

Wheatmark Publishing Agreement

This PUBLISHING AGREEMENT (**Agreement**) between Wheatmark, Inc., with offices at 610 East Delano Street, Suite 104, Tucson, Arizona 85705 (**Publisher**), and the client (**Client**) whose name and signature appear on the **Client Information** section of the **Wheatmark Publishing Sign-up Form** is effective as of the date of the **Client's** signature on the **Wheatmark Publishing Sign-up Form**. WHEREAS the **Publisher** and the **Client** wish respectively to publish and to have published the work (**Work**) listed in the **Book Information** section of the **Wheatmark Publishing Sign-up Form**. THEREFORE, they mutually agree as follows:

1. License of Rights

The **Client** hereby grants to the **Publisher**, during the **Term** of this **Agreement**, the nonexclusive worldwide rights to: print, publish, and sell the **Work** in book form, and to publish and sell the **Work** in all electronic book (eBook) formats; and for publicity purposes, to publish (or permit others to publish) in print or on the Internet, or to broadcast (or permit others to broadcast), but not dramatize, by radio or television, without charge, such selections from the **Work** as in the opinion of the **Publisher** may benefit its sale. The **Client** retains all rights not granted to the **Publisher** in writing.

2. Editorial Control

If the **Client** HAS NOT purchased editorial services from the **Publisher**, the **Client** acknowledges that the **Publisher** is not responsible for editing the **Work** and has no editorial control over the **Work**. If the **Client** HAS purchased editorial services from the **Publisher**, the **Client** acknowledges that he/she retains final editorial control over the **Work**. The final design and text of the **Work**, including any and all changes suggested or made by the **Publisher's** copyeditors, proofreaders, and indexers, must be approved in writing by the **Client** before publication.

3. Copyright Notice

All copies of the **Work** that are distributed to the public will bear a copyright notice in the name of the **Client**, or designated copyright owner, as prescribed by the applicable copyright laws of the United States of America.

4. Manuscript Submission

The **Client** will submit all **Required Materials** relating to the **Work** to the **Publisher** before the **Publisher** will perform any services. **Required Materials** are:

- Signed and completed Wheatmark Publishing Sign-up Form
- Payment for the services selected
- The final manuscript in a form acceptable to the **Publisher** (including all changes and corrections)
- All image files or image hardcopies
- Any and all other materials supplied by, or agreed to be supplied by, the **Client** for inclusion in the **Work**.

Client may incur additional charges if the **Work** is not submitted in a format acceptable to the **Publisher**.

The **Submission Date** is the date the **Publisher** receives all **Required Materials** from the **Client**. Any changes or editorial revisions requested by the **Client** after the **Submission Date** will result in additional fees and delays.

The **Publisher** reserves the right to refuse any submitted material for any reason at any time at its sole discretion. If the **Publisher** refuses to publish the manuscript submitted by the **Client**, the **Publisher** will refund the **Client's** payment for publishing services, but the **Publisher** will be under no obligation to return any submitted materials. Once a manuscript is accepted for publication and the publishing process has begun the refund policies in the **Term of Agreement** paragraph will apply. In no event will the **Publisher** be obligated to publish a work, which in its opinion violates the common law or statutory copyright, or the right of privacy of any person, or contains libelous or obscene material.

5. Fees

The **Publisher's** fees for services and products are due at the time of order. In the event that the **Publisher** establishes a fee based on information provided by **Client**, which is later revised by the **Client** or found to be inaccurate, the **Publisher** may revise the fee and require additional payment before performing any services or delivering any products.

6. Date of Publication

The **Publisher** will publish the **Work** 90 to 180 days after the **Submission Date**. The **Client** acknowledges that client review periods totaling in excess of 20 days may delay the publication of the **Work** to more than 180 days after the **Submission Date**. The **Client** acknowledges that client alterations to the manuscript after the **Submission Date** may delay the publication of the **Work** to more than 180 days after the **Submission Date**. In no event will the **Publisher** be responsible for delays caused by circumstances beyond its control.

7. Style of Publication

The **Publisher** will design the **Work's** interior layout and cover in consultation with the **Client**. The **Publisher** will, however, retain final discretion over the style and formatting of the **Work**, including its interior layout and cover design. The **Publisher** will publish the **Work** in print under such imprint as it deems suitable, unless an agreement specifying the imprint has been made in writing and is signed by the **Publisher**. The retail price of the printed **Work** will be based on its page count and format using the **Publisher's** current guidelines.

