

Trade Publishing Agreement Between Publisher and Author for Trade Softcover and/or Electronic Editions

And the Country Messenger Press Publishing Group, LLC, a.k.a. CMP Publishing Group, a company of the state of Washington with its principal offices at 27657 Hwy 97, Okanogan, WA 98840 (hereinafter referred to as CMPPG), its successors and assigns;

Concerning a Work presently titled: *A Journey to Madagascar* (hereinafter referred to as *Madagascar*). *Madagascar* is a composite work resulting from a class project led by Edna Siniff, publisher, and Marcy Wirth, teacher for the District. It is the writing and art of Wirth's 2009-2010 second grade students compiled and edited by Siniff. Permission to include those student's names in the book is the responsibility of Marcy Wirth. Marcy Wirth will retain the title as the "author" of the work for the purposes of publication. However, all references in this agreement and all future correspondence between the parties referring to the Author of the work will be a reference to the School District, as all copyright authorship and ownership rights are owned by the District.

WITNESSETH:

WHEREAS, the Author agrees to deliver to CMPPG a manuscript entitled *Madagascar* by September 30, 2010 and WHEREAS, CMPPG agrees to publish or to arrange for publication of *Madagascar* and any revisions thereof, on the terms and conditions specified below. NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

1. Warranties and Indemnification

- (a) The Author hereby warrants and represents to the Publisher that:
 - (i) *Madagascar* is not in the public domain;
 - (ii) The Author is the sole proprietor of *Madagascar* and has full power, free of any rights of any nature whatsoever in anyone that might interfere therewith, to enter into this Agreement and to grant the rights hereby conveyed to CMPPG;
 - (iii) *Madagascar* has not heretofore been published in whole or in part;
 - (iv) *Madagascar* does not, and if published will not, infringe upon any proprietary right at common law, or any statutory copyright, or trademark right, or any other right whatsoever;
 - (v) All statements of fact are true or based upon reasonable research;
 - (vi) *Madagascar*, "as told by the Author", is authentic; and
- (b) If CMPPG makes an independent investigation to determine whether the foregoing warranties and representations are true and correct, such investigation shall not constitute a defense to the Author in any action based upon a breach of any of the foregoing warranties.
- (c) Upon receipt of any notice of any claim, demand, recovery, suit, civil or criminal proceeding which alleges facts inconsistent with the foregoing representations and warranties, the publisher shall have the right to withhold any sums payable to the Author in reasonable amounts as

security for the payment of his possible obligations. The right herein granted shall not be unreasonably or frivolously exercised by the publisher. Each of the parties hereto shall give the other prompt written notice of any Claims.

(d) Approval. No compromise or settlement of any claim, demand or suit shall be made or entered into without the prior written approval of both parties.

2. The Manuscript

(a) The Author agrees to deliver to the Publisher at the Author's own expense, a complete computer generated copy on disk or via email, using Microsoft Word, a manuscript of *Madagascar* in the English language, acceptable to the Publisher in form and substance and ready to format for publication. The Author agrees that the Author shall have retained copies of the manuscript as delivered to CMPPG.

(b) Authorizations. The Author further agrees to provide a photo of Marcy Wirth for front or back matter and cover art and other related materials along with written Authorization by all third party proprietors of any copyrighted photographs and the proper forms of copyright notice for such material. If the Author fails to obtain such permissions or provide such notices, CMPPG may do so and charge the cost to the publishing account of *Madagascar*.

(c) Right to edit. The Publisher shall have the right to edit *Madagascar* for the original printing and for any reprinting, provided the meaning of the text is not materially altered, and shall have the right to publish and promote *Madagascar* in suitable style as to paper, printing, binding, cover and/or jacket design and to fix or alter title and price. Author will be included if this edit cycle is needed.

