority provided that the Party suffering the delay immediately notifies the other Party of such delay; and in any event, such delay shall be limited to no longer than thirty (30) days in the aggregate. In the event that any such force majeure event lasts longer than thirty (30) days in the aggregate, the Party not suffering the delay shall have the right to immediately terminate this Agreement in accordance with the terms hereof.

19. TERMINATION. In the event of a breach by either Party of the terms of this Agreement, the non-breaching Party shall have the right to immediately terminate this Agreement in the event that such breach is not cured by the breaching Party within thirty (30) days following notice of such breach. Upon the natural expiration of this Agreement, Publisher may continue to sell its remaining inventory of copies of any versions of the Property on a non-exclusive basis for a period of one (1) year from the date of reversion, subject to the payment of any compensation provided for herein that may become due on account thereof, and otherwise in accordance with all of the terms and conditions of this agreement.

20. MISCELLANEOUS. This Agreement, together with any Exhibits or Schedules attached hereto, constitutes the entire agreement among the Parties and supersedes any prior understandings or agreements with respect to the subject matter of this Agreement. Any modification of this Agreement must be in writing and signed by all Parties. A waiver by either Party of any term or condition of this agreement in any instance shall not form or be construed to form a waiver of such term or condition for the future. This Agreement is binding upon the Parties and their heirs, licensees and assigns. Nothing herein contained shall constitute a partnership or joint venture by and between the Parties hereto or constitute either Party the agent of the other. Notwithstanding anything to the contrary contained herein, this agreement is between Creator and Publisher only and no other Person shall be a third party
beneficiary. This agreement shall not be binding until signed by both Parties hereto. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument. Upon the request of either Party, each Party shall execute and deliver to the other Party a copy of this Agreement bearing its original signature. The Parties Acknowledge that copies of this Agreement transmitted via email of a .pdf file, photocopy, facsimile or other process of complete and accurate reproduction and transmission shall be deemed original documents. This Agreement shall be construed in accordance with the laws of the State of Illinois applicable to agreements executed and wholly performed within the state. Paragraph headings have been inserted for convenience only and shall not be given any legal effect. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the Parties. Any disputes over this Agreement shall be settled by arbitration in Cook County, Illinois according to the laws of Illinois. All the rights, licenses, privileges and property herein granted to Publisher are irrevocable and not subject to rescission, restraint, reversion, or injunction under any or all circumstances, except as expressly provided herein. In the event of any breach of this agreement or any portion thereof by Publisher, Creator’s sole remedy shall be an action at law for damages, if any; in no event shall Creator have the right to injunctive relief or to enjoin or restrain or otherwise interfere with the publication or distribution of any materials prepared hereunder or the exercise of any rights granted to Publisher herein.

This Agreement, when signed by both Parties, is legally binding agreement dealing with significant creative rights. Each party hereto has been advised to seek out its own competent legal counsel to review this document prior to signing.

Sincerely,

ARCHAIA

By: ________________________________

John J. Cummins
President and COO

AGREED:

_________________________________

Name
## Schedule 1
### Delivery Schedule

Tentative Publication Schedule for the Work:

<table>
<thead>
<tr>
<th>Book</th>
<th>Cover Due</th>
<th>Delivery of Work</th>
<th>Direct Market Solicitation Month</th>
<th>Publication Month/Year</th>
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Creator shall deliver the complete Published Work, including but not limited to:

- Script
- Pencils
- Inks
- Colors
- Lettering
- Front Cover
- Back Cover
- Book Matters, if any
- And all other items necessary to complete publication of the Published work under this Agreement
Schedule 2
Publishing Commitment

Publisher commits to a marketing and promotions plan ("Plan") for [Work]. Publisher shall have sole authority in choosing the timing, degree, resources, and costs of said Plan. Creator acknowledges that said Plan will vary based on the timing of completion of said works for printing and publishing; third party events, cooperation, and agreements; and the availability and cooperation of Creator.

The Plan shall include substantially all of the following specific activities which shall be made on best efforts basis:

- Print advertising in select distributor catalogs and mailings.
- Book trade solicitations through distributor sales kits and both print and digital mailings.
- Direct solicitations with book buyers at major book chains.
- Promotional and preview support in Archaia’s monthly e-newsletter.
- Creation and distribution of press release(s) announcing key developments of the project, such as publishing announcement, major selling points, etc.
- Arranging online interviews with key comics-related consumer websites.
- Online previews at key comics-related consumer websites.
- Direct e-mailing of watermarked PDFs of finished or near-finished book to up to 300 critics, journalists and bloggers for review and promotional purposes.
- Direct mailing of hard copies to the top critics, journalists and bloggers for review purposes.
- Web support via the Archaia website, including listings of the title, review links, and bios for key creators.
- Print support with promotional material included in Archaia catalogs, brochures, and other printed matter available to both consumers and retailers.

Publisher may incorporate the following additional activities in the Plan in its sole discretion:

- Email advertising to direct market vendors via distributor reach-out programs.
- Direct solicitations with select retailers.
- Coordination of signings and appearances at local area comic book shops and/or bookstores once the book is released.
- Convention support with visual presence as part of Archaia booth displays.
- Exposure to independent bookstores and library buyers through mailings, conventions, and direct solicitations.
- Promotional campaigns to have it considered for major comics and book industry awards.
Exhibit A

ASSIGNMENT

For valuable consideration, receipt of which is hereby acknowledged, the undersigned, [NAME] ("Creator"), whose address is __________, expressly subject to the terms of the Publishing Agreement described above and below, hereby grants and assigns to BOOM! Entertainment, Inc., a Delaware corporation, through its Archaia imprint, located at 5670 Wilshire Blvd., Suite 450, Los Angeles, CA 90036, all right, title and interest in and to among other things, the exclusive right to produce and distribute for and in all media now known or hereafter devised all types of publishable materials, audiovisual works of any kind and allied rights therein (including by way of illustration all soundtrack, music publishing and merchandising rights) based on the potential comic book series ("Comic Book") and/or graphic novel ("Graphic Novel") (collectively, "Published Material") based on the Property by Creator entitled "[TITLE]", including without limitation, all past, current and future volumes of work connected to or in association with property, the character, stories, plots, artwork, copyrights and trademarks and other intellectual property contained therein (collectively, "Property"), except as reserved to Creator as described in the Publishing Agreement, paragraph 9.

The undersigned and Publisher have entered into a Publishing Agreement dated as of [EFFECTIVE DATE] relating to the transfer and assignment of the foregoing rights in and to said work, which rights are more fully described in said agreement, and this assignment is expressly made subject to all of the terms, conditions and provisions contained in said agreement.

