



AGREEMENT made on \_\_\_\_\_ between Berrett-Koehler Publishers, Inc. (“the Publisher”) and \_\_\_\_\_ (“the Author”).

The Author and Publisher agree to collaborate in the publication of a work (“the Work”) on “\_\_\_\_\_” (tentative title) and to carry out their respective responsibilities as described below.

**1. Grant of Rights.** The Author grants to the Publisher the exclusive rights during the full term of this Agreement: (a) to publish and sell the Work, under its own name and under other imprints and trade names, in all languages throughout the world; (b) to make and sell, and authorize others to make and sell, all translations, abridgements, excerpts, other editions, and other versions and derivatives of the Work, whether in print, electronic, digital, audio, video, or any other form or format now known or hereafter discovered or created; and (c) to use or authorize others to use the Author's name and likeness or photograph in conjunction with the foregoing. The Publisher will take the necessary steps to register the copyright on behalf of the Author and in the Author's name (or in the name designated by the Author) and will place copyright notice in the Author's name (or in the name designated by the Author) in all copies of the Work. The Publisher acknowledges that the general ideas and concepts contained in the Work may be used by the Author in the normal course of the Author's day-to-day business, and the use of such general ideas and concepts in the Author's day-to-day business will not be deemed a violation of the Agreement.

**2. Delivery of Manuscript.** The Author agrees to submit to the Publisher, on or before \_\_\_\_\_ one electronic copy of the draft manuscript of the Work to be sent via e-mail as a Microsoft Word or RTF (Rich Text Format) document. The Author agrees to subsequently undertake such revisions of the manuscript as in the Author's and Publisher's judgment, based on critical reviews of the manuscript, are necessary to enhance the quality, usefulness, and salability of the Work. The Author further agrees to prepare and submit to the Publisher, on or before \_\_\_\_\_ one printed hard copy and one electronic copy of the complete and final manuscript of the Work, to consist of approximately \_\_\_\_\_ words, \_\_\_\_\_ halftone photographs, and \_\_\_\_\_ charts, figures, and illustrations, including all materials specified in Paragraph 7 below. The printed hard copy of the final manuscript will be sent to the Publisher's San Francisco office and the electronic copy will be sent via e-mail as a Microsoft Word or RTF (Rich Text Format) document. If the final manuscript contains any illustrations, charts,

diagrams, art work, forms, photographs, or other figures and exhibits, they will be prepared according to the Publisher's specifications and put in a separate file from the body of the manuscript, with notation in the manuscript of where each such material should be placed.

**3. Publication, Principal Royalties, and Advance Payments.** When the Author has delivered to the Publisher the copies of the complete and final manuscript, it will be published at the Publisher's expense. The Publisher will pay the Author a royalty based on cash received by the Publisher of (a) 10% on the first 10,000 copies sold, 15% on the next 20,000 copies sold, and 20% on copies sold thereafter on sales of any hardcover edition of the Work; and (b) 10% on the first 10,000 copies sold, 15% on the next 20,000 copies sold, and 20% on copies sold thereafter on sales of any softcover edition or other edition, version, or derivative of the Work in any format, excluding electronic editions or versions. The Publisher will pay the Author a royalty of 20% of the cash received by the Publisher from the sale of any electronic edition or version or from the sale or licensing to another party of any rights to make or sell an electronic edition or version of the Work. As used in this Agreement, an "electronic edition or version" means a copy of the Work, or of any version, derivative, or portion of the Work, that is sold, distributed, or accessed in an electronic or digital format using any process or technology for retrieving, transmitting, displaying, or delivering electronic or digital content. The Publisher will pay to the Author an advance of \$5,000.00 in two payments, which will be applied against royalties to be earned and other sums accruing to the Author under this Agreement: \$2,500.00, due within 30 days after the Publisher's receipt of fully executed copies of this Agreement; and \$2,500.00, due within 30 days after the Publisher's initial publication of the Work.

