

## PUBLISHING AGREEMENT

THIS PUBLISHING AGREEMENT (this “Agreement”), effective as of **DATE** (the “Effective Date”), is made by and between Light Messages, LLC, a North Carolina limited liability company doing business as Light Messages Publishing, with a principal place of business at 5216 Tahoe Drive, Durham, NC 27713 (“Publisher”) and **AUTHOR**, an individual residing **AUTHOR ADDRESS** (“Author”).

WHEREAS, Author has created an original work titled **BookTitle** (“the Book”); and

WHEREAS, Publisher wishes to publish the Book;

NOW, THEREFORE, in consideration of the foregoing Recitals, incorporated herein by reference, the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and, unless earlier terminated, shall continue in effect for the full term of copyright in the Book and any renewals or extensions thereof under then-current United States copyright law or until such time as the rights granted hereunder revert to Author pursuant to Sections 3(c), 13(d), and 13(e).
2. Schedule. The parties shall perform their obligations according to the schedule set forth in Exhibit A, attached hereto and incorporated herein (as such Exhibit may be updated and amended from time to time by written agreement of the parties) (the “Schedule”).
3. Rights Granted; Reserved
  - a. Publishing Rights. Author hereby grants to Publisher during the Term an exclusive, worldwide, sub-licensable, royalty-bearing license to reproduce, distribute, offer for sale, sell and promote printed and electronic versions of the Book in any manner, medium or format.
  - b. Subsidiary Rights. Subject to the provisions of Section 3(d), Author hereby grants to Publisher during the Term an exclusive, worldwide, sub-licensable, royalty-bearing license to exercise or license the exercise of subsidiary rights, including, without limitation, first and second serial rights, book club rights and nondramatic audio reproductions of the Book.

c. Negotiation and Execution of Contracts. Publisher shall have the sole right to negotiate and sign contracts with respect to the rights set forth in Sections 3(a) and 3(b); provided it has first consulted with Author; and provided further that its licensing costs, if any, shall not be deductible for purposes of computing Royalties or other amounts payable to Author under Section 6. In the event that two (2) years after Publisher's first publication of the Book Publisher has not exercised or entered into a license pertaining to the exercise of any of the rights set forth in Sections 3(b), such rights shall automatically revert to Author.

d. Rights Retained by Author. Author shall retain all rights not expressly granted in Sections 3a, 3b and 3c, including, without limitation, dramatic adaptation, video, film, graphic novel, and merchandise rights rights.

4. Acceptance; Editing; Publication

a. Acceptance. The parties mutually acknowledge that, as of the Effective Date, Publisher has notified Author that the manuscript of the Book, as previously delivered by Author to Publisher, is acceptable, subject to the provisions of Section 4(b).

b. Content and Line editing. Author agrees to make content and line editing changes requested by Publisher; provided, however, that Publisher and Author shall confer in good faith with respect to such changes.

c. Copy Editing Publisher shall have the right to edit the Book in accordance with its standard style of punctuation, spelling, capitalization and usage. Author shall review, correct, revise and return the edited manuscript, proofs and other materials delivered to Author by Publisher in accordance with the Schedule. Publisher will make no changes or alterations to the text of the Book without Author's final approval. If Author fails to timely perform author's obligations as set forth on the Schedule, publishing of the Book by Publisher may be commensurately delayed.

d. Publication. Publisher shall publish the Book in paperback and/or hardcover, and electronic editions, including, without limitation, Kindle and ePub formats, at its own expense in accordance with the Schedule. Production, distribution, display, offering for sale, sale and promotion of the Book shall be at the sole discretion of Publisher; provided, however, that Publisher and Author shall confer in good faith with respect to the design, cover art and format of the Book in any and all editions; provided, however, that Publisher reserves the right for the final decision regarding all matters of design, cover art and format of the Book.

5. Copyright; Registration. Author shall retain all right, title and interest, including, without limitation, copyright, in and to the Book. Author shall be solely responsible for registering the copyright in the Book in the U.S. Copyright Office. Publisher shall print a copyright notice in Author's name in conformity with U.S. copyright law in every copy of the Book in any and all media and shall cause its licensees to include such notice in connection with the publication of any and all editions of the Book and any derivative Books based on the Book.

