

AGREEMENT BETWEEN AMERICAN BOOKSELLERS ASSOCIATION (ABA) AND ABA MEMBER BOOKSTORE FOR INDIECOMMERCE

This Agreement ("Agreement") is entered into as of the last date set forth below (the "Effective Date"), by and Between American Booksellers Association, Inc., a New York not-for-profit corporation ("ABA"), with a principal place of business at 200 White Plains Rd, Tarrytown, New York 10591 and the participant, identified below ("Participant").

_____ Name of Store	_____ Contact Person
_____ State in which Store is Incorporated	_____ Phone Number
_____ Address	_____ Fax Number
_____ City	_____ E-mail Address
_____ State	_____ Bank Acct. and Bank Routing Number
_____ Zip	

WHEREAS, Participant desires to use IndieCommerce during the Term to enable Participant to establish and maintain an online presence;

WHEREAS, Participant is an ABA Regular Bookstore Member who operates one or more bookstores with (an) actual physical storefront location(s) selling substantially new books who desires to have a Website on the ABA Web Server.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth below, the parties agree as follows:

1. Definitions.

- 1.1. "Back-End Features" means the Licensed Data, ABA's search engine, ABA's shopping cart technology, and ABA's web-based administrative tools.
- 1.2. "IndieCommerce" means the project in which Participant will be able to create and manage a Website that will be located on the ABA Web Servers, and will be accessible on the World Wide Web by use of Web Browsers.
- 1.3. "Content" means marketing collateral, data, copy, text, audio files, video files, graphics and other material provided by ABA.
- 1.4. "Home Page" means the first page typically viewed by users on any Website.
- 1.5. "Internet" means the world-wide network of computers that provide access to the World Wide Web.
- 1.6. "Licensed Data" means (a) the data elements in electronic database form for each title contained in the database provided by the IndieCommerce title database supplier ("Bibliographic Data"), and enhancements thereto; (b) any updates provided to the Bibliographic Data or to enhancements thereto; and (c) such other data elements as may be added to the Bibliographic Data from time to time. Licensed Data will not include any Content or Participant's Content.
- 1.7. "Look and Feel" means the image and appearance of the IndieCommerce Website.
- 1.8. "Marks" means the trademarks or service marks that will be used on or in connection with or associated with the IndieCommerce Website that ABA has the right to use and to authorize others to use.
- 1.9. "Participant" means the bookstore that is a party to this Agreement.
- 1.10. "Participant's Content" means the marketing collateral, data, copy, text, audio files, video files, graphics and other materials provided by Participant and used on Participant's Website.

- 1.11. "Participant's Website" means the unique Web Pages hosted on the ABA Web Servers that are available through use of the unique URL assigned to Participant owned and/or operated by Participant for, among other things, the sale of products solely to end users who are prospective consumer purchasers of products.
- 1.12. "Store Fulfilled Order" is any order placed by a User that will be filled at least in part by the Participant. Store Fulfilled Orders include, without limitation, orders that Users have designated as "Pick up in Store," international orders, tax-exempt orders, orders with a method of payment other than credit card, orders in excess of \$150 (US), orders that include a gift card or gift certificate, orders with special instructions for the User, specific titles that are not carried by ABA's wholesale fulfillment partners, and specific titles that are not currently in stock at ABA's wholesale fulfillment partners.
- 1.13. "User" means any person or entity who uses Participant's Website.
- 1.14. "Web Browser" means software designed to allow interactive access to the World Wide Web, including without limitation, Firefox, Internet Explorer, Safari, Opera, and the AOL web interface.
- 1.15. "Web Page" means a document or file that is intended to be accessible to Internet users with a Web Browser. It may be formatted in HTML or other coding.
- 1.16. "Web Server" means a computer operated for making Websites available on the Internet.
- 1.17. "Website" means a series of interconnected Web Pages which either may be dynamically generated or reside in a single directory or multiple directories on a single Web Server or multiple Web Servers.
- 1.18. "Wholesaler Fulfilled Order" includes orders fulfilled by ABA's wholesale fulfillment partners. Any order or portion of an order not designated as a Store Fulfilled Order will be a Wholesaler Fulfilled Order. Orders may have portions that are Wholesaler Fulfilled Orders and other portions that are Store Fulfilled Orders.
- 1.19. "Works" means the ABA Websites, Content and related materials, including without limitation those graphics and artworks created by or for IndieCommerce.
- 1.20. "World Wide Web" means all the Web Pages that are accessible to a typical computer user with appropriate access to the Internet using a Web Browser.

