

Publishing Contract

AGREEMENT MADE this ____ day of _____, between [name of publisher] (referred to as the “Publisher”) and [name of author] (referred to as the “Author”).

WHEREAS the parties wish respectively to publish and have published a book (referred to as the “Work”) provisionally titled “[book title]”;

NOW, THEREFORE, they mutually agree as follows:

1. Grants of Rights: The Author grants to the Publisher during the term of copyright, including renewals and extensions thereof:
 - a) Exclusive right in the Frisian language and/or English language, throughout the world, to:
 - i) Print, publish, and sell the Work as a soft-cover (mass-market and/or trade paperback) book; and
 - ii) License publication of a reprint edition(s) by other publishers.
 - b) Non-exclusive right in the Frisian and/or English language, throughout the world, to print, publish, and sell the Work as a hard-cover book.
 - c) Subsidiary Rights and Licenses:
 - i) The Publisher shall have the exclusive right, throughout the world, to sell or license the rights in the Work indicated below upon such terms as the Publisher deems advisable. The proceeds received by the Publisher from the sale or license of such rights shall be divided between the Author and the Publisher as set forth in paragraph 11:
 - a) book club rights;
 - b) textbook rights;
 - c) anthology rights;
 - d) first serial rights (i.e., publication of condensations, excerpts, digests, serializations, and extracts in newspapers and periodicals before first publication in book form);
 - e) second serial rights (i.e., publication of condensations, excerpts, digests, serializations, and extracts in newspapers and periodicals after first publication in book form);

- f) selection rights, (such as a catalogue that produces its own edition of the work);
- g) abridgment/condensation rights;
- h) large print rights;
- i) mass-market paperback rights;
- j) trade (quality) paperback rights;
- k) foreign language rights;
- l) audiobook and e-book rights;
- m) merchandising and commercial rights;
- n) audio rights (i.e., the right to use or adapt the Work or any portion thereof as a basis for audio through any method of recording or transmission now known or hereafter devised, including, without limitation, copying or recording by phonographic, magnetic, laser, electronic, or any other means and whether on phonograph records, audio cassettes, audio discs, or any other human or machine-readable audio medium and the broadcast or transmission thereof, now known or which may be devised in the future);
- o) online database (via time-sharing access equipment or direct downloading);
- p) CD-ROM optical discs in all forms now or to be utilized;
- q) all other forms, formats, platforms, and standards now in use or which may in the future be in use during the term of this agreement and its option terms; and
- r) picture, dramatic, television, radio, and allied rights.

Any subsidiary rights not exploited within 18 months of publication shall become nonexclusive.

- d) Exclusive right to license in all foreign languages and all countries, the rights granted in subparagraphs (a) and (b) above;
- e) The right of first refusal as to any sequel, revision, or republication of the work. During the period of this agreement, and for five (5) years thereafter, except in the case of termination in accordance with paragraph 17 herein, the Author shall not submit any sequel, revision, or republication of the Work to other publishers, nor

seek offers from nor negotiate with others, with respect thereto until first offering said work to the Publisher. After submission of said proposed sequel, revision, or republication, the Publisher shall have thirty (30) days to determine whether to publish the said next work; if so, the parties shall negotiate in good faith the terms of the publishing agreement. If the parties are unable to reach agreement before the thirty (30) days shall expire, then the Author shall be free to offer the said sequel, revision, or republication to others, but only on terms more favorable than those offered by the Publisher. The Author shall notify the Publisher in writing of such offer, and all particulars, within seven (7) days of the receipt of said offer, and the Publisher shall have the right for thirty (30) days to match said offer of any other publisher.

- f) To use or license others to use the approved name, likeness, and biography of the Author, the work and the title of the work, in whole or in part, or any adaptation thereof as the basis for trademark or trade name for other products or for any other commercial use in connection with such other products.
2. Delivery of Satisfactory Copy: The Publisher acknowledges receipt of an acceptable manuscript OR the Author agrees to deliver two complete copies (original and clean copy) of the revised manuscript of the work in the English language, together with any necessary permissions and all photographs, illustrations, drawings, and indexes suitable for reproduction and necessary to the completion of the manuscript not later than [date].