**4. Income from Subsidiary Rights Sales.** The Publisher will pay the Author 50% of the cash received by the Publisher, after deducting any foreign taxes and any payments to the Publisher's or Author's agents to solicit such sales, from sales to third parties of any of the following subsidiary rights in the Work: (a) the right to publish, broadcast and/or sell the Work or any edition, version or derivative of the Work, in whole or in part, in audiotapes, videotapes, television and radio programs, films or any other audio or video media, book club distributions, foreign language translations, other print editions, reprints or adaptations, microfilm versions, or in Braille or large-print versions; and (b) the right to use excerpts, quotations, serializations, and abridgements from the Work in periodicals, anthologies, or educational and training materials. The Publisher may authorize use of the Work by others without compensation to the Publisher or Author, if, in the judgment of the Publisher, such use may benefit the sale of the Work or of subsidiary rights in the Work. If, in connection with any subsidiary rights sales, remainder sales, or other sales, the Publisher sells any stock of the Work at a price below the manufacturing costs of the Work plus the royalties otherwise due to the Author, no royalties will be paid to the Author on the sale of that stock. Sales under Paragraph 4 will be excluded in computing the number of copies sold as specified in Paragraph 3 and will be computed and shown separately in reports to the Author.

**5. Reports and Payments.** The Publisher will report on sales of the Work and subsidiary rights sales on or before March 31 of each year for the twelve-month period ending the prior December 31. With each report of sales, the Publisher will make settlement to the Author for any royalty balance shown to be due in excess of advance payments made to the Author. The Author or the Author's representative will have the right, upon written request, to inspect the Publisher's books

of account as they relate to the Work. Such inspection will be at the expense of the Author unless errors of accounting amounting to 5% or more of the total sum paid to the Author are found that are to the Author's disadvantage, in which case the cost will be paid by the Publisher. During any accounting period, the Publisher may withhold a reasonable reserve against returns to be set by the Publisher. Any reserve against returns withheld by the Publisher in a given accounting period will be added to the Author's royalty account in the next accounting period. If, for this Work or any other work subject to an agreement between the Author and the Publisher, the Publisher does not fully recoup any amounts paid to the Author in excess of the royalty balance actually due to the Author, or any other expenses the Publisher is entitled to apply against the Author's royalty account (which account includes both royalties and subsidiary rights income), the Publisher may recoup such excess payments or expenses from royalties or subsidiary rights income otherwise payable to the Author under this Agreement or any other agreement between the Author and the Publisher for any other work.

**6. Author's Copies.** The Author will receive 150 free copies of the initial edition of the Work for personal and marketing use and to send to persons who have endorsed, contributed to, or otherwise supported the Work; the Author may decide how many of these 150 copies are print copies and how many are copies of a digital edition sold directly by the Publisher. The Author may purchase in any quantity at a 50% discount of the list price additional copies of any print or digital edition of the Work sold directly by the Publisher. The Author may also purchase bulk quantities of any print or digital edition of the Work sold directly by the Publisher at a special prepublication discount of 60% off list price for 500 to 999 copies, 65% off list price for 1,000 to 1,999 copies, 70% off list price for 2,000 to 2,999 copies, and 75% off list price for 3,000 or more copies, provided that the order and payment are received by the Publisher at least two months in advance of the date that the printed and bound Work is scheduled to ship from the printer, so that the Author's bulk purchase may be added to the printing of the Work. On copies of the Work purchased by the Author, no royalties will be paid to the Author, no credit or payment will be given for any copies returned to the Publisher, and the Author's purchases will be excluded in computing the number of copies sold as specified in Paragraph 3. The Publisher's usual and customary shipping charges will be added to the cost of copies purchased by the Author.