2. General Obligations of Participant.

- 2.1. Participant will pay ABA a one-time nonrefundable setup fee of \$350. This payment is due and payable by Participant upon signing this Agreement.
- 2.2. Participant will pay ABA \$225 per month during the term of this Agreement. Payment for each month must be received on the first day of that month (or the next business day) and shall be made by ACH transfer. Participant authorizes ABA to debit Participant's checking account for recurring monthly fees as they become due. If this payment is not timely received by ABA, access to Participant's Website by Users may be blocked until payment for all arrears is received.
- 2.3. Participant shall pay ABA a royalty of four and one half per cent (4.5%) on the portion of orders made through Participant's Website that are Wholesaler Fulfilled Orders. This royalty will be calculated on the selling price of the goods sold and is calculated before tax and shipping costs are included. This royalty will not be calculated on the portion of orders that are Store Fulfilled Orders. This royalty will be collected and retained by ABA as set forth below.
- 2.4. ABA may enter into certain arrangements with various third parties ("Affiliates") to, among other things, have the Affiliate refer and direct users of the Affiliate's Website to a central hub Website maintained on the ABA Servers. For each User that (i) is referred to the central hub Website by an Affiliate; and (ii) makes a purchase at Participant's Website Participant shall pay ABA a royalty, expressed as a percent of such sale (the "Affiliate Fee"). The percentage for the Affiliate Fee will vary from Affiliate to Affiliate, but in no case will it exceed ten percent (10%). This Affiliate Fee is calculated on the selling price of the goods sold and is calculated before tax and shipping costs are included. ABA will send Participant a quarterly invoice for all Affiliate Fees that are due and owing for the prior quarter. Payment of the Affiliate Fee of Participant to ABA will be by ACH transfer from Participant's checking account, which ABA will debit within thirty (30) days from the date of the invoice.
- 2.5. Participant is responsible for and will pay any and all sales, use, transfer, privilege, excise or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby, excluding any taxes which may be levied on ABA's net income. ABA will provide a report to Participant detailing Participant's state sales tax obligations for online sales made through Participant's Website based on the information provided to ABA by Participant. In general and without limitation, it is anticipated that the ABA report to Participant will reflect that state sales taxes will be levied and paid on all sales made through Participant's Website to Users in the state(s) where Participant maintains an actual physical storefront location(s) or in a state(s) where ABA conducts operations. Participant will be responsible for remitting to its state taxing authority(ies) taxes in the state(s) where Participant maintains an actual physical storefront

location(s). If Participant makes sales into states outside of the state(s) where Participant maintains an actual physical storefront location(s), ABA will, if and when it deems it appropriate, remit the sales tax payments to such states' taxing authority, and the payment shall be deducted from Participant's revenues.

