

PUBLISHING AGREEMENT

This Agreement is made as of **DATE**, between NO STARCH PRESS, INC. (“we” or “us”), located at 245 8th St., San Francisco, CA 94103, and **AUTHOR** (“you”), located at **ADDRESS**, concerning a literary work tentatively entitled **WORKING TITLE** (“Work”). The Work is described in **Schedule A**, attached to and made a part of this Agreement.

The parties agree:

1. Grant of Rights and Term of This

Agreement. You grant, convey, and transfer to Us the exclusive right to publish, distribute, and sell the Work in whole or in part in print, electronic, or any other form or medium, now known or hereafter developed, in all languages, throughout the world, for the duration of copyright in the Work, which shall be the term of this Agreement unless it is terminated sooner as the Agreement provides. “Electronic Form” shall include photographic, audio, video, digital, laser, magnetic, or any other form, and for any medium now known or hereafter developed. You may publish excerpts from the Work or articles based on the Work, provided that no individual excerpt represents more than ten percent (10%) of the entire Work, and that all such excerpts or articles contain appropriate references to the Work, including a reference to us as its publisher.

2. Delivery of Manuscript. On or before **DATE**, you’ll deliver to Us the complete manuscript of the Work of approximately **XXX** typeset pages, and any additional materials, as described in Schedule A. You’ll be responsible for writing the text of the Work, generating appropriate rough sketches for illustrations, and compiling all front and back matter. You will also deliver all source code, a disk image for a CD-ROM, a demonstration version of a software program, or any other materials specified in Schedule A or elsewhere in this Agreement. You’ll deliver the manuscript to us in an electronic form acceptable to us and shall include any additional materials required under Paragraph 5 (except that you’ll deliver the index to us within seven (7) days after we deliver paginated proofs to you) and Paragraph 6, unless otherwise instructed by us in writing.

3. Outline and Schedule. You’ll develop an outline and schedule for completion of the Work in consultation with Us. The schedule shall provide for submission of the text on a section-by-section basis. If you are unable to meet a deadline in your schedule you will notify Us in advance. If you fall more than four weeks behind

any deadline in your schedule, and we, in our sole discretion, have not agreed in writing to extend your deadline, we may terminate your Agreement, and you shall promptly return to us any monies advanced or granted to you by us.

4. Advances and Approval. We will pay you an advance against royalties of **\$XXX** as follows:

\$XXX on our acceptance of one-third of the manuscript.

\$XXX on our acceptance of one-half of the manuscript.

\$XXX on our acceptance of the balance of the manuscript, including any rewriting we request.

If your manuscript is not satisfactory in form and content to us or does not conform with any outline or description attached to this Agreement, we may accept it, reject it, or specify in writing what we need for you to do in order to make the manuscript acceptable to us. If you fail to deliver the complete manuscript within thirty days after the delivery date or, if after we give you detailed instructions for the revision of your manuscript and thirty days to do so you fail to make satisfactory revisions, we may:

- (1) Terminate this Agreement. If we reject your Work you may arrange to publish the Work elsewhere only after returning any monies advanced or granted to you by us;
- (2) Arrange for another to complete the Work and charge the costs of completion against money otherwise due you under this Agreement.

Our decisions under this section of the Agreement are subject to our judgment only, and shall be effective upon our written notification to you.

5. Additional Materials. You agree to provide us with a preface and foreword for the Work (if we ask for either). You'll also supply us with an index if we request. If you wish us to prepare the index we'll do so and deduct the cost from your royalties under this Agreement. If we prepare the index, you agree to review it and return it to us with your written comments within three (3) days of receiving it from Us. After three days, we may assume that you found the index complete and accurate.

6. Permissions. You agree to obtain and pay for any permissions and releases necessary for the use of materials copyrighted by others, or otherwise owned or controlled by others that you wish to reproduce in your Work. Permissions and releases must be acceptable to us, and must be obtained in writing; you must provide us with copies of all permissions and releases when you deliver your completed manuscript to us.

7. Publication. a. We agree to publish your Work not later than six months from the time that we notify you that we have accepted the Work, except that we may delay publication due to revisions of software or hardware that is the subject of the Work. Furthermore, we will not be responsible for delays caused by any wars, civil riots, strikes, fires, Governmental restrictions, or other similar or dissimilar circumstances beyond our control, and in the event of the occurrence of any such circumstance the publication date shall be deemed extended until the next spring or fall season immediately succeeding the removal of the cause of such delay. If we accept the Work and fail to publish it within six months, or the period of any extension, you may terminate this Agreement by notice to us, all the rights you granted us in this Agreement shall revert to you, and you may keep any money we paid you under this Agreement. Keeping that money shall be your only remedy for our failure to publish the Work. If we accept your Work but delay publication due to revisions of software or hardware that are the subject of the Work, such delays will not be counted toward the six month period referenced in this section.

