

SMALL PRESS UNITED DISTRIBUTION AGREEMENT

THIS AGREEMENT made as of this _____ day of _____, 2009 between

_____ with its principal office at

Telephone: _____; Fax: _____; E-mail: _____

(hereinafter called "Publisher") and Chicago Review Press, Incorporated, an Illinois Corporation with its principal office at 814 North Franklin St., Chicago, Illinois 60610 (hereinafter called "CRP").

CRP is the parent company of Independent Publishers Group, Small Press United, and Chicago Review Press Books. You can find more info about the company at www.ipgbook.com.

WITNESSETH:

WHEREAS, Publisher has published a book(s) entitled

_____ under its own name; and
WHEREAS, Publisher wishes to appoint CRP, through its Small Press United distribution program (hereinafter SPU) as its sole and exclusive distributor to the book trade for all editions, including digital editions, of the title(s) referred to above, and Publisher's existing and future titles, upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Exclusive Distributorship

Publisher hereby appoints SPU as its sole and exclusive distributor to the book trade (book retailers, wholesalers, book catalogs, book clubs, and libraries) during the term hereof, for the United States, its territories and possessions. SPU may utilize the services of subdistributors, as it, in its sole discretion, may determine. Publisher agrees that during the term of this agreement Publisher will not sell any copies of its books to the book trade as defined above, and will promptly forward any orders from such customers to SPU for billing and fulfillment. Publisher also appoints SPU its sole and exclusive distributor to Canada. From time to time SPU may sell Publisher's books in Australia, the UK, and around the world.

2. Services to be Performed by SPU and by Publisher

- (a) SPU agrees to perform at its sole expense the following services:
 - (i) Order processing and billing.
 - (ii) Maintaining and collecting accounts receivable.
 - (iii) Shipping of books and processing of returns; and
 - (iv) Listing Publisher's titles in SPU's database, from which sales materials are created, and which is transmitted regularly to major book retailers and wholesalers.
 - (v) Listing of Publisher's title(s) in such specialty catalogs, fliers, e-mails, and sell sheets as SPU, in its sole judgment, determines are appropriate.
- (b) Publisher shall perform at its sole expense and shall be solely responsible for:
 - (i) All publishing functions with respect to the titles distributed hereunder including, without limitation, receiving, recording, and returning of manuscripts;
 - (ii) Editing and copying;
 - (iii) Accepting or rejecting works for publication;
 - (iv) Negotiation and execution of publisher/author contracts;
 - (v) Copyright registration and renewal;
 - (vi) Manufacture of books (including plant, composition, paper, printing and binding) and all shipping costs arising from delivery of the books to SPU's warehouse.
 - (vii) Promotion and advertising;
 - (viii) List pricing of all titles;
 - (ix) Payment of author's advances and royalties;
- (c) Publisher agrees to promptly and accurately fill out and submit all information forms that SPU will send to Publisher for the purpose of producing the databases and sales materials in which the book will be featured; and further agrees that failure to do so may result in the forfeiture of the setup fee indicated below. The information will include, but not be limited to, the following:
 - (i) Title, author's name, ISBN(s), format, number of pages, list price;
 - (ii) Written information about book contents and author information;
 - (iii) Competitive title information;
 - (iv) Reviews of publisher's title(s) as they become available;
 - (v) Previous sales history detail report, if any;
 - (vi) Digital file of color book cover art at 300 dpi or higher
- (d) Publisher will inform SPU of any contemplated sale of rights of Publisher's books that could substantially affect SPU's distribution efforts, and will not conclude any rights sales that would in SPU's sole judgment substantially adversely effect sales of the books during the term of this agreement. Rights sales include the sale of the rights of the book to be published by another publisher in any format.
- (e) Publisher has the right to handle direct mail solicitation efforts, that is sales of the book to individuals approached through direct mail solicitation or coupon advertising; but Publisher shall also have the right pursuant hereto to request fulfillment of any such direct mail orders by SPU. In such event, SPU shall allow Publisher to use SPU's address and 800 ordering number in its advertising, and SPU will process such orders through its credit card processing system. SPU's service charge for handling these direct, prepaid sales shall be the same as for its sales to

book trade accounts; SPU shall bear the costs of the 800 calls and the credit card processing fees.

