

**Amazon Addendum  
to  
IngramSpark Agreement**

This Amazon Addendum is entered into as of \_\_\_\_\_ ("**Addendum Effective Date**") between \_\_\_\_\_ ("**Publisher**") and Lightning Source LLC ("**LS**") and supplements the terms of the IngramSpark Agreement ("**Agreement**") entered into by the Publisher and LS. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Agreement.

**1. Additional Definitions.**

- A. "**Academic Titles**" shall mean those Digital Titles classified as "ACADEMIC" titles either in written notice provided to LS by Publisher or as determined by AMAZON in its sole discretion.
- B. "**AMAZON**" shall mean Amazon Digital Services, Inc., a Delaware corporation with offices at 410 Terry Avenue North, Seattle, WA, and AMAZON shall have the right to distribute Digital Titles under this Addendum to the (i) the Amazon Site and any "mirrored" version of the Amazon Site which substantially replicates the Amazon Site or a portion thereof (including, but not limited to the sites "CDNow.com" and "VirginMega.com"), (ii) any other web site branded or co-branded "Amazon" or branded or co-branded with any Amazon sub-brand (including, but not limited to "Audible"), (iii) any other web site that is owned or operated by AMAZON or its affiliates (including, but not limited to the site "IMDb.com"), and (iv) any web page widget or online point of presence that is branded or co-branded "Amazon" or branded or co-branded with any Amazon sub-brand (including, but not limited to "Audible") and that allows for the discovery and Purchase, through the widget or other online point of presence, of Digital Titles from Amazon or its affiliates.
- C. "**Non-Academic Titles**" shall mean any Digital Titles which are not classified as Academic Titles (as defined above).
- D. "**Purchase Discount**" shall mean the discount given to a Reseller from the List Price of Digital Media Files based on the sales model.
- E. "**Similar Service**" shall mean any digital text marketing and/or distribution service using a mode of distribution similar to any of the modes of distribution permitted under this Addendum.
- F. "**Territory**" shall mean worldwide unless a Digital Title is not available for distribution in every country in the Territory, then Publisher shall specify in the Metadata for the Digital Title the country or countries in which the Digital Title is available for sale, and the Territory for such Digital Title will be such country or countries alone.

**2. Purchase Discount.** For those sales by Publisher to AMAZON pursuant to this Addendum, the Purchase Discount shall be defined as follows:

**I. From January 1, 2020 through January 31, 2021:**

- A. For sales of Non-Academic Titles to customers that reside in the **United States**, the Purchase Discount shall be 57.75%. In the event AMAZON needs to encode or re-encode a Digital Title provided by Publisher, and only after receiving written authorization from Publisher and LS, which may be delivered via email, the Purchase Discount shall be 61.25%.
- B. For sales of Non-Academic Titles to customers that reside in **Australia or New Zealand** the Purchase Discount shall be 62.5%. In the event AMAZON needs to encode or re-encode a Digital Title provided by Publisher, and only after receiving written authorization from Publisher and LS which may be delivered via email, the Purchase Discount shall be 64.5%.

- C. For sales of Non-Academic Titles to customers that reside in **India**, the Purchase Discount shall be 63.5%. In the event AMAZON needs to encode or re-encode a Digital Title provided by Publisher, and only after receiving written authorization from Publisher and LS which may be delivered via email, the Purchase Discount shall be 68.5%.
- D. For sales of Non-Academic Titles to customers that reside **outside the United States, Australia, New Zealand, and India**, the Purchase Discount shall be 59.5%. In the event AMAZON needs to encode or re-encode a Digital Title provided by Publisher, and only after receiving written authorization from Publisher and LS which may be delivered via email, the Purchase Discount shall be 64.5%.
- E. For sales of Academic Titles to customers that reside in the **United States**, the Purchase Discount shall be 43%. In the event AMAZON needs to encode or re-encode a Digital Title provided by Publisher, and only after receiving written authorization from Publisher and LS which may be delivered via email, the Purchase Discount shall be 48%.
- F. For sales of Academic Titles to customers that reside **outside the United States**, the Purchase Discount shall be 45%. In the event AMAZON needs to encode or re-encode a Digital Title provided by Publisher, and only after receiving written authorization from Publisher and LS which may be delivered via email, the Purchase Discount shall be 50%.
- G. Any higher discount may be agreed upon in writing by Publisher for special promotions and offers.

**3. Promotional Content.** In addition to the promotional content requirements contained in the Agreement, Publisher shall make available to AMAZON through LS the following: (i) the front and back flaps, copyright notice page and indices ("**Front and Back Matter**") and either (ii) up to 5% of each Digital Title (excluding Front and Back Matter) or (iii) the first chapter of each Digital Title, as determined by AMAZON, in text and/or image format. Publisher acknowledges that the content included in such promotions will not be subject to any form of digital rights management ("**DRM**") and may be available for search and display by Internet and other electronic search engines.