(d) Additional Materials. The Publisher retains the final right to determine whether or not photographs, charts, maps, drawings or the like (hereinafter collectively referred to as "Additional Material") are necessary for *Madagascar*, and if necessary, how many. CMPPG will contract with a designer to complete cover. The cost of completed design will be charged to *Madagascar's* publishing account. The Publisher shall not be responsible for the loss or damage to any Additional Material and the publisher shall be under no obligation to insure same.

(e) Failure to deliver. If the Author fails to deliver *Madagascar* or all Additional Material designated as the Author's responsibility within the time specified, or if the Author delivers *Madagascar* and specified Additional Material and *Madagascar* or any of the Additional Material is not accepted by CMPPG as being satisfactory, CMPPG shall have the option to terminate this agreement; in which case upon receipt of notice of such termination, all rights granted to publisher shall revert to the Author, with all representations and warranties void.

3. Proofreading and Changes in Proof

CMPPG shall email the Author a galley proof of *Madagascar*. The Author agrees to read, correct and return proof within forty-five (45) days of receipt thereof. If any changes in the proof are required after *Madagascar* goes to press (other than corrections of printer's errors) are made at the Author's request or with the Author's consent, the cost of such changes in excess of two percent (2%) shall be charged to *Madagascar's* publishing account. CMPPG shall give the Author prompt notice of any amounts charged to *Madagascar* publishing account under this Paragraph. If the

Author fails to return the proof within the time specified above, CMPPG may publish *Madagascar* without the Author's approval of the proof.

4. Agreement to Publish

(a) CMPPG agrees to publish *Madagascar*, within 12 months after acceptance of the final manuscript, except that this publication date will be extended to the extent reasonable and necessary in case of a delay caused by any circumstances beyond publisher's control, including, but not limited to, strikes, fires, shortages of labor or materials, mechanical difficulties, governmental restrictions and acts of God. It is agreed that the production, design, printing, publicity and promotion expenses are to be paid by CMPPG and charged to *Madagascar's* publishing account. CMPPG has the discretion to decide *Madagascar's* format, style of printing and binding, cover presentation, trademark, logo, imprint or other identification, retail price, and terms of sale, distribution, and promotion. The Author agrees to work with CMPPG on publicity and promotion. CMPPG agrees to consult with the Author in good faith in all matters covered in section 4 (a) Agreement to Publish.

(b) If *Madagascar* is not published within the time period specified above, including any allowance for an extension due to circumstances beyond the publisher's control, the Author may terminate this agreement by written notice, which shall become effective six (6) months after receipt by CMPPG unless *Madagascar* is published before expiration of the period. Upon such termination all rights granted hereunder will revert to the Author. No other damages, claims, actions or proceedings, legal or equitable, founded on breach of contract, default or failure to publish may be pursued against CMPPG by the Author or the Author's agents, heirs or assign.

(c) In no event shall the Publisher be obligated to publish or have any liability to the Author for failure to publish (or any related cause of action) *Madagascar* when either the Author or CMPPG has been given notice of a claim, demand or suit alleging that *Madagascar*

(i) infringes the copyright or violates the right of privacy or any other right of third parties,

(ii) contains libelous or obscene matter, or

(iii) when the Author is unable or unwilling to verify statements in *Madagascar* purporting to be truthful or factual.

(d) CMPPG will not be obligated to publish *Madagascar* if the Publisher's legal counsel is of the opinion that it contains unlawful material or material which may violate the rights of any person. If, in CMPPG's opinion, there appears to be a substantial risk of legal action or liability on account of *Madagascar*, the Author will make any necessary revisions or deletions to remove any such risk. If the Author does not make or Authorize CMPPG to make the necessary revisions or deletions or if *Madagascar* is unpublishable in the opinion of the Publisher's legal counsel, then CMPPG may terminate this Agreement in writing any time prior to publication.

5. Author's Copies

The Publisher shall furnish to the Author, two (2) free copies of each edition of *Madagascar* published by CMPPG. The Author shall be permitted to purchase further copies in any amount at \$1 over CMPPG's printing cost plus shipping, for the Author's personal use. Books purchased for resale must be sold at CMPPG's retail price. Royalties shall not be paid to the Author on these

“Author’s copies,” as the Author will be permitted to keep the monetary difference between the purchase and retail price.

6. Author’s Property

Publisher shall exercise reasonable care for any property of the Author in its hands as it takes of its own property. The Author shall retain copies of the manuscript and any other documents or materials supplied to the Publisher. If the Author does not present the Publisher with a written request for their return, the Publisher after publication of *Madagascar*, may dispose of the original manuscript and proofs.

7. Copyright

(a) The copyright of *Madagascar* is currently held by the Author. If necessary the Author shall register a claim for a United States copyright for *Madagascar* in the name of the Author as “claimant”. CMPPG will, in all published versions of *Madagascar* place a Copyright Notice in a form and place that CMPPG believes complies with the requirements of the United States Copyright law, showing that the owner of the copyright rights in and to *Madagascar* is the Author. The cost shall be the Author’s expense. Copyright for cover art may be registered separately.

(b) If the copyright in *Madagascar* is infringed by a third party, whichever party to this agreement first learns of the infringement will inform the other. Author will have the right to join CMPPG in bringing suit against the alleged infringer. If the Author decides to do so, the Author will share equally in the expenses of the action and in any sums recovered as a result. The Author and CMPPG will agree in advance on legal representation and anticipated expenses. Neither the Author nor CMPPG will be required to bring suit. Should one party decline to participate in a suit, the other party may proceed, bearing all expenses and retaining all sums recovered.

(c) CMPPG will take all necessary steps in protecting the Author’s copyright in *Madagascar* in all countries where the Publisher or its licensees publish or distribute *Madagascar*.

(d) Foreign. Publisher may, but shall not be obligated to, copyright *Madagascar* in such other countries as it may determine. Such notice shall not be construed in any way as affecting or diminishing any of the rights granted to CMPPG and its Author under this Agreement.

(e) Documents. The Author shall execute and deliver to the Publisher any documents necessary or desirable to evidence or effectuate the rights granted to CMPPG under this Agreement. The “copyright laws” shall be construed to be those now or hereafter in force in the Territory.

8. Non-Competition

The Author shall not permit or arrange for the publication, distribution or sale in the Exclusive Territory (as herein after defined) other than by CMPPG, of any manuscript which will compete with *Madagascar* or diminish the value of any subsidiary or additional rights granted by this agreement, except that the Author may grant licenses for the exploitation for any rights reserved to the Author under this Agreement. This clause shall not apply to the retail sales of said “Author’s copies” from item 5 above.

9. Option

Should the expectations of both Author and Publisher be mutually satisfied by the publication of *Madagascar* the Author shall have the option of offering to CMPPG another manuscript for publication. When the Author offers that manuscript, CMPPG shall have ninety (90) days after receipt of the submission within which to notify the Author of whether it will publish that Work. If a mutually satisfactory Agreement is not reached at the end of ninety (90) days, the Author shall be free to offer said rights to a third party.

10. Discontinuance of Publication

Madagascar will only go out of print by mutual agreement between the Author and CMPPG terminating this agreement. Upon such termination, all rights granted hereunder, except the rights to dispose of existing stock, which will be sold to the Author at CMPPG's cost, shall revert to the Author, subject to rights which may have been granted to third parties pursuant to this Agreement, and the Publisher shall be under no further obligations or liability to the Author except that the Author's share of earnings hereunder shall be paid when and as due. The mere status of *Madagascar* being available through electronic publishing and 'print-on-demand' does not render *Madagascar* as 'in print'.

11. Royalty Statements and Payments

(a) CMPPG shall prepare semiannual statements accounting for all payments due the Author under this agreement. CMPPG shall send each such statement to the Author within 30 days after the close of each period (June 30 and Dec. 31 of each year) accompanied by payment to the Author of the amounts due to the Author for that period. If Payment is not timely made, the Author may demand in writing that payment be made within forty-five (45) days. If CMPPG fails to comply Author may immediately terminate this Agreement and all rights shall revert to author.