- 2.6. Participant shall not sell, offer for resale, rent, sub-license or lease all or any portion of the Licensed Data.
- 2.7. Participant may only display the Licensed Data at Participant's Website(s) to Users who are prospective consumer purchasers of products.
- 2.8. Participant agrees to use its best efforts to fill the Store Fulfilled Orders in a timely manner.
- 2.10. Participant agrees to accept American Express, Visa, MasterCard and Discover credit cards as forms of payment for orders.
- 2.11. Participant agrees to follow the then-current procedures as may be established by ABA from time to time when returning books to wholesale fulfillment partners for those purchases that were Wholesaler Fulfilled Orders and returned by User to Participant. These procedures may be found in their most current form on Participant's local administration pages.
- 2.12. Participant agrees to use its best efforts to routinely change content in the Participant's Website, and at a minimum, to change some portion of Participant's Home Page at least once a week.
- 2.13. Participant agrees to gift wrap books and include a gift message with orders when so requested by Users. Participants may charge a fee for this service.
- 2.14. Participant agrees not to post or allow others to post anything on the IndieCommerce Website and/or Participant's Website that violates any copyright, trademark, trade secret, patent, libel, antitrust or other federal, state or local law, regulation, or other enforceable right.
- 2.15. Participant agrees to allow ABA to inspect and use the aggregate sales and User data from Participant's Website, so long as this data is aggregated with other comparable data from the other participants' Websites. Any such use will be limited to furthering the marketing goals of ABA. ABA will not access individual User sales history data without Participant's or User's prior consent. ABA also may grant its vendors the right to use certain aggregate data of the type referred to above, along with similar restrictions.
- 2.16. Without any further notice, Participant authorizes ABA, on behalf of Participant and on behalf of User, as applicable, to process credit cards for Wholesaler Fulfilled Orders, collect money from Users, retain the Wholesaler Fulfilled Order royalty identified above, pay all parties that are entitled to payments from each sale (which include without limitation credit card processors, order fulfillment houses and taxing authorities in certain instances) and remit the balance to Participant on a semi-monthly basis, typically, around the first and the fifteenth of each month via ACH Transfer. Participant authorizes ABA to debit Participant's checking account via ACH transfer for recurring monthly fees as they become due. Participant agrees to fill out and return to ABA the "ACH Authorization Letter" attached to this agreement.
- 2.17. Participant agrees to direct any and all questions about issues regarding IndieCommerce to ABA. Participant agrees that it will not contact any ABA vendor regarding any technical issue or question concerning the ABA Websites, the Licensed Data, credit card processing, any Back-End Feature or any other aspect of ABA E-Commerce Solution. Participant's failure to abide by its obligation not to contact ABA vendors as set forth in this section may be grounds for termination of this Agreement without any further notice, in ABA's sole discretion.

3. ABA Obligations.

- 3.1. ABA will provide Participant with the tools to create Participant's Website, and ABA will host Participant's Website on the ABA Web Server. Participant's Website will be branded with the identity of Participant, as Participant chooses. IndieCommerce will include:
 - 3.2. a database of more than two million book titles;
 - 3.3. the ability for Users to search and browse the title database;
 - 3.4. the ability for Users to use a credit card to purchase books and other merchandise through Participant's Website;
 - 3.5. Content for Participant to use as its own on Participant's Website;
 - 3.6. a navigational system to maneuver through Participant's Website;
 - 3.7. a series of administrative tools to allow Participant to manage Content and Participant's Content;
 - 3.8. the ability for Participant to manage orders;
 - 3.9. the ability for Participant to access User information;
 - 3.10. the ability for Participant to download User e-mail addresses (when permission to do so has been granted by the User);
 - 3.11. the ability for Participant to set store pricing policies; and
 - 3.12. the ability for Participant to view sales and User reports.

- 3.13. the ability to allow Participant to link, via the Internet, to all or a portion of the Licensed Data stored on the ABA Web Server;
- 3.14. the ability to display in any order, all or a portion of the Licensed Data, which portions may be selected by ABA and/or Participant, for display on the Participant's Website solely for the purpose of enabling Users to view the Licensed Data;
- 3.15. the ability to allow Participant to add Content and/or Participant's Content along with and/or in combination with the Licensed Data;
- 3.16. the ability for Users to search a database to locate Participant's store(s) within a predefined distance from a zip code entered by User; and
- 3.17. support to Participant in developing and operating Participant's Website and will be responsible for answering questions regarding Licensed Data, credit card processing, Back-End Features and any other aspect of ABA E-Commerce Solution.
- 3.18. ABA agrees to use its best efforts to promote the ABA Websites, as ABA may determine in its sole discretion.