- (f) Publisher will arrange for the delivery, to the SPU warehouse, of the number of copies of Publishers title(s) initially requested by SPU and also such additional copies as SPU determines from time to time are needed for on going sales. URWku'pqv'qdrki cvgf "vq'tgekgxg'Rwdrkuj gt)u'gpvktg" kpxgpvqt {.'cpf 'y knluqrn{ 'f gygtto kpg"vj g'pwo dgt"qh'wpku"vq"dg"uj kr r gf "vq"URWOPublisher must follow the instructions for labeling each shipment that are posted on the Small Press United website and that will from time to time be updated. For all titles that Publisher decides to offer in digital format, Publisher will also send to SPU a digital copy of its title(s) which SPU may use to sell copies to digital or e-book resellers.

3. Schedule of Service Charges and Reporting Procedures

- (a) Service charges for services rendered hereunder, Publisher agrees to pay SPU, and SPU agrees to accept service charges calculated in accordance with the provisions of this Section, as follows:
- (i) For all regular sales hereunder, SPU's service charge will be 30% of net billings. For the purpose of this agreement, "net billings" shall be defined as gross billings invoiced by SPU pursuant hereto excluding shipping charges, less returns credited by SPU pursuant hereto. For sales of digital or e-book copies, the service charge will be 20% of net billing.
 - (ii) Publisher shall be charged at the rate of 10% of the amounts credited for all returns. Returns will be handled by SPU pursuant to its regular returns policy, it being understood, however, that the enforcement of such policy is subject to ordinary considerations of industry practice, based upon such necessary factors as maintenance of goodwill with booksellers. Enforcement of returns policy shall be solely at SPU's discretion.
 - (iii) For inclusion of a Publisher's title in the Small Press United database and sales materials, Publisher will pay SPU a one-time set up charge of \$200.00 for the first title included, due on signing of this agreement. All titles listed will include a color image of the book cover or jacket, complete specifications, and descriptive copy and author information produced by the SPU staff from the information provided by Publisher. Publisher's title will also be included in order forms and other material provided by SPU to its sales reps.
 - (iv) If the Publisher requires stock to be transferred from the SPU distribution center to the Publisher's own offices, the charge will be \$1.00 per copy (or a maximum of \$4.00 for quantities up to the full carton count), \$4.00 per carton, or \$50.00 per skid on single titles that can be shipped in their original cartons, plus freight charges. If a publisher would like for us to ship some of their books back to them, we will do it at these costs. This is not a money making venture for SPU but a service to its clients.
 - (v) On orders invoiced by Publisher to be shipped by SPU to third parties, SPU shall be entitled to charge Publisher 10% of the invoiced amount plus freight charges. Publishers can ask SPU to ship books to their customers outside of the book trade, such as a doctor's office or specialty retailer that doesn't normally carry books. The publisher is responsible for the billing but will send SPU shipping information.

- (vi) If publisher wishes SPU to send our review copies, the charge for this service will be \$2.00 per copy plus postage.
 - (vii) In the event Publisher shall at any time be indebted to SPU due to excessive returns of Publishers books, which may occur from time to time and is not uncommon in the book publishing industry, or due to sales activity that does not generate enough revenue to cover storage charges, SPU may request payment from Publisher. If payment is not received in thirty (30) days, SPU shall have the right to recoup or setoff such indebtedness from any money payable to Publisher hereunder or from any property of Publisher, including copies of titles, in SPU's possession. From time to time publishers don't follow through on the PR and promotion they have indicated would happen on a title, or a title just doesn't sell as much as expected. SPU uses every effort not to oversell a book but occasionally more books come back than go out for a period of time.
 - (viii) There will be no storage charges for Publisher's stock except if the quantity in the SPU warehouse exceeds the copies needed for any title to fill orders anticipated in the coming six (6) months. The quantity needed for six (6) months shall be the number sold the previous six (6) months. The storage charge for copies greater than needed for six (6) months shall be \$0.03 per month per unit.
 - (ix) Obligatory advertising charges such as are now required by Amazon, and such others as may in future be required, will be deducted from amounts owed publisher, and SPU will have the authority to direct how such obligatory advertising charges are used in regard to specific advertising programs. Books that come up on the top of searches at major online book retailers are often at the top due to the retailer's coop advertising arrangements with the publisher.
 - (x) Publisher agrees to become a member of the Independent Book Publishers Association, and to remain a member of that organization so long as this agreement remains in force. Your set up fee will include a membership to IBPA if you are not already a member.
- (b) Reporting and Payment Procedures
- (i) SPU will render an accounting of sales, which may be accessible to Publisher exclusively in an electronic format, within ten (10) days after each month in which sales are made. Any obligatory advertising fees charged by customers to SPU will be passed through to Publisher. SPU will remit the net amount of such sales within one hundred and twenty (120) days of the rendering of such accounting, less a reasonable amount, not to exceed 20% of monthly gross sales, to create a reserve to cover anticipated returns. If the amount owed is less than \$50.00, payment will be withheld until such time as the amount owed is over \$50.00. Payment will be made electronically to Publishers bank account.
- (c) If a major customer defaults
- (i) If Barnes & Noble, or Borders, or Books-a-Million, or Ingram, or Baker & Taylor files a petition in bankruptcy, or a petition for arrangement, or a petition for reorganization; or an order is entered directing the liquidation of any of these customers as in bankruptcy; or an assignment for the benefit of creditors is ordered; then in any of such events to the extent that SPU is not paid in full for Publisher' books shipped to such a customer, the

amount owed to Publisher by SPU will be limited to the historical printing cost of the books not paid for rather than the amount invoiced by SPU for such books.

4. Publisher's Representations, Warranties and Agreements

As a continuing inducement to SPU to enter into this Agreement and to perform its obligations hereunder, Publisher represents, warrants and agrees as follows:

- (a) Publisher is a _____ (type of business) duly organized and validly existing in good standing under the laws of the State of _____ and has the power to own its properties and carry on the business presently being conducted by it.
- (b) The execution and performance by Publisher of this Agreement has been duly authorized by all necessary corporate action and will not violate any law, rule, regulation, order, right, judgment, decree, determination, or award presently in effect having applicability to Publisher or result in a breach of or constitute a default under any agreement or instrument to which Publisher is presently a party or by which Publisher or its partners, employees, or property is bound.
- (c) Publisher has the right to publish all material published and distributed pursuant to this Agreement; all such material will be protected by copyright to the extent copyright is available, and will not, in whole or in part, infringe any copyright, or violate any right of privacy or other personal property right or contain any libelous, scandalous or obscene matter, or matter otherwise contrary to law or in violation of the rights of any third parties.
- (d) Publisher accepts that its publicity and PR efforts in support of its title(s) are crucial to its (their) success, and understands that SPU's efforts to market any title must be proportional to that publicity and PR effort, the adequacy of which will be determined by SPU's sole judgment; and further Publisher holds SPU harmless from any allegation or claim that SPU did not use its best efforts, or did not perform any duty arising from any provision of this agreement, or meet any supposed standard or custom of the book trade, to market Publisher's title(s).
- (e) Publisher shall indemnify SPU against, and shall hold SPU harmless from, any loss, cost, expense (including reasonable attorneys' fees), or damage occasioned by the claim, demand, suit, settlement (if made with Publisher's consent which will not be unreasonably withheld) or recovery arising, without limitation, from any breach, or alleged breach of any of Publisher's representations, warranties, or agreements as herein set forth.

5. SPU's Representations, Warranties, and Agreements

As a continuing inducement to Publisher to enter into this Agreement and to perform its obligations hereunder, SPU represents, warrants and agrees as follows:

- (a) SPU is a subsidiary of CRP, a corporation duly organized and validly existing in good standing under the laws of the State of Illinois and has corporate power to own its properties and carry on the business presently being conducted by it.

- (b) The execution and performance by SPU of this Agreement has been duly authorized by all necessary corporate action and will not violate any law, rule, regulation, order, right, judgment, decree, determination, or award presently in effect having applicability to CRP or any provision of its Certificate of Incorporation or By-Laws or result in a breach of or constitute a default under any agreement or instrument to which it is presently a party or by which it or its officers, employees, shareholders, or property is bound.
- (c) SPU shall indemnify Publisher and hold Publisher harmless against any and all cost, expense (including reasonable attorneys' fees) or damage occasioned by the claim, demand, suit, settlement (if made with SPU's consent which shall not be unreasonably withheld), or recovery arising out of any misrepresentations by SPU or its agents or employees in any advertising or promotional activities, unless such misrepresentations are based on material or information supplied by Publisher to SPU pursuant hereto.

6. Duration and Termination of the Agreement

- (a) This Agreement shall be effective upon execution by both parties, shall extend for an initial period of one year, and shall renew automatically each year thereafter, subject however, after the initial one year period, to termination by either party giving six (6) months written notice to the other. SPU will accept returns for six (6) months after the termination of this agreement, at which time SPU will prepare an accounting of the credits issued and the return processing fees charged by SPU and monies due either party shall be paid by the other party within thirty (30) days of the rendering of this accounting, depending on the adequacy of the reserve withheld. At termination, SPU will coordinate the transfer of inventory to the party or parties designated by Publisher. The cost of shipping will be Publisher's expense.

