

## **Retailer Agreement of Distributor**

This Distribution Agreement (this “Agreement”) is made and entered into by and between You (referred as “Distributor” or “Retailer”) and PublishDrive Inc. (Registered address: 160 Greentree Drive Dover, Delaware 19904 Address: 428 Broadway, New York, NY 10013)

This Agreement contains the terms and conditions under which Distributor offers the services on its Site.

### **I. Subject of agreement:**

1. PublishDrive is engaged in distributing electronic publications, e.g., e-books, e-magazines, etc., as functional intermediary to third parties such as Distributor who will provide such publications to end customers for fee-based download or online access via Internet platforms.
2. Between parties this Agreement is non-exclusive. If Distributor aims for an exclusive partnership in ebook distribution with PublishDrive, financial terms may be subject to change in joint consideration.
3. PublishDrive grants rights to Distributor under this Agreement for redistributing content provided by PublishDrive.

### **1. Rules of distribution:**

4. Distributor will maintain a secure hosting environment for the eBooks. Distributor shall work with PublishDrive in good faith to promote PublishDrive Content’s availability on the Online Store.
5. **Digital rights management:** Distributor provides prevention of copyrights with technological solutions. This will typically be hard DRM where it is possible, or watermarked where there is no option for DRM. No fee is applied for any type of DRM or watermark for PublishDrive.
6. **Ownership of rights:** As between the parties and subject to the grants under this Agreement: (a) PublishDrive and/or its partners own all right, title and interest in and to the eBooks, Metadata, Cover or Other Images, PublishDrive’s Marks and any and all Intellectual Property Rights embodied in the foregoing (collectively, the “PublishDrive IP”); (b) Distributor owns all right, title and interest in and to the Distributor Service, Distributor’s Marks and any and all Intellectual Property Rights embodied in the foregoing. PublishDrive shall provide an appropriate copyright notice in the Content File, or as reasonably requested by Distributor.
7. **Grant of rights:** PublishDrive grants Distributor the non-exclusive and perpetual rights, which shall be revocable in accordance with the present Agreement only, to make the Digital Products publicly available within the Sales Territory and to distribute and have them distributed to end customers. This grant of rights shall in particular include the following rights:
  - a. The right to reproduce the Digital Products, to feed all of them or any part thereof into electronic data bases and networks, and to store them there
  - b. The right to format or convert or adjust the Digital Products – without changing any of their content – and in particular to make such adjustments as required for technical purposes
8. **Metadata management:** PublishDrive will give all required metadata to the Distributor in the following formats: ONIX 2.1, ONIX 3.0 or Excel sheets with customized table. If any other formats preferred (such as own API of Distributor) it is discussed by both Parties.
9. **Content files:** PublishDrive gives content files in ISBN.epub (epub 2.0 or epub 3.0) and cover files in ISBN.jpg. All files are named after the ISBN (or ISBN-alike unique identifier) of the content. Preferred method of transferring the data is through FTP provided by Distributor.