6. Royalties.

a. Publisher shall pay Author royalties ("Royalties") in an amount equal to twenty-five percent (25%) of its net receipts ("Net Receipts"). As used herein, "Net Receipts" shall mean one hundred percent (100%) of all gross receipts ("Gross Receipts") received by or credited to Publisher pursuant to its exercise of the rights granted in Sections 3(a), 3(b) or 3(c) less its direct costs ("Direct Costs"). Direct Costs shall include costs actually incurred by Publisher in connection with the printing and shipping of the Book but shall not include the cost of Publisher's overhead, marketing, or the salaries of Publisher's employees.

b. Publisher shall deduct from Author royalties ("Royalties") those royalties computed in 6.a. for books which are returned unsold to publisher.

7. Accounting; Audit

a. Accounting and Payment of Royalties. Publisher shall issue complete and accurate, quarterly statements of account (each a "Statement of Account") no later than thirty (30) days following the end of each calendar quarter at an address to provided by Author. Each such Statement of Account shall include (a) the Gross Receipts attributable to the exercise of the rights granted in Sections 3(a), 3(b) or 3(c) during the applicable quarter, (b) permitted deductions from such Gross Receipts and (c) Net Receipts. Publisher, simultaneously with its issuance of each Statement of Account, shall pay Royalties to Author as set forth in Section 6. If the amount of Royalties due to Author in any calendar quarter does not exceed twenty-five dollars (\$25.00), Publisher reserves the right to accrue such amounts until they meet or exceed \$25.00 in the aggregate.

b. Obligation to Maintain Records; Periodic Audits. During the Term and for a period of two (2) years thereafter, Publisher shall keep and maintain full, true and accurate books of account and other records containing specific information relating to Publisher's manufacture, distribution, sale and licensed use of the Book and any Royalty-bearing

use of the Book by Publisher itself, all with sufficient particularity to permit the computation and verification of the amounts to be paid as Royalties hereunder. During the Term and for a period of two (2) years thereafter, Author or a representative of Author shall be permitted, upon reasonable written notice to Publisher, to audit, inspect and copy such books and records pertaining to the Book at Publisher's premises during normal business hours or at such other place as the parties may agree to verify the accuracy of the Royalties paid to Author. Each such audit or inspection shall be at Author's expense, unless such audit or inspection reveals a deficiency of five percent (5%) or more in the payment of any Royalty, in which case Publisher shall reimburse Author for all expenses incurred by Author in connection with the audit or inspection in addition to the amount of the deficiency. Any deficient Royalty payment discovered as the result of such audit or inspection shall be rectified no later than fifteen (15) days following its discovery.

8. Author's Representations and Warranties. Author represents and warrants to Publisher that (a) Author is the sole creator of the Book; (b) the Book is original, has never before been published in whole or in part in any form and is not in the public domain in any country; (c) the Book does not infringe any copyright or any other proprietary right; (d) no royalties, honoraria or fees are payable by Publisher to any third party by reason of Publisher's use of the Book in accordance with the terms and conditions of this Agreement; (e) to the best of Author's reasonable knowledge, the Book is not in violation of any right of privacy or publicity or harmful so as to subject Publisher to liability to any third party or is otherwise contrary to law; (f) Author has not assigned, licensed, pledged or otherwise encumbered any rights in the Book; (g) Author has all requisite power and authority to enter into this Agreement; and (h) the execution, delivery and performance of this Agreement by Author shall not violate provisions of any other agreement or understanding to which Author is a party or by which Author is bound.

9. Publisher's Representations and Warranties. Publisher represents and warrants to Author that (a) Publisher has all requisite power and authority to enter into this Agreement; and (b) the execution, delivery and performance of this Agreement by Publisher shall not violate provisions of any other agreement or understanding to which Publisher is a party or by which it is bound.

10. Indemnification. Each party shall and hereby does defend, indemnify and hold harmless the other party (the "Indemnified Party"), and in the case of Publisher its members, managers, employees, agents and licensees, from and against any and all damages, claims, losses, expenses, costs, obligations and liabilities, including, without limitation, liabilities for attorneys' fees and expert witness fees, suffered or incurred by the Indemnified Party directly or indirectly

as a result of any breach of any representation, warranty or covenant made by the indemnifying party under this Agreement.

## 11. Infringement Actions

a. Defense of Third-Party Claims. In the event that any third party asserts a demand, claim or cause of action (collectively, "Claims") against Publisher alleging that Publisher's use of the Book in accordance with the terms of this Agreement infringes the rights of such third party, Publisher shall within a reasonable period following Publisher's receipt of notice of such Claims notify Author of such Claims. Upon receipt of such notice from Publisher, Author shall defend Publisher against such Claims. In connection therewith, Publisher shall assist and cooperate with Author in the defense of any such Claims; provided, however, that Author shall bear all damages, costs and expenses, including attorneys' fees and expert witness fees, arising from all such legal proceedings and shall reimburse Publisher for all damages, costs and expenses, other than attorneys' fees, incurred by Publisher in providing such assistance to Author. Publisher may, at its election, participate in the defense of such Claims at its sole cost and expense.

b. Pursuit of Third-Party Infringers. In the event that Publisher believes that a third party is infringing any of the rights granted by Author pursuant to Section 3, Publisher shall within a reasonable period following Publisher's discovery of such acts of infringement notify Author of such infringement. Following such notification, Publisher shall have the right, but shall not be obligated, to take such action as Publisher deems appropriate to stop such infringement, including, but not limited to, filing a civil action against the party engaging in such infringement. In furtherance of such right, Author acknowledges that Publisher may include Author, at Publisher's expense, as a party plaintiff in any such suit. Publisher, in its sole discretion, may settle or dismiss any such proceeding at any time. All damages, costs or other amounts recovered by Publisher as a result of any such action, claim or settlement shall be the sole property of Publisher.

c. If Publisher does not elect to take action against an act of infringement: Author shall have the right, but shall not be obligated, to take such action as Author deems appropriate to stop such infringement, including, but not limited to, filing a civil action against the party engaging in such infringement. In furtherance of such right, Publisher acknowledges that Author may include Publisher, at Author's expense, as a party plaintiff in any such suit. Author, in his sole discretion, may settle or dismiss any such proceeding at any time. All damages, costs or other amounts recovered by Author as a result of any such action, claim or settlement shall be the sole property of Author.

12. Dispute Resolution. If either party believes that the other is in breach of this Agreement, that party shall give the other written notice of the alleged breach

and a thirty (30) day opportunity to cure it. Any disagreement that persists thereafter shall be resolved in good faith through mediation conducted by a certified mediator in accordance with the rules for Superior Court Mediated Settlement Conferences. If the parties are unable to agree on the selection of a certified mediator, they will jointly petition the Senior Resident Superior Court Judge of Durham County to appoint a mediator.

13. Termination.

a. Termination for Cause. Either party may terminate this Agreement if, after notice and thirty (30) days' opportunity to cure, (i) the other party fails to timely and fully perform their material obligations hereunder, including, without limitation, obligations under Section 4, or (ii) either party breaches their representations, warranties or covenants hereunder.

b. Termination in Bankruptcy. Notwithstanding any provision herein to the contrary, if a petition in bankruptcy is filed by or against Publisher, or if Publisher becomes insolvent or makes an assignment for the benefit of its creditors or any arrangement pursuant to any bankruptcy law, or if Publisher discontinues its business or a receiver is appointed for it or its business, then, to the fullest extent permitted by law at the time of the occurrence, this Agreement and the rights granted hereunder shall automatically and immediately terminate without any notice or further action by either party being necessary. In the event that this Agreement is terminated by operation of this Section 13(b), Publisher and its receivers, representatives, trustees, agents, administrators, successors and/or assigns shall have no right to sell, exploit or in any way deal with the Book except upon the separate written consent and instructions of Author.