4. Ownership and License Rights

- 4.1. Rights in the Works. ABA is and will be the owner of the Works, including but not limited to, the Content, the ABA Websites as a whole, as a compilation or a collective work, and all related marketing and promotional materials, other than as specifically owned or reserved by Participant or third parties. Nothing hereunder shall prevent ABA from reusing or authorizing others to use any Content, the Marks, the Licensed Data or the Look and Feel of the ABA Websites. Participant shall acquire no right, title or interest of any kind in the ABA Websites, Content, Licensed Data and/or the Look and Feel of the ABA Websites as a result of this Agreement.
- 4.2. License from ABA to Participant to Use Content. During the term of this Agreement, ABA grants Participant a limited, non-exclusive license to use the Content in connection with Participant's Website and in the advertising, marketing and promoting thereof.
- 4.3. License from ABA to Participant to Use the Marks. During the term of this Agreement, ABA grants Participant a limited, non-exclusive license to use the Marks solely in connection with Participant's Website, including the right to use the Marks in advertising, marketing and promoting Participant's Website.
- 4.4. No Sublicensing. Participant agrees not to resell, lease or otherwise license or attempt to authorize others to use the Content, the Marks, the Look and Feel of the ABA Websites, Licensed Data, any components of the foregoing and/or the code or other databases used to create or operate or impart functionality to any of the foregoing.
- 4.5. Rights in the Marks and the Look and Feel of the ABA Websites. Participant agrees that, as between itself and ABA, the Marks and any goodwill associated with the Marks, as well as the Look and Feel of the ABA Websites, shall be owned exclusively by ABA and all use shall inure solely to the benefit of ABA.
- 4.6. Proprietary Notices. In no event shall Participant alter, remove, obscure, erase or deface or hide from view, any copyright, trademark or other proprietary rights or other notice of any party contained on or incorporated into any Web Page on the Participant's Website.
- 4.7. License from Participant to ABA to Use Participant's Content. During the term of this Agreement, Participant grants ABA a limited, non-exclusive, royalty-free license to use Participant's Content, for the purpose of rendering ABA's services under this Agreement.
- 4.8. License from Participant to ABA to Use Participant's Trademarks. During the term of this Agreement, Participant grants ABA a limited, non-exclusive, royalty-free license to use trademarks and service marks owned by Participant that are used by Participant on Participant's Website, for the purpose of rendering ABA's services under this Agreement.

5. Term and Termination.

- 5.1. Term. This Agreement shall be effective when signed by both parties and thereafter shall remain in effect for one year unless terminated pursuant to the provisions of this Agreement. At the end of the one year term of this Agreement, this Agreement shall automatically renew for additional one year terms, unless at least thirty (30) days prior to such renewal date either party notifies the other party in writing of its intention not to renew the Agreement.
- 5.2. Termination of Agreement.
 - 5.2.1. Termination for Cause. In the event that either party hereto materially defaults in the performance of any of its duties or obligations under the Agreement and/or the Marketing Program Letter of Agreement and does not substantially cure such default within ten (10) days after being given written notice specifying the default, then the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. If either party breaches any of its representations and warranties, the other party may terminate this Agreement without further notice.

