

Publishing Agreement

THIS PUBLISHING AGREEMENT (this “Agreement”) is made and entered into as of [redacted], 20 [redacted], by and between THREE BEAN PRESS, LLC, a Massachusetts company (“Publisher”), and [redacted] (“Client”).

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. **Manuscript and License to Publish:**

(a) Client hereby engages Publisher to provide the publishing services described herein. Client shall deliver to Publisher on or before [redacted] a complete electronic copy of the manuscript to be published, currently entitled [redacted], including any illustrative copy ready for reproduction (collectively, the “Work”), in content, style, and form satisfactory to Publisher. If, in the judgment of Publisher, the Work as submitted is not satisfactory for publishing, Client agrees to retype or rework the Work, or such parts of the Work as Publisher deems necessary, at Client’s own expense.

(b) Client hereby grants to Publisher a non-exclusive, worldwide, sublicensable license to print, publish, distribute and sell the Work on behalf of Client, and to make excerpts from the Work in order to facilitate sales of and publicize the Work.

(c) Client agrees that in the event the Work incorporates any writings or composition previously published elsewhere, Client shall, at Client’s own expense, obtain and deliver to Publisher written permission and authorization to reprint such writing or composition from the owner of the relevant copyright.

2. **Publishing Services:** Publisher shall print and publish an edition of [redacted] copies (the “Print Run”) of the Work (the published Work being referred to herein as the “Book”), in the specific form and style determined by Client, and shall perform such services as are described in Exhibit 1 attached hereto (the “[redacted] Services”). At Client’s request, Publisher, in its sole discretion, may agree to perform additional services on such terms and conditions as the parties may agree in writing (the “Additional Services”).

3. **Payments and Fees for Publishing Services:**

(a) **Editorial, Design/Production and Publishing/Printing Services:** Client shall pay Publisher [redacted] (\$[redacted]) for the [redacted] Services as follows: (i) [redacted] (\$[redacted]) upon execution of this Agreement; and (ii) the remaining [redacted] (\$[redacted]) at the time Client approves a proof for submission to the printer. Publisher will perform any Additional Services for a fee to be agreed upon by the parties in writing prior to commencement of such Additional Services. Client acknowledges and agrees that the fee for the services provided by Publisher hereunder assumes the work required to prepare the Work for publishing will be similar in manner and scope to the work generally required for manuscripts of similar length and kind as the Work. If this assumption proves incorrect, Publisher will notify Client of the work Publisher believes to be outside the scope of the services to be provided hereunder and, at

Client's request, will provide Client with an estimate for the cost of such work.

(b) **Price of Printing:** Client is solely responsible for all costs incurred by Publisher in connection with the printing of the Book. Once Client has chosen a printer for the Print Run, Client will pay Publisher the price of printing as follows: (i) fifty percent (50%) of the printer's quoted price at the time Client approves a proof for submission to the printer; and (ii) the remainder of the printer's quoted price when client approves the final proof from the printer prior to initiation of the Print Run. Client understands that the printer may increase the price of printing due to changes in items including, but not limited to, page count, paper stock, galleys or cover materials, and Client will pay Publisher the amount of any such increase within ten (10) business days of Client's receipt of notice from Publisher of such increase.

(c) **Alterations:** Client is solely responsible for all additional costs incurred as a result of changes to the proof (or in copy, negatives, or plates used in production by offset lithography) requested by Client after delivery to the printer ("Alterations"). Before making any Alterations, Publisher will obtain an estimate from the printer for the cost of such Alterations and submit such estimate to Client for approval. Client will pay Publisher the full amount of such estimate upon approval of such Alterations.

(d) **Shipping and Additional Charges:** Client acknowledges that additional charges, including, but not limited to, charges relating to printing of color proofs of the Work and shipping of the Print Run, are not included in the price of printing and are the sole responsibility of Client. Client will pay Publisher the full amount of any additional charges within ten (10) business days of Client's receipt from Publisher of notice of said charges.

(e) **Payments:** All payments made to Publisher under this Agreement shall be made by check payable to Three Bean Press and shall be delivered to Three Bean Press, P.O. Box 301711, Jamaica Plain, MA 02130.