The undersigned has executed this assignment as of [DATE SIGNED], effective as of the Effective Date.

___________________________________
Name
ALL-PURPOSE ACKNOWLEDGMENT

State of )
 )
County of ___________________ )

On _____________ before me, ______________________________, personally appeared [NAME], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

__________________________________
Signature of Notary
[NAME] ("Creator") has entered into a Publishing Agreement with BOOM! Entertainment, Inc., a Delaware corporation, through its Archaia imprint ("Publisher"). in connection with that certain literary property currently entitled [TITLE] ("Property"). Creator hereby certifies that:

1. Creator warrants and represents that: (a) Creator has the right to execute this document, except to the extent that it may be based upon material in the public domain, all materials prepared and/or furnished by Creator, including without limitation, all ideas, plots, themes, titles, characters, characterizations, artwork, translations, treatments, stories, story lines, designs, logos, trademarks and other intellectual property contained therein or pertaining thereto ("Material") is or shall be original with Creator; (c) to the best of Creator’s knowledge (or that which Creator should have known in the exercise of reasonable prudence), the Material does not and shall not defame or disparage any person or entity or infringe upon or violate the rights of privacy, publicity or any other rights of any kind or nature whatsoever of any person or entity; (d) no part of the Material will infringe upon the copyright or, to the best of Creator’s knowledge (or that which Creator should have known in the exercise of reasonable prudence), literary, dramatic or any other similar rights, common law or otherwise, of any person, firm or corporation; and (e) to the best of Creator’s knowledge (or that which Creator should have known in the exercise of reasonable prudence), the Material is not the subject of any litigation or of any claim that might give rise to litigation. If any written claim, action, suit or proceeding is brought or threatened alleging facts which, if true would constitute a breach by Creator of Creator’s representations, warranties and covenants under this Certificate of Authorship, Creator shall immediately notify Publisher thereof in writing and Publisher agrees to notify Creator in writing of any claims alleging facts which, if true would constitute a breach by Creator of Creator’s representations, warranties or covenants under this Certificate of Authorship. Creator agrees that Publisher shall have the sole right to control the legal defense against such claims or litigation, including the right to select counsel of its choice and to compromise or settle any such claim, demand or litigation. Creator shall indemnify and hold harmless Publisher and Publisher’s directors, officers, shareholders, agents, assigns, successors and licensees from and against any and all liabilities, claims, costs, damages, and expenses (including reasonable outside attorneys’ fees and court costs actually incurred) arising out of or in connection with a breach of the foregoing covenants, warranties and representations. Publisher agrees to indemnify and hold Creator harmless from and against any and all liabilities, claims, costs, damages or expenses (including, without limitation, reasonable attorneys’ fees) arising out of or in connection with Publisher’s material breach hereunder, any material supplied to Creator by or on behalf of Publisher or Publisher’s development, production, distribution, publication and exploitation of the Property or any Element thereof (except for liabilities, claims, costs, damages or expenses for which Creator’s indemnity applies or which have otherwise been created by Creator).

2. Creator agrees to execute any documents consistent herewith and do any other acts as may be reasonably required by Publisher or its assignees or licensees to further evidence or effectuate Publisher’s rights as set forth in this Certificate of Authorship. Upon Creator’s failure promptly to do so within five (5) business days following receipt of Publisher’s written request and delivery to Creator of the applicable documents after a reasonable chance to review and comment within customary parameters, Creator hereby appoint Publisher as Creator’s attorney-in-fact for such purposes (it being acknowledged that such appointment is irrevocable and coupled with an interest) with full power of substitution and delegation. Publisher agrees to provide copies of all documents and/or other instruments executed on Creator’s behalf in connection with such documents, however, any casual or inadvertent failure by Publisher to provide copies of such documents shall not be a breach hereunder.

3. Creator further acknowledges that: (a) in the event of any breach hereunder by Publisher, Creator will be limited to Creator’s remedy at law for damages, if any, and Creator will not have the right to terminate or rescind this Certificate of Authorship or to restrain, enjoin or otherwise impair the production, distribution, advertising, publicizing or exploitation of the Property and/or the Published Material and/or any rights therein, (b) nothing herein shall obligate Publisher to produce, advertise or distribute the Property, and (c) this Certificate of Authorship shall be governed by the laws of the State of
California applicable to agreements executed and to be performed entirely therein. In the event of legal action in connection with this Agreement and Certificate of Authorship, the prevailing party shall be entitled to recoup from the other party any legal costs incurred.

4. Creator agrees that Publisher's rights with respect to the Published Material may be assigned and licensed by Publisher subject to the approval of Creator, as described in the Publishing Agreement; Creator shall not have the right to assign this Certificate or delegate the performance of Creator's obligations to any person or entity and any such purported assignment or delegation shall be void.

The undersigned has caused this document to be executed as of [DATE SIGNED].

_______________________________________
Name

Social Security No: _____________________
eContent Distribution Agreement

THIS eCONTENT DISTRIBUTION AGREEMENT (this "Agreement") is entered into by and between the entity identified below ("eContent Provider") and the Barnes & Noble entity identified in Exhibit A, Section 1 ("Barnes & Noble"). Barnes & Noble and eContent Provider shall be referred to in this Agreement as "Parties". The Digital Terms and Conditions attached hereto (together with all Exhibits thereto) are incorporated into this Agreement by this reference.

<table>
<thead>
<tr>
<th>eContent Provider</th>
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<tbody>
<tr>
<td>Contact Name</td>
<td></td>
</tr>
<tr>
<td>Contact Title</td>
<td>President and COO</td>
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<tr>
<td>Address (Line 1)</td>
<td></td>
</tr>
<tr>
<td>Address (Line 2)</td>
<td></td>
</tr>
<tr>
<td>Phone #</td>
<td>312-464-9840</td>
</tr>
<tr>
<td>Fax #</td>
<td>312-464-9845</td>
</tr>
<tr>
<td>E-mail Address</td>
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</table>

Subject to the Digital Terms and Conditions, to which the undersigned Parties hereby agree, and in consideration of the mutual covenants set forth in this Agreement, eContent Provider grants to Barnes & Noble certain rights (in accordance with the Digital Terms and Condition) of eContent Provider’s digital content as provided to Barnes & Noble pursuant to this Agreement ("eContent") in conjunction with the Barnes & Noble digital content program pursuant to which Barnes & Noble makes eContent available to end users (the "Program").

IN WITNESS WHEREOF, Barnes & Noble and eContent Provider enter into this eContent Distribution Agreement as of the later of the two signature dates below (the "Effective Date").

