

PUBLISHING AGREEMENT

This Publishing Agreement (“Agreement”) is entered into as of \_\_\_\_\_\_\_\_ (“Effective Date”) by and between Black Lawrence Press, 279 Claremont Avenue, Mount Vernon, NY 10552 (“Publisher”), and \_\_\_\_\_\_\_\_\_\_\_\_, (“Author”), concerning a work (with the working title) \_\_\_\_\_\_\_\_\_\_\_\_(“Work”) and described as a work of \_\_\_\_\_\_\_\_.

GRANT OF RIGHTS

Author grants, assigns, and otherwise transfers to Publisher the exclusive right, in the English language for World Rights, to print, publish, sell, distribute, transmit, and sublicense the Work, and any renewals, and all of the other rights set forth in Subsidiary Rights below. In cases where the publishing of Work is done in Hardcover, the Publisher retains the right to publish in paperback as well. In either case, the Publisher retains the right to publish in e-Book as well. The Publisher shall have non-exclusive rights to print, publish and sell, distribute, transmit, and sublicense (as provided herein) the Work in the rest of the World. All rights not specifically herein granted are reserved to the Author. Such rights include but are not limited to Foreign Translation, First Serial, commercial and merchandising, performance rights (television, radio, dramatic, motion picture, and video rights, and all allied merchandising rights derived therefrom), and electronic multimedia version rights. For Works published in chapbook form by the Publisher, the Author retains the right to re-publish some or all of the Author's original material (poetry or prose) contained in the Work as part of a full-length collection beginning nine (9) months following the Publisher's original date of publication of the Work.

AUTHOR COMPENSATION

Royalties on Publisher’s Editions

For each Edition of the Work published by the Publisher under this Agreement, Publisher shall credit Author’s account with the following royalties on Net Copies Sold:

o 10.0% of the Net Revenues on the first 5,000 Net Copies Sold of each Edition;

o 12.5% of the Net Revenues on the next 20,000 Net Copies Sold of each Edition;

o 15.0% of the Net Revenues on the next 25,000 Net Copies Sold of each Edition;

o 20.0% of the Net Revenues on the next 50,000 Net Copies Sold of each Edition;

o 25.0% of the Net Revenues on sales in excess of 100,000 Net Copies Sold of each Edition.

In the case of the Work, “Edition,” as used in this Agreement, refers each separate edition of the Work published by the Publisher (Hardcover (if applicable), paperback).

And

o 10.0% of the Net Revenues on all Net Copies Sold of each Edition (in cases where the edition is eBook)

“Net Revenues” as used in this Agreement, refers to money actually received by Publisher from the sale of copies of the Work at the Publisher’s standard wholesale and retail discounts, net of returns, after deduction of shipping, customs, insurance, printing fees, design fees and currency exchange discounts.

“Net Copies Sold,” as used in this Agreement, means the sale less returns of any and all copies sold by Publisher through conventional channels of distribution in the book trade, and does not include promotional and review copies, Author’s copies (whether free or purchased by Author), or copies for which a royalty rate is otherwise set forth in this Agreement.

Reduced Royalties on Publisher’s Editions. For any and all sales of the Work in any Publisher’s Edition at discounts greater than the Publisher’s announced wholesale discounts in the book trade; non-returnable sales; direct sales; export sales; and bulk, premium and other special sales; Author’s royalty shall be one-half the full royalty specified for sales in ordinary channels of distribution in the book trade.

Subsidiary Rights. Publisher shall credit Author’s account with a royalty equal to Author’s share, as specified below, of all Net Revenues actually received by Publisher for exploitation or disposition of the following subsidiary rights in the Work by third parties under license from the Publisher.