7. Miscellaneous Provisions

- (a) Title to Works

Title to Publisher's book distributed by SPU pursuant hereto shall be and remain in Publisher, subject however to SPU's setoff right as set forth in subsection 3(a)(vii) hereof. Except as provided above, all copies placed in SPU's warehouse by Publisher will be on consignment to SPU. Publisher shall be solely responsible for insuring its stock consigned to SPU, and Publisher waives any claims that Publisher or any insurance carrier or other party with rights of subrogation could have against SPU arising out of SPU's obligations under this Agreement.

Publisher agrees to allow SPU to take from stock at no charge as many as fifty (50) copies of each of Publisher's titles to be used as salespersons' samples and samples to key buyers, or one hundred (100) copies if the title is determined by SPU to have sales potential in the gift trade market, and SPU shall not be responsible for normal inventory shrinkage. In the event that the quantity of copies on hand in the SPU warehouse of Publisher's title exceeds, based on any previous six (6) months total sales, the quantity required by SPU to fill orders for the next six (6) months, SPU may at its sole discretion return the excess copies to Publisher at Publisher's expense.

(b) SPU's Right to Refuse to Distribute

SPU reserves the right, to be exercised at any time and from time to time, to refuse to perform services as set forth herein for any given title if advised to do so by counsel by reason of risk of liability or litigation against it, or by reason of the material breach by Publisher of its representations and warranties as set forth in Section 4 hereof.

(c) Arbitration

In the event of any dispute under this Agreement arising between or among the parties, either party may request the other party to agree to submit such dispute to arbitration in the City of Chicago in accordance with the then current rules of the American Arbitration Association. Absent an agreement to arbitrate, exclusive jurisdiction for the determination of any such dispute solely between or among parties to this Agreement is hereby vested in the Circuit Court of Cook County, Illinois, or at the election of either party if the jurisdictional prerequisites at the time exist, in the United States District Court for the Northern District of Illinois, and each party hereto agrees to submit to the jurisdiction of either such court in the City of Chicago and State of Illinois for the determination of any such dispute, and hereby consents (in addition to service of process by any other means provided at the time by law) to services of process on it by certified mail, first class postage prepaid, return receipt requested, addressed to the defendant named in such process at the address to which notices may be given pursuant to subsection 6(e) of this Agreement, and that notice by mail so given shall be deemed to confer jurisdiction upon such court.

(d) Litigation and Right to Defend

Each party hereto shall give to the other prompt written notice of any suit, proceeding, claim, or demand brought, made, or threatened against it on the basis of or in connection with Publisher's books distributed under, or other matters set forth in, this agreement. If any such suit, proceeding, claim, or demand is brought or made, SPU may elect (a) to undertake the defense thereof through counsel of its choosing, or (b) to notify Publisher to undertake the defense. If SPU does so notify Publisher, Publisher shall undertake such defense; and in such case SPU may, at its option, join in the defense. In either case, the costs and expense of any defense shall be borne by Publisher, and Publisher shall hold SPU harmless against any loss, liability, damage, cost, or expense (including without limitation, reasonable attorneys' fees) finally sustained.

(e) Notices

All notices, demands or requests required or permitted to be given or made upon SPU or Publisher hereunder shall be deemed to have been duly given or made when delivered to the party to be notified or mailed to said party by registered or certified mail, return receipt requested, postage prepaid, in the case of SPU to:

Chicago Review Press
814 North Franklin St.
Chicago, Illinois, 60610

and in the case of Publisher to:

Name: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
E-mail: _____

or at such other address as said party shall have designated in a written notice to the other party.

(f) **Laws Applicable to Agreement**

This Agreement shall be construed in accordance with the laws of the State of Illinois. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(g) **Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(h) **Waivers Are Not Cumulative**

No waiver of any term or condition of this Agreement, or of any breach of this Agreement or of any part thereof, shall be deemed a waiver of any other term or condition of this Agreement or of any later breach of this Agreement or of any part thereof, nor shall distribution or continued distribution of any title by SPU following notice or claim of facts that, if true, would constitute a breach of any warranty, representation or agreement of Publisher, constitute or imply any waiver by SPU of any defenses, rights, or remedies of SPU.

(i) **Entire Agreement**

This Agreement constitutes the entire agreement, supersedes any and all prior agreements and understanding between SPU and Publisher with respect to the subject matter hereof, may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and may be modified only by an instrument in writing signed by the duly authorized representative of both parties."

SAMPLE AGREEMENT ONLY. NO SIGNATURE AREA PROVIDED. YOU WILL RECEIVE THE OFFICIAL AGREEMENT (EXACTLY THE SAME, MINUS THE ITALIC TEXT) AND A SPACE WILL BE PROVIDED FOR YOUR SIGNATURE.