**7. Manuscript Preparation.** The manuscript will be deemed to be "complete and final" for purposes of this Agreement when (a) the revisions of the manuscript described in Paragraph 2 are completed; (b) the manuscript is in proper form for use by the copyeditor, in accordance with the Publisher's guidelines for manuscript preparation, including being double-spaced throughout every page (including quotations, references, notes, and heads); and (c) the manuscript includes the following materials: a title page; preface; acknowledgments; dedication; author's biographical statement; table of contents; list of tables, figures, and exhibits (if any); complete references; and complete and final copies of all illustrations, charts, diagrams, art work, forms, photographs, and other figures and exhibits (if any). If the Publisher and Author determine that an index to the Work is desirable, the Publisher will prepare or engage a third party to prepare the index in such manner as the Publisher deems appropriate, and the Publisher will pay the cost of preparing the index. If the Author and the Publisher decide to include illustrations, art work, figures, exhibits, and the like in the Work, the Author will deliver such materials with the final

manuscript, and any costs incurred by the Publisher in excess of \$2500.00 for preparing such materials for reproduction and publication will be charged against the Author's royalty account. In the event that the Author elects not to or fails to provide on a timely basis complete and final copies ready for publication of any manuscript materials, or in the event that developmental editing is needed to help revise the manuscript to make it complete and final and ready for copyediting, then the Publisher may elect to have these materials prepared or this work done by others, and the cost of such preparation and work will be charged against the Author's royalty account.

**8. Copyrighted Material and Permissions.** The Author agrees to obtain permissions covering all the rights granted in this Agreement for the use of any copyrighted material included in the Work; to submit written and complete copies of all permissions, in accordance with the Publisher's guidelines for permissions, with the complete and final manuscript when it is delivered to the Publisher; and to pay any permissions fees charged by the copyright holders or their agents, assigns or licensees.

**9. Copyediting and Proofreading.** The Publisher will have the right to edit the Work for the original printing and for any reprinting, and the Author will have the right to review and alter the editing so that the edited manuscript is reasonably and substantially acceptable to the Author. The Author will also have the right to review the typeset proofs of the Work, which the Author shall correct and promptly return to the Publisher. If the costs of the Author's alterations in the proofs (other than for correcting composition errors) or the costs of any composition or design work necessitated by the Author's changes in the proofs exceed 5% of the cost of composition, the excess amount will be charged against the Author's royalty account.

**10. Publishing Details.** The Author and Publisher will jointly decide the title of the Work and the copy on the front cover ("Cover") of the Work. The Publisher will consult with the Author and solicit the Author's advice and ideas concerning the design of the Cover as well as soliciting input from the Publisher's sales, marketing, design, and editorial representatives. The Publisher will take the lead in developing and refining the design of the Cover, and the Author and Publisher will jointly approve the final Cover design. The Publisher will also consult with the Author and seek the Author's advice and ideas concerning the trim size and format of the Work, the type of cover, the design and layout of the interior text, and the plans for marketing the Work through direct mail, bookstore and trade distribution, special sales, media reviews and publicity, and other marketing channels; the Publisher will have the right to make final decisions in these matters. The Publisher will also have the right to decide all other publishing details, including prices at which the Work is sold, discounts and other sales policies, and paper, printing, and binding details. The Publisher will not be liable to the Author for damages, if any, resulting from the loss or destruction of manuscripts, art work, electronic files, printer's files, or other materials connected to the publication of the Work.

**11. Revised Editions of the Work.** The Author agrees to revise the Work if the Author and Publisher agree that a revision is warranted. The provisions of this Agreement, including the schedule of royalties in Paragraph 3, will apply to each revision of the Work as though the revision were the Work being published for the first time under this Agreement, except that there will be no additional advance paid to the Author for any revised edition. If the Author is

deceased or unable to revise the Work, the Publisher may have the Work revised by others and charge the cost of such revision (up to a maximum of 50% of the royalties for the revised Work) against royalties due the Author for the revised Work and may display in the revised Work and in advertising the name of the person who revised the Work along with the name of the Author.