<table>
<thead>
<tr>
<th>BARNES &amp; NOBLE</th>
<th>eCONTENT PROVIDER</th>
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<tbody>
<tr>
<td>By:</td>
<td>By:</td>
</tr>
<tr>
<td>Printed Name:</td>
<td>Theresa Horner</td>
</tr>
<tr>
<td>Title:</td>
<td>VP, Content – Digital Products</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>
1. INCORPORATION INTO ECONTENT DISTRIBUTION AGREEMENT.

These Digital Terms and Conditions (the "Terms and Conditions"), together with all applicable Exhibits hereto are incorporated by reference into the eContent Distribution Agreement (the "Agreement").

2. GRANT OF RIGHTS

(a) GRANT OF RIGHTS TO SELL, MARKET, DISPLAY, DISTRIBUTE AND PROMOTE ECONTENT. eContent Provider hereby grants Barnes & Noble (and any of its distributors, licensees and third party retail partners) the non-exclusive, worldwide right to make eContent available for sale, sell, market, display, distribute (whether by download or otherwise) and promote (collectively, "Use") the eContent including without limitation the right for Barnes & Noble to deliver content (i) directly or indirectly through an affiliate, subsidiary, or unrelated third party and/or (ii) in, by or through any eContent Store (as defined in Section 5 hereof) to end users. The foregoing rights may be exercised without limitation through or in any commercially available electronic or digitized format or on any electronic device platforms (including but not limited to hand-held devices and computers) whether now existing or hereafter created or developed, in the territories set forth in the metadata (as referred to under Section 3(b) hereof) provided by eContent Provider to Barnes & Noble ("Territories"). eContent Provider further authorizes and licenses Barnes & Noble to (i) convert or otherwise render the print version of eContent, into a format suitable for the performance of Barnes and Noble’s duties hereunder; (ii) store the eContent on servers hosted by or on behalf of Barnes & Noble and make the content available to end users; (iii) index and catalogue the eContent; (iv) allow end users to copy, paste, print, email and share a portion of the eContent; and (v) Use the eContent as otherwise provided herein pursuant to the rights granted and the acknowledgements given under this Agreement, as set forth in applicable section of Exhibit C. Terms of Sale, and/or as the Parties may otherwise agree from time to time in writing (vi) grant to end users any and all rights that are customarily, explicitly or implicitly granted to end users within end user contracts comparable to those envisaged by the parties, including end user license agreements.

(b) AGENCY. With respect to eContent provided to Barnes & Noble by eContent Provider for Distribution in the Territories listed on Exhibit D, Section 1 ("Agency eContent"), subject to these Terms and Conditions, eContent Provider hereby appoints Barnes & Noble as its ‘sales agent’.

(c) RESELLER. With respect to eContent provided to Barnes & Noble by eContent Provider for Distribution in the Territories listed on Exhibit D, Section 2, subject to these Terms and Conditions, eContent Provider hereby appoints Barnes & Noble as its reseller.

(d) Conversion to Reseller. In addition to the foregoing, and notwithstanding any other provision of this Agreement, if, in any territory listed on Exhibit D, Section 1, eContent Provider provides an item of Agency eContent to any person or entity for resale (in other words, not on an agency basis) or sells an item of eContent directly to end users on a discounted basis itself (or by or through any of its subsidiaries or affiliates), Barnes & Noble may, in such territory, choose to sell such eContent on a resale basis pursuant to Exhibit C, Section 2. In such case, and subject to these Terms and Conditions, eContent Provider hereby appoints Barnes & Noble as a reseller and for such eContent items grants to Barnes & Noble the non exclusive, worldwide right to sell, market, display, distribute and promote eContent as set forth in Exhibit C, Section 2.

(e) Parity. eContent Provider agrees that any item of eContent it provides to any third party on a resale basis shall also, at Barnes & Noble’s option, be provided to Barnes & Noble on a resale basis notwithstanding the fact that such item of eContent had previously been provided to Barnes & Noble on an agency or commissionaire basis. With respect to any item of eContent provided to Barnes & Noble on a resale basis, Barnes & Noble shall have the sole and complete discretion to set the retail sales price (the “Retail Sales Price”). eContent provider agrees that if eContent provider provides an eContent item to any other party at a lower or discounted price, or if another party is offering an eContent item of eContent Provider’s at a lower or discounted price, then Barnes & Noble may match the lower or discounted price for such eContent item.

(f) TERRITORY SPECIFIC OBLIGATIONS. The Parties shall comply with any such territory specific obligations as set out in Exhibit A, Section 2.

3. DELIVERY; METADATA.

(a) DELIVERY. In accordance with the criteria set forth on Exhibit B, Specifications for eContent Delivery.
eContent Provider shall deliver to Barnes & Noble a complete file, of each item of eContent in a format compatible for the performance of Barnes and Noble’s duties hereunder and for the Use of the eContent pursuant to the rights granted and acknowledgements given under this Agreement.

(b) GENERAL METADATA. eContent Provider shall provide Barnes & Noble with the following metadata through an ONIX feed or a spreadsheet with respect to each item of eContent: (i) title; (ii) author(s) and/or contributor(s); (iii) ISBN or unique identifier; (iv) eContent on sale date; (v) referring ISBN for most recently published print edition and original publication date (if any); (vi) page count of print version (if any); (vii) geographic or other rights restrictions (if any); (viii) selling territory; (ix) short description; (x) cover image; (xi) whether Barnes & Noble digital rights management (“DRM”) is to be applied and (xii) such other information as is reasonably requested by Barnes & Noble. eContent Provider agrees that all metadata provided hereunder (i) shall be accurate, current and up to date and (ii) may be used, adapted, and modified by Barnes & Noble for the purposes of the Program.

(c) PRICING METADATA. In addition to the foregoing metadata, eContent Provider shall also provide (in the same ONIX feed or spreadsheet), the following pricing information for each applicable Territory: (i) for all eContent sold on an Agency basis, the price to be charged to the end user (the “Customer Price”); (ii) for all eContent, a list price (the “Digital List Price”); and (iii) for all eContent sold on a Reseller basis in a territory subject to fixed pricing laws, a list price to be charged to the customer (“Fixed Digital List Price”).

4. TESTING AND SAMPLES.

(a) TEST COPIES. Prior to general commercial sale of an item of eContent, Barnes & Noble may distribute or cause to be distributed free of charge to certain employees of Barnes & Noble copies of each item of eContent in any format for purposes of testing the electronic sale of such eContent in such format.