8. Registrations

The **Publisher** will:

- Secure an International Standard Book Number (ISBN) for the printed **Work**
- Apply for a Library of Congress Control Number (LCCN) for the printed **Work**
- Apply to have the printed **Work** listed in R. R. Bowker's *Books-in-Print*

9. Distribution

For a period of at least three years after the date of first publication of the **Work**, the **Publisher** will make the printed **Work** available for sale:

- On major online bookstores
- On the **Publisher's** own online bookstore
- Through a wholesaler, Ingram Book Company or Baker & Taylor

In no event will the **Publisher** be responsible for interruptions in distribution caused by circumstances beyond its control.

Three years after the date of first publication of the **Work** in print, the **Publisher** has the right to begin charging an annual title distribution fee for each edition of the **Work** that the **Publisher** continues to distribute.

10. No Guarantee of Minimum Sales

The **Publisher** makes no promises that any of its products or services will result in the sales of a minimum number of copies of the **Work**. The **Client** acknowledges that the **Publisher** has no control over the purchasing decisions of book buyers and is not liable to any party if sales of the **Work** do not meet the **Client's** expectations.

11. Royalty Payments

Royalty percentages are calculated from Publisher Print Receipts from the sale of printed copies of the **Work**. "Publisher Print Receipts" is defined as the payments the **Publisher** actually receives from the sales of printed copies of the **Work**, less any returns. The **Client**, or a person or entity designated by the **Client**, will receive royalties equaling 40% of the Publisher Print Receipts when the **Work** is sold through the **Publisher's** bookstore at the full retail price. The **Client** will receive royalties equaling 20% of the Publisher Print Receipts on all other sales. The **Client** will receive royalties equaling 50% of the Publisher Receipts on all sales of electronic book (eBook) versions of the **Work**.

No Royalty Copies. No royalty will be paid on copies sold below or at cost, including expenses incurred; on copies sold directly to the **Client** by the **Publisher**; or on copies furnished gratis to the **Client** or for review, advertising, sample, or like purposes.

The **Publisher** will make royalty payments on a quarterly basis to the **Client**. If the royalty payment due in any one quarter is less than thirty U.S. dollars (\$30), a payment may not be made, and the balance may be carried forward and added to the next quarter's royalty payment.

Share to Other Authors. If the work of other authors is included in the **Work**, the royalty payment made by the **Publisher** to the **Client**, pursuant to earlier sections of this paragraph, will not be increased and will include the royalties due such other authors. It is the responsibility of the **Client** to pay such other authors the pro-rated portions of the royalties to which they are entitled.

Should the **Client** receive an overpayment of royalty arising from copies reported sold but subsequently returned for reason other than physical defect, the **Publisher** may deduct such overpayment from any future royalties due the **Client**.

12. Sample Copies for Client

The **Client** will receive sample copies of the printed **Work** upon publication. The number of sample copies will be based on specific publishing services and publishing packages purchased by the **Client**. The **Publisher** will ship these copies to the **Client** at the **Publisher's** own expense, using the shipping method of the **Publisher's** choice.

13. Discounts to Client

The **Client** may purchase copies of the printed **Work** from the **Publisher** at 40% off the **Publisher's** suggested retail price, plus shipping and handling. (Volume discounts apply to orders of 100 copies or more.)

14. Publicity

The **Publisher** reserves the right to publish information regarding the **Client** or the **Work** for publicity purposes. The **Client** will allow the **Publisher** to distribute promotional copies of the book free of charge, as deemed necessary by the **Publisher**. The **Client** will receive no royalties for such copies.

15. Client's Warranties and Indemnities

The **Client** represents and warrants to the **Publisher**:

- That he/she is the sole owner of the **Work** and of all the rights granted to the **Publisher**
- That he/she has not assigned, pledged, or otherwise encumbered the rights to the **Work**
- That he/she has full power to enter into this **Agreement**
- That the **Work** and all rights therein are free of liens, claims, or interests of any kind
- That the **Work** is entirely original except for portions thereof for which legally effective written licenses or permissions have been secured
- That the **Work** does not violate or infringe upon any personal or proprietary rights including without limitation privacy rights, contract rights, or publicity rights of any other persons or entities
- That the **Work** is not libelous or obscene
- That the **Work** does not infringe upon any statutory or common law copyright
- That any information contained in the **Work** is accurate, and any recipe, formula, or instruction contained in the **Work** is not injurious to the reader or to any other party

If any claim, action, or proceeding based upon an alleged violation of any of these warranties is made (i) the **Publisher** will have the right to defend the same through counsel of its own choosing, (ii) no settlement will be effected without the prior written consent of the **Client**, which consent will not unreasonably be withheld, and (iii) the **Client** will hold harmless the **Publisher**, any seller of the **Work**, and any licensee of a subsidiary right to the **Work**, against any damages finally sustained. If such claim, action, or proceeding is successfully defended or settled, the **Client** will indemnify the **Publisher** against the entire expense (including reasonable counsel fees) attributable to such defense or settlement. If any such claim, action, or proceeding is instituted, the **Publisher** will promptly notify the **Client**, who will fully cooperate in the defense thereof, and the **Publisher** may withhold payments of reasonable amounts due the **Client** under this or any other agreement between the parties. These warranties and indemnities will survive the termination of this **Agreement**.