**12. Author's Warranties.** The Author warrants and represents that the Work is the Author's original creation, that the Author owns or is the authorized licensee of all rights granted under this Agreement, that the Author has full power and authority to copyright the Work and make this Agreement, that the uses of the Work authorized in this Agreement will not infringe any other person's copyrights or other proprietary rights, that the Work does not violate any privacy or publicity rights or contain any libelous or unlawful matter, and that all statements of fact in the Work are based upon deliberative research and to the best of the Author's knowledge are true. The Author agrees to indemnify and hold harmless the Publisher and its licensees against any damages or expenses, including reasonable legal fees, incurred in connection with the Author's breach of any of these warranties or with any third party claim, demand, or action arising out of such a breach (a "third party claim"). The Publisher will have the right to take the lead in defending any third party claim, and the Author will have the right to choose an attorney, to be paid at the Author's expense, to co-defend such a claim. Any settlement of a third party claim will be subject to the Author's approval, which will not be unreasonably withheld. If a third party claim is sustained in a court of competent jurisdiction or settled by common agreement between the Author and Publisher, the Publisher may withhold sums otherwise due the Author under this Agreement and apply them to the reduction of the Author's obligations under this Paragraph 12. The above warranties and indemnities will survive the termination of this Agreement.

**13. Right to Terminate Agreement.** The Author will have the right to terminate this Agreement after the Work is published if, for any reason, the Author is not satisfied, in the Author's sole judgment, with any aspect of the relationship with the Publisher or with the Publisher's performance in any aspect of publishing and selling the Work. To exercise this right, the Author must send the Publisher written notification of the Author's intention to terminate the Agreement, along with a statement of problems causing dissatisfaction. The Publisher will then have 6 months after receiving such notification to remedy the problems to the satisfaction of the Author, and if at the end of this period the Author continues to not be satisfied, the Author may send the Publisher written notice of termination, which termination of this Agreement will take effect 120 days after the Publisher receives such notification, unless there are any outstanding sums owed by the Author to the Publisher in connection with the Work at that time, in which case the termination will not take effect until such outstanding sums have been paid. The Author will also have the right to terminate this Agreement (a) if the Publisher fails to publish the Work within 12 months after receiving the complete and final manuscript from the Author, (b) if the Publisher fails to make any report of sales or payment pursuant to Paragraph 5, or (c) in the event that the Publisher files for bankruptcy or enters into a liquidation proceeding; in such cases, the Author must send the Publisher written notification of the Author's intention to terminate the Agreement, and termination will take effect 60 days after the Publisher's receipt of such notification unless the Publisher has remedied the problem justifying the termination during the 60-day period. The Publisher will have the right to terminate this Agreement if the Author does not fulfill the Author's obligations named in Paragraph 2, provided, however, that the

Author will be allowed a 9-month grace period in which to submit any delinquent materials before the Publisher may exercise this right; if the Publisher exercises this right after this 9-month grace period, the Author will promptly repay to the Publisher any advance payments and other sums paid to the Author under this Agreement. Either party may terminate this Agreement, effective 30 days after written notification of termination to the other party, if (a) the Publisher sends written notification to the Author of a decision to put the Work out of print, or (b) the work is available only in electronic or digital versions and/or in a print-on-demand format, and the Author's royalties and subsidiary rights income from the Work total less than \$100 in a single royalty accounting period. The parties' respective obligations to pay any sums owed to the other under the terms of this Agreement will survive any termination of the Agreement.

**14. Reversion of Rights to Author.** Upon termination of this Agreement pursuant to any of the provisions of Paragraph 13, all rights in the Work granted to the Publisher in this Agreement will revert back to the Author, provided that any license or contract previously granted to a third party as authorized by this Agreement will remain in effect, and the Publisher will continue after the termination to have the right to its share of the proceeds from any such licenses or contracts. In addition, the Author will have the option to purchase within 30 days of the notice of termination any remaining copies of the Work in inventory at 20% of the list price of the work and any remaining printer's files at 25% of the cost to produce them; if the Author does not exercise this right, the Publisher may dispose of these materials in any manner, without obligation to the Author.