c. Out of Print. Publisher may declare the Book out of print if sales of the Book fall below 10 copies in any twelve-month period; provided, however, that no such declaration may be made by Publisher earlier than two (2) years following first publication of the Book. Copies of Book purchased by Author shall not be included in the count used to determine out of print status. A declaration that the Book is out of print will not relieve Publisher of its obligations to pay royalties owed by Publisher to Author under Section 6. This provision shall apply independently to print and electronic copies of the Book. A declaration that both print and electronic editions of the Book are out of print shall constitute termination of this Agreement.

d. Purchase by Author. Author may elect to purchase the rights to the Book from Publisher if sales of the Book fall below 10 copies in any two consecutive full calendar years. The cost to repurchase the rights shall be 10 percent of cumulative Net Receipts as defined in 6(a).

e. Effects of Termination. In the event that this Agreement is terminated other than by Author for cause or by operation of Section 13(b), Publisher may continue to sell or cause to be sold any print medium copies of the Book or any licensed edition of the Book in its inventory or the inventory of its distributors or licensees, as the case may be, as of the effective date of such termination, subject to Publisher's timely payment of Royalties due to Author. Otherwise all rights granted by Author to Publisher hereunder shall revert to Author automatically.

14. Gratis Copies; Author Purchases. Immediately upon publication, Publisher shall send three free copies of the print edition of the Book to Author. Author shall have the right to purchase an unlimited number of copies of the Book at a reduced author price, which price shall be no greater than the price offered by Publisher to its best wholesale customers. Sales to Author under this Section 14 shall not count toward the accrual of Royalties.

15. Miscellaneous Provisions

a. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties, supersedes and cancels any and all prior agreements, written or oral, between them relating to the subject matter hereof, and may not be amended except in a writing signed by them.

b. Assignment; Binding Effect. This Agreement may be assigned by Publisher as part of the sale or transfer of all or substantially all of Publisher's business or as part of a merger or consolidation of Publisher with another company. This agreement may also be assigned by Publisher to any subsidiary or affiliate or any company or entity under control by it. The performance of the terms of this Agreement by Author is personal to Author and may not be assigned or delegated. Otherwise, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective successors, legal representatives, heirs and permitted assigns.

c. Governing Law; Waiver of Provisions; Severability; Binding Effect; Relationship of Parties; Captions. This agreement is subject to the laws of the United States or America and the State of North Carolina without reference to the conflict-of-laws rules of such State. The terms, covenants and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver by either party of any condition or other breach of any provision, term or covenant in this Agreement whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or the breach of any other provision, term or

covenant of this Agreement. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future law effective during the Term hereof, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. This Agreement does not create and shall not be deemed to create a relationship of partners, joint venturers, employer/employee, associates or principal and agent between the parties hereto. The captions of Sections of this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

d. Surviving Provisions. The following Sections shall survive the expiration or earlier termination of this Agreement: 5, 7, 10–12, 13(d), 13(e), and 15.

WHEREFORE, Author has executed and Publisher has caused its duly authorized representative to execute this Agreement as of the Effective Date.

**LIGHT MESSAGES**

**AUTHOR**

By: Publisher

**AUTHOR**

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Date:

Date:

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## Addendum A - Description of Rights

1. **Subsidiary Rights:** The right to use your work in a format other than hardcover or paperback editions. This includes ebooks, and non dramatic audio.
2. **Author Maintains:** drama, video, film, graphic novel (comic book), dramatic audio, and merchandise rights.

**Non-Dramatic Audio** is a standard audiobook.

**Dramatic Audio** refers to a reading of the books with added special effects such as musical interludes, sound effects, and theatrical dialogue as might be used for a radio show.

3. **First Serial Rights:** The right to be the first publisher of your work
4. **Second Serial Rights:** The right to publish your work after it has already been published by another publisher.
5. **Book Club Rights:** The right to allow a book club to print and sell the book. Author's share of that income is the same as other royalties.

Publisher must consult with author before exercising rights 1-5 per clause 3.c. For example publisher could license the ebook to another company but must consult with author first.