(b) Each royalty statement shall report for each edition of *Madagascar* the number of copies sold, the royalty rate, amount of royalties, and the amount of reserve withheld for production expenses.

(c) Upon written request by the Author, the Author's designated representative may examine, during normal business hours, the books and records of CMPPG insofar as they relate to *Madagascar* up to a maximum of one time annually, for the prior year only. If such examination discloses an error of five percent (5%) or more with respect to any royalty statement, CMPPG shall reimburse the Author for the Author's costs of the examination; otherwise such costs shall be borne by the Author.

12. Permissions

Publisher may permit others to reprint portions of *Madagascar*. Any payments received for such permissions shall be equally divided between the Author and CMPPG. However, CMPPG may grant permission without compensation to publish extracts from *Madagascar* in order to promote the sale of *Madagascar*. Such payment will be included as a separate item on the royalty statement.

13. Mediation

In the event of any controversy or claim arising out of or relating to this Agreement, or the breach

hereof, CMPPG and Author agree to participate in 4-6 hours of mediation in accordance with the Mediation Procedures of United States Arbitration and Mediation of Minnesota State. The costs of mediation shall be borne equally by the parties hereto.

14. Arbitration

If mediation is unsuccessful in resolving the conflict, any controversy or claim arising out of or relating to this Agreement, or breach here of, shall be settled by binding arbitration in accordance with the rules of procedure. Notwithstanding the amount in controversy, judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The costs of arbitration shall be borne equally by the parties hereto. The Arbitrator may award costs and attorneys fees to the prevailing party.

15. Assignment

This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators or assigns and licensees of CMPPG, and the successors, heirs and estate of the Author. Since this agreement is for personal services, the Author may not assign or delegate any duties or obligations under this Agreement, however, the Author may assign any net sums due to the Author hereunder.

16. Applicable Law

Regardless of the place of its physical execution, this Agreement shall in all respects be interpreted, construed and governed by the laws of the State of Minnesota.

17. Headings

Headings, captions and marginal notes are for convenience only and are not to be deemed part of this Agreement.

18. Entire agreement

This agreement contains the entire agreement of the parties in regard to the subject matter hereof, supersedes all prior agreements and understanding of the parties, and may be changed only by a written document signed by CMPPG and Author.

19. Severability

If any provisions of this Agreement shall be prohibited by or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

20. Further Documents

The Author agrees to execute and deliver to CMPPG any and all documents in proper or customary form necessary or helpful to the use, sale, license or other disposition of any or all the rights granted to CMPPG herein, or for more fully carrying out the purposes and intent of this Agreement.

21. Notices

Any written notice required under any of the provisions of this Agreement shall be deemed to have

been properly served by delivery in person to the Author or by mailing such notice to either of the parties hereto at the addresses set forth below. Mailed notices shall be sent by registered or certified mail, return receipt requested, with proper postage prepaid, addressed as follows:

TO: Country Messenger Press Publishing Group, LLC
27657 Hwy. 97
Okanogan, Washington 98840

TO: Forest Lake Independent School District No. 831
6100 210th Street North
Forest Lake, MN 55025

Or to other such address as a party from time to time may designate by notice to the other as hereinbefore provided.

22. Remedies

No course of dealing between or among the parties to this Agreement, nor any failure or delay on the part of any party in exercising any remedy of such party, nor any single or partial exercise of any remedy hereunder shall operate as a waiver or preclude the exercise of any other remedy available to either of the parties.

23. Survival of Rights

(a) In the event of the termination of this Agreement as elsewhere herein provided, any rights reverting to the Author shall be subject to all licenses and other grants of rights previously made by CMPPG to third parties, and to the rights of CMPPG to the proceeds under third party agreements subject, however, to payment to the Author for the Author's share of such proceeds.

(b) In addition to the rights set forth above in subparagraph (a), the following paragraphs shall survive termination [1, 6, 12, 16, 17, 18, 19, 21, 22, 23]

24. The Grant and the Territory

(a) The Author grants to CMPPG and its licensees, for the full term of copyright available in each country included within the Territory covered by this Agreement under any copyright laws now or hereafter in force within the Territory with respect to *Madagascar*

(i) the exclusive right to print, publish, distribute and sell ("publish") in all languages in book form, and to license others to do so, *Madagascar* in the following "Primary" Rights:

25. "Primary Rights"

(a) "Trade Edition Rights" - exclusive right to publish, or Authorize others to publish, hardcover and trade paperback (softcover editions distributed primarily through hardcover trade channels such as bookstores) editions of *Madagascar*.

(b) "Mass Market Reprint Rights" - exclusive right to publish, or Authorize others to publish, softcover editions of *Madagascar* to be distributed primarily through independent magazine wholesalers and to direct accounts.

(c) "Book Club Rights" - exclusive right to sell to book clubs or to Authorize book clubs to print

and sell *Madagascar*.

(d) "General Publication Rights" - exclusive right to publish, or Authorize others to publish, condensations and abridgments of *Madagascar*; publication of the complete Work or selections in anthologies, compilations, digests, newspapers, magazines and other works as a textbook; and in Braille.

(e) "Direct Mail Rights" - exclusive right to sell, or Authorize others to sell, *Madagascar* through the medium of direct mail circularization or by mail order coupon advertising.

(f) "eBook Rights" - exclusive right to sell, or Authorize others to sell, *Madagascar* through electronic media.

(g) "Audio Books" - exclusive right to sell, or Authorize others to sell, *Madagascar* through audio media.

26. Royalties

(a) Where CMPPG has exercised its rights under Clause 24, CMPPG shall pay the Author royalties against the retail price on each copy of *Madagascar*. Production costs of *Madagascar* include costs for printing, binding, editing, proofreading, and design and do not include overhead or operational expenses of CMPPG. It is understood by the Author that special circumstances might impact the amount of profit to be divided, such as a small print run, market conditions, damaged books, or the necessity to offer high discounts.

The Author will receive a percentage of royalties for *Madagascar* as depicted:

(i) 10% (ten percent) of royalties on the actual sale price of the book;

(b) With respect to copies given away free to the Author or for publicity or promotional purposes, or to induce additional sales or regarding copies destroyed, no royalty shall be payable.

(c) 50% of CMPPG's dollar receipts, if any, for eBook and audio book sales for files downloaded from internet sales sites.

(d) 50% of CMPPG's dollar receipts, if any, in excess of manufacturing costs from remainder sales. If the book is remaindered, the Author will have the first right to purchase at the remainder price.

(e) When the royalty statements reflect that the annual sales volume of copies of *Madagascar* is low and with 90 days written notice, either party to this Agreement can call for a meeting to review the future plans for *Madagascar*.

(f) By donating services for the creation of *Madagascar*, the publisher's goal was to provide further educational resources for Marcy Wirth's classroom in addition to stimulating her students to develop life time writing and reading skills.

27. Promotion

Author agrees to cooperate with CMPPG to promote *Madagascar* for a period of not less than one year. This may include making Marcy Wirth available for travel, public speaking and media appearances at the convenience of March Wirth and the Author. Author agrees to work with CMPPG and outside advisors to enhance appearance, style and presentation of material. Travel will be coordinated with Author's Schedule.

IN WITNESS WHEREOF, this Agreement was executed as follows:

Edna M. Siniff, CMPPG, LLC
Federal I.D.# 20-1633204

Date

Bill Bresin, School Board President
Forest Lake Independent School District No. 831
Federal I.D. # 41-6008218

Date

Dan Kieger, School Board Clerk
Forest Lake Independent School District No. 831
Federal I.D. # 41-6008218

Date