

LEGAL & CONTRACTS ADVICE

An Annotated Contract

Understand Your Contract with CreateSpace

WHAT'S INSIDE:

Ownership
Rights

How to
Terminate

Timing of
Payments

And More



ALLi

Alliance of Independent Authors

Introduction

CreateSpace is an Amazon-owned, on-demand publishing platform popular with many authors because of its functionality and existing integration with the Amazon.com platform.

Authors can take advantage of CreateSpace's platform to quickly produce e-books, print books, and audiobooks to a high standard.

However, authors entering into a contract with CreateSpace should read the fine print of this (and any) contract to make sure they understand what is involved in the author-publisher relationship.

Ambiguous or complex clauses, and changeable terms and conditions, are potential pitfalls for authors.

Both the KDP and CreateSpace contracts say that Amazon may change the terms and conditions at any time by posting the changes online, and that your continued use of their services is your agreement to those changes.

Many courts have upheld these provisions when it comes to payment of fees.

You will find similar provisions in the terms and conditions of many other POD providers and social media sites, so as an author you may have no choice but to agree and take your chances, but you should always make

informed choices about the future use of your work.

We have annotated the CreateSpace Services Agreement to draw your attention to key clauses authors should be aware of when agreeing to engage CreateSpace's publishing services.

Read through the following contract carefully. And, remember, if there's a clause that you don't understand in a contract, always seek clarification before signing it.

Self-publishing success requires you to take charge of the process and to maintain knowledge and control. To think and act like a business investor, an entrepreneur, the boss.

This guide gives you the skills and information you need to review your CreateSpace contract before you proceed with publishing your book.

The information discussed in this guide should not be considered legal advice, and is provided as guidance only.

ALLi recommends authors seek legal advice if they are unsure about how to proceed with a contract negotiation.

We hope you find these examples useful, and welcome your feedback.

CreateSpace Services Agreement

6. Licenses; Ownership

6.1 Content

Subject to your retained control and ownership of your Content as described in Section 6.4. [6.4 is below.] in order to enable us to provide you with the Services on your behalf, you grant to us a nonexclusive license¹, during the term of this Agreement,² to...(c) with respect to Books, print, distribute and sell your Book through the CreateSpace E-stores, the Amazon Properties and other sales channels, . . .³

You grant us the rights set forth in this Section 6.1 on a worldwide basis; however, if we make available to you a procedure for indicating that you do not have worldwide distribution rights to a Title, then the territory for the sale of that Title will be those territories for which you indicate, through the procedure we provide to you, that you have distribution rights.⁴

6.4 Ownership

Subject to the licenses set forth in this Section 6..., and as between the parties, you own all right, title and interest in and to the Content, including all patent, copyright, trademark, service mark, mask work, moral right, trade secret or other intellectual property or proprietary right (collectively, "Intellectual Property Rights") therein.⁵

1. Good. You want the license to be nonexclusive, so you can use other POD providers as well.

2. In another section, it says either party may terminate at any time.

3. This is what you want to see—a nonexclusive license for a limited purpose—printing and selling your books. Nothing more.

4. Similar to the KDP contract.

5. This is what you want to see. Other than the specific licenses granted, you retain all other rights and ownership in your work.

10. Term; Termination

This Agreement will remain in effect until terminated in accordance with this Section. You may terminate this Agreement at any time by giving notice to us, and we may terminate this Agreement at any time by sending you an e-mail notice at the e-mail address associated with your account.⁶ Upon termination, you will pay us whatever fees were incurred prior to the date of the termination.⁷

Also upon termination:

(a) we may fulfil any Customer orders pending as of the date of termination.⁸

Upon termination, we may set off against any payments to be made to you, an amount determined by us to be adequate to cover any disputes, chargebacks and refunds from your account for a prospective three-month period. At the end of such three-month period following termination, we will refund any amount not used to offset chargebacks and refunds to you, or seek reimbursement from you via any of the means authorized in Section 5.1 for any additional amount required to offset chargebacks and refunds, as applicable.⁹

5.1 Fees

For any Unit sold to a Customer, we will pay you the applicable Content License Royalty based on the List Price of the Unit:

*(a) within 31 days after the end of the month in which the Unit sold for physical Units sold through the CreateSpace E-Stores and the Amazon Properties; and
(b) within 60 days after the end of the month in which the Unit is sold for physical Units sold through Expanded Distribution.¹⁰*

6. Good. You want to be able to terminate at any time.

7. CreateSpace provides a number of publishing services. Most likely you will have paid the fees in advance. Some fees are refundable if you are not satisfied. Check their website.

8. This is reasonable.

9. This gives them the right to hold back any payments to you to cover returns or claims. A three-month holdback period is reasonable.

10. Timing of payments is clear and reasonable. Like the KDP contract, you set the list price, but CreateSpace/Amazon may discount the retail price. Royalties, however, are based upon the list price you choose.

