

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC.,

Plaintiff,

- against -

SETH GRAHAME-SMITH, and  
BABY GORILLA, INC.,

Defendants.

16-CV-

COMPLAINT

Plaintiff, HACHETTE BOOK GROUP, INC. (“Hachette”), by its attorneys Cowan DeBaets Abrahams & Sheppard, LLP, for its complaint against Defendants SETH GRAHAME-SMITH (“Smith”) and BABY GORILLA, INC. (“BGI”), alleges as follows:

**THE PARTIES**

1. Hachette is a Delaware corporation, with its principal place of business at 1290 Avenue of the Americas, New York, New York.
2. Smith is an individual who, on information and belief, is domiciled in and a citizen of the State of California.
3. BGI is Smith’s personal-services corporation that, on information and belief, is organized and exists under the laws of the State of California.

**JURISDICTION AND VENUE**

4. This court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1), as the sum in controversy exceeds \$75,000, exclusive of interest and costs.

5. This court has personal jurisdiction over Smith and BGI pursuant to NY CPLR §§302(a)(1), as well as the December 3, 2010 book-publishing agreement between Hachette and BGI (a true copy of which is annexed hereto as Exhibit A and made part hereof) (the “Agreement”) and Smith’s unconditional Guaranty thereof dated December 7, 2010 (a true copy of which is annexed hereto as Exhibit B and made part hereof), which confer on the state and federal courts in New York County exclusive jurisdiction over any action arising under the Agreement.
6. Venue lies in this court pursuant to both 28 U.S.C. §1391(b)(2) and the afore-described Agreement (Exhibit A) and Guaranty (Exhibit B).

### **GOVERNING LAW**

7. Paragraph 23 of the Agreement provides, in pertinent part, that “This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements executed and fully performed therein.”
8. Smith’s Guaranty similarly provides that it “shall be interpreted and construed in accordance with the laws of the State of New York applicable to agreements entered into and fully performed therein.”

### **FACTS**

9. Hachette is a large and well respected trade-book publisher in the United States.
10. Smith is an experienced and successful author of several published books, including the national bestsellers *Abraham Lincoln: Vampire Hunter* and *Pride and Prejudice*

*and Zombies*, as well as being an experienced and sophisticated Hollywood screen writer.

11. The Agreement provides for BGI to deliver to Hachette two works (“Book #1” and “Book #2”) authored by Smith.
12. On execution of the Agreement by the parties, Hachette paid BGI \$1 million, allocated \$500,000 each to Book #1 and Book #2, which was the first installment of a total advance payment of \$2 million for each Book against the royalties that it was anticipated BGI would earn from sales of that Book.
13. Paragraph 1(b) of the Agreement provides that  
  
Book #1 will be a sequel to or spinoff of ABRAHAM LINCOLN: VAMPIRE HUNTER. Book #2 will be a novel on a subject to be determined by Proprietor [BGI] with Publisher's written approval. Each Book will be comparable in style, quality and broad appeal to ABRAHAM LINCOLN: VAMPIRE HUNTER.
14. Pursuant to Paragraph 5 of the Agreement, the manuscript for Book #1 and Book #2 must each be between 80,000 and 100,000 words in length.
15. Pursuant to Paragraph 12(a) of the Agreement, BGI represents that each manuscript will be “original with Author [Smith] in all respects.”
16. In January 2015 Hachette published Book #1 under the title *The Last American Vampire*.
17. At the request of BGI and Smith, Hachette twice extended the delivery date for Book #2 from the original contractual date of June 3, 2013, first to October 1, 2014, and then from October 1, 2014, to April 1, 2016, totaling in all an extension of 34 months beyond the original delivery date.

18. Paragraph 5 of the Agreement provides that “If Proprietor [BGI] shall fail to deliver the manuscript(s) for Book #1 and/or Book #2 within sixty (60) days after the above corresponding delivery dates (or any agreed upon extension thereof), Publisher shall have the right, at its option, to terminate this Agreement as to that Book by giving written notice to Proprietor, subject to repayment to Publisher of any amounts paid by Publisher on account of the Book.”
19. On April 20, 2016, Hachette notified BGI that it had failed to deliver the manuscript for Book #2 by April 1, 2016, and that Hachette intended to terminate the Agreement, thereby triggering the 60-day grace period within which BGI and Smith still could timely deliver the Book #2 manuscript. (A true copy of Hachette’s notice is annexed hereto as Exhibit C and made part hereof.)
20. On June 6, 2016, approximately three years after the original contractual delivery date, Smith and BGI purported to deliver to Hachette the manuscript for Book #2.
21. The manuscript delivered on June 6, 2016, is not the manuscript that BGI – with Smith’s Guaranty – promised to deliver under the Agreement, and for which Hachette paid a \$500,000 advance, because the manuscript delivered to Hachette:
  - a. is not original to Smith, but instead is in large part an appropriation of a 120-year-old public-domain work;
  - b. materially varies from the 80,000-100,000 word limit fixed in the Agreement;
  - c. is on a subject that was never approved by Hachette in writing, as required by Paragraph 1(b) of the Agreement; and

- d. is not comparable in style and quality to Smith's wholly original bestseller *Abraham Lincoln: Vampire Hunter*, as also required by Paragraph 1(b) of the Agreement.
22. Pursuant to his Guaranty (Exhibit B), Smith unconditionally "guarantees the performance of all of the obligations of the Company [BGI] under the terms and conditions of the Agreement," and agrees that "If for any reason the Company [BGI] shall fail or cease to perform any of its obligations under the Agreement . . . the Agreement shall be enforceable directly against the Undersigned [Smith]."
23. The Guaranty also provides that "In the event of default in the performance of this guaranty, the Undersigned [Smith] agrees to pay all reasonable expenses (including reasonable outside attorneys' fees) incurred by the Publisher in the enforcement of the Publisher's rights under this guaranty and the Agreement."
24. Neither BGI nor Smith has repaid the \$500,000.00 to Hachette, and have stated that they do not intend to repay the money.

**AS AND FOR A CLAIM  
(BREACH OF CONTRACT)**

25. Hachette repeats and re-alleges the allegations of Paragraphs 1 through 24, inclusive, of this Complaint.

26. By delivering a manuscript that varied so materially and substantially from that described in the Agreement and for which Hachette contracted, BGI failed to timely deliver a manuscript for Book #2 in breach of Paragraph 5 of said Agreement.
27. BGI's breach has damaged Hachette in an amount to be determined at trial, but which is no less than \$500,000, plus interest at the legal rate accruing from June 6, 2016.
28. Under his Guaranty (Exhibit B), Smith is jointly and severally liable for the damages caused by BGI's breach.

WHEREFORE, Plaintiff HACHETTE BOOK GROUP, INC. demands judgment against Defendants SETH GRAHAME-SMITH and BABY GORILLA, INC.:

- (A) Awarding Hachette against the Defendants, jointly and severally, an amount to be determined at trial, but no less than the sum of Five Hundred Thousand Dollars (\$500,000.00), plus interest at the legal rate from June 6, 2016;
- (B) Awarding against Defendant Smith Hachette's reasonable expenses, including its reasonable attorneys' fees, incurred in this action;
- (B) Awarding Hachette against the Defendants, jointly and severally, its reasonable costs and disbursements incurred in this action; and

(C) Granting Hachette such other and further relief as the Court deems just and proper.

Dated: New York, New York  
August 26, 2016

COWAN DEBAETS ABRAHAMS  
& SHEPPARD, LLP

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*Attorneys for Plaintiff Hachette Book Group, Inc.*

## **EXHIBIT A**





**GRAND CENTRAL  
PUBLISHING**

**AGREEMENT** dated this December 3, 2010 by and between Grand Central Publishing, a division of Hachette Book Group, Inc. ("Publisher"), 237 Park Avenue, New York, NY 10017, and Baby Gorilla, Inc. f/s/o Seth Grahame-Smith ("Proprietor") c/o William Morris Endeavor Entertainment, LLC, 1325 Avenue of the Americas, New York, NY 10019, attn: Claudia Ballard, with respect to the Work as set forth in subparagraphs 1(a) and (b) below.