10. **Price maintenance:** By signing this Agreement, the parties acknowledge that ebooks are also subject to the book retail price maintenance rules and regulations in certain countries, in particular Germany. For such countries, the maintained Retail Price shall be determined by PublishDrive.
11. **Pricing:** Distributor acknowledges the fact that ebooks are priced in an agency model meaning that PublishDrive will receive certain amount of the net sales detailed in "Remuneration" of this Agreement after every book sold in Distributor's store/platform. If there is any other pricing model required by Distributor (wholesale model, subscription based or library model), its technical methods are discussed in joint consideration of both parties.
12. **Price promotions:** Price promotions are initiated by PublishDrive, but it does not change the agreed % for remuneration. Price promotions are scheduled automatically coming from PublishDrive and in this case Distributor has to apply those price promotions for given books in 3 days before the effective date of the price promotion. Distributor cannot offer books on lower prices than it is indicated in the metadata for the different territories.
13. **Marketing activity:** Distributor is allowed to schedule and implement any marketing actions for works/books in order to increase sales. This activity has to be supported by PublishDrive as well with mutual effort for marketing ebooks on a long term partnership basis. Both parties aim to harmonize their marketing and PR activities in the future, however no paid cooperation is mentioned in this Agreement.
14. **Service providers:** Distributor, PublishDrive are entitled to employ third parties as subcontractors and/or service providers for performance of their obligations and exercise of their rights under this Reseller Agreement, and further, to replace such third parties by others during the term of this Agreement.
15. **Logos, trademarks:** Publisher shall not use the names, service names or trademarks or logos of, or otherwise identify or refer to, PublishDrive in any press releases, publications, websites, reports, studies, publicity, marketing or promotional materials, without the prior, written approval of PublishDrive in each instance, except that Publisher may publicly refer to PublishDrive as the publisher of the Work without any approval of PublishDrive.
16. **Promotional items:** Distributor may use and cite 5% of the Work/books for promotional goals. In addition, it shall be entitled to distribute, publicly perform, publicly display and otherwise make available, for promotional purposes, free of charge, portions of the Work ("Reading Samples") in any form of media (including but not limited to Facebook, blogs, Google, Twitter, etc.), to promote the license, sale and distribution of Books; In case that the Publisher did not provide Company with Reading Samples of the Work, the Company or the Stores, are entitled to produce their own Reading Sample of such Work and to make use thereof for promotion of the Work. The Reading Samples are usually up to 10% of the volume of the Work. However, some Stores (such as Google Play) require a minimum amount of 20% of the volume of the Work, as a Reading Sample.
17. **Sales stop:** If PublishDrive informs Distributor that a specific Digital Product is to be barred from distribution, Distributor will take all necessary steps to remove Digital Products from sale. Such information shall – if possible – be communicated to Distributor via the Site by granting Distributor a reasonable lead time (at least 2 workdays). PublishDrive shall not be held liable for any delay occurring from any Distributor's or platform's side or resulting from any deadline scheduled by any Retailer or platform for sell-out, depletion, or expiry of a Digital Product. The right to enable end customers to obtain Reloads of the respective Digital Product even after a sales stop shall remain unaffected.

### **III. Remuneration and accounting**

19. **Remuneration:** Distributor will receive 30% royalty after the net sales price provided by PublishDrive.
20. **Sales reports:** are sent to/visible for PublishDrive in every month until the 10<sup>th</sup> of the following month which contain all transactions for end-customers in all countries and Resellers. Distributor has to make those data available through an automated platform in a format or Excel sheet where all transaction ID-s, book IDs, transaction dates, currency, retail price, VAT, account payable to PublishDrive and

Distributor royalty are included. Distributor aims to provide as rich data about the transactions as possible with a realtime sales tracking period and end-user behavior statistics.

21. **General accounting terms:** The remuneration amount resulting from such accounting process shall be payable within 30 days from the respective reference date. If it is possible, Distributor provides self-billing option for PublishDrive on the day of publishing sales reports are sent out, otherwise PublishDrive will send an electronic invoice about sales in USD. All bills are in USD and should be paid out in USD. If other payment currency is preferred by Distributor, it has to be discussed in joint consideration of both parties. PublishDrive prefers bank transfer to USD bank account, however other payment options may be used if it is needed by Distributor after joint consideration of possible payment options. Distributor aims to use a service where PublishDrive has no or very low fees for accepting any money transfer. PublishDrive shall provide Distributor with PublishDrive's banking information. As between the parties, Distributor is responsible for collecting and remitting all taxes imposed on its sale of eBooks to End Customers.
22. **Fraudulent activities:** In the event that Distributor receives notice of any claim, demand, action or suit or other legal proceeding alleging facts inconsistent with your warranties and representations, or in the event that Distributor has reason to suspect PublishDrive's account whether it has been subjected to and/or involved in fraudulent activities.
23. **Copyright infringement:** PublishDrive grants if there is a misuse of copyrights during distribution, or there is a copyright dispute with the author(s) of the ebooks, Distributor is notified immediately.
24. **Refund:** PublishDrive acknowledges that customers can withdraw from any purchase and they claim their money back. In that case PublishDrive can see these transactions as refund ('R') in Distributor's sales reports. PublishDrive is obligated in these cases to validate those cases as negative transactions. There is a "charge-back" refund option from banking institutions where a misuse of debit/credit card is reported (e.g. stolen debit/credit card). This refund is also demonstrated in sales reports as negative transactions.
25. **Auditing:** In replacement of any other auditing rights, PublishDrive may request a certification from a chartered accountant, once a year at maximum, confirming that Distributor has completely and correctly accounted for PublishDrive's remuneration from time to time. In case of any deviation amounting to more than 5 % at PublishDrive's expense, Distributor shall be liable to pay the auditing fees; otherwise, PublishDrive shall be liable to pay such fees.