 Author’s Publisher’s

 Share Share

 (percent) (percent)

Periodical or newspaper publication or syndication

following book publication (second serial)\*\* 50% 50%

Softcover reprint\*\* 50% 50%

Book Club Rights\*\* 50% 50%

Condensation, abridgment, selection, anthology,

use in other works\*\* 50% 50%

Premium, deluxe, or special editions\*\* 50% 50%

Braille, large-type, and other editions for the

handicapped (the Publisher also may grant such

rights to recognized non-profit organizations for

the handicapped without charge and without

payment to the Author) \*\* 50% 50%

Computer and other interactive media and allied

methods or reproducing the Work in whole or in

part, including computer software, database and

other computer assisted methods of storage,

reproduction, retrieval, and manipulation of

information \*\*

 50% 50%

Other methods of reproducing the Work, including

microfilm, microfiche, computer database, and any

other magnetic or electronic storage media,

whether not known or hereafter developed 50% 50%

\*\* in consultation with the Author

Delivery of Manuscript

Author agrees to deliver the manuscript of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the English language in its entirety (“Manuscript”) to the Publisher not later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the Initial Delivery Date”) in the form of a computer-readable file stored on a digital storage device or via file attached to the electronic mail delivery in such format(s) and word-processing program(s) as Publisher may specify.

Artwork, Permissions, Index, and Other Materials

Author shall deliver to Publisher, at Author’s sole expense, not later than the Initial Delivery Date or such later date(s) as may be designated by Publisher:

o Written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to Artwork, Backmatter, and/or Frontmatter) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted, or depicted in the Work (collectively “Permissions”). If Author fails or refuses to deliver the Permissions, Publisher shall have the right, but not the obligation to acquire and prepare such matter, or to engage skilled person to do so, and Author shall reimburse Publisher for all reasonable costs and expense incurred by Publisher in doing so.

o Author acknowledges and confirms that Publisher shall have no liability of any kind for the loss or destruction of the Manuscript, Additional Materials, or any other documents or materials provided by Author to Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

Publisher’s Rights on Delivery

If Publisher, in its sole discretion, deems the Manuscript delivered by Author under this Agreement to be editorially unacceptable in form or substance then Publisher shall so advise Author by written notice, and Author shall have the opportunity to cure any defects and generally revise, correct, and/or supplement the Manuscript, Permissions and/or other materials to the satisfaction of Publisher, and delivery fully revised, corrected and/or supplemented Manuscript, Permissions and/or other materials no later than sixty (60) days after receipt of Publisher’s written notice (“the Final Delivery Date”) or a mutually agreed later date. If such revised, corrected and/or supplemented materials are deemed unsatisfactory in form or substance by Publisher, then the Publisher will immediately notify the Author that the manuscript is unsatisfactory. Upon receipt of this notice, the Author may, at the Author’s option, terminate this agreement upon written notice to the Publisher. In the event of termination, all rights granted herein shall revert immediately to the Author.

Termination for Non-Delivery

If Author fails to deliver the Manuscript, Permissions, and/or other materials required under this Agreement, on the dates designated by Publisher herein, then Publisher shall have the right to terminate this Agreement, in writing to the Author, after a thirty (30) day grace period. Upon termination by Publisher, Author shall, without prejudice to any other right or remedy of Publisher, immediately repay Publisher any sums previously paid Author, and upon such repayment, all rights granted to Publisher under this Agreement shall revert to Author.

Publisher’s Right to Terminate Due to Changed Conditions

Publisher shall not be obligated to publish the Work, if, in its sole and absolute judgment, whether before or after acceptance of the Work, Publisher determines that supervening events or circumstances since the date of this Agreement have materially and adversely changed the economic expectations of the Publisher regarding the Work at the time of making this Agreement. Upon making such determination, Publisher may terminate this Agreement without further obligation by notice in writing to Author, in which event all right, title and interest in the Work shall revert to the Author, and the Author shall retain all payments made to Author up to the time of such termination.

PUBLICATION

Editing and Publication Format

Publisher shall have the right to edit and revise the Work, provided that the meaning of the work is not materially altered, and shall have the right to make any changes in the Work as advised by Publisher’s counsel with the Author’s prior written approval. No changes shall be made in the text of the manuscript except for routine copyediting and correction of grammar and spelling without the Author’s prior written consent. Publisher shall have the right to manufacture, distribute, advertise, promote, and publish the Work in a style and manner which Publisher deems appropriate, including typesetting, paper, printing, binding, and price. Publisher agrees that Author shall be consulted on cover design, front and back matter, of the Work. The Author shall have the right to approve biographical material and any likeness used on the Work. The Author shall have the right to approve the title of the work, such approval not to be unreasonably withheld. Notwithstanding any editorial changes or revisions by Publisher, Author’s warranties and indemnities under this Agreement shall remain in full force and effect, unless the Publisher’s changes or revisions form the basis for any claim. If the Publisher fails to publish the Work within twelve (12) months from delivery and acceptance of the manuscript, the Author may, by written notice to the Publisher, terminate this Agreement. In such event, the only damages recoverable by the Author shall be limited to the advance payable by the Publisher and any sub-licensing revenues.

