The following document is a copy of the participation agreement you will be required to read and agree to during the submission process through www.penandbrush.org. This is a binding legal document, please read carefully. If you have any questions, contact: submissions@penandbrush.org.

AUTHOR PUBLISHING PROGRAM
PARTICIPATION AGREEMENT

This agreement ("Agreement") contains the terms and conditions applicable to your submissions by you ("Author") of a work to The Pen Brush, Inc. ("Pen and Brush", "P+B", “P&B Books”) for inclusion in P+B’s publishing program described herein. By typing your name at the end of this Agreement and clicking the “I agree button,” you agree to be bound by these terms and conditions. This document is intended to be a binding agreement between you and P+B. If you do not agree to the terms and conditions below, please do not submit work(s) to P+B for inclusion in our publishing program. Note that your submission of work(s) and your consent to this Agreement does not guarantee that your work will be selected for inclusion in our publishing program.

Description of Program
P+B has established a program (hereinafter, the “Program”) having the intended purpose of exposing new audiences to literary works by women authors who have not received significant commercial success to date, through a variety of electronic and digital publishing activities and other opportunities for showcasing the selected works, which may include, but are not limited to, posting of such literary works on P+B’s website and web archive, making the works available for download, inclusion of the works in P+B electronic book anthologies and collections, and inclusion of authors and works in readings, interviews, recordings and other material and/or events to promote awareness of the selected literary works. A selected work may be highlighted through one or more of these publishing vehicles. The appropriate vehicle for any individual work in the Program and whether to charge readers or offer a work free of charge (or some combination thereof) is within P+B’s sole discretion. The selection of works for inclusion in the Program and publishing platform(s) will be made by P+B (“P+B Curators”) who are experienced authors, editors, agents and others in the literary field.

General Terms and Condition
1. The Work. The “Work” is defined as any literary creation Author submits to P+B for inclusion in the Program, and is the same iteration of the work as submitted to P+B for curatorial review and selection to the Program. Editing of the Work by Author is permitted only to the extent that it does not materially alter the original submission. P+B retains the right to select or reject inclusion of the Work in the Program in its sole discretion.
2. Grant of Rights. Author hereby grants to P+B the worldwide, non-exclusive right to reproduce, publish, archive, sell, and distribute the Work in whole or in part, directly or through a distributor:

(a) in any electronic format and for any platform now known or known in the future, including:

(i) on any P+B website; web archive; or any affiliated websites;

(ii) by download, and in e-book formats, mobile formats or other formats direct to consumers or through distributors; and

(iii) inclusion of the Work in electronic anthologies or collections developed by P+B in its sole discretion.

(b) P+B may edit or format the Work as it deems appropriate in its sole discretion for inclusion in any of the aforementioned platforms and formats, provided, however, Author retains certain approval rights of the final version to be distributed by P+B (or its distributor(s)) described in Section 7.

(c) Author grants P+B the right to use author’s name, image and likeness and any biographical material in association with the Work or promotion of the Work or the Program.

3. Term. The initial term of this Agreement is eighteen (18) months from the Effective Date, and may be terminated thereafter by Author or P+B upon thirty (30) days written notice provided, however, P+B may terminate this Agreement immediately without notice in the event it determines that Author has breached or threatens to breach any of the representations or warranties made by Author herein. After the initial term, this Agreement will automatically renew for periods of six (6) months each until copyright in the work has expired, unless terminated by either party upon thirty (30) days written notice. The copyright ownership rights described in this Agreement, and Sections 6 and 11 shall survive termination of this Agreement.

4. Copyright. Author shall obtain U.S. Copyright Office registration of the Work in Author’s name and provide a copy of such registration to P+B within 60 days of the Work being selected. P+B may terminate this Agreement in the event Author fails to timely provide a copy of the certificate of Copyright Registration.

Inclusion of a Work in an anthology or other collection shall not confer to Author any rights in the anthology or collection as collective work, including the copyright therein which shall be owned by P+B (subject to the Author’s rights in her contributed Work). Such content created by P+B is the exclusive property of P+B and will not be reprinted, distributed, copied or otherwise used by Author without the express written permission of P+B.