8. Royalties. a. We'll pay you **XX** percent of the net cash we receive (our gross sales less returns) on all copies of the Work sold in printed form, except that we'll not pay you royalties on the following sales:

- (1) Of copies of the Work that you purchase from us at your 60% discount.
- (2) In the case of a remainder sale where we sell your Work at or below its manufacturing cost.
- (3) In cases where the Work is sold at greater than an 80% discount from its list price.

b. On sales of the Work in electronic form, we'll pay you **twenty-five** percent (**25%**) of our net cash received.

c. If you receive any overpayment of royalties, due to returns from bookstores, dealers, or other distributors, or because of our error, we may retain an equal amount from your royalties for our own account for this Work only until we have recovered the overpayment or, if we do not owe you any royalties, you agree to repay the overpayment to us when we bill you.

d. We may set up a rolling reserve against returns of printed copies of the Work. If we do, we may add to the reserve each accounting period and withhold from your royalties otherwise payable an amount based on our reasonable assessment of the historical returns of the Work and our good faith estimate of returns likely for the next royalty accounting period, not to exceed 25 percent of your earnings in that period. We will track each period's reserve and release each once it has been held for no more than four accounting periods.

9. Subsidiary Rights. We may permit others to publish, broadcast through any medium, make recordings, make mechanical or electronic renditions, publish book club and microfilm editions, make translations and other versions, show or produce for theaters and motion pictures and by television, serialize, syndicate, quote, and otherwise utilize the Work, and material based on the Work, and may authorize the use of your name in connection therewith. If we don't license or ourselves use any of these subsidiary right you've granted us within two years after we first publish the Work, we'll revert the unused right or rights to you if you notify us you want us to do so. For any rights we license, other than electronic renditions, we'll divide the proceeds from the license equally between us, after we deduct any direct, out-of-pocket costs

we incur in selling those rights. For any rights we wish to use, you and we will negotiate royalties in good faith, taking into account the costs of making use of those rights and the market for the product produced using the rights. If we can't agree, and we can't license them within the two-year period stated in this Paragraph, then you may notify us to revert the rights.

10. Accounting and Payment. Our accounting periods close on June 30 and December 31. After first publication of your Work, we'll report to you within 60 days after the close of each period, showing for that period and cumulatively to date the number of copies printed and bound, the number of copies sold and returned at each royalty rate, the number of copies distributed free for publicity purposes, the number of copies remaindered, destroyed, or lost, the royalties paid to and owed to you, the amount of income held in reserve, and the amount and source of income from subsidiary rights. We'll pay you all money due you under this Agreement within 90 days after the close of each accounting period.

11. Non-Competition. During the term of this Agreement, you agree not to publish or furnish any other publisher any work on the same subject for the same market that would hurt sales of the Work.

12. Copyright and Authorship Credit. We'll register the copyright on your behalf and in your name and shall place copyright notice in your name on all copies of the Work. You'll receive authorship credit as follows: **AUTHOR**

13. Warranty and Indemnity. a. You warrant and represent to us, and to third parties to or through whom we sell or license rights in the Work—

(1) That you are the sole author of the Work and own all rights granted under this Agreement;

(2) That the Work is original and has not previously been published (except for materials for which you have obtained permissions as Paragraph 6 requires).

(3) That the Work does not infringe any other person's copyrights or other property

rights, nor does it violate the rights of privacy of, or libel, other persons or entities.

b. You make no warranties and shall have no obligation to indemnify us with respect to materials we inserted in the Work.

c. You agree to indemnify us against any final judgment for damages (after all appeals have been exhausted) in any lawsuit based on a breach of the warranties in this Agreement, and you'll pay us the reasonable costs and attorney's fees we incur in defending that lawsuit. If we are named in a complaint that alleges that you have breached your warranties under this Paragraph 13, we may withhold and place in an escrow account all money payable to you under Paragraphs 8 and 10, up to the amount of the damages claimed in the complaint and reasonable costs and attorney's fees.

14. Editorial, Publishing, and Artistic Control.

a. In order to keep you informed and a part of the process of publishing the Work, we'll consult with you about each of the following decisions:

- (1) the title and price of your Work
- (2) the method and means of promoting and selling your Work
- (3) the number and destination of free copies
- (4) the number of copies to be printed
- (5) the method of printing and other publishing processes
- (6) the exact date of publication
- (7) the form, style, size, type, paper to be used and like details
- (8) how long the plates or film shall be preserved and when they shall be destroyed, and
- (9) when new printings of the Work shall be made.

b. If we don't agree after we consult about any of these decisions, we'll make the final decision, based on our experience as publisher and the investment we're making in the Work.

c. We won't make changes in the manuscript of the Work after we accept it, except for reasonable copy editing, unless you consent to such changes. We'll provide you with proofs, which you'll promptly review and return to us within the time we specify. If you don't return proofs to us

within the schedule, we may proceed without your corrections. If the cost of your alterations (other than for typesetting errors or unavoidable factual updating) exceeds 10 percent of the cost of the typography, we'll have the right to deduct that excess from your royalties under this Agreement.

15. Author's Right to Full Disclosure. We'll make reasonable efforts to provide you with feedback and a description of sales, promotional efforts, and consumer response to your Work, upon your request. We also agree, upon your request, to open all of our books and records regarding your Work to you, or a legal or accounting professional that you hire. We'll do so on your reasonable written notice, not more than once a year, during our normal business hours. If the examination reveals errors in our favor of more than five percent, we'll pay the reasonable costs of the examination.