4. **Publisher's Sales Commissions:**

(a) **Commissions:** Publisher shall be paid the following commissions for its sales of the Book: Fifty Percent (50%) of retail price for sales on threebeanpress.com; Fifteen Percent (15%) of retail price for sales to stores; Six and Seventy-Five One-hundredths Percent (6.75%) of retail price for sales on Amazon.com or Target.com or through any distributors or wholesalers chosen by Publisher. For clarification only, the "Profit Sample for Client" attached hereto as Exhibit 2 provides examples of the commission due to Publisher hereunder in certain circumstances. Client shall be entitled to all remaining profits made on the Book after wholesale discounts, shipping charges and commissions on the sales paid to Publisher.

(b) **Quarterly Statements:** During the term of this Agreement, Publisher shall provide Client with statements of account for each quarter ending March 31, June 30, September 30 and December 31 within thirty (30) days of the end of each such quarter. Each quarterly statement shall reflect: (i) all sums received by Publisher from quarterly sales of the Book; (ii) all quarterly sales commissions due to Publisher; (iii) all remaining profit due to Client; and (iv) any outstanding shipping or additional charges due to Publisher pursuant to this Agreement. Publisher shall disburse to Client all profit earned from Publisher's sale of the Book, minus any

sales commissions and other amounts due to Publisher pursuant to this Agreement, within ten (10) business days of issuance of each quarterly statement, provided that if in any quarterly period the total payment due is less than \$25.00, Publisher shall render the quarterly statement but may defer payment until such time as the sum of \$25.00 or more shall be due.

5. Copies & Sales; Storage:

(a) **Publisher Copies & Sales:** Upon completion of the Print Run, Publisher shall receive and retain [amount] copies of the Book for sales through Publisher's website, Amazon.com, Target.com, distributors hired by Publisher and sales channels not previously procured by Client. Publisher shall be entitled to commissions on its sales of such Book, as described in Section 4 of this Agreement. Should Publisher successfully sell all its copies of the Book, Publisher may request additional copies of the Book from Client. In addition, Client agrees to give Publisher, at no cost to Publisher, [amount] copies of the Book for distribution for purposes of sales, publicity, marketing and Publisher's portfolio.

(b) **Client Copies & Sales:** Upon completion of the Print Run, Client shall receive and retain [amount] copies of the Book for distribution in any manner other than by sales through channels previously procured by Publisher and distributors hired by Publisher. Client retains all proceeds from any sales Client may make; provided that Client is responsible for paying all costs for packing and transporting such orders.

(c) **Storage:** Client agrees to secure storage space for Client's copies of the Book at Client's own expense. Publisher agrees to secure storage space for Publisher's copies of the Book at Publisher's own expense.

(d) **Electronic Copy:** Upon completion of the Print Run, Publisher shall provide Client with a final and complete copy of the Book in electronic form for use by Client for future print runs.

6. Advertising: Publisher shall not authorize or contract for any direct advertising, circularization or other paid special promotion of the Book, unless and until such proposed advertising, circularization or special promotion and its costs have been mutually agreed upon by Client and Publisher.

7. Insurance: Publisher agrees to use commercially reasonable efforts to protect all electronic data, information, programs, documents or records which in any way pertain to the manuscript, the Work, and/or any and all materials used in connection with the publication or sale thereof, and are contained in, maintained by, generated from, stored or held in any fashion whatsoever by Publisher or its computer system, including its hard drives, disc drives or other memory/data storage systems. It shall be the sole obligation of Client to insure all electronic data, information, programs, documents or records which in any way pertain to the manuscript, the Work, and/or any and all materials used in connection with the publication or sale thereof, and are contained in, maintained by, generated from, stored or held in any fashion whatsoever by Client and/or Publisher or their computer systems, including hard drives, disc drives or other memory/data storage systems.

8. Client Representations and Warranties: Client represents and warrants to Publisher as follows:

(a) The Work is entirely the original creation of Client, except for any portions thereof that are in the public domain or for which Client has secured legally effective written permission to use in the Work, and the Work has not heretofore been published, in whole or in part. Client is the sole author and owner of the Work and has not sold, licensed, assigned, pledged or otherwise encumbered any rights to the Work, except for the rights granted herein.

(b) The Work does not, and when published will not, infringe upon any third party's proprietary right at common law or any statutory copyright. The Work does not contain any scandalous or libelous material, or in any way violate or infringe upon any personal rights of any third party, including any privacy rights or publicity rights.

(c) Client has full power and authority to enter into this Agreement and perform Client's obligations hereunder.

9. Indemnification: Client shall defend, indemnify and hold harmless Publisher, its affiliate and their respective officers, directors, managers, members, employees and agents against any and all claims, demands, suits, losses, costs, damages and other expenses, including attorneys' fees, arising out of (a) any breach of Client's representations, warranties or covenants contained herein, (b) any scandalous or libelous matter contained or alleged to be contained in the Work, or (c) any infringement or violation, or alleged infringement or violation, by the Work of any third party's copyright or property right.