Review by Publisher’s Counsel

Notwithstanding any other provision of this Agreement, Publisher shall have the right, but not the obligation, to submit the Work for review by counsel of its choice to determine if the Work contains material which is or may be unlawful, violates the rights of third parties, or violate the promises, warranties, and representations of Author set forth in this Agreement. Publisher shall not be obligated to publish the Work if, in the reasonable opinion of the Publisher or its counsel, there appears to be a risk of legal action or liability on account of any aspect of the Work. If, in the reasonable opinion of Publisher or its counsel, the Work is determined to require additions, deletions, modifications, substantiation of facts, or other changes to avoid the risk of legal action or liability, then Author shall make all such changes at the direction of Publisher or its counsel. If Author declines to make such changes, or if Publisher or its counsel deem the changes made by Author to be insufficient, then Publisher shall have the right to terminate this Agreement without further obligation, and Author shall be obligated to repay all amounts advanced by Publisher. Upon such repayment by Author, all rights granted to Publisher shall revert to Author. Notwithstanding the foregoing, the Publisher has no obligation to review or verify the contents of the Work, nor shall failure to do so affect in any way the promises, warranties, and representations of Author and/or the duty of indemnification of Author, all of which shall continue to apply to the Work, whether or not the Work is changed at the request of Publisher or Publisher’s counsel.

Proofs

Publisher shall furnish Author with a proof of the Work. Author agrees to read, correct, and return all page proofs within seven (7) calendar days after receipt thereof. If any changes in the proof sheets or the printing plates (other than corrections of printer’s and/or Publisher’s errors) are made at Author’s request or with Author’s consent, then the cost of such charges in excess of 15% of the cost of typesetting (exclusive of the cost of setting corrections) shall be paid by Author.

Time of Publication

Publisher agrees that the Work, if published, shall be published within twelve (12) months of the Final Delivery Date except as the date of publication may be extended by forces beyond Publisher’s control by no more than six (6) months. The date of publication as designated by Publisher, but not later than the date of first delivery of bound volumes, shall be the “Publication Date” for all purposes under this Agreement.

Author’s Copies

Publisher shall provide Author with ten (10) copies, free of charge, to be sent to him or her directly at an address to be provided, of each edition of the Work published by Publisher. Author shall be permitted to purchase additional copies of the Work, at a discount of fifty (50) percent, to be paid upon receipt of Publisher’s invoice.

Use of Author’s Name and Likeness

Publisher shall have the right to use, and to license others to use, Author’s pre-approved name, image, likeness, and biographical material for advertising, promotion, and other exploitation of the rights granted herein in the Work and the other rights granted under this Agreement.

COPYRIGHT

Copyright Notice and Registration

Publisher shall, in all versions of the Work published by Publisher under this Agreement, place a notice of copyright in the name of Author in a form and place that Publisher reasonably believes to comply with the requirements of the United States copyright law. Publisher shall register the copyright of the Work within ninety (90) days after the publication with the United States Copyright Office. Author shall execute and deliver to Publisher any and all documents which Publisher deems necessary or appropriate to evidence or effectuate the rights granted in this Agreement.

Copyright Infringement

If, at any time during the term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights that are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorney’s fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, either or both parties shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her, or its name. Notwithstanding the foregoing, Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

ACCOUNTING

Publisher shall provide Author with a statement of Net Units sold and Net Revenues from sale of Publisher’s editions and other exploitation and disposition of rights to the Work, along with reserve being held for returns, and pay Author any amount(s) then owing, for each six-month accounting period, not later than thirty (30) days following the close of each such period. As used herein, “Net Units” shall refer to copies of the Work in any Publisher’s edition actually sold and delivered, net of returns, damaged or spoiled copies, and promotional and Author’s copies. Publisher shall have the right to debit the account of Author for any overpayment of royalties, and any and all costs, charges, or expense which Author is required to pay or reimburse Publisher, under this Agreement between Publisher and Author. Publisher’s advance payable to Author is not to be deemed an overpayment.