**4. Content Availability.** Publisher shall provide AMAZON with the same Digital Titles that it provides to all other Similar Services. Publisher shall be entitled to enter into limited exclusive promotional arrangements with respect to particular Digital Titles prior to making the same available to AMAZON that do not, when taken as a whole, prevent AMAZON from generally being able to make Digital Titles available on the same dates as Similar Services.

**5. Adjustments to Price and Purchase Discount.**

A. List Price.

- (i) Publisher must not provide AMAZON with a List Price for a country in the Territory that exceeds (A) the list price for the lowest-priced edition of the Digital Title's corresponding print book for distribution in that country that is set by Publisher; (B) the list price for the digital version of the Digital Title that Publisher provides to any Similar Service for distribution in that country; or (C) the lowest customer price for any Digital Title that Publisher itself sets for End Users in that country. AMAZON may adjust the List Price to reflect the requirements of (A), (B), and (C) upon the date it provides notice to LS of such pricing discrepancy. If Publisher does not provide a List Price for a particular Digital Title, then the List Price shall be deemed to equal the list price for the Digital Title's lowest-price corresponding print book for distribution in that country and where rights for the print book are controlled by Publisher.

- (ii) Notwithstanding sub clause (i) above, if Publisher provides a List Price for India that exceeds 50% of the list price for the lowest-priced edition of the Digital Title's corresponding print book for distribution in the United States that is set by Publisher (the "**Print Price**"), then AMAZON may adjust the List Price to reflect a List Price that is 50% of the list price for the Print Price. The List Price for India shall be deemed equal to such lower list price, effective as of the date such lower list price comes into effect. In the event that a Digital Title has no equivalent Print Price then this clause shall not be applicable.
  - (iii) Notwithstanding sub clause (i) above, if Publisher provides a List Price for an Academic Title in any territory other than India that exceeds 80% of the list price for the lowest-priced edition of that Digital Title's corresponding print book for distribution in that same territory that is set by Publisher (the "**Academic Title Print List Price**"), then AMAZON may adjust the List Price to 80% of the Academic Title Print List Price. The List Price for such territory shall be deemed equal to such lower list price, effective as of the date such lower list price comes into effect. In the event that an Academic Title has no equivalent Academic Title Print List Price then this clause shall not be applicable.
  - (iv) In the event AMAZON identifies any pricing discrepancies that violate the terms of this Section and provides notice to LS, LS shall notify Publisher and Publisher shall have forty-eight (48) hours from such notification to either adjust the price or provide documented evidence to LS that such pricing discrepancy is erroneous. In the event AMAZON adjusts pricing based on violations of the terms of this Addendum, LS shall pass through any resulting charges to Publisher.
  - (v) The adjustments to List Price provided for in (i)(A), (ii), and (iii) of this Section shall not apply to enhanced Digital Titles, meaning any Digital Title with multimedia or interactive elements, if Publisher also provides AMAZON with a "basic" or "non-enhanced" version of such Digital Title pursuant to the terms herein.
- B. Purchase Discount. For each country in the Territory, AMAZON shall have the ability to automatically adjust the Purchase Discount so that the Purchase Price for a Digital Title in a country is at all times no more than 70% of any customer price in that same country for the Digital Title that Publisher sets through any Similar Service in which the Publisher has the right to set the customer price. If AMAZON provides LS with notice and reasonable detail where the Purchase Price for a Digital Title is more than 70% of any Publisher set customer price through any Similar Service, LS shall provide such notice to Publisher and in the event that price is still in effect more than twelve (12) hours from the time LS provides notice of such discrepancy to Publisher, AMAZON will automatically adjust the Purchase Discount to no more than 70% of such Publisher set customer price.
- C. Parity with Digital Cost of Goods Sold. Notwithstanding anything to the contrary contained in this Addendum, Publisher will ensure that AMAZON does not pay a greater wholesale price for a Digital Title than any other Similar Service pays Publisher for that same Digital Title in that same country. In the event that Publisher becomes aware that a Similar Service is paying Publisher a wholesale price that is less than that paid by AMAZON in a country, then Publisher shall promptly notify LS and AMAZON in writing. Publisher authorizes AMAZON to adjust the wholesale price to be equal to that lower amount that the other Similar Service pays to Publisher for that Digital Title in that country, effective as of the date that Similar Service started to pay Publisher less for it than AMAZON.
- D. Currency: Publisher shall provide the List Price for each Digital Title in U.S. Dollars. For territories in which AMAZON operates a local store, Publisher may provide a market-specific List Price in the Metadata. Where a market specific List Price is not provided, AMAZON may convert an existing List Price contained in the Metadata at an exchange rate AMAZON reasonably determines. Where a market specific List Price is provided, for purposes of payment AMAZON shall convert the payment currency to US Dollars using an exchange rate

Amazon reasonably determines. The conversion rate will be based on prevailing exchange rates and inclusive of all fees and charges for such rate conversions.