- 5.2.2. Termination for Convenience. Participant may, at any time, terminate this Agreement for any reason by providing ABA with written notice of Participant's desire to terminate the Agreement. ABA may terminate this Agreement if ABA determines to suspend or cease developing or deploying IndieCommerce.
- 5.2.3. Effect of Termination. Upon termination of this Agreement, Participant will pay ABA for all services rendered by ABA and all royalties or other fees due and owing to ABA through the effective date of such termination, within 30 days after the effective date of such termination. Upon termination of this Agreement, Participant shall make no further use of the Licensed Data, the Marks or the Content Website without ABA's prior written permission. Upon termination of this Agreement, each party shall either return the other's Confidential Information in its possession (including all copies) or shall, at the disclosing party's direction, destroy the other party's Confidential Information (including all copies) and certify its destruction to the disclosing party. The foregoing obligation concerning return or destruction of Confidential Information shall not apply to information or data generated by Participant's participation in the ABA Websites. Upon termination of this Agreement, ABA shall make no further use of Participant's Marks, or Participant's Content. Upon termination of this Agreement, ABA shall submit to Participant a final report and any monies owing to Participant by virtue of sales made by Participant through Participant's Website.
- 5.2.4. Survival. Termination of this Agreement for any reason shall terminate each party's obligations under this Agreement except for those provisions of Section 2.21 (No Contact with ABA Vendors), Section 6.2.3 (Effect of Termination), Section 7 (Confidentiality), Section 8 (Participant's Representations and Warranties), Section 9 (ABA's Representations and Warranties), Section 10 (Exclusion of Representations and Warranties), Section 11 (Limitations of Liability), Section 12 (Indemnification), and Section 14.3 (Governing Law), all of which shall survive termination of this Agreement.

6. Confidentiality.

- 6.1. Confidential Information. The parties acknowledge that each may be exposed to confidential information relating to the other party's business under this Agreement. ABA acknowledges that sales and User data from Participant's Website is deemed to be confidential information. The confidential information which each party may receive from the other party shall be used for the sole purpose of performing under this Agreement. The parties agree that, during the Term and after the termination or expiration of this Agreement, neither party will disclose to any third party any such confidential information without the prior written consent of the other party, except (i) to employees, agents, auditors, contractors, directors and similar entities, solely required to fulfill the terms of this Agreement, and as long as such third parties agree to be bound by the confidentiality provisions hereof, or (ii) as may be required by law. In the event of disclosure under clause (ii), the receiving party will provide the disclosing party with prompt notice so that the disclosing party may seek a protective order or other appropriate remedy, and the receiving party will not oppose action by the disclosing party to obtain such an order or remedy.
- 6.2. Exclusions. The confidentiality obligations between the parties will not apply to any information which: (a) is in the public domain at the time of disclosure or enters the public domain following disclosure through no fault of the receiving party, (b) the receiving party can demonstrate as already in its possession prior to disclosure hereunder, or is subsequently disclosed to the receiving party with no obligation of confidentiality by a third party having the right to disclose it or (c) is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

7. Participant's Representations and Warranties.

- 7.1. Participant represents and warrants that Participant has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereunder.
- 7.2. This Agreement has been duly and validly executed by Participant and constitutes the valid and binding Agreement of Participant in accordance with its terms.
- 7.3. Participant represents and warrants that all information it has provided about itself to ABA is true and accurate in all material respects to the best of its knowledge, information and belief.
- 7.4. Participant represents and warrants that Participant's Content and the exercise of any rights granted herein will not constitute defamation of any person, firm or corporation, or violate or infringe the trademark, trade name, copyright, patent, literary, artistic, dramatic, personal or property rights of any person, firm or corporation including the right of privacy or publicity and shall not violate the trade secrets of any person, firm or corporation, nor have any claims of infringement or other violation been threatened, raised or asserted against Participant concerning Participant's Content.

8. ABA Representations and Warranties.

- 8.1. ABA represents and warrants that it has full corporate power and authority to execute and delivery this Agreement and to consummate the transactions contemplated hereby.

8.2. This Agreement has been duly and validly executed and delivered by ABA and constitutes the valid and binding Agreement of ABA, enforceable against ABA in accordance with its terms.

9. Exclusion of Representations and Warranties. ALL SERVICES AND PRODUCTS PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER ABA NOR ANY OF ITS AFFILIATES, EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS, AGENTS OR LICENSORS WARRANTS THAT THE SERVICES OR PRODUCTS PROVIDED PURSUANT TO THIS AGREEMENT WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DO THEY WARRANT THAT CERTAIN RESULTS MAY BE OBTAINED BY PARTICIPANT IN CONNECTION WITH ABA'S RENDERING OF SERVICES OR PROVISION OF PRODUCTS HEREUNDER. ABA AND ITS AFFILIATES, EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS, AGENTS AND LICENSORS MAKE NO WARRANTY, GUARANTEE OR REPRESENTATION EITHER EXPRESS OR IMPLIED REGARDING THE MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, NEITHER ABA NOR THE SUPPLIER OF THE LICENSED DATA MAKE ANY WARRANTIES WHATSOEVER REGARDING THE LICENSED DATA.

