

Torchflame Books

HYBRID PUBLISHING AGREEMENT

THIS PUBLISHING AGREEMENT (this "Agreement"), effective as of _____ (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 *THE BOOK TITLE* ("The Book");

WHEREAS, Publisher wishes to publish The Book under the Light Messages imprint Torchflame Books;

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. Delivery

a. Delivery of The Book. Author agrees to deliver to Publisher a copy of the final manuscript of The Book, in content and form satisfactory to the Publisher, on or before _____, hereinafter referred to as the "Initial Delivery Date," formatted to be compatible with Microsoft Word. The Author agrees to make and keep at least one (1) complete backup copy of the manuscript.

b. Delivery of Documents. The Author shall deliver to the Publisher, not later than the Initial Delivery Date unless otherwise designated by the Publisher, each of the following materials. The Author shall deliver to the Publisher written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art and illustrations) owned by any third party which appear in The Book (hereinafter collectively called the "Permissions").

2. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and, unless earlier terminated, shall continue in effect for three years after the date of first publication, whether in print or digital format, or until such time as the rights granted hereunder revert to Author pursuant to Sections 3(c) or 15.

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, 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 8. In the event that three 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 3(a), 3(b) and 3(c), including, without limitation, dramatic adaptation, video, film, graphic novel, and merchandise rights.

4. Editing

- a. Developmental and Line Editing. Publisher shall provide and Author shall work with an assigned editor 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.
- b. Copy Editing and Proofreading. Publisher shall have the right to edit The Book in accordance with its standard style of punctuation, spelling, capitalization and usage. Publisher shall provide and Author shall work with an assigned copy editor to provide a final manuscript. Author shall be responsible to proofread and return the proofs and other materials delivered to Author by Publisher. Publisher shall make no changes or alterations to the text of The Book without Author's final approval.
- c. Effects of Author's Failure to Timely Perform. If Author fails to timely perform the obligations described in Section 4(a) and 4(b) according to a schedule to be mutually agreed by the parties, then Publisher has the option to delay release or terminate the agreement as warranted.

5. Pre-Press Production, Publication, and Distribution

a. Pre-Press Production. Publisher shall provide developmental and line editing, proofreading, black and white interior design, layout, color cover design, ISBN, Library of Congress registration, scanning and minor editing and enhancements on up to twenty (20) images, production PDF proofs, and creation of Kindle and ePub electronic versions of The Book.

b. Publication. Publisher shall cause The Book to be printed and shall cause paperback and ebook versions of The Book to be available wholesale to retailers.

c. Distribution. Publisher shall cause The Book to be distributed through the Ingram and Lightning Source Global Distribution network.

d. Marketing. Publisher shall provide industry standard marketing metadata for catalog listings of The Book, listing of The Book on publisher's website, press release, cover images for use by author, and support for author's announcements and events through its social media.

6. Schedule. Publisher shall publish The Book within sixty (60) days following the approval of the pre-press proof by Author or on an agreed upon date.

7. Copyright; Registration. Author shall retain all rights, 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 works based on The Book.

8. Royalties, Holdback Reserves, and Returns.

a. Royalties. Publisher shall pay Author Royalties ("Royalties") in an amount equal to sixty percent (60%) of its net receipts ("Net Receipts") for print books and ebooks on the first one thousand royalty-bearing books sold. Subsequently, Publisher shall pay Author Royalties in an amount equal to seventy-five percent (75%) of its net receipts for print books and ebooks. As explained in Section 16(b), copies of The Book purchased by Author are not Royalty-bearing.

b. Net Receipts. As used herein, "Net Receipts" shall mean one hundred percent (100%) of all monies received by Publisher pursuant to its exercise of the rights granted in Sections 3(a), 3(b) or 3(c) less the costs of printing and shipping The Book.

c. Holdback Reserve. Publisher shall reserve an amount equal to twenty percent (20%) of Author Royalties earned during the previous eight (8) months for books which may be returned to Publisher.

- d. Returns. Author shall reimburse Publisher Royalties received for copies of The Book returned to Publisher.
- e. Death of Author. If Author should die before the termination of this agreement, this contract shall transfer in force to the Author's official heirs, assigns, or beneficiaries. The Publisher will pay royalties to Author's official heirs, assigns, or beneficiaries. If no official heirs, assigns, or beneficiaries can be located, the Publisher is authorized to hold, without penalty or interest, payment of royalties until official heirs, assigns, or beneficiaries can be identified.
9. 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 the address set forth in the preamble to this Agreement or other address 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) and 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 8. 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. During the Term and for a period of seven 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.
- c. Audits. During the Term and for a period of seven 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.
10. 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 contain materials the author is not authorized to

own, copyright, and distribute; and that the contents do not pose intentional or potential harm to the finances or reputation of an individual or a third party; (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.

11. 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.

12. 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 reasonable 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. Author shall not indemnify Publisher for any damages, expenses, etc. related to claims arising from content added to The Book by Publisher or by any of its licensees with or without Author's consent.

13. 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 subject to the limitations set forth in Section 12, Author shall bear all damages, costs and expenses, including reasonable 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.

b. Pursuit of Third-Party Infringers. In the event that either Publisher or Author believes that a third party is infringing rights described in this agreement or granted

by law, the party discovering such infringement shall, within a reasonable period following discovery of such acts of infringement, notify the other party of such infringement. Following such notification, Publisher and Author shall have the right, but shall not be obligated, to take such joint action as they deem 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. All expenses of such action and proceeding shall be born equally by Publisher and Author. Any damages, costs or other amounts recovered as a result of any such joint action shall be shared equally by Publisher and Author.

c. Pursuit of Third-Party Infringers Solely by Author. 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 taken solely by Author shall be the sole property of Author.