**15. Dispute Resolution.** In the event of a dispute arising under this Agreement that the Publisher and Author are unable to resolve themselves, the Publisher and Author will first attempt to resolve the dispute through mediation, and, if that fails, the dispute will then be settled in binding arbitration before a single arbitrator in San Francisco, California, in accordance with the rules of the American Arbitration Association, and judgment upon the award may be entered in any court of law having jurisdiction thereof. In the event of arbitration, the prevailing party shall recover its reasonable legal fees and costs in an amount to be determined by the arbitrator.

**16. Legal Details.** This Agreement represents the entire Agreement between the parties regarding the Work, which they have equally bargained for, and it supersedes all prior negotiations, writings and agreements with respect thereto. Any modifications of the Agreement must be in writing and signed or initialed by both parties. This Agreement will be construed and interpreted according to the laws of the State of California and will be binding upon the parties hereto, their heirs, successors, assigns, and legal representatives. No waiver of any term or condition of this Agreement, or of any breach of this Agreement or of any part thereof, will be deemed a waiver of any other term or condition of the Agreement or of any later breach of the Agreement or of any part thereof.

**Accepted by Berrett-Koehler Publishers:**

---

**Accepted by the Author:**

---

Name

---

Social Security No. or Federal ID No.

---

Name to Whom Royalties Are to Be Paid

---

E-mail Address

---

Complete Address for Royalty Payments

To: Prospective Berrett-Koehler Authors

Re: Background on the Berrett-Koehler Publication Agreement

Fr: Steven Piersanti, President

There is more to the Berrett-Koehler publishing agreement than at first meets the eye. In keeping with the intention stated in our original business plan to "rethink the concept of the publishing company and create a new kind of publishing business," we have attempted to rethink the publication agreement between author and publisher. The publishing agreement defines, structures, and sets the tone for many aspects of the publishing relationship and business. Therefore, we have attempted to operationalize in the agreement our guiding philosophy that publications belong to the authors who create them, not to the publisher, and that our role is to be steward rather than owner of the publications. The resulting agreement, in the words of one observer, "creates incentives for both parties to contribute and do well, whereas most contracts are contingencies for when things go wrong, legal protection against foul-ups."

Our main objective is to create a more balanced and fair agreement -- one that is more of an equal partnership -- between the author and publisher. In my view, most publishing agreements today are grossly one-sided: the author has few rights and many obligations, while the publisher has many rights and few obligations. In attempting to remedy this inequity, we have tried to incorporate the requests that various authors have given to us, and we have inserted key provisions that are radical departures from what I have seen in any other publishing company's agreement. We are of course fully mindful of the need for the publisher to run a financially sound business (and we have taken the precaution of having several intellectual property attorneys as well as authors and agents review the agreement). But we believe that it is possible to balance the author's and publisher's needs and, indeed, that the changes we have made will in the long run result in a more sound and profitable business.

Among the distinctive provisions of the publication agreement are:

1. Perhaps the most radical provision is in Paragraph 13, wherein the Author is given the right to terminate the agreement "if, for any reason, the Author is not satisfied, in the Author's sole judgment, with any aspect of the relationship with the Publisher or with the Publisher's performance in any aspect of publishing and selling the Work." Our motivation in doing what one attorney told me "is going to blow away any attorney who looks at the agreement" is partly a sense that it is about time that publishers started doing what some of the best non-publishing companies have been doing for years: giving customers (in this case, authors) the right to terminate a transaction or relationship if the customers, in their own sole judgment, are not completely satisfied. But our bigger motivation is simply a personal sense that the current norm



-- wherein authors sign away the rights to their creations for life with little possibility of getting back their rights -- is not fair, particularly in this age when the people and even the companies with whom the authors originally signed their agreements are frequently no longer around several years later. Although I am not aware of any other publishing company offering such a right, I actually do not think it is too high of a risk, partly because there is a notice provision that will allow Berrett-Koehler to recoup some of its investment (in the event that an author does exercise this right) and partly because I believe the risk will be balanced by the competitive edge gained from the publisher's imperative to maintain a high level of performance to satisfy and keep authors instead of being able to fall back on contractual handcuffs.