10. Limitations of Liability.

10.1. EXCEPT FOR LIABILITY ARISING FROM A CLAIM FOR A VIOLATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR OF SECTION 7 (CONFIDENTIALITY), NOTWITHSTANDING ANY TERM OR PROVISION CONTAINED IN THIS AGREEMENT, IN NO EVENT WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON, FIRM OR CORPORATION, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR OTHER SIMILAR TYPE OF DAMAGES, INCLUDING YET NOT LIMITED TO DAMAGES BASED UPON LOSS OF PROFITS AND/OR LOSS OF BUSINESS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PERFORMANCE THEREOF, THE USE OF THE PRODUCTS PROMISED OR SERVICES DELIVERED PURSUANT TO THIS AGREEMENT, AND/OR AN ALLEGED BREACH OF THIS AGREEMENT, WHETHER OR NOT THAT PARTY IS INFORMED, KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

10.2. EXCEPT FOR LIABILITY ARISING FROM A VIOLATION OF SECTION 7 (CONFIDENTIALITY) OR ARISING UNDER SECTION 12 (INDEMNIFICATION), UNDER NO CIRCUMSTANCES WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON, FIRM OR CORPORATION, FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PERFORMANCE THEREOF, THE PRODUCTS OR SERVICES DELIVERED PURSUANT TO THIS AGREEMENT, AND/OR AN ALLEGED BREACH OF THIS AGREEMENT, IN ANY AMOUNT OF MONEY WHICH SHALL EXCEED (I) IN THE CASE OF CLAIMS AGAINST BSI, THE AMOUNT OF THE FEES PAID BY PARTICIPANT TO ABA; AND (II) IN THE CASE OF CLAIMS AGAINST PARTICIPANT, THE AMOUNT OF FEES DUE TO BE PAID BY PARTICIPANT TO BSI IN THE TWELVE (12) MONTHS BEFORE THE CLAIM AROSE.

10.3. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO ALL CAUSES OF ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, AND LIABILITY BASED UPON THE PROVISIONS OF ANY PART OF THIS AGREEMENT AND ANY FEDERAL, STATE AND/OR LOCAL LAW AND/OR ORDINANCE. THE LIMITATIONS ON LIABILITY REPRESENT A FUNDAMENTAL TERM OF THIS AGREEMENT AND NEITHER PARTY WOULD HAVE ENTERED INTO THIS AGREEMENT WITHOUT THEIR INCLUSION.

10.4. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT, MAY BE BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

11. Indemnification.

11.1. Participant (the "Indemnifying Party") will indemnify and hold ABA and its affiliates, officers, directors, employees, agents and representatives harmless from and against all damages, costs, expenses, and liabilities, including without limitation, reasonable attorneys' fees and expenses, arising from any action, claim, suit or proceeding ("Proceeding") brought by a third party as a result of the Indemnifying Party's breach or performance or nonperformance of this Agreement.

11.2. Participant (the "Indemnifying Party") will indemnify and hold ABA and its affiliates, officers, directors, employees, agents and representatives harmless from and against all damages, costs, expenses, and liabilities, including without limitation, reasonable attorneys' fees and expenses, arising from any Proceeding and incurred by ABA, directly or indirectly as a result of such Proceeding (i) brought against any vendor or supplier of ABA by

Participant relating to this Agreement, including without limitation against the supplier of the Licensed Data, where such Proceeding arises out of, is related to or is in connection with, the Licensed Data or this Agreement;

(ii) relating to any modifications, however slight, made by or on behalf of or through access gained through Participant, of the Licensed Data, whether or not such modifications are permitted hereunder.