If the Publisher should fail to pay monies due or deliver statements as agreed, then within three (3) months of the date of a written demand by the Author or the Author’s representative, the Author at the Author’s sole discretion may cancel this Agreement, and all rights in the Work granted herein shall revert to the Author forthwith, without further notice, and without prejudice to monies due the Author from the Publisher.

Audit Rights

Author shall have the right, upon reasonable notice and during usual business hours, but not more than once each year, to examine the books and records of Publisher relating to the Work and make copies thereof at the place where such records are regularly maintained. Any such examination shall be at the sole cost of the Author, unless errors of accounting amount to five percent (5%) or more of the amount due to the Author are discovered, in which event, all costs of the audit shall be borne by the Publisher. In the event of such underpayment, Publisher shall promptly pay Author due sums. Statements rendered under this Agreement shall be final and binding upon Author unless Author sets forth the specific objections in writing and the basis for such objections within one (1) year after the date the statement was rendered.

WARRANTIES, REPRESENTATIONS, AND INDEMNITIES

Author’s Representations and Warranties

Author represents and warrants, to the best of \_\_\_\_\_\_\_\_\_\_\_\_\_ knowledge, to Publisher that: (i) the Work is not in the public domain; (ii) Author is the sole proprietor of the Work and has full power and authority, free of any rights of any nature whatsoever by any other person, to enter into this Agreement and to grant the rights which are granted to Publisher in this Agreement; (iii) the work has not heretofore been published, in whole, in any form; (iv) the Work does not, and if published will not, infringe upon any copyright, trademark, or any other intellectual property rights or other proprietary rights of any third party; (v) the Work contains no matter whatsoever that is libelous, violative of any third party’s right of privacy or publicity, or otherwise in contravention of law or the right of any third party; (vi) all statements of fact in the Work are true and are based on diligent research; (vii) all advice and instruction in the Work is safe and sound, and is not negligent or defective in any manner; (viii) the Work, if biographical or “as told to” Author, is authentic and accurate; and (ix) Author will not hereafter enter into any agreement or understanding with any person or entity which might directly conflict with the rights granted to Publisher under this Agreement. Publisher acknowledges that much of the Work, being comprised of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been published previously in literary magazines, in print or online.

Author’s Indemnity of Publisher

Author shall indemnify, demand, and hold harmless Publisher, its subsidiaries and affiliates, and their respective shareholders, officers, directors, employees, partners, associates, affiliates, joint venturers, agents, and representatives, from any and all claims, debts, demands, suits, actions, proceedings, and/or prosecutions (“Claims”) based on allegations which, if true, would constitute a breach of any of the foregoing warranties and representations or any other obligation of Author under this Agreement, and any and all liabilities, losses, expenses (including attorney’s fees and costs) and damages in consequence thereof. Each party shall give prompt notice in writing to the other party of any Claims. In the event of any Claims, Publisher shall have the right to withhold payments otherwise due to Author under this Agreement in an interest-bearing account as security for Author’s obligations hereunder. Notwithstanding the foregoing, in the event that no proceeding is instituted within one(1) year of the Publisher’s receipt of a Claim, the Publisher shall release all sums so withheld. Author’s warranties, representations, and indemnities as set forth in this Agreement shall extend to any third party against whom any Claims are asserted by reason of the exploitation of the rights granted by Author in this Agreement, as if such warranties, representations, and indemnities were originally made to such third parties. All such warranties, representations, and indemnities shall survive the termination or expiration of this Agreement.

CESSATION OF PUBLICATION

Remainders

If Publisher determines that there is not sufficient demand for the Work to enable it to continue its publication and sale profitably, the Publisher remainder the work by disposing of the copies remaining on hand as it deems best. In such event, Author shall have the right, within two (2) weeks of the giving of written notice by Publisher, to a single purchase of some or all of such copies at the best available price, and the purchase of film and plates at Publisher’s actual cost of manufacture. If Author declines to purchase such copies or other materials, Publisher may dispose of them and shall pay Author, in lieu of royalties or any other amounts otherwise payable under this Agreement, a sum equal to 5% of the amounts actually received by Publisher in excess of the cost of manufacture. In no event shall Publisher remainder the Work prior to one (1) year after initial publication.

Reversion of Rights

If the Work goes out of print in all Publisher’s editions, Author shall have the right to request that Publisher reprint or cause a licensee to reprint the Work in a full-length, English, print edition, not including Braille or large print. Publisher shall have six (6) months after receipt of any such written request from Author or Author’s representative to comply, unless prevented from doing so by circumstances beyond Publisher’s control. If Publisher declines to reprint the Work as described above, or if Publisher agrees to reprint the Work but fails to do so within the time allowed, then Author or Author’s representative may terminate this Agreement with respect to the particular Work upon sixty (60) days’ notice in writing. Upon such termination, all rights granted under this Agreement for the Work, except the rights to dispose of existing stock, shall revert to Author, subject to all licenses which may have been granted by Publisher to third parties under this Agreement, and Publisher shall have no further obligations or liabilities to Author for that Work, except that Author’s earned royalties shall be paid when and as due. The Work shall not be deemed out of print within the meaning of this section so long as the Work is available in a full-length, print edition (excluding Braille and large print) for sale either from stock in Publisher’s, or its distributor’s warehouse, or in regular United States retail channels.

Rights Surviving Termination

Upon the expiration or termination of this Agreement, any rights reverting to Author shall be subject to all licenses made by Publisher to third parties pursuant to this Agreement. Any and all rights of Publisher under such licenses, and all warranties, representations, and indemnities of Author, shall survive the expiration or termination of this Agreement.

GENERAL PROVISIONS

Counterparts

This Agreement may be signed in counterparts, and if so, the counterparts bearing the signatures of all parties shall be deemed to constitute one binding agreement.

Entire Agreement

Author and Publisher acknowledge and agree that this Agreement supersedes and replaces all other communications between Author and Publisher, and represents the complete and entire agreement of Author and Publisher regarding the Work.

Modification and Waiver

The Agreement may not be modified or altered except by a written instrument signed by both parties. No waiver of any term or condition of this Agreement, or of any breach of this Agreement or any portion thereof, shall be deemed a waiver of any other term, condition, or breach of this Agreement or any portion thereof.

Force Majeure

Publisher’s obligations under this Agreement shall be extended by a period equal to any period of delay resulting from acts of God, acts of the public enemy, fires, floods, strikes, and other causes beyond the reasonable control of the Publisher (“force majeure”) that prevents Publisher from performing such obligations.

Binding on Successors

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of Author, and the successors, assigns, and licensees of Publisher. Neither party shall assign this Agreement without the prior written consent of the other, except that Publisher may assign this Agreement upon notice to the Author in conjunction with the sale of all or substantially all of the Publisher’s assets. Any assignment in contravention of this section shall be null and void.

Applicable Law

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

Arbitration

If any dispute shall arise between Author and Publisher regarding this Agreement, such dispute shall be referred to binding private arbitration in New York, New York in accordance with the Rules of the American Arbitration Association, and any arbitration award shall be fully enforceable as a judgment in any court of competent jurisdiction. Notwithstanding the foregoing, the parties shall have the right to conduct reasonable discovery as permitted by the arbitrator(s) and the right to seek temporary, preliminary, and permanent injunctive relief in any court of competent jurisdiction during the pendency of the arbitration or to enforce the terms of an arbitration award.

Early Termination

Either party may cancel this Agreement immediately, without liability to the other party upon the happening of any of the following or any comparable event: (i) a breach of any term of this Agreement which is not cured within thirty (30) days of receipt of written notice from the non-breaching party; (ii) insolvency of the other party; (iii) filing of any petition by or against the other party under any bankruptcy, reorganization or receivership law; (iv) execution of an assignment for the benefit of the other party’s creditors; or (v) appointment of any trustee or receiver of the other party’s business or assets or any part thereof.

IN WITNESS WHEREOF, Author and Publisher have executed this Agreement, as of the Effective Date.

“AUTHOR” BLACK LAWRENCE PRESS

ENTER AUTHOR'S NAME HERE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: (Signature of Author) By: Diane Goettel

 Title: Publisher

Date Signed: \_\_\_\_\_\_\_\_\_\_\_ Date Signed:\_\_\_\_\_\_\_\_\_\_\_

SS #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Birth: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Citizenship: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_