#### **IV. Term and termination of Agreement**

26. **Term:** Unless terminated earlier as permitted below, the term of this Agreement will be for one year commencing upon the Effective Date of accepting of the Terms and Conditions on the Site of Distributor. Thereafter, this Agreement will automatically renew for additional one year periods unless either party gives the other party written notice of termination at least 90 days prior written notice to the close of the then-current term.
27. **Termination for cause:** The rights of either party to terminate this Agreement for cause shall remain unaffected. Any termination of this Agreement shall be made in writing.
28. **Confidentiality:** The parties agree to maintain secrecy towards third parties, during the term of this Reseller Agreement and for a period of 3 years following termination hereof, with respect to the contents of this Agreement and all information, Sales-Relevant Information, documentation, and data related thereto and not being in the public domain, and shall not make any of such information available to third parties. Either party will make use of any information obtained from the other party within the scope of cooperation for the intended purpose only and shall protect such information with the same care as it would protect its own business secrets.
29. **Liability:** Any liability of the parties for loss or damage caused by slight negligence shall be excluded, unless concerning any loss or damage the breaching party is to be held liable for in consequence of non-performance of any essential obligation the fulfilment of which is a basic prerequisite for this

Agreement to be implemented duly and properly and on the adherence to which the parties may generally rely (so-called cardinal obligations). In such event, the breaching party shall be liable for those damages to property and such financial losses which are attributable to the respective breach and which could reasonable be anticipated upon execution of this Agreement.

30. **Force Majeure:** PublishDrive will not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, disruption of power or other essential services, interruption or termination of service by any service providers being used by Distributor to link its servers to the Internet, labor disturbances, vandalism, cable cut, computer viruses or other similar occurrences, or any malicious or unlawful acts of any third party (each a "Force Majeure Event").
31. **Intellectual Property:** Retailer agrees that PublishDrive's Website contains proprietary information and material that is owned by PublishDrive and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary information or materials in any way whatsoever except for use of PublishDrive in compliance with these Terms of Service. No portion of PublishDrive's Website may be reproduced in any form or by any means.
32. **Copyrights.** All copyrights in and to PublishDrive are owned by PublishDrive and/or its licensors.

#### **VI. Final provisions**

33. **Relationship of the Parties.** The parties hereto agree and acknowledge that the relationship between them is that of independent contractors. This Agreement shall not be deemed to create an agency, partnership or joint venture, and neither party is the other's agent, partner, or employee.
34. **Binding Effect.** This Agreement will be binding on the assigns, heirs, executors, affiliates, agents, personal representatives, administrators, and successors (whether through merger, operation of law, or otherwise) of each of the parties.
35. **Notice.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes on the delivery date if sent by electronic mail to the addresses provided to and by you upon registration with the Distributor Site, or as properly updated, or, in the absence of a valid electronic mail address.
36. **Place of performance and jurisdiction:** The agreed place of performance and exclusive jurisdiction for all disputes arising from or in connection with this Reseller Agreement shall be Delaware.
37. **Governing law:** This Agreement shall be governed by the substantive law of Delaware.
38. **Written form:** This written Agreement shall solely be authoritative. Any amendment or supplement to this Agreement shall be subject to the approval of both parties hereto and shall be made in writing. The same applies to the present written-form clause.
39. **Severability:** In case any provision of this Agreement should be ineffective or unenforceable as a whole or in part, the remaining provisions shall not be affected. The parties agree beforehand to replace such ineffective or unenforceable provision by an effective and enforceable provision that is apt to accomplish the intended economic purpose of the replaced provision in the best possible manner. The same applies in the event of any loophole in this Agreement.