**WHEREAS, Proprietor and Publisher entered into an agreement dated August 25, 2009, as amended, and an audio agreement dated August 25, 2009 (collectively referred to herein as the "2009 Agreement") with respect to two fiction works by Seth Grahame-Smith ("Author"), the first work published under the title ABRAHAM LINCOLN: VAMPIRE HUNTER and the second work (not yet delivered) provisionally entitled UNTITLED #2 (collectively, the "Prior Works");**

**WHEREAS, the parties acknowledge that a condition of this Agreement is that a separate agreement regarding audio formats for the Work (the "2010 Audio Agreement") is to be executed simultaneously herewith;**

**WHEREAS, Proprietor and Publisher desire that the 2009 Agreement, this Agreement and the 2010 Audio Agreement be jointly accounted with respect to all payments and all earnings thereunder;**

**NOW, THEREFORE, the parties agree as follows:**

**1. GRANT OF RIGHTS:** (a) Proprietor hereby grants and assigns to Publisher, with respect to Proprietor's two fiction works by Author provisionally entitled **UNTITLED SETH GRAHAME-SMITH #3\*** ("Book #1") and **UNTITLED SETH GRAHAME-SMITH #4\*** ("Book #2"), as further described below and referred to hereinafter individually and collectively as the "Book(s)" or the "Work," as the context indicates, the exclusive right to print, publish, distribute and/or sell the Work in the English language in all editions and the right to exercise and authorize others to exercise the subsidiary rights described hereinbelow throughout the following territory:

the United States of America, its territories, possessions and dependencies, Puerto Rico, the Philippines and Canada (the "Exclusive Territory"), and the non-exclusive right in the balance of the world, excluding the British Commonwealth (other than Canada) as set forth in Schedule A attached hereto and made part hereof (the "Non-exclusive Territory"). (The Exclusive Territory and the Non-exclusive Territory shall be jointly called the "Territory.").

\*The final title for each Book shall be subject to the mutual agreement of Proprietor and Publisher.

(b) The Work is described as follows: **Book #1 will be a sequel to or spinoff of ABRAHAM LINCOLN: VAMPIRE HUNTER. Book #2 will be a novel on a subject to be determined by Proprietor with Publisher's written approval. Each Book will be comparable in style, quality and broad appeal to ABRAHAM LINCOLN: VAMPIRE HUNTER.**

(c) Such rights shall include the following rights which shall be exclusive throughout the Exclusive Territory and non-exclusive throughout the Non-exclusive Territory:

(i) First serial\*\*, second serial\*, book club\*, Electronic Display (see subparagraph 1(c)(ii) below), reprint editions\*\*\*, large print edition, library edition, deluxe edition, selection, abridgment\*, condensation\*, digest\*, textbook, syndication and anthology publishing rights.

\*Subject to Proprietor's approval.

\*\*Subject to Proprietor's approval of periodical and cut.

\*\*\*Subject to Proprietor's approval of a licensed reprint edition if Publisher has not already published the Work in the format proposed by the licensee; subject to meaningful consultation with Proprietor if the Work has been previously published by Publisher in such format.

(ii) Electronic Display rights, which for the purposes of this Agreement shall be limited to the right to reproduce, transmit, download or otherwise transfer, manufacture, publish, distribute, and/or sell the text (which may include photographs, illustrations and all other elements of the Work in its printed form) of the Work in its entirety in an electronic format in any media and by any means, on any platform now known or hereafter developed, without enhancement (i.e., video, illustrations and audio), including the right to exercise and authorize others to exercise the subsidiary rights described in subparagraph 1(c)(i) above in such format. Publisher shall not itself exercise or license Electronic Display rights for the complete verbatim Work for sums greater than one thousand dollars (\$1,000.00) without Proprietor's prior written approval and such approval shall also be required by Publisher itself or for Publisher's licensees of subsidiary rights under subparagraph 1(c)(i) of other than the complete verbatim Work. Any other approval required for the exercise of any rights under the terms of this Agreement shall also apply to an electronic format. Publisher shall not itself offer nor authorize any licensee to offer an Electronic Display edition for sale as part of a package, group, bundle or other multiple work method which includes works by other authors without the prior written approval of Proprietor.

(iii) Publication, transmission, and/or broadcast without charge, such selections from each of Book #1 and Book #2 for publicity purposes as may benefit its sale, such broadcast shall not exceed two (2) minutes in length per Book; and any publication and/or transmission shall not exceed ten percent (10%) of each Book or 750 words in length per Book, whichever is greater, without Proprietor's prior written approval.

(iv) Utilization of the approved name, approved likeness and approved brief biography of Author on the covers and generally in connection with any advertising and promotion of the Work. Any use of Author's likeness and biographical material shall be subject to Proprietor's prior written consent.

**2. ADVANCE:** (a) In consideration of Proprietor's promises, obligations and the rights granted to Publisher hereunder, Publisher shall pay to Proprietor the guaranteed (except as set forth in paragraph 5 and subparagraphs 6(a), 15(b) and 16(c) below) sum of **four million dollars (\$4,000,000.00), allocated two million dollars (\$2,000,000.00) to each of Book #1 and Book #2**, as an advance against and on account of all of Proprietor's earnings under: (i) this Agreement; (ii) the 2010 Audio Agreement; and (iii) the 2009 Agreement. All amounts payable under this paragraph 2 shall be referred to collectively as the "Advance." The Advance shall be payable at the following times:

- (i) one million dollars (\$1,000,000.00), allocated five hundred thousand dollars (\$500,000.00) to each of Book #1 and Book #2, on execution of this Agreement;
- (ii) five hundred thousand dollars (\$500,000.00) on Publisher's acceptance of Book #1, together with all necessary permissions;
- (iii) five hundred thousand dollars (\$500,000.00) on Publisher's first publication of its hardcover edition of Book #1 or 18 months after Publisher's acceptance of Book #1, whichever is earlier;
- (iv) five hundred thousand dollars (\$500,000.00) on Publisher's first publication of its paperback edition of Book #1 or 30 months after Publisher's acceptance of Book #1, whichever is earlier;
- (v) five hundred thousand dollars (\$500,000.00) on Publisher's acceptance of Book #2, together with all necessary permissions;
- (vi) five hundred thousand dollars (\$500,000.00) on Publisher's first publication of its hardcover edition of Book #2 or 18 months after Publisher's acceptance of Book #2, whichever is earlier; and
- (vii) five hundred thousand dollars (\$500,000.00) on Publisher's first publication of its paperback edition of Book #2 or 30 months after Publisher's acceptance of Book #2, whichever is earlier.

(b) Book #1 and Book #2 shall be jointly accounted with each other and with the Prior Works as set forth in subparagraph 16(b) below.

**3. ROYALTIES:** Publisher shall pay to Proprietor the following royalties after deducting a reasonable reserve against returns. Any royalty escalations shall be calculated separately for

each of Book #1 and Book #2.

(a) On all copies of the hardcover editions of the Work published by Publisher, if any, royalties shall be payable on copies shipped, less returns, at the following rates:

- (i) For copies sold in the United States:  
10% of the retail price on the first 5,000 copies;  
12.5% of the retail price on the next 5,000 copies; and  
15% of the retail price on all copies thereafter
- (ii) For copies sold outside the United States:  
15% of net sales revenue

(b) On all copies of the mass market paperback editions of the Work published by Publisher, if any, royalties shall be payable on copies shipped, less returns, at the following rates:

- (i) For copies sold in the United States:  
8% of the retail price on the first 150,000 copies; and  
10% of the retail price on all copies thereafter.
- (ii) For copies sold outside the United States:  
10% of net sales revenue

(c) On all copies of the quality paperback editions of the Work published by Publisher, if any, royalties shall be payable on copies shipped, less returns, at the following rates:

- (i) For copies sold in the United States:  
7.5% of the retail price
- (ii) For copies sold outside the United States:  
10% of net sales revenue

(d) On all Electronic Display editions published by Publisher, if any, royalties payable shall be twenty-five percent (25%) of "Net Sales" (as defined below) on all copies sold. In the event Publisher hereafter offers another author of a work of fiction a higher base Electronic Display edition royalty, then it will promptly thereafter increase Proprietor's base Electronic Display edition royalty to such higher rate. "Net Sales" means all monies actually received by or credited to Publisher from sales of the Electronic Display editions of the Work, less any applicable taxes, handling or processing fees (e.g., credit card transaction charges), customer refunds resulting from bona fide ordering, billing or other errors in the transmission of the Work and agent/distribution commissions or fees payable by Publisher to third parties (including, web hosters and digital rights management providers) incurred in connection with effecting the transaction or transmission of the Electronic Display editions to the customer. No deductions shall be made for sublicensing commissions or normal overhead expenses. Such terms shall apply for five (5) years from Publisher's first electronic publication of the Work, and future royalties will be negotiated in good faith, on request, in accordance with industry standards at the end of the scheduled five (5) year period.