- E. Modifications to Prices/Purchase Discounts: LS may revise the Prices and/or Purchase Discounts to reflect modifications implemented by AMAZON to be effective immediately upon notice to Publisher. For purposes of this section, notice through the IngramSpark site or by email shall suffice.

## 6. **Payments.**

- A. Qualifying Sales. AMAZON shall make payments to LS on behalf of Publisher for Qualifying Sales of Publisher's Digital Titles. "**Qualifying Sales**" shall be defined as a purchase for which AMAZON has received final payment, from or on behalf of an End User. In the event an End User uses a credit card or bank account deduction mechanism, AMAZON shall deem final payment to have occurred at such time as the applicable credit card company or bank has fully settled the payment for the sale. LS shall pay Publisher for Qualifying Sales made by AMAZON in accordance with the Agreement.
- B. Offsets. AMAZON shall be entitled to an offset against payments due to LS and LS shall pass through these offsets to Publisher for: (i) End User refunds and credits issued by AMAZON in its sole discretion; (ii) bad debt; and (iii) any market development funds, cooperative marketing funds, or other marketing or advertising fees agreed to from time to time between AMAZON and Publisher.
- C. Disputes. For disputes related to sales to AMAZON, Publisher must provide written notice to LS and AMAZON stating the specific basis for the dispute within thirty (30) days after the date the payment was rendered by LS to Publisher. Any action or proceeding concerning a payment dispute initiated by Publisher against AMAZON or LS related to sales of Publisher's Digital Titles shall be limited to a determination of the amount of monies, if any, payable to Publisher by AMAZON for sales during the accounting periods in question, and Publisher's sole remedy from either LS or AMAZON shall be the recovery of those monies with no interest thereon.

## 7. **Corrections.**

- A. Correction Fee. AMAZON may charge a fee for the correction of Digital Titles (a "**Correction Fee**") in the event Publisher has not provided such files to LS free of any errors or omissions and Publisher has not provided corrections to the Digital Titles within seven (7) business days of receiving notice from LS of such error or omission. In the event AMAZON charges a Correction Fee, LS shall pass this fee through to Publisher and such fee shall be deducted from any amounts owed to Publisher under this Addendum or the Agreement.
- B. Metadata. In the event that, after delivery of Metadata to AMAZON, LS receives notice from AMAZON or otherwise becomes aware of inaccuracies in the Metadata, LS shall notify Publisher and Publisher shall promptly provide LS with corrections to the Metadata.

- 8. **DRM**. In the event of a security breach with regard to DRM or the AMAZON systems that store Digital Titles, Publisher's sole remedy shall be the suspension of sale of any Digital Titles affected by the security breach.

- 9. **Previous Agreement**. In the event Publisher had entered into an agreement with AMAZON within one (1) year prior to the entering into this Addendum, Publisher must supply AMAZON with the same or greater selection of Digital Titles as provided under such previous agreement. Additionally, if the discount provided by Publisher to AMAZON under the previous agreement is greater than the discount provided under the agreement between AMAZON and LS, the discount provided by Publisher to AMAZON under the this Addendum shall be the same as the discount provided by Publisher to AMAZON under the previous agreement. The increased discount shall remain in effect for a three (3) year period beginning on the date that LS first makes the Publisher's Digital Titles available to AMAZON.