2. In the spirit of giving authors more control over their creations, Paragraph 10 gives authors much more involvement than is normally the case in deciding the title of the book, the design of the cover and interior of the book, and other publishing details. This is something that many authors have indicated to us is very important to them. It is a direct departure from the common contractual language that allows publishers to impose a title and cover on a book that the authors don't want.

3. Similarly, the copyright is held in the author's name (not the publisher's name, as many publishers do).

4. The discounts for authors' purchase of copies of their books are much better than the author discounts in most publishers' publication agreements. And, unlike many publishers' agreements, there is no restriction on the authors' ability to sell copies themselves of their books to their clients, customers, or others.

5. We have eliminated the "bait and switch" clauses that are the stock of most agreements with regard to royalties. Authors think that they are getting one royalty, but when they read the fine print, they discover that the royalty rates are reduced by one third, one half, or even two thirds for many types of sales, including direct mail sales, advertising-generated sales, foreign sales, sales at a 50% or greater discount (which would include many or most wholesaler sales and special sales), and other categories of sales. Indeed, in many agreements, the only sales that are at the "regular" royalty rate are bookstore sales. A quite common provision is the following, specifying the "fine print" royalties of one of the major publishing houses: "5% for copies of any edition sold through the medium of mail order, coupon, space, radio, or television advertising, direct by mail circularization, or any other direct to consumer mail order methods; 10% for copies of any edition of the Work sold for export, or outside the United States, or at less than the established wholesale price."

6. The royalty rates go up to 20%, which is higher than many other publishing agreements go.

7. The number of free copies given to authors is much higher than the publishing industry norm.

8. The author does not pay for preparing the book's index, unlike many publication agreements.

9. The author does not pay for proofreading, unlike some agreements.

10. The common clause that the publisher will have the right to the author's next book or books has been deleted, in the view that the publisher should earn the right to publish the author's next book and the author should be free to make that choice rather than being locked in by the previous book's contract.

11. Also deleted is the competing works clause, which commonly states that the author will not furnish to any other publisher any work on the same subject that in the opinion of the publisher would conflict with the sale of the work. These clauses are often objectionable to authors and agents because they are so sweeping and intimidating.

12. Authors and agents typically ask for a "Reversion of Rights to Author" clause, and one that is favorable to the author is included, which includes frequently requested provisions to define when books are out of print and to return rights to the author.

13. Also included is another clause that authors and agents often request: "The Publisher acknowledges that the general ideas and concepts contained in the Work may be used by the Author in the normal course of the Author's day-to-day business, and the use of such general ideas and concepts in the Author's day-to-day business will not be deemed a violation of the Agreement."

13. Various other clauses and changes have been inserted that agents typically bargain for, to protect authors.

14. We also attempted to reduce the amount of jargon and to make the agreement easier to read and understand throughout.

Of course, you will also find a number of provisions that are in the publisher's favor in helping to run a sound and profitable business. Our major emphases in setting up Berrett-Koehler, besides the partnership and equity themes I have described above, are building into the basic business design (a) maximum flexibility and responsiveness; (b) strong, deeply ingrained, well-thought-out cash flow; (c) high value-added in the editing and production of publications; (d) aggressive, multi-channel sales and marketing strategies; and (e) low overhead and a very sound cost structure. All of these major emphases have been built into the publication agreement.

I welcome any ideas that you and others have about how the agreement can be further improved. I also welcome questions about any clauses in the agreement that you find unclear.