(e) Notwithstanding the foregoing, for copies of the Work sold to the non-book trade market, such as premiums (subject to Proprietor's approval), mail order, educational institution sales; copies of the Work sold to book clubs other than licensed by Publisher under subparagraph 4(a) or any other non-returnable sales, the royalty shall be ten percent (10%) of net sales revenue for the hardcover edition(s), sold and seven and one-half percent (7.5%) of net sales revenue for any paperback edition(s) sold.

(f) The term "net sales revenue" shall mean all sums actually received by or credited to Publisher from its sales of the Work, less any commissions to any third party distributors, which commissions shall not exceed ten percent (10%), (which shall include Publisher's own distributors, whose commissions shall not exceed that of any unaffiliated third party distributor) or sales agents paid by Publisher in making such sales. No deductions shall be made for normal overhead expenses. The term "retail price" shall mean the suggested retail price for the Work.

(g) Should Publisher find itself with an overstock (i.e. remainders) of the Work on hand, when, in its reasonable judgment, the demand for the Work would not deplete this

stock in a reasonable time, or should Publisher find itself with a stock of damaged copies of the Work, Publisher shall have the right to sell such copies at the best price it can secure subject to the payment of a royalty of ten percent (10%) of net sales revenue on all copies of the hardcover edition sold and five percent (5%) of net sales revenue on all copies of any paperback edition sold or as set forth in subparagraph 3(h) below. Publisher may not remainder any edition of each of Book #1 or Book #2 until twelve (12) months after publication of each such edition and not before offering such copies to Proprietor at the price Publisher would propose to another party.

(h) No royalties shall be payable to Proprietor on copies of the Work destroyed, distributed for review, advertising, publicity, sample or like purposes, without compensation, or any copies disposed of at cost, or less than cost, or copies sold to Proprietor hereunder.

**4. LICENSING REVENUE:** (a) All net licensing revenue (as the term "net licensing revenue" is herein defined) derived from licensing of any publication rights in the Work, or any part thereof, in the form granted herein throughout the Territory shall be divided as set forth below:

- |  |                   |
|--|-------------------|
| (i) First serial rights (subject to subparagraph 1(c)(i)):   | 90% to Proprietor |
| (ii) Second serial, Book club, Selection, Abridgment, Condensation, Digest, Syndication, Large print edition, Deluxe edition, Anthology, Library edition, Reprint and Textbook edition rights: | 50% to Proprietor |
| (iii) Electronic Display rights (subject to subparagraph 1(c)(ii)):  | 60% to Proprietor |

(b) Publisher shall have the right to license free of charge the photographing, microfilming, taping, reproduction, in Braille or other publication of the Work to the physically handicapped, in whole or in part, without compensation therefor to Publisher or Proprietor. However, in the event that Publisher receives income with respect to such editions, such income will be shared equally with Proprietor.

(c) The term "net licensing revenue" shall mean all sums actually received by or credited to Publisher from licensing rights in the Work and shall exclude Publisher's reasonable and documented charges to licensees for the manufacture and delivery of copies of the Work.

(d) In the event Publisher exercises any of the rights specified in paragraph 4 itself in lieu of licensing same, the royalty rates, where not otherwise provided for in paragraph 3 above, shall be negotiated and mutually agreed in good faith consistent with prevailing book industry standard as applicable to authors of comparable status to Author.

**5. DELIVERY OF MANUSCRIPTS:** Proprietor agrees to deliver the final manuscript of Book #1 no later than **June 1, 2012** and the final manuscript of Book #2 no later than **June 3, 2013**. However, in the event Publisher consents to a later delivery date for Book #1, the above corresponding delivery date for Book #2 shall also be extended by the same time period as Book #1 is extended, it being understood that the total "extended period" for each Book shall not exceed 12 months from the above corresponding delivery date for each such Book unless approved by Publisher. Delivery to Publisher shall consist of a complete and final, typewritten manuscript for each Book, in content and form satisfactory to Publisher, of approximately eighty thousand (80,000) to one hundred thousand (100,000) words in length for each Book described above, and all mutually agreed upon related materials, indexes, and any permissions necessary with respect to third party copyrighted material for use throughout the Territory of such material included in each Book, which permissions shall be obtained at Proprietor's expense. (A sample form Exhibit A is provided as a courtesy which Proprietor can customize for Proprietor's specific needs.) If Proprietor shall fail to deliver the manuscript(s) for Book #1 and/or Book #2 within sixty (60) days after the above corresponding delivery dates (or any agreed upon extension thereof), Publisher shall have the right, at its option, to terminate this Agreement as to that Book by giving written notice to Proprietor, subject to repayment to Publisher of any amounts paid by Publisher on account of the Book. If Proprietor shall fail to deliver the related materials within sixty (60) days after the above corresponding delivery date (or any agreed upon extension thereof), Publisher shall have the right, at its option, either to supply such related materials and to charge the cost thereof against Proprietor's royalty account (excluding the Advance) pursuant to this Agreement, or to terminate this Agreement with respect to such Book by giving written notice to Proprietor, subject to repayment to Publisher of any amounts paid by Publisher on account of such Book. It is understood, however, that Publisher shall not terminate this Agreement for non-delivery of the manuscript without first giving Proprietor sixty



(60) days notice and the opportunity to deliver the manuscript during that period. No extension of the corresponding delivery date for Book #1 or Book #2 will be effective without the consent of Publisher to a new delivery date for such Book. Notwithstanding the foregoing, if delivery is prevented or delayed due to Author's illness or serious illness of an immediate family member, accident, or another condition beyond Proprietor's reasonable control, the time for delivery shall be extended for an additional sixty (60) days. If Publisher loses or damages beyond reasonable wear and tear the original manuscript(s) or the related materials, the cost of any retyping or photocopying the manuscript(s) and/or any duplicating by mechanical or conventional means of the related materials deemed necessary by Publisher, shall be paid by Publisher.

**6. ACCEPTANCE OF MANUSCRIPTS:** (a) The payment to Proprietor of the Advance due on acceptance of the manuscript of each of Book #1 and Book #2 pursuant to paragraph 2 shall constitute acceptance of the manuscript of such Book. If after delivery of the manuscript of such Book in accordance with paragraph 5, Publisher determines in its sole discretion that any installment or the entire manuscript of such Book shall not, in the sole opinion of Publisher, be editorially suitable for publication and in conformance with the description in paragraphs 1 and 5 above, Publisher shall have the right to terminate this Agreement as to that Book by notice in writing to Proprietor given within thirty (30) days after Publisher's receipt of the manuscript of such Book, subject to the repayment to Publisher of any amounts actually paid by Publisher on account of such terminated Book prior to the delivery of the rejected manuscript, but such repayment shall be required only in the event such terminated Book is subsequently placed with another publisher and only to the extent of any sums paid by such publisher. Publisher agrees to accept or reject the manuscript of a Book within thirty (30) days of delivery of such complete manuscript. Any written request by Publisher for changes or revisions in the entire manuscript shall constitute notice to Proprietor that the entire manuscript is not acceptable to Publisher. Any agreement by Proprietor to perform any such requested revisions shall automatically postpone until a date not to exceed thirty (30) days following the submission of such revisions to Publisher, the time period in which Publisher may notify Proprietor as to the acceptability or unacceptability of such manuscript as so revised. If Proprietor refuses or fails to make changes or revisions requested by Publisher, Publisher shall retain the right, pending further notice to Proprietor, but not to exceed thirty (30) days, to publish such Book(s) hereunder. Any acceptance by Publisher hereunder shall not limit any rights Publisher may have under subparagraph 15(a) or 15(b) below.

(b) Proprietor understands and agrees that it is Proprietor's sole responsibility to render the manuscripts acceptable and that any assistance, encouragement or critical comments provided by Publisher shall not obligate Publisher to accept the manuscripts or to further assist Proprietor in rendering the manuscripts acceptable to Publisher.