If the Author fails to deliver the manuscript within thirty (30) days after the above date, or if any manuscript that is delivered is not, in the Publisher's judgment, satisfactory, the Publisher shall give the Author written notice describing such failure and permit the Author to cure this defect within thirty (30) days of that notice. If the Author fails to do so, the Publisher may have the option to remedy the defect. The Publisher may deduct its reasonable expenses for curing such defect from any proceeds that come due to the Author, and no proceeds will be paid to the Author until said expenses are reimbursed to the Publisher. Alternatively, the Publisher may opt to terminate this agreement by giving written notice, whereupon the Author agrees to repay forthwith all amounts which may have been advanced hereunder.
 3. Permission for Copyrighted Material: If the Author incorporates in the work copyrighted material, she shall procure, at her expense, written permission to reprint it.
 4. Author's Warranties and Indemnities: The Author warrants that she is the sole author of the work; that she is the sole owner of all the rights granted to the Publisher; that she has not previously assigned, pledged, or otherwise encumbered the same; that she has full power to enter into this agreement; that except for the material obtained pursuant to Paragraph 3, the work is original, has not been published before in the form submitted by the Author, and is not in the public domain; that it does not violate

any right of privacy; and that it does not infringe upon any statutory or common-law copyright.

In the event of any claim, action, or proceeding based upon an alleged violation of any of these warranties, (i) the Publisher shall have the right to defend the same through counsel of its own choosing, and (ii) no settlement shall be effected without the prior written consent of the Author, which consent shall not unreasonably be withheld, and (iii) the Author shall hold harmless the Publisher, any seller of the work, and any licensee of a subsidiary right in the work, against any damages finally sustained. If such claim, action, or proceeding is successfully defended or settled, the Author's indemnity hereunder shall be limited to fifty percent (50 percent) of the expense (including reasonable counsel fees) attributable to such defense or settlement; however, such limitation of liability shall not apply if the claim, action, or proceeding is based on copyright infringement.

If any such claim, action, or proceeding is instituted, the Publisher shall promptly notify the Author, who shall fully cooperate and shall have the right but not the obligation to participate in the defense thereof, and the Publisher may withhold payments of reasonable amounts due her under this or any other agreement between the parties.

Such payments shall be released within one year if there is no action pending. These warranties and indemnities shall survive the termination of this agreement.

5. **Conflicting Publication:** The Author agrees that until termination of this agreement, she will not, without the written permission of the Publisher, publish or permit to be published any book that is directly competitive with the work. The Author does have the right to publish and distribute training manuals that support her seminar.
6. **Date, Style, and Price of Publication:** The Publisher shall publish the work at its own expense, in such style and manner, under such imprint and at such price as it deems suitable by [date]. The Publisher shall not be responsible for delays caused by any circumstance beyond its control. In no event shall 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 matter. The Publisher shall consult with the Author on the design of the book and the cover. The Publisher shall have final approval.
7. **Proofreading and Author's Corrections:** The Author agrees to read, revise, correct, and return promptly all proofs of the work and to pay in cash or, at the option of the Publisher, to have charged against him the cost of alterations, in type or in plates, required by the Author, other than those due to the printer's or the Publisher's errors, in excess of ten percent (10 percent) of the cost of setting type, provided a statement of these charges is sent to the Author within thirty (30) days of the receipt of the printer's bills and the corrected proofs are presented upon request for his inspection.