5. Representations and Warranties. Author represents and warrants, as of the Effective Date and during the Term of the Agreement, that:

(a) the Work is original;
(b) Author is the sole author and proprietor of the Work and has full power to enter into this Agreement;

(c) this Agreement does not violate any other Agreement, including any publishing agreement Author has previously entered into with respect to print publication rights for the Work;

(d) when published, sold, or distributed as contemplated under this Agreement, the Work will not infringe upon any rights of any third party;

(e) if the Work contains any material not created by Author, Author has obtained assignment of the rights in material by the owner thereof or has obtained written permission for such use sufficient to cover the licenses granted to P+B hereunder;

(f) the Work does not violate any rights of privacy or publicity, nor does it contain any defamatory or other illegal material;

(g) any electronic material provided by Author with respect to the Work contains no viruses, corrupt data or malware;

(h) Author has not (and will not) enter into any agreements under which any royalties or other payments shall be due to a third party as result of Author’s participation in the Program or publication, sale, distribution or transmission of the Work as contemplated hereunder, and if any such payments shall be due, they shall be the responsibility of the Author; and

(i) there are no existing or threatened claims with respect to the Work.

6. **Indemnification.** Author shall indemnify and hold harmless P+B, its officers, directors, curators, members, employees and agents from and against any losses, liabilities, cost, damage or expense, including without limitation court costs and attorneys’ fees arising out of or for the purpose of avoiding any suit, proceeding, claim, or demand or the settlement thereof, which may be brought or made against P+B by reason of reproduction, publication, sale, promotion or distribution of the Work or any materials provided by Author with respect thereto, except in connection with matters involving controversies arising solely out of P+B’s fault (e.g., P+B’s failure to pay a distributor).

7. **P+B Activities.**

(a) Prior to posting, offering for sale, publishing or distributing the Work or related promotional materials, P+B will provide to Author for Author’s review copies of all final versions of the Work as formatted for publication or distribution and all promotional materials related specifically to the Work which P+B intends to use in the Program (collectively including the formatted Work, “Distribution Materials”). If Author does not give written notice to P+B within ten (10) days of receipt of the Distribution Materials (which P+B shall deliver to Author by US First Class mail or overnight courier return receipt, and shall be deemed received two days after the date
the materials are posted, or by email, in which case they shall be deemed received on the date sent), of any inaccuracies in or objections to the Distribution Materials, Author waives any claims related to the editing, formatting, reproduction, publishing, sale or distribution or other use of the Work and other Distribution Materials by P+B pursuant to this Agreement. Notwithstanding the foregoing Author shall have no right to reject the inclusion of a Work in a Program collection or anthology created by P+B.

(b) P+B will provide attribution to the Author in all uses of the Work.

(c) The acceptance of any work for inclusion in the Program is at the sole discretion of P+B.

(d) P+B will communicate to Author any inquiries P+B receives regarding further publication of the Work.

(e) P+B will make reasonable efforts to maintain the web pages featuring the Program and update them on a regular basis. P+B will not be liable for site downtime or interrupted transmissions.

(f) P+B may not, without prior written consent of Author, enter into any contract regarding exploitation of the Work with any third party, which has any obligations that cannot be terminated upon termination of this Agreement.

8. Royalty. P+B may distribute the Work for a fee, free of charge, or some combination thereof (by featuring the Work in different publishing vehicles) in its discretion. The selling price and distributor price of the Work are those prices set by P+B and any distributor with which it makes an agreement. Such prices may be modified from time to time by P+B and/or the distributor without prior notice. As used herein, the Selling Price shall mean the sales price to consumers when P+B sells the Work directly to consumers, and the Distributor Price shall mean the sales price to consumers less the commission paid by P+B to the distributor when the work is sold through a distributor. P+B will pay to Author, a royalty on each sale of the Work as follows:

(a) for a Work distributed free of charge (for example, posting a Work on P+B’s website as part of a “literary show”), there will be no royalty paid to Author;

(b) for each sale of the Work directly to consumers in electronic format, including cd-rom, DVD, computer download or other electronic means or formats directly to consumers, seventy-five (75%) of the Selling Price received by P+B;

(c) for each sale of the Work to or by a distributor, such as with E-Book reader companies, seventy-five (75%) percent of the Distributor Price received by P+B; and

(d) for each sale of the Work as part of an anthology, collection or other format containing works of other authors, Author’s proportionate share of seventy-five (75%) of the Selling Price or Distributor Price received by P+B. “Proportionate Share” means that percentage Author’s work is of the entire
No royalties will be paid on free reviewer or promotion copies or on returns. Returns will be credited against future payments if royalty payments have already been made to Author, and at termination of the Agreement, Author shall reimburse P+B for any over-payments.