(b) SAMPLES. The eContent Provider acknowledges and agrees that Barnes & Noble may distribute and display via download all front matter of an item of eContent and up to five additional percent (5%) of an item of eContent free to end users as a sampler.

5. BARNES & NOBLE ECONTENT STORES/DIGITAL LOCKER/LENDING RULES/IN-STORE BROWSING.

(a) ECONTENT STORES. eContent Stores shall be permitted to store, on servers operated by or on behalf of Barnes & Noble, eContent provided by eContent Provider hereunder and to make such eContent available for the Use of the eContent pursuant to the rights granted and acknowledgements given under this Agreement. Any eContent Store shall be permitted (without any payment to eContent Provider or any third party) to allow its end users from time to time to upload and download eContent previously purchased by such end users from such eContent Store even if the eContent is no longer available for sale in such eContent Store. As used herein, “eContent Store” shall mean (a) e-content stores operated by Barnes & Noble, including but not limited to Barnes & Noble.com and any e-content store operated by Barnes & Noble on behalf of any third party anywhere in the world and (b) e-content stores operated by or in conjunction with a third-party retail partner of Barnes & Noble.

(b) Digital Locker. As used herein, “Digital Locker” shall mean a customer account digital content repository that stores a customer’s digital purchases. The Digital Locker allows for content management activity that includes but is not limited to downloading files, syncing with customer devices and storing customer annotations to the eContent.

(c) LENDING. eContent Provider acknowledges and agrees that Barnes & Noble shall have the right to institute a program whereby end users of any eContent Store can loan eContent to others. The program shall have the rules set forth in Exhibit E, Lending Rules.

(d) IN-STORE BROWSING. eContent Provider acknowledges and agrees that one hundred percent (100%) of every item of eContent provided to Barnes & Noble under this Agreement can be viewed via Wifi, or similar technology, within the confines of a physical Barnes & Noble store or a physical store operated by a third-party retail partner of Barnes & Noble (and within the reach of such store’s Wifi) via streaming or similar technology. The ability to copy, paste, print, email/share, and lend will not be available for eContent viewed in a physical store via Wifi or similar technology as provided herein.

6. SECURITY/DRM.

(a) COPYRIGHT PROTECTION. Barnes & Noble shall use reasonable endeavors to provide industry standard and use its reasonable endeavors to put in place copy protection for eContent.
(b) DRM. Barnes & Noble will provide commercially accepted DRM compliant with applicable laws for those eContent Providers who notify Barnes & Noble through the metadata that DRM is to be applied to an item of eContent.

(c) NO GUARANTEE. eContent Provider acknowledges and agrees that all security technology, including but not limited to DRM, is subject to possible breach by interlopers. Barnes & Noble assumes no responsibility for any breaches of such security technology, including but not limited to DRM. If the security technology used with an item of eContent has been subject to repeated breach, at eContent Provider’s request, Barnes & Noble will discontinue offering such eContent for future sale until eContent Provider is satisfied with the protection that such security technology provides.

7. WITHDRAWAL OF eCONTENT.
   eContent Provider may provide written notice to Barnes & Noble at eBookContent@book.com (or to such other email address or website that Barnes & Noble may provide for this purpose) to withdraw any eContent from the Program. If eContent Provider requests that an item of eContent be withdrawn, Barnes & Noble will use its reasonable endeavors to terminate the future sale of that item of eContent by the within (3) three business days. (measured by the territory in which the eContent is sold) after receipt of such written notice; provided, however, that in the event Barnes & Noble withdraws a particular item of eContent as provided herein, Barnes & Noble shall be able to continue to distribute such item of eContent to past purchasers of that item of eContent.

8. NO OBLIGATION TO USE ON PART OF BARNES & NOBLE.
   Barnes & Noble shall have no obligation to Use the eContent pursuant to any of the rights granted and acknowledgements given under this Agreement.

9. BRAND FEATURES.
   eContent Provider grants to Barnes & Noble a limited, non-exclusive, world-wide, royalty-free license to use its trademarks, trade names, designs and logos (“Brand Features”), in accordance with eContent Provider’s usage guidelines, if and as provided by eContent Provider, solely for use in connection with the Program. All uses of eContent Provider’s Brand Features, and all goodwill associated therewith, shall inure solely to the benefit of eContent Provider. Subject to the express license granted herein, all right, title and interest in and to eContent Provider’s Brand Features are and shall remain with eContent Provider.

10. PAYMENT AND REPORTING
   (a) PAYMENT. Pursuant to the terms set out in Exhibit C, Barnes & Noble shall remit payment to eContent Provider for the sale of each item of eContent no later than thirty (30) days after the end of each calendar month for sales made during that calendar month as reported by Barnes & Noble. All payments will be made via electronic funds or by check in US Dollars (or such other currency as may be agreed by the parties) and from such bank accounts as Barnes & Noble deems acceptable.

   (b) REPORTING. Barnes & Noble shall provide eContent Provider with a report that identifies, for each item of eContent, the calculation of the amounts payable to eContent Provider hereunder.

   (c) PAYMENT CONCLUSIVE AND BINDING. All payments made by Barnes & Noble to eContent Provider shall be deemed conclusive and binding, and eContent Provider agrees that it may not challenge such payment if eContent Provider does not provide a good faith basis in writing to Barnes & Noble to dispute the amount of payment within three (3) months of receipt of the report set forth in Section 10(b) above.

11. FEEDBACK
   In the event that eContent Provider provides suggestions, advice, ideas or other feedback (“Feedback”) to Barnes & Noble in conjunction with the Program, Barnes & Noble shall be free to Use such Feedback without restriction without any need to remunerate or otherwise compensate eContent Provider.

12. CONFIDENTIALITY.
   (a) BARNES & NOBLE CONFIDENTIAL INFORMATION. “Barnes & Noble Confidential Information” means (i) these Terms and Conditions (including all Exhibits hereto), the Agreement and all discussions, negotiations and proposals related thereto; (ii) all information regarding or reflecting payments or commissions (including the Agency Commission) earned under this Agreement; (iii) any information that would reasonably be considered to be confidential information of Barnes & Noble in light of the circumstances surrounding the disclosure; and
(iv) any other confidential information provided by Barnes & Noble to eContent Provider hereunder including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (A) trade secrets; (B) financial information, including pricing; (C) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (D) business information, including operations, planning, marketing interests, and products; and (E) information acquired during any facilities tours.