8. Copyright: The Publisher shall copyright the work in the name of the Author, in the United States, in compliance with the Universal Copyright Convention, and apply for renewals of such copyright. If copyright in any country should be in the name of the Publisher, it shall assign such copyright upon request of the Author.
9. Advance Payments: The Publisher shall pay to the Author as an advance against and on account of all moneys accruing to her under this agreement, the sum of X dollars (\$X), payable:
 - \$X upon signing;
 - \$X upon acceptance; and
 - \$X upon publication
10. Royalty Payments: The Publisher shall pay to the Author a royalty on every copy sold by the Publisher and paid for, less actual returns and a reasonable reserve [note: typical reserves can be up to 30 percent of monies owed] for returns (except as set forth below):
 - i) Soft-cover: For the first 10,000 copies sold: seven and one-half percent (7 1/2 percent) of retail price; From 10,001 to 50,000 copies sold: eight percent (8 percent) of retail price; From 50,001 copies sold: ten percent (10 percent) of retail price.
 - ii) Hard-cover: For the first 5,000 copies sold: ten percent (10 percent) of retail price; From 5,001 to 10,000 copies sold: twelve and one-half percent (12 1/2 percent) of retail price; From 10,001 copies sold: fifteen percent (15 percent) of retail price.
 - b) No Royalty Copies: No royalty shall be paid on copies sold below or at cost including expenses incurred, or furnished gratis to the Author, or for review, advertising, sample or like purposes.
 - c) Proceeds from revenues derived from the sale of all nonexclusive and subsidiary rights under paragraph 1(b) and (c) shall be divided as follows:
 - i) Book club rights [note: typically 50 percent to the Publisher, 50 percent to the Author]
 - ii) Hard-cover rights [note: typically 50 percent to the Publisher, 50 percent to the Author]
 - iii) First serial rights [note: authors can often get 90 percent here]
 - iv) All other subsidiary rights

11. Reports and Payments: The Publisher shall render semiannual statements of account to the last day of December and the last day of June, and shall mail such statements during the third month following, together with checks in payment of the amounts due thereon.

Should the Author receive an overpayment of royalty arising from copies reported sold but subsequently returned, the Publisher may deduct such overpayment from any further sums due the Author.

Upon written request, the Author may examine or cause to be examined through certified public accountants or other qualified representatives the books of account of the Publisher insofar as they relate to the sale or licensing of the work. If there is a discrepancy of more than eight percent (8 percent), the cost of the audit will be borne by the Publisher.

12. Payment to Author's Representative: All monies due to the Author under the terms of this agreement shall be paid to the Author's duly assigned representative, [agent's name and address], whose receipt thereof shall be a valid discharge of the Publisher's obligation. The Author shall irrevocably assign to the Agent a sum equal to [agent's percentage] of the income accruing to the Author's account under the terms of this agreement, and the said Agent is empowered by the Author to act on her behalf in all matters arising from and pertaining to this agreement. The term "Author" as used in this paragraph includes but is not limited to all author(s) named elsewhere in this agreement and their successors, assigns, licensees, heirs, legal representatives, administrators and executors, and anyone acting on their behalf or in their place and stead.
13. Copies to Author: On publication, the Publisher shall give X (X) free copies to the Author, and X (X) free copies to her agent, each of whom may purchase further copies for personal use at a discount of [note: typically 50 percent] from the retail price. The Author may order full case quantities at a discount of [note: can be as much as 60 percent].
14. Discontinuance of Publication: If the Publisher fails to keep the work in print and the Author makes written demand to reprint it, the Publisher shall, within sixty (60) days after the receipt of such demand, notify the Author in writing if it intends to comply. Within six (6) months thereafter, the Publisher shall reprint the work unless prevented from doing so by circumstances beyond its control. If the Publisher fails to notify the Author within the sixty (60) days described above that it intends to comply, or, within six (6) months after such notification, the Publisher declines or neglects to reprint the work, then this agreement shall terminate and all rights granted hereunder shall revert to the Author, subject to licenses previously granted, provided the Author is not indebted to the Publisher for any sum owing to it under this agreement. After such reversion, the Publisher shall continue to participate to the extent set forth in this agreement in monies received from any license previously granted by it. Upon such

termination, the Author shall have the right for sixty (60) days thereafter to purchase the plates, if any, at one fourth of the cost (including typesetting).

