

**e-book Hosting Agreement
between the
Orange County Library System
and**

This e-book Hosting Agreement (“Agreement”) is dated _____ (the “Effective Date”) and is between _____ (the “Author”), a _____ **[insert company name/or an individual]**, and the Orange County Library System (the “Library”), an independent special district of the State of Florida.

The Author has written a book, and wishes for the Library to host the book in an electronic “e-book” format (the “e-book”) on Library’s e-book lending platform currently known as “ePULP.”) The Author and the Library agree to the terms and conditions in this Agreement.

General Terms and Conditions

1. The Author wishes Library to host the Author’s e-book on Library’s ePULP e-book platform or other platform used by Library and grants Library the nonexclusive right to format the e-book for hosting in e-book format.
2. No royalties, license fees, remuneration, or other payments of any description will be made by the Library or by any Affiliate to the Author and no payments for the hosting services provided by Library will be due to or paid to Library or to any Affiliate. As used herein, “Affiliate” means libraries that have signed an ePULP e-book Affiliate Agreement with Library, which Affiliate Agreement authorizes such libraries, and their registered library card holders, access to the ePULP e-book platform and e-books in the collection.
3. The Library reserves the right to reject any e-book or other material provided by Author for any reason whatsoever, and to determine the date or dates of on-line availability for Authorized Users and the methods of advertising and promotion of the e-book.

Grant of Usage and License

4. The materials that are the subject of this Agreement, including the e-book, are detailed in Schedule “A” (the “Materials”), with such specifics as: title(s) and format(s) (including details of multimedia files). Schedule “A” is incorporated in and made part of this Agreement by this reference thereto. All e-books submitted to Library by Author for hosting on Library’s e-book lending platform shall be governed by this Agreement and Author shall submit a revised Schedule “A” with each new e-book submitted.
5. Author grants to Library a world-wide, non-exclusive, non-transferrable (except to Affiliates), perpetual, right, and license, to use the Materials, and the right to provide the Materials to authorized Reviewers (as described in Section 7) and to Authorized Users (as defined in Section 12) in accordance with this Agreement’s terms and conditions.

Author grants Library multi-use, simultaneous, and concurrent use rights during review period by registered Reviewers. Author grants rights for one-copy, one-user by Authorized Users if the Materials are hosted by Library, as well as the right to make copies in specialized formats (exclusively for disabled Authorized Users) of the Materials and the right to make copies of the Materials in order to perform these functions.

6. Library acknowledges that Author retains ownership and title to the Materials' copyright and any trademarks or service marks related to the Materials. Author is only transferring the rights granted in Section 5. Library is the sole owner of the media to which the Materials are downloaded, transferred, or copied.
7. Author understands and agrees that before the Materials will be accepted for hosting and viewing by Authorized Users, the Materials will first be examined and reviewed on a secure and limited access web page or site called the Community Review Website currently at <http://epulpreviews.ocls.info/>, viewable only by Library's and Affiliates' registered authorized Reviewers ("Reviewers"). If the Materials are favorably reviewed they will then be added to Library's collection of e-books, placed on Library's e-book lending platform and made available to Authorized Users as provide for in this Agreement. If the Materials are not favorably reviewed, Author will be notified in writing, and the Materials will be purged from Library's reviewing web page or web site and from any other electronic storage site within Library's system.

Delivery of the Book

8. It is the Author's responsibility to submit the e-book to the Library in EPUB, PDF or other electronic format specified by Library. Metadata will also be provided to support integrated access within Library's catalog to increase searchability.
9. The Library has the right to determine the appearance of all on-line information concerning the book, including but not limited to, on-line marketing, listing, and the e-book appearance.
10. The Library is not responsible for errors in the Materials, including, but not limited to, spelling errors, grammar, punctuation, style of work, page numbering, corrupted files, computer formatting errors, and missing fonts. The Library is not responsible for editing, rewriting, page-numbering, indexing, or providing third party reviews of the Materials.
11. A separate hosting agreement must be completed for each e-book being submitted to the Library.

Authorized Use & Users

12. Author and Library define "Authorized Users" as the following:
 - a. Library's and Affiliates' registered library card holders, regardless of their physical location;
 - b. Library's and Affiliates' fulltime and part-time employees (including temporary and contract), regardless of their physical location.

13. Library and the Authorized Users may view, display, access, and use the Materials in ways that are consistent with this Agreement's terms and conditions and U.S. Copyright Law. Materials will be hosted and managed on Library's servers for the personal, non-commercial, uses by Authorized Users. Authorized Users may use, browse, and search the content of the Materials and may print and make copies of insubstantial portions of the Materials as permitted under the fair use provisions of the U.S. Copyright Act (17 U.S.C.A. §107).

Rights to the e-book

14. The Author will retain all copyright and other intellectual property rights in the materials as provided by Author to the Library under this Agreement.
15. The Library is entitled to use the Author's name and likeness for the purpose of promoting and cataloging the e-book, and the Library may use excerpts of the e-book for marketing or promotional purposes, including issuing preview or extracts of the e-book to promote the book.
16. The Author may pursue publishing ventures with third parties that do not involve the use of the Library's name or logo, likeness, barcode, copyright page, or ISBN. No such publishing ventures will affect or modify Library's rights as stated in this Agreement.

Access and Restrictions on Use

17. Author and Library agree to the following use and access restrictions on the Materials;
 - a. **Unauthorized Use.** Author understands that Library is unable to practically enforce the terms of this Agreement as to third parties, but Library agrees to make reasonable efforts to take appropriate action to prohibit misuse of the Materials. Library shall not knowingly or intentionally permit anyone other than Authorized Users to access or use the Materials. Library will use standard digital rights management best practices to inhibit unauthorized copying of the Materials.
 - b. **Modification of the Materials.** Library will not modify or create a derivative work of the Materials without Author's prior written permission.
 - c. **Removal of Copyright Notice.** Library will not remove, obscure, or modify any copyright or other notices included by Author in the Materials.
 - d. **Commercial Purposes.** Other than as specifically permitted in this Agreement, Library will not use the Materials for commercial purposes. This restriction expressly prohibits Library from selling, broadcasting, assigning, or distributing in bulk the Materials in any form except as hosted Materials according to this Agreement.

Author's Representations

18. The Author is the sole author of the Materials, the sole undivided owner of the copyright and all of the contents of the Materials, and has full power, right, and legal capacity to enter into this Agreement. No part of the Materials are in the public domain.

19. The Author has not engaged in plagiarism and the Materials do not contain plagiarized content.
20. The Author, if submitting work that includes content that does not originate from the Author or to which the Author does not own the copyright, has obtained the copyright owner's written permission to use any such material and will provide the Library with a copy of all written permissions for use at the time of submission to the Library. All such permitted uses will be so noted in the e-book.
21. The Author's Materials are not in violation or invasion of anyone's right of privacy, are not injurious, obscene, libelous, slanderous, or otherwise a violation or infringement of any federal, state, or local law, statute, or code.
22. No part or portion of the Materials infringe upon the rights of any third-party. The Materials are an original work of authorship by Author. The Materials have not previously been published.
23. The book, in whole or in part, has not been sold, transferred, or assigned by Author and is, and will remain, free and clear of any and all liens, security interests, and encumbrances.

Performance Obligations

24. Author agrees to the following performance standards.
 - a. **Updated Materials and Meta Data.** Author agrees to furnish Library the most current versions of the Materials. Author will also furnish the meta data for all of the Materials and updates.
 - b. **Materials Problems.** If the electronic file(s) for the Materials fail to operate, display, load, or render in conformance with the terms of this Agreement ("defective Materials"), the Library shall notify Author, and Author shall promptly use reasonable efforts to replace the defective Materials as soon as possible. In the event that Author fails to replace the defective Materials in a reasonable time, Library may terminate this Agreement by written notice to Author.
 - c. **Withdrawal of the Materials.** Author reserves the right to withdraw from the Materials any item or part of an item for which he/she no longer retains the right to publish, or which he/she has reasonable grounds to believe infringes a copyright, or is defamatory, or unlawful. Author shall give written notice to Library of such withdrawal, at least 30 days in advance of date of withdrawal.
 - d. Author must obtain any desired copyright registration and ISBN for the Materials. Author understands this duty is only Author's and not Library's.
25. Library agrees to the following performance standards:
 - a. **Usage Terms Notice.** Library shall make reasonable efforts to provide Authorized Users with appropriate notice about the terms and conditions under which access to the Materials is granted under this Agreement.
 - b. **Protection from Unauthorized Use.** Library shall use reasonable efforts to inform Authorized Users about the restrictions on use of the Materials. In the event any Affiliate

or Authorized User makes an unauthorized use of the Materials, Library may terminate such Affiliate's or Authorized User's access to the Materials upon Author's request or at the sole discretion of Library.

c. Library is not a publisher of the Materials for Author and has no responsibility for obtaining any copyright, ISBN or other rights pertaining to the Materials.

Indemnification and Liability

26. Author shall defend, indemnify and hold harmless the Library, its employees, officers, directors, and representatives to the fullest extent permitted by law from and against all claims, damages, losses, liens, and expenses (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from (a) the hosting of the book; (b) a breach of the terms of this Agreement by the Author; and (c) violations of applicable law by the Author.
27. Neither the Library nor any Affiliate is liable to the Author or any third-party for lost profits or revenues relating to this Agreement or the Materials.
28. The Library is not liable to the Author for any misplacement or loss of the Materials for any reason. It is the Author's responsibility to retain complete records and copies of the Materials.
29. In no event shall either Library, its Affiliates, or any Authorized User be liable to the Author for indirect, special, incidental, exemplary, or consequential damages, including, but not limited to, loss of revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise.

Duration and Termination

30. Either party may terminate this Agreement upon 30 day prior written notice to the other.
31. Termination shall not affect (a) any e-books published or in circulation as of the date of termination, (b) either party's rights and obligations up to the date of termination, or (c) the warranties and indemnities given to Library by Author.

Notices; Points of Contact

32. All notices, demands, requests, and other communications given under this Agreement shall be made in writing and shall be delivered (a) in person, (b) by certified mail, return receipt requested, (c) by receipt-confirmed overnight delivery service, (d) via confirmed facsimile, or (e) via confirmed electronic mail at the address for the party in Paragraph 34, below. Any such notice, demand, request or other communication shall be effective only when it is received by the Point of Contact at the specified address listed in Section 34, below.

33. The acceptance of this Agreement or any modification of this Agreement or any notices permitted or required under this Agreement may be made by facsimile or electronic transmission. Receipt of the facsimile or electronic transmission shall for the purpose of this Agreement be deemed to be an original, including signatures.

34. Points of Contact:

Library:

Name: _____
101 E. Central Boulevard
Orlando, Florida 32801
Phone: _____
Email: _____

Author:

Name: _____
Address: _____
Phone: _____
Email: _____

Archives

35. Author hereby grants to Library a nonexclusive, royalty-free, perpetual license to archive any of the Materials. Library will duplicate one complete copy of the Materials for the sole purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored becomes obsolete, if:
- a. Library, after a reasonable effort determines that a replacement cannot be obtained at a fair price; and
 - b. Any such copy reproduced in digital format is not made available to the public in that format outside the premises of Library.

Miscellaneous

36. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall remain enforceable to the greatest extent permitted by law.
37. This Agreement may not be altered, modified, amended or changed in any manner, except pursuant to a written amendment executed and delivered by each of the parties. Additionally, any such modification, amendment or change shall be effective on the date of execution and delivery, or such later date as the parties may agree in writing.
38. This Agreement may not be assigned by either party without the prior written consent of the other party.

- 39. Each party shall bear its own costs and expenses in connection with the preparation and negotiation of this Agreement. In the event of litigation between the parties, the prevailing party shall be entitled to recover their reasonable attorneys' fees and court costs.
- 40. This Agreement constitutes the entire agreement between the parties hereto and shall supersede all previous or contemporaneous statements, communications, or agreements, either oral or written, by or between the parties hereto with respect to the subject matter hereof, and is not intended to confer upon any person other than the parties any rights or remedies hereunder.

Governing Law; Jurisdiction; Venue.

- 41. This Agreement shall be interpreted and construed according to, and governed by, the laws of the state of Florida, excluding any such laws that might direct the application of another jurisdiction's laws. The federal or state courts located in Florida shall have jurisdiction to adjudicate any dispute under this Agreement. Exclusive venue for litigating any disputes between the parties shall be in the federal or state courts located in Orange County, Florida.
- 42. Paragraphs 2, 5, 14, 15, 16, 17, 23, 26, 27, 28, 29, 31, 35, 40, 41, and 42 shall survive termination of this Agreement.
- 43. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The parties are signing this Agreement as of the Effective Date.

Orange County Library System

[Insert Author/Company Name]

By: _____

By: _____

[Insert Name/Title]

SCHEDULE "A"

MATERIALS