(b) RESTRICTIONS ON USE, DISCLOSURE AND COPYING.
Except with the prior written consent of the Barnes & Noble, eContent Provider shall not (i) use or disclose any Barnes & Noble Confidential Information other than to employees and contractors who have a need to know and any disclosure to contractors may only be to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties; or (ii) make copies or allow others to make copies of such Barnes & Noble Confidential Information except as is reasonably necessary for internal business purposes.

(c) REQUIRED DISCLOSURE. If eContent Provider is required to disclose Barnes & Noble Confidential Information to a third party in connection with any ongoing civil or criminal investigation, or any judicial or administrative proceeding, eContent Provider will promptly notify Barnes & Noble so that it may, if it chooses, seek an appropriate protective order or take other appropriate steps to seek to limit or prevent such disclosure.

(d) EXCEPTIONS. In addition, nothing in this Agreement shall prohibit or limit eContent Provider’s use or disclosure of information (i) previously known to it without obligation of confidence; (ii) independently developed by or for it without use of or access to the Barnes & Noble Confidential Information; (iii) acquired by it from a third party which is not under an obligation of confidence with respect to such information; or (iv) which is or becomes publicly available through no breach of this Agreement or any other agreement.

(e) RETURN OF CONFIDENTIAL INFORMATION. eContent Provider shall within thirty (30) days of the expiration or termination of this Agreement return all Barnes & Noble Confidential Information to Barnes & Noble or certify to its destruction. eContent Provider acknowledges and agrees that breach of this Section 12 may cause irreparable injury for which monetary damages are not an adequate remedy. Barnes & Noble may seek injunctive relief and any other available equitable remedies to enforce the provisions of this section, without posting a bond if otherwise required by law.

13. DATA PROTECTION.
For the avoidance of doubt, the Parties acknowledge that Barnes & Noble owns all the personal data of end users collected during the performance of its duties hereunder or pursuant to its Use of the eContent pursuant to the rights granted and acknowledgements given under this Agreement.

14. REPRESENTATIONS AND WARRANTIES.
(a) REPRESENTATIONS AND WARRANTIES OF BOTH PARTIES. Each Party represents and warrants (i) it has the right, power and authority to enter into this Agreement and to fully perform its obligations hereunder and grant the rights granted herein; (ii) upon execution and delivery hereof, this Agreement shall constitute the valid and binding obligations of the Party; and (iii) it will comply with all applicable laws, rules and regulations with respect to each party’s performance under this Agreement.

(b) REPRESENTATIONS AND WARRANTIES OF ECONTENT PROVIDER. eContent Provider represents and warrants that (i) eContent Provider holds the necessary rights, including all intellectual property rights and the right to provide the eContent in the language(s) in which eContent Provider provides such eContent to Barnes & Noble, in and to the eContent and eContent Provider Brand Features, to enter into this Agreement and grant the rights granted herein and such rights are not subject to any prior agreement, lien or encumbrance that may interfere with the free exercise of Barnes & Noble’s rights hereunder; for the avoidance of doubt, eContent Provider represents that it has fulfilled any authors’ claim to an equitable remuneration under applicable copyright law and for any claim for additional remuneration, including without limitation any remuneration claims made by collecting societies with respect to actions taken by Barnes & Noble during performance of its duties hereunder and claims with respect to visual and multimedia elements of eContent (ii) eContent does not contain any obscene or libelous material or material that is in any way unlawful (as each is determined by the law of the applicable Territory in which the eContent is Used pursuant to the rights granted and acknowledgements given under this Agreement); (iii) the use, with reasonable care and skill, of any instruction, material,
or advice contained in eContent is not likely to result in injury and eContent includes appropriate warnings and safety precautions concerning any particular hazards that may be involved in the use of any such instruction, material or advice; (iv) eContent may be Used as set out in and as contemplated by this Agreement without violating or infringing the rights of any other person or entity, including, without limitation, infringing any copyright, patent, trademark or right of privacy, or any other intellectual or industrial property right, title or interest of any party, and without obligating Barnes & Noble to pay any fees to third parties; (v) eContent Provider will pay or cause to be paid all royalties, fees or other compensation due to third parties in connection with the use of the eContent in the manner contemplated by this Agreement; (vi) the metadata provided by eContent Provider hereunder shall be accurate and current; and (vii) it will at all times comply with any applicable laws, rules and regulations concerning the pricing and distribution of eContent.

15. DISCLAIMER OF WARRANTY.
TO THE FULLEST EXTENT POSSIBLE BY APPLICABLE LAW, THE EXPRESS REPRESENTATIONS AND/OR WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF EACH PARTY. IN PARTICULAR, TO THE FULLEST EXTENT POSSIBLE BY APPLICABLE LAW NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES THEREOF, WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR OTHERWISE INCLUDING, WITHOUT LIMITATION (i) IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, (ii) WARRANTIES AS TO THE QUALITY OR PERFORMANCE OF THE MATERIALS, INFORMATION, GOODS, SERVICES, AND/OR TECHNOLOGY PROVIDED UNDER THIS AGREEMENT, AND ANY LIMITATIONS ON CUSTOMER, DISTRIBUTOR AND LICENSEE ACCESS TO OR USE OF THE ECENT; AND (iii) WARRANTIES AS TO THE PERFORMANCE OF COMPUTERS OR NETWORKS WHEN USED IN CONJUNCTION WITH THE ECENT, INFORMATION, GOODS, SERVICES, AND/OR TECHNOLOGY PROVIDED UNDER THIS AGREEMENT.

16. INDEMNIFICATION.
(a) Each Party hereby indemnifies and holds harmless, on demand the other party and its subsidiaries and affiliates, and their respective directors, officers, employees, agents, shareholders, partners, members and other owners, against any and all third party claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs and expenses (including reasonable attorneys’ fees) (any or all of the foregoing hereinafter referred to as "Losses") insofar as such Losses (or actions in respect thereof) arise out of or are based on (i) any representation or warranty made by the indemnifying Party being untrue or breached and/or (ii) any breach by the indemnifying Party of any covenant, agreement or obligation made by it herein or a breach of any term of this Agreement.

(b) The obligation to indemnify will be contingent upon the indemnified Party: (i) providing the indemnifying Party with prompt written notice of any claim for which indemnification is sought; (ii) cooperating with the indemnifying Party, and (iii) allowing the indemnifying Party to control the defense and settlement of such claim. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified Party shall not be final without the indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed.