**7. PRINTER'S PROOFS:** Proprietor agrees to read, revise and correct, without material changes in, additions to, or eliminations from, the manuscripts accepted by Publisher, all galley proofs or proof sheets of the Work. Proprietor agrees to return such corrected proofs to Publisher within thirty (30) days of the receipt thereof by Proprietor. The cost of alterations in the galley or page proofs required by Proprietor, other than corrections of printer's errors, in excess of ten percent (10%) of the original cost of composition, shall be charged against the earnings of Proprietor hereunder provided, however, that in either case Publisher shall, upon request, promptly furnish to Proprietor an itemized statement of such additional expenses, and shall make available at Publisher's office the corrected proof for inspection by Proprietor. The final edited manuscripts shall be subject to Proprietor's approval.

**8. PUBLICATION OF THE WORK:** (a) Publisher agrees to publish, or cause to be published, Book #1 and Book #2 in such style(s), manner(s), imprint(s), binding(s) and print quantities, and at such prices as Publisher deems appropriate not later than eighteen (18) months after Publisher's acceptance of the final manuscript for such Book. Publisher agrees to publish each Book first in a hardcover edition. Publisher agrees to consult with Author regarding its scheduled publication date for each Book for the purposes of coordinating with Author with regard to his professional commitments and availability.

(b) Should Publisher be unable to print, publish and/or sell the Book(s) for reasons beyond Publisher's control, including, by way of example, governmental restrictions, strikes, war, invasion, civil riot, breakdown of market distribution facilities, or shortages of labor or material ("Force Majeure Conditions"), this Agreement shall remain valid and the rights and obligations it sets forth shall be resumed when Publisher shall again be able to print, publish and/or sell, provided, however that such Force Majeure Conditions shall not be permitted to delay publication longer than six months from the date such conditions commence.

(c) Subject to subparagraph 8(a) and in accordance with Proprietor's approval and consultation rights hereunder, Publisher shall determine which of the rights granted under this Agreement it shall or shall not exercise (whether by itself, by license, or otherwise), and its judgments as to such matters shall be binding.

(d) Publisher shall have the sole discretion to determine what, if any, advertising or promotional services Publisher may perform for the Work, and, subject to the terms of paragraph 27 below, Author may, after consultation with Publisher, perform such advertising and promotional services for Book #1 and Book #2, as Proprietor believes will benefit sales of the Book(s). (See paragraphs 27 and 33 below.)

(e) In the event Author desires to obtain or perform any publicity (i.e. interviews) in connection with the Work, Proprietor will endeavor to coordinate such activities with Publisher's Publicity Department, provided, however, any inadvertent failure to do so shall not be deemed a breach of this Agreement.

**9. COPYRIGHT:** (a) Publisher agrees, upon the first publication of each of Book #1 and Book #2, to submit an application for registration of the copyright in the name of Proprietor in the United States of America, in compliance with the Universal Copyright Convention. If Publisher shall add illustrations, charts, diagrams or any other material to the Work, the copyright in such added material shall be registered in the name of the copyright proprietor. Such additional material shall be subject to Proprietor's approval and the cost thereof shall be borne by Publisher.

(b) If the Work or any portion of the Work has been previously published or will be published prior to Publisher's publication, Proprietor shall submit an application for registration of the copyright in the name of Proprietor or obtain and deliver to Publisher a duly executed and recorded assignment of copyright.

(c) If any Book has been published or will be published in any other English-speaking country prior to Publisher's publication, Proprietor shall promptly deliver to Publisher one copy of such prior edition together with the exact publication date and the manufacturer's name and address so Publisher may submit an application for registration of the copyright in such Book as provided in subparagraph 9(a) above.

(d) Proprietor agrees that Publisher may record this Agreement or a memorandum hereof (each with all material financial terms redacted) in the United States Copyright Office. Upon written request from Proprietor, Publisher agrees to provide a copy of the registered copyright certificate.

(e) Publisher agrees to require all its licensees to print the copyright notice as provided by Publisher.

**10. PROPRIETOR'S COPIES:** Publisher shall furnish to Proprietor fifty (50) free copies of any edition of each of Book #1 and Book #2 published by Publisher and ten (10) free copies of each Book to Proprietor's agent. Proprietor shall have the right to purchase additional copies of the Work at fifty percent (50%) off the retail price for Proprietor's own use and not for resale. No royalty shall be due for such copies.

**11. OPTION ON FUTURE WORK:** (a) Proprietor agrees to submit exclusively to Publisher, for consideration as below described, a reasonably detailed outline for Author's next book-length fiction manuscript, before submitting same or proposals therefor to any other publisher.

(b) Publisher shall have a period of thirty (30) days after the submission of a reasonably detailed outline and sample chapters within which to notify Proprietor in writing whether it desires to publish such next work. If within said time Publisher notifies Proprietor in writing of its desire to publish the next work, Proprietor shall thereupon negotiate exclusively in good faith with Publisher with respect to the terms of such publication. If within thirty (30) days thereafter Publisher and Proprietor are unable to arrive at a mutually satisfactory agreement for such publication, or if Publisher shall within the time hereinabove provided fail to notify Proprietor in writing that it desires to publish such next work, Proprietor shall be free to submit such next work elsewhere.

**12. PROPRIETOR'S WARRANTIES:** (a) Proprietor warrants, represents and covenants to Publisher that Proprietor owns all rights and licenses herein conveyed and purported to be conveyed, and has full and sole right and authority to convey all such rights; that Book #1 and Book #2 are original with Author in all respects; that the Work discloses no information given to Proprietor in confidence or on the understanding that it would not be published; that the Work is or may be validly copyrighted or registered for copyright in the United States of America and likewise may be protected elsewhere so far as the laws of other places and countries provide for such protection; that each of Book #1 and Book #2 as a whole is not in the public domain; that Proprietor shall identify any portion of the Work which has been previously published; that to the best of Proprietor's knowledge the titles of Book #1 and Book #2 may be legally used by Publisher in the exercise of all or any of the rights herein conveyed; that the use or reproduction of the Work or any part thereof, or the exercise of any of the rights herein granted or conveyed will not in any way infringe upon any statutory or common law copyright or constitute a libel or defamation of, or invasion of the rights of privacy or of publicity of any party or violate any law or regulation; that Baby Gorilla, Inc. is an entity formed for the purposes of providing Author's services, and Author is the owner and chief executive of Baby Gorilla, Inc.; that neither Proprietor nor Author has done, or will do, any act or thing that has or will in any way prevent or interfere in any manner with the full and exclusive enjoyment by Publisher of any of the rights or licenses herein conveyed or which has or will impair, impede, invalidate or encumber any such rights or licenses; that to the knowledge of Proprietor there are no claims or litigation pending, outstanding or threatened which may adversely affect or will in any way prejudice Publisher's exclusive rights in the Work or the copyright of any part thereof or any of the rights or licenses herein granted or conveyed, that the use, with reasonable care and skill, of any recipe, instruction, material or formula contained in the Work will not result in injury; and that Proprietor will include in the Work appropriate warnings and safety precautions concerning any particular hazards that may be involved in the use of any such recipe, instruction, material or formula.

(b) The warranties and representations contained in this paragraph 12 do not extend to drawings, illustrations or other material not furnished or created by Proprietor, provided, however, such drawings, illustrations or other material shall be subject to Proprietor's approval.

(c) The warranties and representations of Proprietor hereunder are true on the date of execution of this Agreement and shall, along with the indemnity undertakings of Proprietor and Publisher set forth in paragraph 13 below, survive the termination of this Agreement.

**13. INDEMNITY:** (a) Proprietor undertakes to indemnify and hold Publisher and its licensees, officers, agents, employees and assigns, harmless from and against any liabilities, damages, costs, expenses (including reasonable outside counsel fees), judgments, settlements, penalties, or losses of any kind or nature whatsoever which may be incurred by Publisher or its licensees, officers, agents, employees or assigns for or in connection with any claim, action or proceeding stating allegations inconsistent with any of the representations or warranties herein contained or based upon or arising out of anything contained in the Work. Publisher and Proprietor shall each with all reasonable promptness, notify in writing the other of any suit, claim or demand brought or made on the basis of or in connection with the Work.

(b) If any such suit, proceeding, claim or demand is brought or made against Publisher or Publisher and Proprietor, Publisher shall undertake the defense thereof with counsel of its own selection, provided that Proprietor shall have the right, but not the obligation, to have separate counsel of Proprietor's own selection, it being understood, however, that the conduct of the defense shall always be under Publisher's control, and in any event, that Proprietor shall cooperate with Publisher in the defense. Publisher shall make no settlement up to the amount of the deductible without Proprietor's written consent, which shall not be unreasonably withheld. Proprietor shall have the right to be consulted with respect to any other settlement arrangement.

(c) During the pendency of such suit, proceeding, claim or demand, Publisher may withhold payments due to Proprietor under this Agreement to the extent reasonably necessary to conduct the defense thereof and to satisfy any liability therein, provided however, if no lawsuit shall be commenced within twelve (12) months of any claim or demand, Publisher shall release all such payments previously withheld. Publisher may withhold amounts due Proprietor only up to the extent of the deductible.

(d) Publisher shall include Proprietor and Author as "additional insureds" under any Errors and Omissions insurance maintained by Publisher with respect to claims of libel, invasion of privacy, violation of the right of publicity, copyright infringement and trademark infringement

arising from Publisher's publication of the Work. In the event such a claim is asserted against Publisher, or Publisher and Author or Proprietor, the Errors and Omissions insurance in effect at the time such claim is asserted shall be applicable and Proprietor and Author shall be jointly and severally responsible for fifty percent (50%) of all costs, judgments and settlements not covered by the insurer, and Publisher shall be responsible for the remaining fifty percent (50%). Any coverage by such insurance shall be applied towards satisfaction of Author's indemnity obligations under paragraph 13, provided however that Proprietor shall be responsible for all costs, judgments and settlements attributable to willful or reckless breach of any of Proprietor's representations, warranties or covenants set forth in subparagraph 12(a) of this Agreement. The insurance policy is subject to alteration or cancellation at Publisher's election, but only if Publisher's insurance policy is canceled for all authors. Any change in Proprietor's or Author's share of the deductible shall be the same for all Publisher's authors. Any willful or reckless breach of any of Proprietor's warranties hereunder shall be judicially determined.

(e) If, in the reasonable opinion of Publisher, any Book contains material which may involve Publisher in litigation, and if Publisher and Proprietor elect to engage outside legal or technical expert(s) to review the manuscript of such Book, then the cost for such a review shall be shared equally between Proprietor and Publisher, and Proprietor's share of such cost (not to exceed one thousand dollars (\$1,000.00)) will be charged to and deducted from Proprietor's royalties. If Proprietor refuses to make such changes as are advised by Publisher's counsel, Publisher will have no obligation to publish such Book and will have the right, subject to the repayment to Publisher of all amounts paid on account of such Book, to terminate this Agreement as to that Book. Notwithstanding any legal review which may be obtained by Publisher, nothing in this Agreement shall be deemed to impose upon Publisher any duty of independent investigation or relieve Proprietor of any of the obligations assumed by Proprietor hereunder.

(f) Publisher agrees to defend, indemnify and hold Proprietor, Proprietor's successors and Author harmless with respect to any claims, liabilities, damages, costs, judgments and expenses (including reasonable attorney's fees and court costs) arising from or related to the cover design used on Publisher's editions of the Work, with respect to any third party materials added to or included in the Work (except where such materials have been provided to Publisher by Proprietor), and with respect to any changes to the manuscripts made by Publisher after Proprietor's final approval of the final copyedited manuscript (it being understood that Publisher's rights to make any such changes are subject to the terms of paragraph 32 below).

**14. INFRINGEMENTS:** Proprietor hereby irrevocably appoints Publisher as Proprietor's and Author's attorney-in-fact solely in connection with the right, but not the obligation, and at Publisher's expense, to bring and prosecute suits, actions and proceedings of any nature under or concerning the infringement of the copyright in the Work and all renewals thereof; and to take such action as Publisher may deem advisable to enforce, protect, and/or defend any of the rights, privileges and property herein granted to Publisher under any and all such copyrights and renewals thereof; and to litigate, collect and give receipt for all damages arising from any infringement of any such rights. Any such action may be taken by Publisher in the name of Proprietor or otherwise, and Publisher may join Proprietor as a party plaintiff or defendant in any such suit, action or proceeding. If Publisher shall not bring such action, Proprietor may do so in its own name and at its own expense. All money damages recovered by Publisher or Proprietor shall be applied first to the repayment of such expense, and thereafter the balance shall be divided equally between Proprietor and Publisher. The parties agree to notify one another of intent to bring/file any such suit or action.

**15. TERMINATION; REVERSION OF RIGHTS:** (a) If Publisher shall fail to publish Book #1 and/or Book #2 within the period specified in paragraph 8 above for any reason not attributable to any wrongful act or omission by Proprietor and not attributable to any reason covered in paragraph 6 above or in subparagraphs 8(b) above and 15(b) below, then this Agreement shall terminate automatically with respect to the unpublished Book which gave rise to this termination (the "Terminated Book"). In such event, Proprietor shall be entitled, in lieu of all other remedies, to retain all sums previously paid pursuant to subparagraph 2(a) of this Agreement and promptly be paid all amounts specified in subparagraph 2(a) of this Agreement attributable to the Terminated Book (up to the allocated Advance of two million dollars (\$2,000,000.00)). All rights granted to Publisher hereunder with respect to such Terminated Book shall automatically revert to Proprietor without notice for Proprietor's use and disposition as Proprietor may determine in Proprietor's discretion.

(b) Notwithstanding the acceptance of Book #1 and/or Book #2 pursuant to



subparagraph 6(a) above, Publisher shall at any time be entitled to decline to publish such Book(s) if, in Publisher's good faith judgment, such Book(s) contain(s) potentially libelous, injurious or obscene material, or its publication would violate any law or right of any person or legal entity which opinion shall be given in writing by Publisher's counsel, but not without first giving Proprietor the right to cure the manuscript(s) of such Book(s) within a reasonable amount of time after Proprietor's receipt of a detailed legal opinion and in no event less than ten (10) days. Only in the event of Proprietor's failure to cure, Publisher shall be entitled to terminate this Agreement with respect to such Book(s), subject to the repayment to Publisher of all monies previously paid to Proprietor hereunder with respect to such Book(s) and on such repayment in full to Publisher all rights granted hereunder with respect to such Book(s) will revert to Proprietor.

(c) In the event that after two (2) years from the date of first publication, Book #1 or Book #2 shall not be in print and for sale in any edition by Publisher or any of its licensees and after written demand from Proprietor shall not within six (6) months be reprinted and offered for sale, then in either of these events, Proprietor shall have the right to terminate this Agreement as to such Book, and upon written notice to that effect by Proprietor to Publisher, all rights granted under this Agreement with respect to such Book shall revert to Proprietor subject to the remaining term of any outstanding licenses and subject to Publisher's and Proprietor's right to share in proceeds therefrom provided, however, that Publisher shall have the right, subject to the payment to Proprietor of the applicable royalties thereon, to sell all copies of such Book which have been already printed or are in the process of being printed (i.e. copies have been ordered) as of the date of such termination. A Book shall not be deemed out of print as long as it is under option or contract for publication or on sale in any edition (provided such publication goes on sale within nine (9) months of such contract). The availability of Electronic Display rights (either from Publisher or a licensee) shall not constitute such Book being in print unless royalties of at least two thousand five hundred dollars (\$2,500.00) per royalty period accrue to the account of Proprietor from such sale or license. Proprietor agrees to promptly notify Publisher during the term hereof, if motion picture or television rights in Book #1 and/or Book #2 are under option or contract. Any inadvertent failure by Proprietor to notify Publisher of any motion picture or television option or contract shall not be considered a breach of contract by Proprietor. In the event of termination, Publisher shall furnish Author with fully executed copies of any license agreements for such Book upon request, and Publisher will not renew any outstanding licenses for such Book and will not print or authorize others to print any copies of such Book except to fulfill orders placed prior to receipt of Proprietor's notice of termination. Publisher agrees that upon Author's written request, Author has the right to purchase duplicate film, if available, subject to the terms set forth in subparagraph 15(f) below.

(d) The exclusive rights granted to Publisher hereunder shall remain in effect during the full term that copyright to the Work subsists (including any renewal, extension or reversionary terms thereof) in any country in the Territory, subject to subparagraph 15(c) above.

(e) If Publisher is finally adjudicated a bankrupt, or if a receiver is appointed for all or a substantial part of Publisher's assets and is not discharged within thirty (30) days from the date of appointment thereof, or if an assignment is made for the benefit of creditors, this Agreement shall automatically terminate, subject to outstanding licenses; provided, however, that Publisher shall have the right, subject to the payment to Proprietor of the applicable royalties thereon, to sell all copies of the Work which have already been printed or are in the process of being printed (i.e. copies have been ordered) as of the date of such termination.

(f) Upon any termination under the terms of subparagraph 15(c) above, Proprietor shall have a 30 day option to purchase any remaining inventory of the terminated Book(s) at Publisher's cost plus freight, and any film, plates and/or disks, if available (the "Production Materials") at half the original cost of manufacture plus freight. Publisher does not authorize any use by Proprietor, or any other third parties acquiring such material from Proprietor, of any proprietary materials contained in the Production Materials (e.g., Publisher's name, logo(s) and/or trademark(s) and the cover(s) of the Book(s)) or of any other third party material, and Proprietor agrees that Proprietor will not use the Production Materials without modifying them to remove Publisher's proprietary materials and removal or clearance of any third party copyrighted material.

**16. ACCOUNTING STATEMENTS:** (a) Publisher shall render semi-annual statements of "estimated net sales" and net licensing revenues as of June 30th and December 31st, and shall mail such statements to Proprietor not later than September 30 and March 31 following, together with the payment of amounts due thereon. With respect to each edition of

the Work published by Publisher, the first such statement and payment shall become due three (3) months after the conclusion of the first complete accounting period (January 1-June 30, or July 1-December 31) to follow publication of such edition, and shall cover the time period from publication through the end of such accounting period. The term "estimated net sales" shall be defined as sales less actual returns and less a reasonable reserve against returns of the Work. Publisher shall provide reasonable reserve against returns accounting information to Proprietor upon Proprietor's written request.

(b) Proprietor's earnings under this Agreement shall be jointly accounted with Proprietor's earnings under the 2009 Agreement and with the 2010 Audio Agreement. Specifically, all payments made by Publisher to or for the account of Proprietor pursuant to this Agreement, the 2009 Agreement and the 2010 Audio Agreement, including without limitation, all advance sums under the 2009 Agreement, shall be chargeable against and recoverable by Publisher from any and all monies accruing to Proprietor under this Agreement, the 2009 Agreement and the 2010 Audio Agreement.

(c) Publisher may deduct advance sums, any overpayments, or any other amounts due Publisher under this Agreement or the 2009 Agreement or the 2010 Audio Agreement, from any payments due from Publisher to Proprietor under this Agreement or the 2009 Agreement or the 2010 Audio Agreement, provided however that advance sums shall be deducted only from earned royalties. An unearned advance shall not constitute an overpayment or an amount due from Proprietor.

(d) Subject to the joint accounting of amounts due to Proprietor under the 2009 Agreement, this Agreement and the 2010 Audio Agreement, Publisher agrees that it will not withhold royalty earnings in excess of the total portion(s) of the advance sums paid to date under this Agreement and under the 2009 Agreement. Publisher agrees that if at the time of calculation of royalty earnings for any accounting period under this Agreement, the earnings payable to Proprietor are in excess of the portions of the advance sums paid hereunder and under the 2009 Agreement, Publisher shall pay to Proprietor such excess royalty earnings but such payment shall constitute an acceleration of future payments of the advance sums hereunder or under the 2009 Agreement, and Publisher may deduct any or all of excess earnings so paid from the next portion(s) of advance sums due under this Agreement and/or the 2009 Agreement.

**17. AUDIT RIGHTS:** Proprietor may, at Proprietor's own expense, audit the books and records of Publisher relating to the publication of the Work (including royalty statements which have been submitted to Publisher from its licensees) pursuant to this Agreement at the place where Publisher maintains such books and records in order to verify statements rendered to Proprietor hereunder. Any such audit shall be conducted only by a certified public accountant during reasonable business hours in such a manner as not to interfere with Publisher's normal business activities. In no event shall an audit with respect to any statement commence later than twenty-four (24) months from the date of dispatch to Proprietor of the final statement nor shall any audit continue for longer than twelve (12) consecutive business days nor shall audits be made hereunder more frequently than twice annually, nor shall records supporting any such statements be audited more than once. All statements rendered hereunder shall be binding upon Proprietor and not subject to objection for any reason unless such objection is made in writing stating the basis thereof and delivered to Publisher within twenty-four (24) months from delivery of the final statement, or if an audit is commenced prior thereto, within sixty (60) days from the completion of the relative audit. In the event that an underpayment of five percent (5%) or more of amounts actually earned by Proprietor is discovered in the course of any such audit, then the cost of such audit, not to exceed ten thousand dollars (\$10,000.00), shall be borne by Publisher and paid, together with the full amount of the underpayment, within thirty (30) days of notice of audit results. The term "underpayment" shall not include any disputes as to amounts retained by Publisher as reserves against returns. If the right to audit cannot be exercised by Author with respect to a licensee of Publisher, then, upon Proprietor's written request, Publisher shall use reasonable efforts to conduct such an audit on behalf of Proprietor.

**18. PUBLISHER NOT A TRUSTEE:** In no event shall Publisher be obligated to segregate from any of its other funds, any of the sums which may be paid to Publisher by customers or other parties relating to the Work, nor shall Publisher be considered a trustee, pledgeholder or fiduciary of Proprietor.

**19. CONFLICTING PUBLICATION:** Proprietor shall not publish, or authorize to be published, the Work in any book, pamphlet or other printed version in the Exclusive Territory. Author-written prequels or sequels shall be deemed excluded from this provision hereof,

provided Proprietor is in compliance with the terms of paragraph 11 above.

**20. ASSIGNMENT:** This Agreement shall be binding upon the assigns and successors of Proprietor, and upon the assigns and successors of Publisher. This Agreement and the rights and benefits hereunder shall not be assignable or transferable by Publisher except to a corporate parent, affiliated company or a wholly owned subsidiary that assumes all obligations in writing or in connection with a transfer of all or substantially all of Publisher's assets or any imprint(s), or upon consent of Proprietor (such consent not to be unreasonably withheld). Notwithstanding the above, rights granted hereunder may be exercised by Publisher or Publisher's affiliates. Proprietor shall not assign any of Proprietor's obligations hereunder, but may on written notice to Publisher, assign or transfer any monies due or to become due under this Agreement. If at any time more than three (3) parties shall be entitled to receive payments which would otherwise be due to Proprietor hereunder Publisher may, at its option, require that all such parties execute and deliver an agreement in form satisfactory to Publisher appointing a disbursing agent for all such parties.

**21. NOTICES:** All notices which either party hereto is required or may desire to give to the other shall be in writing and given by addressing the same to the attention of the publisher of Grand Central Publishing and Publisher's General Counsel and to Proprietor at the address set forth on page 1, with a copy to Morris Yorn Barnes Levine Rubenstein Krintzman & Kohner, 2000 Avenue of the Stars, 3<sup>rd</sup> Floor, North Tower, Los Angeles, CA 90067, attn: Gregg Gellman, or at such other address as may be designated in writing by any such party in a notice to the other given in the manner prescribed in this paragraph. All such notices shall be sufficiently given when the same shall be sent by registered or certified mail postage prepaid.

**22. ENTIRE AGREEMENT; MODIFICATION:** This Agreement represents the entire agreement between the parties and supersedes all prior agreements and understandings with respect to the subject matter hereof and Proprietor acknowledges that Proprietor has not relied on any understanding or agreement not set forth in this Agreement. This Agreement shall not be modified except in writing signed by all parties hereto. No written waiver of any term or condition of this Agreement shall excuse the performance of any act other than those specifically referred to therein.

**23. CONSTRUCTION; JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements executed and fully performed therein. It is agreed that New York courts (state and federal) only, will have jurisdiction over any controversies regarding this Agreement; any action or proceeding which involves such a controversy will be brought only in those courts, in New York County.

**24. HEADINGS:** The headings of the paragraphs of this Agreement are for convenience of reference only, are not part of this Agreement, and shall not limit or otherwise affect the meaning of this Agreement.

**25. AGENCY:** (a) Proprietor irrevocably appoints William Morris Endeavor Entertainment, LLC, 1325 Avenue of the Americas, New York, NY 10019, attn: Claudia Ballard, as Proprietor's sole and exclusive agent ("Agent") with respect to the Work for the life of the copyright (and all renewals and extensions thereof) and authorizes and directs Publisher to make all payments due or to become due to Proprietor hereunder to and in the name of Agent, and to accept the receipt by Agent as full evidence and satisfaction of such payments. As sole and exclusive agent, Agent is hereby irrevocably authorized and empowered by Proprietor (i) to act on Proprietor's behalf in all matters arising from and pertaining to this Agreement, (ii) to negotiate for Proprietor throughout the world as to the disposal of all rights in and to the Work and (iii) to receive in Agent's name all monies due or to become due to Proprietor in connection with the disposal of any such rights. In consideration for services rendered, Agent is entitled to receive or retain as its commission (and is hereby irrevocably assigned):

- (i) fifteen percent (15%) of gross monies paid to Proprietor hereunder and from the disposal of all other publication and audio rights in and to the Work, except that such commission shall be twenty percent (20%) with respect to the disposal of British publication and audio rights and foreign language publication and audio rights if and to the extent such rights have not been conveyed to Publisher pursuant to this Agreement; and

(ii) ten percent (10%) from the disposal of all other rights in and to the Work.

(b) The provisions of this paragraph 25 shall survive the expiration of this Agreement and are specifically included for the benefit of Agent which is hereby named a third-party beneficiary. If there is any inconsistency between the terms of this paragraph 25 and any other agency agreement between Proprietor and Agent applicable to the Work, the terms of this paragraph 25 shall prevail.

**Agent's Tax Identification Number: 26-4798946**

**26. EFFECTIVENESS OF AGREEMENT:** This Agreement shall be of no force and effect unless it is signed by Proprietor and Publisher within ninety (90) days of the date first written above.

**SPECIAL PROVISIONS:**

**27. AUTHOR PUBLICITY:** (a) At Publisher's request and sole discretion Proprietor shall ensure that Author will make himself available to participate in promotion and publicity activities in connection with the Book(s) for at least two consecutive weeks around the time of Publisher's first hardcover publication of each of Book #1 and Book #2 at mutually agreeable times and places, including, at Publisher's discretion, a promotional tour. Scheduling of specific promotional activities shall be subject to the approval of Proprietor, and shall be coordinated in advance with Proprietor, it being understood that Publisher intends to publish each of Book #1 and Book #2 at a time when Author may reasonably expect to be available to participate in promotion. All reasonable expenses (including without limitation the cost of business class long leg air travel (i.e., California to New York and vice-versa), and first-class exclusive ground transportation arranged by Publisher) incurred in connection with such promotion and publicity activities arranged by Publisher shall be borne by Publisher, it being understood that if any other author or Hachette Book Group, Inc. personnel traveling with Author flies first-class then Author shall also fly first-class.

(b) Proprietor shall collaborate with Publisher as is reasonable in maximizing cross-promotional opportunities in connection with Publisher's publication of the Work. Specifically, beginning 2 weeks before publication of each of Book #1 and Book #2 and for one year following such publication, Proprietor agrees to use best efforts to reasonably promote each such Book via Author's branded website(s) and blog(s) (if any) and other social media outlets (if any) in which Author communicates directly with readers and other consumers, and at the venues of Author's speaking engagements. Proprietor shall consult meaningfully with Publisher regarding Proprietor's arrangements for such promotion. Proprietor's inadvertent failure to perform the promotional activities in this subparagraph 27(b) shall not be deemed a breach of this Agreement.

**28. RESERVATION OF RIGHTS:** All rights not specifically granted hereunder are reserved to Proprietor for Proprietor's own use and disposition. Reserved rights include, but are not limited to, all dramatic (e.g., motion picture, television and live performance) rights, all interactive multimedia rights to the text of the Work with non-textual elements such as sound, music, visuals, graphics or other multimedia features in an interactive multimedia form (including without limitation videogame format), commercial merchandising rights and the right to publish or cause to be published in any form excerpts, summaries and novelizations of dramatizations and motion pictures of the Work, thereof not to exceed ten thousand (10,000) words in length or ten percent (10%) of the Book(s), whichever is less in the aggregate, to be used for advertising and exploitation of motion picture or dramatizations based upon the Book(s).

**29. ADVERTISING PROHIBITION:** Advertisements may not be inserted or printed in any edition(s) of the Work whether issued by Publisher or its licensee(s) without Proprietor's prior written consent. However, Publisher may list other titles published by Publisher in the last four pages of each Book in its paperback edition(s) but not its hardcover edition(s). Publisher agrees to include in its agreements with licensees appropriate contractual provisions regarding the restrictions set forth in this paragraph 29.

**30. COVER CONSULTATION:** Publisher shall meaningfully consult with Proprietor concerning the jacket(s)/cover(s) of Publisher's hardcover and paperback edition(s) of each of

Book #1 and Book #2 for Proprietor's approval in good time prior to finalization of any cover design.

**31. APPROVALS:** Wherever under the terms of this Agreement Proprietor's approval or consent may be required, such approval or consent shall not be unreasonably withheld or delayed. Proprietor agrees to notify Publisher in writing, specifying particular objections to any item Proprietor does not approve of. Notification of disapproval must be received within seven business days, unless a different approval period is specifically provided for in this Agreement, or Proprietor's approval or consent shall be deemed granted.

**32. CHANGES TO TEXT:** Publisher shall not make or authorize any changes or edits to the text (except for routine copyediting) of the Work without Proprietor's express written consent in each instance.

**33. MARKETING PLANS:** Publisher shall meaningfully consult with Proprietor regarding its marketing plans for the Work.

**34. GUARANTY:** As a condition precedent of this Agreement, Proprietor shall provide Publisher with the Guaranty attached hereto executed by Author.

**IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the latest day and year written below.**

**Baby Gorilla, Inc.**  
**f/s/o Seth Grahame-Smith**

By: 

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

Position: \_\_\_\_\_

Tax Identification No.: 26-4828373

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

**Grand Central Publishing, a division of**  
**Hachette Book Group, Inc.**

By: 

Jamie Raab

Executive Vice President and Publisher

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



### GUARANTY

For valuable consideration, receipt of which is hereby acknowledged, and to induce Grand Central Publishing, a division of Hachette Book Group, Inc. (the "Publisher") to enter into an agreement dated December 3, 2010 (the "Agreement") with Baby Gorilla, Inc. (the "Company") concerning two fiction works provisionally entitled UNTITLED SETH GRAHAME-SMITH BOOK #3 and UNTITLED SETH GRAHAME-SMITH BOOK #4 (collectively, the "Work") by Seth Grahame-Smith (the "Undersigned"), the Undersigned hereby guarantees the performance of all of the obligations of the Company under the terms and conditions of the Agreement.


The Undersigned hereby warrants and represents that the Company has the right and authority to enter into the Agreement and grant the rights therein granted. The Undersigned hereby makes the same warranties, representations, covenants and indemnifications as those set forth in paragraph 12 and 13 of the Agreement and all terms and conditions of such paragraphs shall apply to the Undersigned.

This guaranty is a continuing guaranty which shall remain effective throughout the duration of the Company's obligations under the Agreement, including any extensions, renewals and amendments thereof. The Undersigned's liability hereunder is direct and unconditional and may be enforced without requiring the Publisher first to resort to any right or remedy. If for any reason the Company shall fail or cease to perform any of its obligations under the Agreement or shall not have the rights to the Undersigned's services or to the Work as required in the Agreement, or if there is a material change in control or ownership of the Company, the Agreement shall be enforceable directly against the Undersigned. In the event of default in the performance of this guaranty, the Undersigned agrees to pay all reasonable expenses (including reasonable outside attorneys' fees) incurred by the Publisher in the enforcement of the Publisher's rights under this guaranty and the Agreement.

Notice of acceptance of this guaranty, of any default by the Company, or of any adverse change in the Company's financial condition or any other fact which might materially increase the Undersigned's risk, is hereby waived. Presentment, protest and demand, and notice of protest and demand that may be required in connection with such obligations are hereby waived.

No delay or failure in exercising any rights hereunder shall operate as a waiver thereof. This guaranty may not be modified, altered, or terminated nor may any provision hereof be waived except in a written instrument signed by the party adversely affected thereby. This guaranty and all rights hereunder shall be interpreted and construed in accordance with the laws of the State of New York applicable to agreements entered into and fully performed therein.

This guaranty shall be binding upon the Undersigned's heirs, successors, assigns and legal representatives and shall inure to the benefit of the Publisher's successors and assigns.

  
Seth Grahame-Smith  
Date: 12/7/10

**SCHEDULE A**  
**British Publisher's Exclusive Territories**

Ascension	Pacific Islands (continued)
Australia and territories (including Tasmania)	____ Norfolk Islands
Bangladesh	____ Pitcairn Islands
Belize	____ Tuvalu
Bhutan	____ Kiribati
Botswana	____ Cocos Islands
Brunei	____ Solomon Islands
Burma (Myanmar)	Pakistan
Cameroon	Papua New Guinea
Cyprus	St. Helena
Dominica	Seychelles
Egypt	Sierra Leone
Falkland Islands	Sikkim
Fiji	Somali Republic
Gambia	South African Republic
Ghana	South Yemen
Gibraltar	Sri Lanka
Guyana	Sudan
India	Swaziland
Iraq	Tanzania
Irish Republic	Trinidad and Tobago
Jamaica	Tristan da Cunha
Jordan	Uganda
Kenya	United Kingdom (including Northern Ireland, Isle of Man, and Channel Islands)
Kuwait	West Indies and British West Indies, comprising
Lesotho	____ Bahamas
Malawi	____ Barbados
Maldives	____ Bermuda
Malta and Gozo	____ Turks, Caicos, Cayman, Leeward (including Anguilla, Antigua and Barbuda, Montserrat, St. Kitts and Nevis) and Windward (including Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines) Islands
Mauritius (including Rodrigues)	____ British Virgin Islands
Namibia	Western Samoa
Nepal	Yemen PDR
New Zealand and territories	Zambia
Nigeria	Zimbabwe
Pacific Islands, comprising	
____ Tonga	
____ Western Samoa	
____ Nauru	
____ Vanuatu	
____ New Hebrides	
____ Ellice Islands	
____ Union Islands	

EXHIBIT A  
TEXT/ILLUSTRATIONS PERMISSION

(name and address  
of rights owner/controller):

RE: [MATERIAL TO BE USED]

Dear Sir/Madam:

I [am writing / have written] a book to be published on the subject of \_\_\_\_\_ for a work tentatively entitled \_\_\_\_\_ (the "Work") to be published by Grand Central Publishing, a division of Hachette Book Group, Inc.

I am writing to you to request permission to include in the Work [material of approximately \_\_\_\_\_ words OR illustration(s) / artwork as described] from \_\_\_\_\_ [TITLE] written OR created by \_\_\_\_\_ [AUTHOR'S / ARTIST'S NAME]. Enclosed is a copy of the material I wish to use. Will you please grant permission to me and my publishers and their affiliates, licensees and assigns for the use of this material in the Work in any and all editions, in ALL LANGUAGES/ENGLISH LANGUAGE (DELETE AS APPLICABLE), in whole or in part, throughout the world, in all media now known or hereafter devised, including advertising and promotion of the Work?

Please specify the appropriate copyright acknowledgement or credit lines below.

Please sign below to indicate your agreement and return this original letter to me. I have included a copy for your files.

Very truly yours,

\_\_\_\_\_  
[AUTHOR]  
[ADDRESS]

In consideration of my desire to assist you with respect to the Work, which I believe will be of benefit to the public, I hereby grant you and your publishers the permission requested above. I warrant and represent that I am the owner of the rights granted herein and that the selected material does not infringe upon the copyright or any other rights of anyone. I understand you will include the following line in the Work.

\_\_\_\_\_  
Form of Copyright Acknowledgment/Credit line

\_\_\_\_\_  
[GRANTOR]  
Date:



## **EXHIBIT B**

### GUARANTY

For valuable consideration, receipt of which is hereby acknowledged, and to induce Grand Central Publishing, a division of Hachette Book Group, Inc. (the "Publisher") to enter into an agreement dated December 3, 2010 (the "Agreement") with Baby Gorilla, Inc. (the "Company") concerning two fiction works provisionally entitled UNTITLED SETH GRAHAME-SMITH BOOK #3 and UNTITLED SETH GRAHAME-SMITH BOOK #4 (collectively, the "Work") by Seth Grahame-Smith (the "Undersigned"), the Undersigned hereby guarantees the performance of all of the obligations of the Company under the terms and conditions of the Agreement.

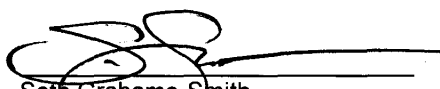
The Undersigned hereby warrants and represents that the Company has the right and authority to enter into the Agreement and grant the rights therein granted. The Undersigned hereby makes the same warranties, representations, covenants and indemnifications as those set forth in paragraph 12 and 13 of the Agreement and all terms and conditions of such paragraphs shall apply to the Undersigned.

This guaranty is a continuing guaranty which shall remain effective throughout the duration of the Company's obligations under the Agreement, including any extensions, renewals and amendments thereof. The Undersigned's liability hereunder is direct and unconditional and may be enforced without requiring the Publisher first to resort to any right or remedy. If for any reason the Company shall fail or cease to perform any of its obligations under the Agreement or shall not have the rights to the Undersigned's services or to the Work as required in the Agreement, or if there is a material change in control or ownership of the Company, the Agreement shall be enforceable directly against the Undersigned. In the event of default in the performance of this guaranty, the Undersigned agrees to pay all reasonable expenses (including reasonable outside attorneys' fees) incurred by the Publisher in the enforcement of the Publisher's rights under this guaranty and the Agreement.

Notice of acceptance of this guaranty, of any default by the Company, or of any adverse change in the Company's financial condition or any other fact which might materially increase the Undersigned's risk, is hereby waived. Presentment, protest and demand, and notice of protest and demand that may be required in connection with such obligations are hereby waived.

No delay or failure in exercising any rights hereunder shall operate as a waiver thereof. This guaranty may not be modified, altered, or terminated nor may any provision hereof be waived except in a written instrument signed by the party adversely affected thereby. This guaranty and all rights hereunder shall be interpreted and construed in accordance with the laws of the State of New York applicable to agreements entered into and fully performed therein.

This guaranty shall be binding upon the Undersigned's heirs, successors, assigns and legal representatives and shall inure to the benefit of the Publisher's successors and assigns.

  
Seth Grahame-Smith  
Date: 12/7/10

## **EXHIBIT C**



Termination Letter

April 20, 2016

Baby Gorilla, Inc. f/s/o Seth Grahame-Smith  
c/o William Morris Endeavor Entertainment, LLC  
11 Madison Avenue, 18<sup>th</sup> Floor  
New York, NY 10010  
Attn: Claudia Ballard

**RE: AGREEMENT DATED December 3, 2010**

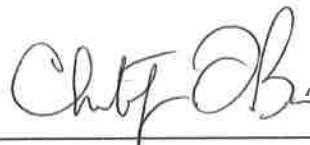
Dear Baby Gorilla, Inc.,

Please refer to the agreement dated December 3, 2010, amended May 13, 2013 and June 15, 2014 (the "Agreement") between Baby Gorilla, Inc. f/s/o Seth Grahame-Smith and Grand Central Publishing, a division of Hachette Book Group, Inc. ("Publisher"), for two works of fiction entitled THE LAST AMERICAN VAMPIRE ("Book #1") and provisionally entitled UNTITLED SETH GRAHAME-SMITH ("Book #2").

According to the terms of the Agreement, the delivery date for the final manuscript of Book #2 was April 1, 2016. Such manuscript has not been delivered.

Pursuant to the terms of paragraph 5 of the Agreement, this letter shall serve as notice of Publisher's intention to terminate the Agreement with respect to Book #2.

Sincerely,



Christofer DuBois  
Associate Contracts Director  
Hachette Book Group, Inc.  
Date: 4/20/16

cc: Jamie Raab  
Eric Zohn