16. Original Materials. We'll return the original manuscript and all additional materials to you upon your request. We'll take reasonable care of any original material you deliver to us, but we won't be liable for loss or damage from any theft, fire, vandalism or other loss or damage to that material that is beyond our reasonable control or that occurs when the material is not in our physical possession.

17. Free Copies. You'll receive twenty (20) free copies of the Work as published, after which you'll have the right to purchase additional copies for personal use or resale at a sixty (60) percent discount from the list price. If you choose to resell the Work you agree that your sales efforts will not compete with ours or any of our distributors. In the case of copies purchased for resale, you must obtain any necessary resale permits, business licenses, and tax identification numbers. You must also fulfill all other regulatory requirements necessary for resale.

18. Revisions. If we decide that a revision of the Work is warranted, we will offer you first option to undertake the revision, under the terms of this agreement. You will advise us within 30 days of our request as to whether you will revise the Work. If you choose to prepare the revision, you and we will negotiate a schedule and you shall diligently proceed with the revision according to the schedule. If you do not advise

us within such 30 day period that you will revise the work, or you cannot or choose not to revise the Work, or you do not diligently proceed with the revision, or if the manuscript for the revised Work that you submit to us is not acceptable, we may have the Work revised by a person competent to do so and charge the costs of the revision against payments due you under this Agreement. We may continue to use your name on all revisions.

19. Successors and Assigns. This Agreement may not be assigned by either party without the written consent of the other, except that you may assign payments due you as long as you provide us written notice of the assignment, and we may assign this Agreement as part of the sale of all or substantially all the assets of Publisher. If assigned, this Agreement shall bind the parties and their respective heirs, administrators, successors, and assigns.

20. Infringement. You and we shall have the right to make a claim or sue jointly for the infringement of the rights granted under this Agreement to us and, after deducting the expenses of making the claim and, if it occurs, bringing and conducting the lawsuit, to share equally in any recovery. If either party chooses not to join in the claim or lawsuit, the other party may proceed at its own expense and, after that party deducts all the expenses of making the claim and bringing the lawsuit, any recovery shall be shared equally between the parties. We will have no liability to you for failing to pursue any potential claim.

21. Termination. a. You'll have the right to terminate this Agreement by written notice and we'll revert all rights in the Work to you if:

(1) the Work goes out-of-print and we, within ninety days after we receive notice from you that the Work is out-of-print, do not place the Work in print again. The Work shall be deemed out-of-print if it is not available for sale in reasonable quantities in normal trade channels, or

(2) we fail to provide a statement of account or make any payment, as Paragraph 8 requires, within 30 days after the statement or payment is due and fail to correct these errors within 30 days of receipt of written notice from you.

b. To the extent permitted by bankruptcy law, you may terminate this Agreement in the event of our insolvency, bankruptcy, or assignment of assets for the benefit of creditors.

22. Production Materials and Unbound

Copies. When the agreement terminates, you may, within sixty days after we notify you of the termination, purchase the plates, offset negatives, computer drive tapes (if any) or other electronic storage media at their scrap value and any remaining copies at the lesser of cost or remainder value.

23. Promotion. We'll promote the Work, using our reasonable judgment about the methods and amount of promotion. You consent to our use of your name, portrait, or picture for promotion and advertising of the Work, provided that use is dignified and consistent with your reputation. You'll assist in the promotion of the Work, furnishing us with leads or ideas for promotion as appropriate, and appearing at events if we agree your appearance would benefit the Work. We'll pay the travel, food, and lodging costs of any appearance we agree you should make.

24. Arbitration. If you and we have a dispute arising under this Agreement, we'll submit it to binding arbitration before an arbitration board where our principal place of business is located, under the rules for commercial disputes of the American Arbitration Association then in effect. If you and we can't agree on the arbitrator, each of us shall appoint one representative, and the

representatives shall choose the arbitrator. Sections 1280 through 1294.2 of the California Code of Civil Procedure, expressly including Section 1283.05, are hereby incorporated into this Agreement by this reference. The arbitration award shall be enforceable in any court with jurisdiction. You and we agree that if the arbitrator determines that a claim is without merit, that party shall pay the reasonable attorney and arbitration fees of the other party.

25. Notice. Where notice is required under this Agreement, it must be given in writing by use of certified mail, return receipt requested, or receipted courier service, sent to the addresses stated in this Agreement, and shall be deemed received ten days after mailing. The addresses for notice may be changed by giving written notice of the new address to the other party.

26. Entire Agreement and Modifications.

This Agreement represents the entire Agreement between the parties. All modifications of this Agreement must be in writing and signed by both parties.

27. Waivers and Defaults. Any waiver of a breach or default under this Agreement shall not be deemed a waiver of any other breach or default.

28. Governing Law. The Agreement shall be governed by the laws of California that apply to contracts made and to be performed in that state.

AUTHOR

NO STARCH PRESS, INC

By _____
William D. Pollock, Founder