17. LIMITATION OF LIABILITY.
TO THE FULLEST EXTENT POSSIBLE BY APPLICABLE LAW, IN NO EVENT SHALL BARNES & NOBLE'S LIABILITY EXCEED THE AMOUNT PAYABLE BY BARNES & NOBLE TO ECENT PROVIDER PURSUANT TO THIS AGREEMENT FOR THE TWELVE MONTH PERIOD PRECEEDING ANY CLAIM. TO THE FULLEST EXTENT POSSIBLE BY APPLICABLE LAW, EXCEPT WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER OR ECENT PROVIDER'S BREACH OF SECTION 12 (CONFIDENTIALITY), NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR PENALTIES INCLUDING, BUT NOT LIMITED TO, LOSSES OF BUSINESS, REVENUE OR ANTICIPATED PROFITS. TO THE FULLEST EXTENT POSSIBLE BY APPLICABLE LAW, THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT, WHETHER FOR BREACH OF CONTRACT,
NEGLIGENCE, STRICT LIABILITY, OR OTHER Torts, WHETHER OR NOT THE PARTIES WERE OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, EXCEPT FOR NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR IN ANY WAY LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THAT OF ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (AS APPLICABLE), FRAUD OR FRAUDULENT MISREPRESENTATION BY IT OR ITS EMPLOYEES, ACTIONS COMMITTED WITH INTENT OR ANY OTHER LIABILITY TO THE EXTENT THE SAME MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW.

18. CHANGES TO PROGRAM.

To the extent permitted by applicable law, eContent Provider acknowledges and agrees that Barnes & Noble may change and modify these Terms and Conditions (and any Exhibits hereto) from time to time in Barnes & Noble's sole discretion in accordance with general changes to the Program, provided that such changes shall not be materially adverse to eContent Provider. Barnes & Noble agrees that it will provide eContent Provider with advance notice of any such change or modification. Failure of eContent Provider to (i) provide Barnes & Noble with written notice of eContent Provider's objection to any change or modification within thirty (30) business days (business days to be calculated by reference to the country in which the Barnes & Noble entity as set out in Exhibit A, Section 1 is established) (“Business Days”) of Barnes & Noble's notification of such change or modification, or (ii) eContent Provider's continued submission of eContent to Barnes & Noble shall be deemed to constitute approval of, and agreement to, any such change or modification.

19. ANTI-CORRUPTION.

The Parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Foreign Corrupt Practice Act of 1997 (under Title 15 of the United States Code), and any similar applicable anti-corruption laws (“Relevant Requirements”) and not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements if such activity, practice or conduct had been carried out in the jurisdiction of the applicable Relevant Requirement, and shall have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

20. TERM AND TERMINATION.

(a) TERM. This Agreement shall continue in full force and effect until terminated by either Party as set forth in Section 20(b) below. Upon expiration or earlier termination of this Agreement, Barnes & Noble shall, within thirty (30) days (or as soon thereafter as is reasonable), cease to grant any further rights with respect to eContent to customers on behalf of the eContent Provider or pursuant to the rights granted under this Agreement to end users. Notwithstanding the foregoing, the ability of a customer to download or upload eContent previously purchased by such customer (including technical updates and corrections) shall survive the termination or expiration of this Agreement.

(b) TERMINATION. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the other. Either Party may terminate this Agreement: (i) immediately upon written notice to the other Party if (A) the other Party files a petition for bankruptcy, becomes insolvent, is wound up, dissolved, goes into administration, makes an assignment for the benefit of its creditors, or a receiver is appointed for the other Party or its business, or if any event occurs which, under the applicable law of any jurisdiction to which it is subject, has an effect similar to that of any of the events referred to in this section; or (B) there is a breach of Section 12 of this Agreement (Confidentiality) that is not cured (where capable of cure) within three (3) Business Days of receipt of notice of such breach; or (ii) with thirty (30) days written notice for any other breach, if such breach is not cured (where capable of cure) within the thirty (30) day notice period.

21. GENERAL.

(a) ASSIGNMENT. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld, unreasonably delayed or made subject to unreasonable conditions except that Barnes & Noble may assign its rights and delegate its duties under this Agreement to (i) a subsidiary, division or an affiliate (such affiliate to include Barnes & Noble Inc. and any entity directly or indirectly owned by Barnes & Noble Inc.), (ii) in connection with a merger, acquisition, or corporate reorganization, provided that in each case, the assignee or delegate agrees to be
bound by all of the terms hereof, or (iii) to a third party in connection with the separation of B&N’s digital business. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void. This Agreement shall be binding upon the successors and permitted assigns of both Parties.

(b) **PUBLICITY.** eContent Provider shall not use the name or any trademark or any other intellectual property right of Barnes & Noble in any manner, including, without limitation, in any press release or other advertising materials of eContent Provider or any of its subsidiaries, divisions or affiliates, without the prior written consent of Barnes & Noble. Neither Party will issue any public statement, including but not limited to, press releases, press conferences, press conferences, and releases, or otherwise as the Parties may agree in a writing provided in writing for such notice purposes. A second copy of every notice to Barnes & Noble shall be sent to Barnes & Noble, Inc., 122 Fifth Avenue, New York, New York 10011, Attn: Legal Department. Notice shall be deemed received (A) upon receipt when delivered personally, (B) upon written verification of receipt from overnight courier, or (C) upon verification of receipt of registered or certified mail. Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts.

(d) **Further Assurances.** eContent Provider agrees to execute such further documents and instruments as Barnes & Noble may reasonably request in order to effectuate the terms and intentions of this Agreement.

(e) **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding and agreement between the Parties and may only be amended according to the procedures set forth in Section 18 of this Agreement or otherwise as the Parties may agree in a writing signed by both Parties. Each Party to this Agreement acknowledges that this Agreement supersedes all prior or contemporaneous agreements, discussions, or representations, whether oral or written, between the parties, including any agreement between eContent Provider and Barnes & Noble’s subsidiaries with respect to the subject matter of this Agreement including without limitation, or any non-disclosure or evaluation agreement regarding the subject matter hereof.

(f) **INSURANCE.** During the term of this Agreement, and for at least 3 years after the end of the term, eContent Provider shall take out and maintain general insurance of at least $5,000,000 (or its equivalent) per claim to cover its liabilities under or in connection with this Agreement. The insurance referred under this Section shall note Barnes & Noble as an interested party and eContent Provider shall procure that Barnes & Noble is notified promptly upon any material change to, or cancellation of, the insurance. Upon request, eContent Provider will provide Barnes & Noble with written evidence that the insurance referred under this Section is in place.

(g) **MISCELLANEOUS.** The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create a partnership or joint venture between the Parties hereto. Neither Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. To the extent permitted by law, this Agreement shall be construed as if jointly drafted by the Parties.