If the work is under contract for publication or on sale in any book edition in the United States in quantities sufficient for distribution in the trade, it shall be considered to be in print. A work shall not be deemed in print by reason of a license granted by the Publisher for the reproduction of single copies of the work. If the Publisher should determine that there is not sufficient sale for the work to enable it to continue its publication and sale profitably, the Publisher may dispose of the copies remaining on hand as it deems best, subject to the royalty provisions of paragraph 10. In such event, the Author shall have the right, within two (2) weeks of the forwarding of a written notice from the Publisher, to a single purchase of copies at the "remainder" price.

15. Author's Property: Except for loss or damage due to its own negligence, the Publisher shall not be responsible for loss or damage to any property of the Author.
16. Suits for Infringement of Copyright: If the copyright of the work is infringed, and if the parties proceed jointly, the expenses and recoveries, if any, shall be shared equally; and if they do not proceed jointly, either party shall have the right to prosecute such action, and such party shall bear the expenses thereof, and any recoveries shall belong to such party; and if such party shall not hold the record title of the copyright, the other party hereby consents that the action be brought in his or its name.
17. Bankruptcy and Liquidation: If (a) a petition in bankruptcy is filed by the Publisher, or (b) a petition in bankruptcy is filed against the Publisher and such petition is finally sustained, or (c) a petition for arrangement is filed by the Publisher or a petition for reorganization is filed by or against the Publisher, and an order is entered directly the liquidation of the Publisher as in bankruptcy, or (d) the Publisher makes an assignment for the benefit of creditors, or (e) the Publisher liquidates its business for any cause whatever, the Author may, subject to any orders or rulings from a Court of competent jurisdiction, terminate this agreement by written notice and thereupon all rights granted by him hereunder shall revert to him. Upon such termination, the Author, at his option, may purchase the plates and the remaining copies at one fourth of the manufacturing cost, exclusive of the Publisher's overhead. If he fails to exercise such option within sixty (60) days after the happening of any one of the events referred to above, the Trustee, Receiver, or Assignee may destroy the plates and sell the copies remaining on hand, subject to the royalty provisions of Paragraph 10. Publisher shall notify author within thirty (30) days of the occurrence of any of the events described in this paragraph.
18. Sums Due and Owing: Any sums due and owing from the Author to the Publisher, whether or not arising out of this agreement, may be deducted from any sum due or to become due from the Publisher to the Author pursuant to this agreement.

19. Law Applicable: This agreement, including all rights and liability of the parties, shall be governed by the laws of the State of [wherever the publisher is located].
20. Copyright: It is a condition of the rights granted hereby that the Publisher agrees that all copies of the work that are distributed to the public shall bear the copyright notice prescribed by the applicable copyrights laws of the United States of America. The Author hereby appoints the Publisher as his attorney-in-fact in his name and in his stead to execute all documents for recording in the Copyright Office evidencing transfer of ownership in the exclusive rights granted to the Publisher hereunder.
21. Assignment: This agreement shall be binding upon the heirs, executors, administrators, and assigns of the Author, and upon the successors and assigns of the Publisher.
22. Complete Agreement and Modification: This agreement constitutes the complete understanding of the parties. No modification or waiver of any provision shall be valid unless in writing and signed by both parties.
23. Dispute Resolution: Any controversy or claim arising out of or relating to this agreement shall be submitted in [wherever publisher is located], to American Mediation Council, LLC, under its Mediation Rules, before the parties resort to arbitration, litigation, or some other dispute-resolution procedure.

IN WITNESS WHEREOF, the parties have duly executed this agreement:

PUBLISHER

By: _____

Dated: _____

AUTHOR

By: _____

Dated: _____