7. Representations and Warranties

*You acknowledge that we are not the publisher of your Titles (including your Content). You represent and warrant that you will be the publisher of your Titles (including your Content) and, in any case, that you will bear the full and ultimate responsibility for the publication and general distribution of your Titles (including your Content).*¹¹

*You further represent and warrant that (a) you will comply with all laws, rules, regulations and orders of any governmental authority having jurisdiction over your performance hereunder as applicable in each country (including any local legal requirements with respect to your publication of your Titles, such as making any necessary notifications and filings of copies of your Titles);*¹²

*(b) you have all requisite right, power and authority to enter into this Agreement and perform your obligations hereunder;*¹³

*(c) prior to your delivery of Content to us you have or have obtained all rights, clearances and permissions to grant the licenses you grant hereunder that are necessary for us to exercise the rights you grant under this Agreement without any further payment obligation by us, ...;*¹⁴

*(d) you are granting us the rights, licenses and authorizations you grant hereunder free and clear of any encumbrances, and this Agreement does not violate or conflict with any other arrangements, understandings or agreements between you and any third party;*¹⁵

11. By stating you are the ‘publisher’, CreateSpace is saying you are responsible for the contents of your work; they are merely a printer or conduit. Being the ‘publisher’ is a shorthand phrase for a bundle of rights and responsibilities.

12. Consider this a “risk-allocation” provision. Since you cannot say that you know your content complies with the laws of every jurisdiction worldwide (there is no way to know that without hiring a team of international lawyers), then you are saying that if it turns out that filings or other steps must be taken in other jurisdictions and countries, you are the one responsible for those and actions.

13. This means you are at least 18 years old and have the mental capacity to enter into a contract, and that you have whatever authority you need from others to grant the licenses and enter into this contract.

14. You are warranting that you have the right to publish your e-book, either because you own the copyright or have obtained all the necessary permissions, licenses, and rights.

15. Encumbrances means liens or other restrictions. Here you are warranting that you will not be violating any other contract by publishing through CreateSpace. For instance, you have not granted to anyone else the exclusive right to publish your book, you are not violating any non-competition or right of first offer in a traditional publishing contract, and you are not violating any agreement with your co-authors.

*(e) the Content (and our use thereof) is not defamatory, libelous, obscene, or otherwise illegal, does not invade any right of privacy, and does not infringe upon any Intellectual Property Right or right of publicity of any person or entity, and any recipe, formula, or instruction contained in the Content is accurate and is not injurious to the user;*¹⁶

*(f) the Content complies with all aspects of the Content Guidelines as such may be updated from time to time; and*¹⁷

*(g) you are and will be solely responsible for accounting and paying any co-owners or co-administrators of any Content any royalties with respect to the uses of the Content permitted hereunder and their respective shares, if any, of any monies payable hereunder.*¹⁸

8.1 Indemnification

*You will indemnify, defend and hold us and our affiliates (and the respective employees, directors, members, managers and representatives of each) and any operator of an Amazon Property harmless from and against any and all claims, judgments, damages and expenses (including without limitation reasonable attorneys' fees) (collectively, "Claims")*¹⁹

*arising out of any breach or alleged breach by you of the terms of this Agreement, including without limitation the terms contained within the Products and Help pages and the Content Guidelines and Privacy Notice, which are incorporated herein by reference.*²⁰

16. Once again, a risk allocation provision. If your book is defamatory or otherwise harmful, you are responsible, not CreateSpace or Amazon.

17. Online, the words 'Content Guidelines' is a link to the page listing these guidelines. This is an example of "incorporation by reference," which means those provisions are made a part of this Agreement. Most online agreements contain multiple links. You should always click through to read them.

18. You, not CreateSpace, are responsible for paying any co-authors.

19. This means that if Amazon or anyone else on the list is sued because any of your representations or warranties are incorrect or because you breach the contract in any manner, you will be required to pay all attorneys' costs and damages.

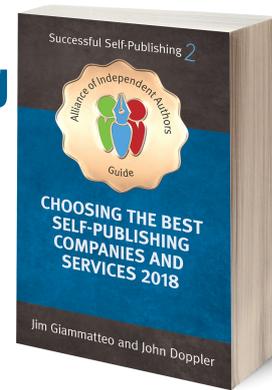
20. Again, the capitalized words are links, another example of incorporating other provisions into this contract. The Help pages alone are endless. This process makes the contract harder to read.

ALLi publishes:

Choosing The Best Self-Publishing Companies and Services 2018

The only annually updated guide to the global self-publishing services industry.

The 2018 edition is now available here (FREE to ALLi Members).



AskALLi

The AskALLi Quick & Easy Guides to Self-Publishing address the most common questions our members have about self-publishing.

The Guides are organized across the seven stages of the publishing cycle: editorial, design, production, distribution, marketing, promotion, and licensing rights. There are also guides to running a successful business as an indie author.

For more advice and a daily blog, visit our Self-Publishing Advice Centre at <http://selfpublishingadvice.org/blog/>

Founded by novelist and poet Orna Ross, the Alliance of Independent Authors is a global nonprofit organization offering authoritative advice, experienced guidance, and advocacy within and outside the publishing industry.

Its mission is ethics and excellence in writing and publishing. The Alliance offers a variety of member benefits, including discounts and incentives and collaboration and connection with the best self-publishing authors and advisers in the world.