This Agreement will automatically convert to a reseller agreement in accordance with the terms and conditions set forth on Exhibit C on a territory by territory basis in the event that it is determined by a competent court of law not to be in compliance with applicable law. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by the laws of the State of New York without regard to its principles of conflicts of law. The Parties irrevocably agree that the courts located in the southern district of New York shall have exclusive jurisdiction. The parties further agree that
service of any process, summons, notice or document by registered mail to the addresses set forth above shall be effective service of process for any action, suit or proceeding brought against us in any such court. The parties hereby irrevocably and unconditionally waive any objection to the jurisdiction and laying of venue of any action, suit or proceeding arising out of this agreement in such courts and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The parties further agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The provisions of Sections 7, 11, 12, 13, 14, 15, 16, 17, 19, 20 and 21 shall survive any expiration or termination of this Agreement.
EXHIBIT A

Relevant Barnes & Noble Entities / Special Conditions

1. RELEVANT CONTRACTING BARNES & NOBLE ENTITY

   Barnesandnoble.com, llc 76 Ninth Avenue, 9th Floor, New York, NY 10011

   ‘Affiliates’ means Barnes & Noble, Inc. and any entity directly or indirectly owned by Barnes & Noble, Inc.

2. SPECIAL CONDITIONS BY JURISDICTION

   N/A
EXHIBIT B

Specifications for eContent Delivery

The eContent delivered by eContent Provider must be ePub files or, subject to prior approval of Barnes & Noble, PDF.

ePub files must conform to the IDPF ePub OPF 2.0 v1.0, OPS 2.0 v1.0 and OCF 1.0 and meet the following additional requirements:

1. Publication Metadata will include:
   a. Title
   b. Creator (containing at least the author role (role=aut) with the file-as attributes)
   c. Publisher
   d. Date (event attribute = 'publication')
   e. Identifiers – at least one of:
      i. Corresponding print ISBN
      ii. eContent ISBN

2. OPS / ePub content documents will be in XHTML format
   a. Tables should be rendered using XHMTL if possible

3. A Declarative Table of Contents will be included as specified in these eContent Specifications.
   a. The Table of Contents will indicate the major sections of the book.
   b. A table of contents within the content of the book that hyperlinks to internal sections is also desirable.

4. The eContent shall contain a "Guide" section containing:
   a. a "text" reference to the first content section of the book (Chapter 1 or equivalent)
   b. Other sections as applicable (e.g. Introduction, Chapters, Illustrations, etc.)

5. If possible, the eContent should contain a cover image.

6. The ePub file must not be encrypted.

7. ePub Files must be named using one of the following formats (in order of preference):
   a. <eContent EAN>.ePub – Where <eContent EAN> is the EAN of the eContent if one exists.
   b. <Print EAN>.ePub – Where <Print EAN> is the EAN of the print edition of the book corresponding to the eContent if one exists.
   c. <Title>_<Author Name>.ePub – Where <Title> and <Author Name> are the title and author of the eContent with any illegal file naming characters (such as quotes) omitted.

PDF files may be provided with prior approval from Barnes & Noble. The PDF for the book content should meet the following requirements:

1. The PDF should be PDF Normal or vector type. If this is not possible, an image-based PDF can be supplied. However, poor quality images will not be accepted.

2. The PDF should include the whole book in a single file and should include the front cover.

3. PDF Files must be named using one of the following formats (in order of preference):
   a. <eContent EAN>.PDF – Where <eContent EAN> is the EAN of the eContent if one exists.
   b. <Print EAN>.PDF – Where <Print EAN> is the EAN of the print edition of the book corresponding to the eContent if one exists.
   c. <Title>_<Author Name>.PDF – Where <Title> and <Author Name> are the title and author of the eContent with any illegal file naming characters (such as quotes) omitted.

Files will be delivered to Barnes & Noble to our secure FTP server. We will provide a separate account for the eContent Provider for this purpose. Files may be zipped either singly or together for transmission to the FTP site.

If neither ePub nor PDF format can be provided, other formats may be acceptable by special arrangement. Please contact Barnes & Noble to discuss.
EXHIBIT C

Terms of Sale

Section 1 – AGENCY

AGENCY TERMS

(a) RETAIL PRICES. The Customer Price for each item of eContent provided hereunder shall be communicated to Barnes & Noble in the metadata referred to in section 3(c), and such Customer Price shall equal the Digital List Price, plus VAT, where VAT applies. Subject to the foregoing, eContent Provider may, in its sole discretion, change the Customer Price of any item of eContent through the metadata, and Barnes & Noble shall use its reasonable endeavors to make any such price changes within three (3) business days of such change. For clarity, the Customer Price shall be set by eContent Provider in its sole discretion and as long as all other agents (and/or commissionaires, as the case may be) of eContent Provider are similarly restricted, Barnes & Noble will not, unless approved by eContent Provider in writing, offer any promotion of eContent that has the effect of, or is advertised or promoted as, giving purchasers a discount, credit, rebate, gift card or other consideration, or otherwise giving purchasers an effective reduced Customer Price, on their purchase of any eContent. In the event that any other seller of eContent is authorized or otherwise allowed by eContent Provider to offer any such promotion, Barnes & Noble shall similarly be authorized or allowed to offer such promotion. For the avoidance of doubt, the parties acknowledge that eContent Provider is solely responsible for ensuring compliance with and warrants that it will comply with all applicable price fixing laws and regulations related to the sale of books (e.g. the German Book Resale Price Fixing Act (BRPFA)).

(b) COMMISSION. Barnes & Noble shall earn a commission of 30% of the Digital List Price (exclusive of VAT, where VAT applies) (the “Commission”) for each item of eContent sold by or through an eContent Store. The Parties acknowledge and agree that the Commission includes a contribution to the costs and expenses incurred by Barnes & Noble for establishing and operating the Program. The Parties agree that in the event, Barnes & Noble is held liable for any copyright payment or levy on account of the sale of eContent hereunder, the commission shall be increased by such amount as is necessary to compensate the payment or levy, as applicable. Barnes & Noble shall collect debt on behalf of the eContent Provider and will cede all receivables stemming from end user contracts.

(c) SALES TAXES. Except as otherwise agreed in a signed writing between the parties, in the event that the sale or delivery of any item of eContent to any end user is subject to any sales, use, good and services, value added or similar tax under applicable law, Barnes & Noble will collect such tax, withhold it from payments due to eContent Provider, and remit such tax to the relevant fiscal authorities on eContent Providers’ behalf. eContent Provider and Barnes & Noble shall jointly work together to resolve any audits or other inquiries or proceedings related to tax. All other payments for eContent sold by Barnes & Noble under this Agreement not subject to sales tax shall be made without any deduction or withholding any monies, except for refunds or unless required by law.