16. Permission for Copyrighted Material

If the **Client** incorporates in the **Work** any copyrighted material, he/she will procure, at his/her expense, written permission to reprint it. The **Client** agrees to retain all such written permissions. The **Client** agrees to deliver all such written permissions to the **Publisher** at the **Publisher's** request.

17. Suits for Infringement of Copyright

If the copyright of the **Work** is infringed and the parties (the **Client** and the **Publisher**) proceed jointly, the expenses and recoveries, if any, will be shared equally, and if they do not proceed jointly, either party will have the right to prosecute such action, and such party will bear the expenses thereof, and any recoveries will belong to such party; and if such party will not hold the record title of the copyright, the other party hereby consents that the action be brought in his/her name.

18. Term of Agreement

This **Agreement** and the rights and licenses granted in the **License of Rights** paragraph above will extend indefinitely until terminated by either party. Either the **Client** or the **Publisher** may terminate this **Agreement** at any time, with or without cause. If the **Client** terminates this **Agreement** before publication, or the **Publisher** terminates this **Agreement** within the first 3 years after publication, the **Publisher** agrees to refund (or apply against any outstanding amounts in the **Client's** account) all publishing fees minus that portion of the publishing fees that the **Publisher**, in its sole judgment, deems to be owing for services already performed and for account administration.

19. Miscellaneous Provisions

Notices. Any notice given under this **Agreement** is deemed to have been given if deposited in the United States mail, certified postage pre-paid, addressed to either party at the locations given above, or any other addresses as hereafter provided by either party.

Arbitration and Governing Law. The laws of the State of Arizona will govern this **Agreement**. Any dispute or controversy arising under, out of, in connection with, or in relation to this **Agreement**, and any amendments thereof, will be determined and settled by arbitration in accordance with the rules of the American Arbitration Association. Venue for any arbitration will be in Pima County, Arizona. Any award rendered therein will be subject to the laws of the State of Arizona and will be final and binding, and judgment may be entered thereon in any court having jurisdiction thereof. In the event that any matter is submitted to arbitration pursuant to this paragraph, the prevailing party will be awarded its costs and reasonable attorneys' fees, including costs and reasonable attorneys' fees associated with collection.

Severability. If any provision of this **Agreement** or the application thereof to any person or circumstance will be held by a court to be unenforceable to any extent, the remaining provisions, and this **Agreement** and the application thereof, will not be affected and will be valid, legal, and enforceable to the fullest extent permitted by law.

Waiver. No waiver of any breach of, or default under, any provision of this **Agreement** will be deemed a waiver of such provision, or of any subsequent breach or default.

Assignment. This **Agreement** will be binding upon and inure to the benefit of the successors, assigns, executors, administrators, and legal representatives of the parties. The written consent of the **Publisher** must be secured before the **Client** may assign this **Agreement** in whole or in part.

Modifications and Amendments. This **Agreement** may not be modified or amended except by the written agreement of the parties.

Entire Agreement. This **Agreement** constitutes the entire agreement between the parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto. The parties will not be bound by any understanding, agreement, promise, or representation, whether expressed or implied, which is not specified in this **Agreement**.

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Thank you for publishing with Wheatmark!

Fill out this form to begin publishing your book.

Fax this page to (866) 273-8990 or mail to

Wheatmark, 610 E Delano St Ste 104, Tucson, AZ 85705.

For assistance, call toll free (888) 934-0888 x2.

Wheatmark Publishing Sign-up Form

Book Information	
Title of Book:	Subtitle <i>(if any)</i> :
Author's Name <i>(as it should appear on book)</i> :	
Additional descriptions or comments <i>(if any)</i> :	

Client Information	
Your Name:	Phone:
Shipping Address <i>(for shipping books, we need a street address, not a P.O. box)</i> :	Fax:
	Email:
Mailing Address <i>(if different than shipping address)</i> :	Date of Birth <i>(optional)</i> :
I have read the Wheatmark Publishing Agreement (Version 12/17/2009). I understand and agree to all its terms in full.	
Date:	Signature: