THE Authors Guild®

HYBRID PUBLISHING CONTRACT CHECKLIST

There is no single definition for "hybrid publishing." Generally, a hybrid publisher will require the author to pay a fee for some or all of its publishing services. The following checklist is intended to act as an aid as you evaluate and consider hybrid publishers and is not a substitute for a full contract review. When evaluating a hybrid publisher, the most important considerations are whether the publisher asks for a broad grant of rights and whether the royalties you earn will permit you to recoup your investment.

CHOOSING A PUBLISHER

When deciding whether to sign a contract with a hybrid publisher, always begin by thoroughly researching the publisher.

- ☐ Consider what services the publisher offers, including editing services, marketing, and promotion
- ☐ Complete online research on sites like Writer Beware® to determine whether there have been any complaints against the publisher
- ☐ Consider reaching out to an author who has previously worked with the publisher to learn about her experience
- ☐ Feel free to contact the Authors Guild to see if the legal department has received any complaints about the publisher

GRANT OF RIGHTS

If you have decided to sign a contract with a hybrid publisher, try to limit your grant of rights. In particular, try to grant as few subsidiary rights as possible.

- ☐ ***Do not*** transfer copyright to the publisher
- ☐ Try to require your publisher to register the copyright in your name within three months of publication
- ☐ Limit the publisher's <u>exclusive</u> right to publish, at least in print book form, to English language editions sold in the United States, its territories, and Canada
- ☐ Try to reserve all non-print and foreign subsidiary rights (e.g. multimedia, dramatic, motion picture, and merchandizing), and only grant verbatim text English language electronic rights
- ☐ Delete any clauses giving the publisher the right to develop sequels or derivative works
- ☐ Do not let the publisher claim ownership in the title of your work

ROYALTIES

For any rights you do grant, make sure you are getting paid adequately for them.

- ☐ Ideally, the publisher should base royalties on "Net Receipts" (defined as "publisher's receipts from sales after taxes and discounts") and not "Net Profits," and that the publisher does not deduct costs of distribution, editing, warehousing, or publishing in its definition of "Net Receipts"

CONTRIBUTION

When hybrid publishers require payment, chose we encourage authors to consider whether they are likely to recoup the investment they make.

- ☐ Calculate the approximate sales numbers you will need to achieve in order to recover your investment
- ☐ Research the publishers to determine whether other authors have been able to recoup their contribution fees
- ☐ Consider whether self-publishing would be more economical
- ☐ Be wary of additional provisions for payment from Author to Publisher beyond the initial "contribution," including "Annual Fees," "Direct Fulfillment Fees," "Warehousing Fees," "Additional Services Fees," and an hourly rate for editing services
- ☐ Beware provisions requiring you to pay interest to the publisher if you are late in paying any of these additional fees

ACCOUNTING

It is important that you hold your publisher accountable to you by ensuring that they provide you with timely statements and royalty payments. It is also vital that your contract contain an audit clause, which is a powerful tool if you suspect that your publisher is calculating your payments incorrectly.

- ☐ Insert accounting periods if there are none, and require the publisher to render statements and payments within three months of the close of a given accounting period
- ☐ Try to require the publisher to render at least bi-annual, if not quarterly, royalty statements and payments
- ☐ Ideally, your publisher should not withhold more than a nominal amount (e.g., $50) if your royalty payments are low; Under no circumstances should the publisher be able to defer sending a statement
- ☐ Try to insert an audit clause if there is none
- ☐ Stipulate that your publisher shall pay for the cost of the audit if you discover an error of 5% or greater in any royalty statement
- ☐ Delete any deadline the publisher places on your ability to audit

DELIVERY

Contracts with hybrid publishers may or may not specify a strict deadline for delivery of your manuscript. However, if your contract does contain a due date for delivery, please consider the following:

- ☐ Delete the phrase "time is of the essence" if you see it in your contract
- ☐ Try to require the publisher to provide you with a grace period before it can terminate the agreement for your failure to deliver by the due date

ACCEPTANCE

If the publisher has not yet accepted your work for publication, try to insert a definite time period within which it must accept or reject your work.

- ☐ Ideally, your publisher should render its decision within sixty (60) days after delivery of your manuscript
- ☐ If your publisher does not find your work to be acceptable, try to provide that the publisher must tell you in writing the ways in which it finds your work unacceptable and must allow you to make corrections or changes in response

PUBLICATION

- ☐ Insert a definite time period (6-12 months after delivery) within which the publisher must publish your work or lose the right to do so
- ☐ If the publisher fails to publish your work within the specified timeframe, you should have the option to terminate and reclaim all monies spent, and all rights should automatically revert to you
- ☐ Be sure to stipulate that no material changes may be made to the work without your approval
- ☐ Explicitly define your publisher's responsibilities to you under the contract (e.g., editing, marketing, promotion, etc.)

PROMOTION

Hybrid publishing contracts may not provide for promotion, or may require that you pay a promotion fee. However, if your publisher agrees to promote your work, try to keep the following in mind:

- ☐ Limit the publisher's ability to require your personal appearance for promotion, especially if you are paying for the publisher's promotion services
- ☐ Retain approval over your publisher's right to use your name and likeness
- ☐ Restrict the amount of your work that can be used for promotional purposes to 10% or less
- ☐ Restrict the number of free copies the publisher can give away, and ensure that the publisher is giving away free copies for promotional purposes only (delete any overbroad language such as "or for any other purpose")

AUTHOR'S COPIES

- ☐ Delete any clauses <u>compelling you to buy copies of your own work</u>
- ☐ You should be able to buy copies of your book at a discount of 50% off the list price
- ☐ If you plan to sell copies of your books at professional speaking engagements, provide that you may resell copies of your book in connection with your professional activities

WARRANTIES AND INDEMNITIES

It is important to try to reduce your exposure to liability by qualifying any warranties and placing restrictions on indemnity provisions. Without taking these measures, an author could be held completely liable if the work is later found to include infringing material, contain defamatory statements, or violate privacy law. Keep in mind that publishers are often unwilling to make changes to warranty and indemnity provisions.

- ☐ Try to insert the phrase "to the best of Author's knowledge" before any warranties you make
- ☐ Promise to reimburse the publisher for costs of litigation only if a court renders a final judgment against you stating that you breached the warranties contained in the agreement
- ☐ Place a cap on the amount the publisher may recover from you
- ☐ Require your approval of any proposed settlement
- ☐ Ask to be covered under the publisher's liability insurance if they have it
- ☐ Limit the amount of time the publisher could withhold monies owed to you to a period of 6-12 months unless litigation is commenced

TERMINATION

Hybrid publishing contracts should be terminable at will by the author, especially if you are paying a contribution fee. In addition, try to ensure that any provisions regarding termination explicitly state that all rights granted by Author to Publisher shall revert to the Author immediately upon termination.

CLAUSES TO REMOVE

Try to negotiate the removal of any of the following clauses if you see them in your contract:

- ☐ Option clauses
- ☐ Non-competition clauses
- ☐ Clauses limiting your remedies if the publisher breaches any promise it makes in the agreement
- ☐ Provisions restricting you from writing or publishing unrelated works before delivering your manuscript under the contract
- ☐ Cross-collateralization clauses (e.g. "under any other agreement"), which represent an attempt by your publisher to tie your debts and proceeds under all agreements together