9. **Statements.** P+B will provide to Author a statement forty-five (45) days after the end of each calendar quarter reflecting the number of units of the Work sold by P+B, the price charged and the total royalty due, together with payment of such royalty due.

10. **Disclaimer.** Submission of a work does not guarantee that it will be selected for inclusion in the Program. Even if a Work is selected for inclusion in the Program, P+B makes no representations or warranties with respect to the outcome or effectiveness of the Program. P+B does not guarantee that the Program will result in publication, distribution or any sales or royalties with respect to the Work. The purpose of the Program is to expose audiences to authors’ work and to assist authors in reaching new audiences. Nevertheless, Author acknowledges that participation in the Program could result in future publishers lack of interest in acquiring a Work already published, archived, (or attempted to be published) even in a limited format pursuant to this Agreement.

11. **Miscellaneous.** As used in this Section 11, “party” and “parties” means P+B or Author, or both, as relevant.

   (a) **Intent to be Bound.** Each party acknowledges that it has had an opportunity to review this Agreement and knowingly and voluntarily intends to be bound hereby. This Agreement shall not be construed or interpreted against either party as the drafter.

   (b) **Relationship of the Parties.** The parties hereto are independent contractors and nothing contained herein shall be construed or represented to any third party as creating a partnership, joint venture, employee-employer relationship, agency or work for hire.

   (c) **Jurisdiction and Governing Law.** This Agreement is governed by the laws of the State of New York, without regard to its conflict of law principles. The parties hereby consent to the jurisdiction of the federal and state courts in the Southern District of New York. Any action, suit or proceeding between the parties arising out of this Agreement shall be brought within such jurisdiction.

   (d) **Entire Agreement/Modification.** This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to its subject matter, and supersedes any prior written or verbal understanding in its subject matter. The Agreement may only be modified in a writing signed by both parties or by Author accepting modifications proposed by P+B through an electronic consent feature.

   (e) **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable to any extent, the remainder of the Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

   (f) **Third Party Beneficiaries.** This Agreement has been executed for the sole benefit of the Parties that are signatories to this Agreement and is not intended for the benefit of any third party.
(g) **Waivers.** No failure by either party to insist upon strict compliance by the other party with any provision of this Agreement or to exercise any right accruing from any default of the other party, shall constitute a waiver of any of such party’s rights under this Agreement.

(h) **Assignment.** Author shall not assign or otherwise transfer its rights and obligations hereunder without the prior written consent of P+B, and any assignment or transfer to the contrary shall be null and void, provided that P+B may use subcontractors and agents to exercise its rights hereunder. P+B shall not assign or otherwise transfer its rights and obligations hereunder without the prior written or electronic consent of Author.

(i) **Notices.** Any notice required under this Agreement shall be provided in writing delivered by First Class U.S. Mail, overnight courier with return receipt, or via e-mail to the Author at the address set forth at the beginning of this document or to P+B at:

Pen and Brush, Inc.
29 East 22nd Street, New York, NY 10010
Attn: Janice Sands
Email: jsands@penandbrush.org

*During your electronic submission you will be asked to complete the following:*

Please enter your name and date below to indicate your consent if you agree to the terms of conditions set forth in this Agreement before clicking the “I agree” button below.

**Author Name:** ____________________________ (referred to in this Agreement as “Author”)

**Today’s Date:** __________________________ (referred to in this Agreement as “Effective Date”)

By typing your name above and by clicking the “I agree” button, Author agrees to be bound by the terms and conditions of this Agreement as of the date first indicated in “Today’s Date” above.

[ ] I have read and agree to the terms and conditions of this Agreement.

[ ] I do not agree and understand that I will not be able to participate in the Program.