14. Dispute Resolution. In the event of a disagreement between the parties arising out of this Agreement, such disagreement shall be resolved in good faith through a mediator to be selected jointly by the parties. No mediation can be commenced and neither Author nor Publisher can be found to be in breach of this Agreement unless such party has been given written notice identifying the alleged breach and a thirty (30) day opportunity to cure.

15. 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 and 8, or (ii) either party breaches their representations, warranties or covenants hereunder.

b. Failure to Deliver. If Author fails to deliver the manuscript or the Permissions required under this Agreement, or if the revisions and corrections requested by Publisher are not satisfactory, then Publisher has the right to terminate this Agreement without further obligation to Author.

c. 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, 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.

d. Out of Print. If Publisher finds that the sale of The Book, in print format, reaches a point not justifying reprinting, it shall have the right to declare The Book as out of print. Publisher shall advise Author of this declaration, and Author shall have the right for thirty (30) days from such notice date to request copies of the electronic files, if any, of The Book and, if Author so desires, to purchase any remaining stock, if any, of The Book at manufacturing cost plus shipping charges. If Author fails to request the electronic files or fails to purchase any remaining stock, Publisher may dispose of any such files, and books without further liability for royalties. If Publisher, in Publisher's sole discretion, determines that further publication or dissemination of The Book in any format is not in Publisher's best interest, then Publisher shall have the right to declare The Book as out of print and cancel this Agreement; provided, however, that no such declaration may be made by Publisher earlier than three years following first publication of The Book. 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 8. When The Book has been declared out of print, all publishing rights return to Author, excluding any outstanding licenses under this Agreement.

e. Violation. In the event that Author is found to be in violation of the law, infringes the rights of any third party, or engages in libel, slander, defamatory conduct, hate speech, or any other conduct that subjects, or could be reasonably anticipated to subject Author or Publisher to ridicule, contempt, scorn, hatred, or censure or which is likely to materially diminish the sales of Book, Publisher may cancel this agreement and terminate publication of The Book pursuant to this section.

f. Effects of Termination. In the event that this Agreement is terminated other than by Author for cause or by operation of Section 15(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.

16. Author Books.

- a. Publisher will provide Author with 20 copies of The Book, at no cost, upon its completion.
- b. Author shall have the option to purchase any number of copies of The Book at printing cost plus twenty percent (20%) and actual shipping costs. Books purchased by Author shall not count toward the accrual of Royalties.

17. Fees.

- a. Cost Sharing Fee. Author shall pay publisher a one-time pre-press production cost sharing fee of \$4,895.00.
- b. Revision Fee. After The Book has been approved by Author and delivered to the printers there will be a \$100 charge for each revised edition of either the text or the cover requested by author.
- c. Additional Services and Fees. A request by Author for a service not listed in Section 5 of this agreement must be made in writing. The fee for the additional service and the agreement to that fee must be in writing.

18. 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: 7-9,12-14, 15(c), 15(d), and 18.

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: Wally Turnbull

Author Name

Title: Publisher

Date: _____

Date: _____

Addendum

This addendum describes how some responsibilities to which we have agreed are fulfilled as of the Effective Date. While the terms of the responsibilities to which we have agreed are binding, the additional details described below are not. For example, we have no control over which nations are served by the distributor or when we are paid for books sold.

Distribution. Torchflame books are distributed through the Ingram and Lightning Source Global Distribution Network currently serving the USA, Australia, Brazil, Canada, China, European Union, India, Poland, Russia, South Korea, and the United Kingdom. That does not mean that bookstores in those countries will stock your title. It means that your title will be available to them at a wholesale price should they wish to purchase it.

Royalty Payments. We distribute royalties to authors after we have been paid for the sales of their books by our wholesalers and retailers. We are paid monthly but usually 90 days after sales. This means, for example, that we are paid for January sales at the beginning of April. We distribute royalties for author account balances of \$25 or more on a quarterly basis. If less than \$25 then the balance carries forward.

1st Quarter: We pay royalties in January for income we received in October, November, and December for sales made in July, August, and September.

2nd Quarter: We pay royalties in April for income we received in January, February, and March for sales made in October, November, and December.

3rd Quarter: We pay royalties in July for income we received in April, May, and June for sales made in January, February, and March.

4th Quarter: We pay royalties in October for income we received in July, August, and September for sales made in April, May, and June.

Editing. We will provide you with proofs before printing. That will allow you to correct errors you missed before submission and errors that were introduced in the editing process and converting your manuscript to our production software. Reviewing of pre-press proofs is for the correction of errors not for the rewriting of your book.

Standards. Please note that in Section 4(b) of this agreement it is agreed that "Publisher shall have the right to edit The Book in accordance with its standard style of punctuation, spelling, capitalization and usage." While we will seriously consider any special typographical, usage, and cover design request you may have, we will make the final decision to ensure the standards to which the professional publishing world subscribes. That is important for the reputations of your book and our company. We want to make you happy by doing what we know to be best for your book.

Additional Services. You may request optional services not listed in Section 5 of this agreement. All such requests must be in writing. If we agree to perform a service, we will provide a written description of the service and its cost for your written confirmation.