10. Limitations on Liability:

(a) NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PUBLISHER'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER EXCEED THE AMOUNTS PAID TO PUBLISHER BY CLIENT FOR **BASIC/EXPANDED/PREMIUM/CUSTOMIZED** SERVICES AND ANY ADDITIONAL SERVICES UNDER SECTION 3(a) OF THIS AGREEMENT. IN NO EVENT SHALL PUBLISHER BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY RESULTING FROM THE DELAY IN COMPLETION OF SERVICES WHEN SUCH DELAY IS DUE TO CAUSES BEYOND THE REASONABLE CONTROL OF PUBLISHER. PUBLISHER SHALL USE COMMERCIALY REASONABLE EFFORTS TO ENSURE THE ACCURACY OF ITS PUBLICATION OF THE WORK, HOWEVER, PUBLISHER SHALL NOT BE LIABLE FOR ANY CONSEQUENCES ARISING FROM ERRORS OR OMISSIONS IN ITS PUBLICATION OF THE WORK.

(b) THE PARTIES ACKNOWLEDGE THAT PUBLISHER HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. IF

ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

11. Term and Termination:

(a) The term of this Agreement shall commence on the date hereof and continue in effect until terminated by either party. Either party may terminate this Agreement at any time by providing the other party with not less than sixty (60) days prior written notice of such termination. Publisher may terminate this Agreement immediately upon written notice to Client if (i) Client fails to pay any amount due to Publisher within five (5) business days of the applicable due date or (b) Publisher believes, in Publisher's sole judgment, that the Book may subject Publisher to a risk of litigation or other adverse consequences.

(b) If Client terminates this Agreement at any time prior to delivering the Work to Publisher, Client shall be entitled to a refund of all monies paid, less any fees and expenses incurred by Publisher pursuant to this Agreement. If Client terminates this Agreement at any time after delivering the Work, Client shall not be entitled to any refund and shall remit to Publisher payment for all services provided and all fees and expenses incurred by Publisher prior to termination within fifteen (15) days of receipt of an invoice from Publisher showing the amount due to Publisher for such services, fees and expenses. If either party terminates at any time after sale of the Book has commenced, Publisher shall pay to Client any accrued and unpaid amounts due pursuant to Section 4 hereof within fifteen (15) days following the date of termination. Publisher shall be entitled to deduct from any amount due to Client upon termination any fees and expenses incurred by Publisher pursuant to this Agreement, including any expenses incurred in delivering any copies of the Book to Client or, if instructed by Client, destroying any copies of the Book remaining in Publisher's possession.

(c) Publisher is not obligated to retain copies of the Book for more than fifteen (15) days following the date of termination of this Agreement. If Publisher has not received written instructions from Client within fifteen (15) days following termination, Publisher has the right to ship any copies of the Book remaining in Publisher's possession to Client at Client's expense.

(d) The provisions of Sections 3, 4, 8, 9, 10, 13 and 15 shall survive termination of this Agreement for any reason.

12. Assignment: Either party may assign this Agreement as a whole, and the assignee thereof shall have all the rights and remedies of the assignor, but neither party may assign any partial interest herein. No assignment by Client shall be valid as against Publisher unless and until Publisher has received notice in writing of such assignment from Client. No assignment by Publisher shall be valid as against Client unless and until Client has received notice in writing of such assignment from Publisher. The provisions of this agreement shall apply to and bind the executors, administrators, successors, and assigns of the respective parties.

13. Severability: Each provision of this agreement shall be considered severable. If, for any reason, any provision is determined to be invalid and contrary to, or in conflict with, any law or

regulation, this shall not have any effect on the other provisions of this agreement, which shall remain in full force and effect.

14. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when so executed shall be an original, and all of which shall constitute one and the same instrument. A facsimile copy of such counterparts hereof shall suffice as an original.

15. **Choice of Law:** The parties agree that this Agreement will be governed by the laws of the Commonwealth of Massachusetts.

16. **Entirety and Writing:** This Agreement contains the entire understanding and agreements of the parties hereto. The terms of this Agreement shall not be modified or amended except by written agreement signed by all parties.

CLIENT

Sign: _____

Print: _____

THREE BEAN PRESS, LLC

By: _____

Name: _____

Title: _____