In jurisdictions where VAT applies, VAT will apply in accordance with the rules of the jurisdiction where a supply under this Agreement takes place or is deemed to take place for VAT purposes. B&N is not required to pay any VAT charged by the eContent Provider until the latter has provided B&N with a valid VAT invoice in the jurisdiction of the supply.

(d) PAYMENT. For any item of eContent sold by Barnes & Noble, the payment due to eContent Provider shall be calculated as follows for each item of eContent:

\[ \text{Payment} = \text{Digital List Price} - \text{Commission} \]

Upon collection of any amounts from any end user for the sale of an item of eContent hereunder, Barnes & Noble will deduct the full amount of the Commission and any applicable taxes collected by Barnes & Noble and shall remit the Payment to eContent Provider pursuant to Section 10 of the Agreement.

(e) Refunds. Sums received by B&N from end users and rightfully refunded to customers – including but not limited to cases of withdrawal under E-commerce and/or consumer protection laws – will be deducted from Payments to eContent Provider. This also applies to any sums paid to end users following end users’ claims rightfully based on or related to contracts concluded by Barnes & Noble in its capacity as agent. In the event of refund, no commissions are owed for the relevant transaction.
(f) **Parity.** eContent Provider warrants, represents and covenants that the terms it provides Barnes & Noble for any and all items of eContent are and will be no less favorable than the terms of sale that eContent Provider provides to any other sales agent or commissaire of such items of eContent. In the event that eContent Provider provides more favorable terms to any other sales agent or commissaire of such eContent (including but not limited to a lower Customer Price, a higher Commission, greater catalogue availability, any promotional opportunity made available to sellers of eContent, any bundling of eContent, or any other terms of sale including the right to control Customer Price), eContent Provider shall immediately notify Barnes & Noble and eContent Provider agrees that Barnes & Noble shall have the right to sell such items of eContent on such more favorable terms.

(g) **Barnes & Noble’s Rights.** Barnes & Noble shall be entitled to perform its duties in such manner as it shall in its absolute discretion believe reasonable, except for Barnes & Noble agrees with eContent Provider at all times during the term of this Agreement to: (i) act in good faith; (ii) look after the interests of eContent Provider with respect to the Use of the eContent pursuant to the rights granted and acknowledgements given under this Agreement; and (iii) market and promote the eContent through the Program (subject to receiving relevant support, including monetary support, from the eContent Provider). Barnes & Noble shall be entitled to take such action as it deems fit against end users to receive outstanding payment due, for the account of eContent Provider, or to enforce any applicable end user license agreements or terms.

**Section 2 – Reseller**

**Reseller Terms**

(a) **Retail Price.** To the extent permitted by applicable law, Barnes & Noble shall have the sole and complete discretion to set the end user price for any eContent sold by Barnes & Noble on a resale basis (“Resale eContent”); for purposes of clarity, the Digital List Price shall be a suggested price only. If applicable law permits Barnes & Noble to set the end user price, then Barnes & Noble shall be solely responsible for ensuring compliance with and warrants that it will comply with all applicable price fixing laws and regulations related to the sale of books (e.g. the German Book Resale Price Fixing Act (BRPFA)). If such laws apply, Barnes & Noble will set the end user price to be the Fixed Digital List Price.

(b) **Payment Terms.** Barnes & Noble shall remunerate eContent Provider for sales of each eContent. eContent Provider’s share of the sale of any eContent shall be 50% of eContent Provider’s Digital List Price (VAT exclusive).

(c) **Sales Taxes.** Except as otherwise agreed in a signed writing between the parties, Barnes & Noble shall be responsible for collecting and remitting any and all taxes imposed on sales by Barnes & Noble of Resale eContent. eContent Provider shall be responsible for any income or other taxes due and payable resulting from amounts paid to eContent Provider pursuant to this Agreement. In jurisdictions where VAT applies, all payments made to eContent Provider by Barnes & Noble hereunder are exclusive of VAT. VAT will apply in accordance with the rules of the jurisdiction where a supply under this Agreement takes place or is deemed to take place for VAT purposes. B&N is not required to pay any VAT charged by the eContent Provider until the latter has provided B&N with a valid VAT invoice in the jurisdiction of the supply.

(d) **Parity.** eContent Provider warrants, represents and covenants that the terms it provides Barnes & Noble for any and all items of eContent are and will be no less favorable than the terms of sale that eContent Provider provides to any other sales reseller of such items of eContent. In the event that eContent Provider provides more favorable terms to any other reseller of such eContent (including but not limited to a lower Digital List Price, more favorable discount off of Digital List Price, greater catalogue availability, any promotional opportunity made available to sellers of eContent, any bundling of eContent, or any other terms of sale), eContent Provider shall immediately notify Barnes & Noble and eContent Provider agrees that Barnes & Noble shall have the right to sell such items of eContent on such more favorable terms.
EXHIBIT D

Relationship by Territory

Section 1 - Countries in which Barnes & Noble acts as Agent for eContent Provider: None

Section 2 - Countries in which Barnes & Noble acts as Reseller for eContent Provider: Worldwide
EXHIBIT E

Lending Rules

1. **eContent Loan.** A customer who has purchased an eContent may loan such eContent to one (1) lendee during a Lending Period (as defined below). No more than one (1) copy of any one (1) eContent can be on loan from an eContent Lendor at any given time.

2. **Lending Period.** The lending period is for up to thirty (30) days (the "Lending Period").

3. **Lendor.** During the Lending Period, as soon as an eContent is loaned, the loaned eContent will be disabled in the lendor's Digital Locker. Once a lendor synchronizes a device containing the loaned eContent with the lendor's Digital Locker, access to that eContent will be prevented on such device. After thirty (30) days the eContent will be re-enabled in the lendor's Digital Locker, after which the eContent can be re-loaned and, if not re-loaned, lendor will be able to regain access to such eContent by synchronizing a device with their Digital Locker.

4. **Lendee.** Lendee will be disabled from lending the loaned eContent. Upon the expiration of the Lending Period, the loaned eContent will be disabled in the lendee’s Digital Locker and lendee will no longer be able to access the loaned eContent.

5. **Return of eContent.** Lendee will be allowed to return the loaned eContent to the Lendor before the expiration of the Lending Period. If lendee returns eContent before the Lending Period has expired, lendor will be able to regain access to that eContent upon the return of that eContent but will be disabled from lending that eContent again until the expiration of the Lending Period.