- 10. Sales Reporting.** In the event that Publisher requests LS to provide sales or financial reports related to Digital Titles distributed to AMAZON to a third-party services provider, LS shall only provide such reports if the third-party service provider has entered into a confidentiality agreement with AMAZON.
- 11. Ancillary Rights.** Publisher grants LS and AMAZON those ancillary rights as are reasonably necessary to affect the distribution of Digital Titles to Resellers, including, but not limited to the right to reproduce and create copies of, convert, encode, encrypt, decrypt, transmit, and perform the Digital Titles as required to effectuate such rights.
- 12. COOP.** AMAZON shall charge Publisher four and one-half percent (4.5%) of the total amount AMAZON pays Publisher for all copies of Digital Titles, net of amounts attributable to customer returns, that it distributes through its websites in the **United States and Canada** ("**COOP**"). Publisher will pay the full accumulated balance of COOP to AMAZON on a monthly basis and such amounts shall be deducted from Publisher's account with LS. If AMAZON is unable to collect payment for COOP from LS, Publisher shall be required to promptly pay LS using another method and LS shall provide this payment to AMAZON. Publisher may only dispute a COOP statement by giving LS and AMAZON written notice stating the specific basis for objection within five (5) days from the date of the publisher compensation statement from LS containing sales made to AMAZON. Publisher shall allow LS to deduct the relevant COOP amount from any amounts owed to Publisher under this Addendum or the Agreement. In the event Publisher does not have an active print COOP account with AMAZON, LS will manage the relevant COOP amount for Publisher in a manner determined in LS sole discretion. In the event Publisher has an active print COOP account with AMAZON, Publisher shall be responsible for managing the relevant COOP amounts related to this Addendum through such print COOP account.
- 13. Amazon Strategic Advantage Program ("**ASAP**").** AMAZON shall charge Publisher one percent (1%) of the total amount AMAZON pays Publisher for all copies of Digital Titles distributed by AMAZON during the Term. Publisher will pay the full accumulated balance of ASAP to AMAZON on a monthly basis and such amounts shall be deducted from Publisher's account with LS. If AMAZON is unable to collect payment for ASAP from LS, Publisher shall be required to promptly pay LS using another method and LS shall provide this payment to AMAZON. Publisher may only dispute an ASAP statement by giving LS written notice stating the specific basis for objection within five (5) days from the date of the publisher compensation statement from LS containing sales made to AMAZON. Publisher shall allow LS to deduct the relevant ASAP amount from any amounts owed to Publisher under this Addendum or the Agreement.
- 14. Indemnity.** As it relates to any and all claims, actions, proceedings, damages and expenses (including reasonable attorneys' fees and allocable costs of in-house counsel) in any way related to AMAZON, EXCEPT WITH RESPECT TO THE INDEMNITY OBLIGATIONS OR THE OBLIGATIONS OF CONFIDENTIALITY IDENTIFIED IN THE AGREEMENT, IN NO EVENT SHALL LS OR PUBLISHER, THEIR PARENTS, SUBSIDIARIES OR AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR PUNITIVE, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, COST OF COVER, REVENUES, BUSINESS, USE, DATA OR OTHER INTANGIBLES, OR FOR ANY EQUITABLE REMEDY OF DISGORGEMENT, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF LS OR PUBLISHER HAD BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. IN ADDITION, PUBLISHER ACKNOWLEDGES AND AGREES THAT AMAZON CANNOT ENSURE THAT ITS CUSTOMERS WILL COMPLY WITH THE CONTENT USAGE RULES AND NEITHER LS OR AMAZON SHALL HAVE ANY LIABILITY ARISING FROM A FAILURE OF ANY CUSTOMER TO COMPLY WITH THE CONTENT USAGE RULES.

**15. Confidentiality.** The terms of this Addendum and all information provided to Publisher in connection herewith, including, but not limited to all information relating to End User purchases of written works through AMAZON (the "**Confidential Information**"), are confidential, and Publisher will maintain such Confidential Information in strict confidence and not disclose such information to any third party or use them for any purpose other than the performance of this Addendum without the express, prior written permission of LS; provided, however, that Publisher may disclose such information as required to comply with applicable law, provided that Publisher (1) gives LS prior written notice sufficient to allow it to seek a protective order or other appropriate remedy; (2) discloses only such information as is required by applicable law; and (3) uses reasonable efforts to obtain confidential treatment for any information so disclosed.

**16. Termination.** LS may terminate this Addendum for any or no reason at all, with immediate effect, by providing notice to Publisher.

**17. Conflicting Terms.** All other terms and conditions of the Agreement shall remain in full force and effect. In the event the terms of this Addendum conflict with the terms of the Agreement, the terms of this Addendum shall control with respect to the services provided under this Addendum.

**18. Signature/Counterparts.** By completing the fields in the signature section, the Publisher represents and warrants that it has the legal right, power and authority to enter into this Addendum and hereby agrees to be bound by the terms contained herein. By typing Publisher's name in the space provided below, Publisher acknowledges that Publisher's typewritten name acts as a handwritten signature complying with electronic signatures as described in the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act. The parties may execute this Addendum in counterparts. Each executed counterpart will be considered an original document and all executed counterparts, together, will constitute the same Addendum.

IN WITNESS WHEREOF, the Publisher and LS have caused this Addendum to be signed and delivered as of the Addendum Effective Date.

**LIGHTNING SOURCE LLC**

**PUBLISHER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_