- 11.3. ABA (the "Indemnifying Party") will defend or settle, at its expense, any action brought or allegation made against Participant to the extent that it is based upon a claim brought by a third party that the Marks or the Works, as provided by ABA to Participant under this Agreement and used within the scope of this Agreement, infringe upon any United States copyright, patent, trade secret or registered trademark, and will pay all costs, damages and reasonable attorneys' fees attributable to such claim that are incurred by Participant as a result of such claim.
- 11.4. The right of a party to be indemnified as set forth herein shall be subject to all of the following: (a) the indemnified party (the "Indemnified Party") must notify the Indemnifying Party in writing promptly upon learning that a proceeding has been or may be asserted, (b) the Indemnifying Party shall have sole control over the defense of the Proceeding and any negotiations for the settlement or compromise thereof, and (c) the Indemnified Party shall provide reasonable assistance and cooperation to the Indemnifying Party to facilitate the settlement or defense of any such Proceeding.
12. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and deemed given and effective upon delivery if sent by personal delivery or five (5) days after posting if sent by certified United States mail, return receipt requested, with postage pre-paid and addressed to the addresses set forth above or by email or facsimile transmission, if transmitted to the most current email address or facsimile number set forth above or as may be provided to the other party in writing. Any contact information may be changed by written notice to the other party as provided herein.
13. General.
- 13.1. Force Majeure. Neither party shall be liable to the other party for any delay or failure to perform any of the obligations set forth in this Agreement due to causes beyond its reasonable control ("Force Majeure Event"). Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.
- 13.2. Assignment. This Agreement and any rights and obligations thereunder may not be assigned in whole or in part by Participant without the prior written consent of ABA. Any attempted assignment in violation of the foregoing provision shall be invalid. Either party may assign all of its rights indivisibly to a parent company or subsidiary of that assigning party. The parent company or subsidiary in question must agree in writing to comply with the assigning party's obligations under, and to be bound by, this Agreement. This clause does not in itself authorize the assigning party to delegate its duties under this Agreement.
- 13.3. Governing Law. This Agreement shall be governed by and construed solely and exclusively in accordance with the laws of the state of New York, without reference to its conflicts of law principles. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the local and federal courts located within New York, New York, and each party hereby consents to the jurisdiction of such courts and irrevocably waives any objections thereto, including without limitation, on the basis of improper venue or forum non conveniens.
- 13.4. Severability. If any of the provisions of this Agreement is or becomes illegal, unenforceable, or invalid (in whole or in part for any reason), the remainder of this Agreement shall remain in full force and effect without being impaired or invalidated in any way.
- 13.5. Headings. The titles and headings of the various sections and paragraphs in this Agreement are intended for convenience of reference and are not intended to explain, modify or place any construction or limitation upon any of the provisions of this Agreement.
- 13.6. Entire Agreement; Amendment. No representations of any kind made by either party that are not expressly stated herein or in any written amendment hereto or in the Marketing Program Letter of Agreement shall be binding on such party. Notwithstanding the foregoing, because the IndieCommerce project is a work in process, and the ABA Websites will be changed as appropriate to meet changing market conditions, and to remain competitive, ABA reserves the right to change the terms of this Agreement upon written notice. Such notice may be as provided by Section 13 herein, or may be effected by a posting on the ABA's BookWeb.org Website. Participant's continued use of the IndieCommerce Website following such notice shall be conclusively deemed acceptance of such changes. The parties agree this Agreement, and the Schedules to this Agreement (if any) shall constitute the complete and exclusive statement of the agreement between them, and supersede all prior or contemporaneous proposals, oral or written, and all other communications between them relating to the subject matter hereof.

13.7. No Third-Party Beneficiaries. Nothing in this Agreement is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither party shall make any representations to the contrary.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf as of the date set forth below.

American Booksellers Association, Inc.

PARTICIPANT

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date