

# Author-Publisher Agreement

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Prepared this **eleventh** day of A.D. **2011** between

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as author and The Regents of the University of Michigan for the University of Michigan Press (“the Press”) as publisher.

This is the Agreement to publish a Work tentatively titled

## **Writing History in the Digital Age**

This Agreement specifies your responsibilities as author and ours as publisher. Fundamental to this contract is our pledge to do our best to publish this title to your satisfaction and at the same time make it available to as many readers as possible, both in the United States and abroad.

## **Rights Granted**

**1. Copyright.** You shall retain the full copyright in the Work in your name with authorization to the Press to register the Work in the United States and elsewhere as such. The retention of copyright notwithstanding, you grant and transfer to the Press the exclusive right to publish or allow others to publish the Work in all forms, languages, and media throughout the world during the full term of the copyright. This transfer of rights includes:

- (a) publishing and / or licensing publication of the Work in a hardcover and large-print edition;
- (b) at our option publishing and / or licensing publication of the Work in a paperbound and large-print edition;
- (c) publishing or licensing publication of translations of the Work;
- (d) granting permission for use of material in the Work (as is or in digested, abridged, condensed, or adapted form), except insofar as already copyrighted by others;
- (e) licensing publication and production of a book club edition of the Work by book clubs;
- (f) licensing publication or distributing the Work or portions thereof in digitized or audio-visual media or in other media or forms not yet invented;
- (g) serializing excerpts of the Work at any time before or after publication; and
- (h) licensing motion picture, dramatization, radio, and television rights.
- (i) licensing the Work electronically through the Attribution Non-Commercial No Derivatives (“by-nc-nd”) Creative Commons license.

The Press shall have the right to license any or all of these rights, directly or through an entity such as the Copyright Clearance Center, and we shall have the right to grant to the Library of Congress a nonexclusive license to reproduce the Work in Braille (or similar tactile symbols) or in audio form for distribution solely to persons with visual or physical disabilities.

**2. Author's Warranty.** You guarantee

- (a) that for the purpose of this Agreement you are the sole author and owner of the Work and have full power to make this Agreement; and
- (b) that the Work contains no matter that is libelous, injurious, or otherwise unlawful or that infringes any literary or proprietary right, copyright, or any right of privacy.

**3. Edited Volumes and Anthologies.** You will bear responsibility for editorial duties associated with a collected work including securing and submitting to the Press, in a form provided by us, a letter of agreement signed by each contributor transferring to the Press the right to publish the material as provided in Paragraph 1. In the case of previously published material, you will secure written permission to publish those works and submit the permissions to us.

- (a) The Author and the Press agree that the Press may, at its sole discretion, distribute the Work to the World, in electronic format, in whole or in part, via a by-nc-nd Creative Commons license. The Author acknowledges that such distribution will not yield revenue or royalties to either the Press or the Author.

## **Publisher's Commitment**

**4. Publication and Promotion.** Upon the approval of our Executive Committee, and upon receipt of the manuscript prepared to our specifications, the Press agrees to publish and promote the Work at our expense within a reasonable time, under the digitalculturebooks imprint in a paperback and online edition. The online edition will be distributed via a Creative Commons Attribution Non-Commercial No Derivatives (by-nc-nd) license. You shall be consulted on decisions regarding the production of the Work (including jacket or cover design, interior design, typography, and all other design elements), The Press shall have sole discretion regarding the establishment of the list price, and the marketing activity (including advertising, review copy distribution, and all other promotional activities). Nevertheless, we value and welcome your suggestions on all of these matters.

**5. Author's Copies and Discount.** The Press agrees to supply each you with **one (1) copy** of the hardcover edition and **five (5) copies** of any subsequent paperback edition and **one (1) non-transferable copy** of the e-book edition in Adobe Digital Editions or similar format for personal, non-commercial use. We further agree to sell to you additional copies of the Work, provided these are not for resale, at a discount of 40 percent from the list price.

**6. Royalties.** The Press agrees to pay you royalties on net sales revenue according to the following terms:

(a) *On sales in the U.S. of the hardcover edition of the Work:* **zero percent (0.0%)** of sales revenue on all copies sold.

(b) *On sales in the U.S. of any paperbound edition of the Work (whether published alone, simultaneously with, or subsequently to the hardcover edition):* **zero percent (0.0%)** of sales revenue on all copies sold.

(c) *On sales in the U.S. of any digitized, audio-visual, or other non-book edition of the Work (whether published alone, simultaneous with, or subsequent to the first book edition):*

For all e-book formats: 0%;  
for downloadable audio: 0%.

A royalty rate for additional formats to be mutually agreed upon via an addendum to this contract will be produced at the time of the project's approval.

(d) *On sales of the Work in any print edition sold outside the U.S.:* one-half of the royalty rate as defined in sections 6(a) or 6(b) above.

(e) *On sales of the Work in any edition sold in the U.S. during a royalty period in which sales of that edition fall below 25 copies:* one-half the royalty rate as defined in sections 6(a) or 6(b), above.

(f) *On sales of the Work in any edition to a co-publisher:* one-half royalty rate as defined in sections 6(a), 6(b), or 6(c), above.

(g) *On subsidiary rights:* Percentage of actual receipts as follows:

|   |     |
|---|-----|
| Licensing the manufacturing of a co-publication, cloth, paperback and large-print edition             | 50% |
| Licensing a translation   | 50% |
| Granting permission for the authorized reproduction and quotation of excerpts of material in the Work | 50% |
| Licensing publication and production of a book club edition by a book club                            | 50% |
| Licensing distribution in digitized or other media  | 50% |
| Serializing before publication  | 50% |
| Serializing after publication   | 50% |
| Licensing dramatizations and performances   | 75% |
| Licensing motion picture, radio, and television rights  | 75% |

(h) *On sales of Publisher produced copies of the Work to a book club:* the royalty rate as defined in 6(a) and 6(b).

(i) Distribution of the Work under a Creative Commons license does not yield revenue and, therefore, no royalties shall be passed along to the Author. For the sake of clarity, distribution of the Work under a Creative Commons license is not considered part of the "sales" or "subsidiary rights" described above in this Section 6.

**7. Statements and Payments.** The Press agrees to render semiannual royalty statements and payments in the months of June and December. The June statement will cover sales of the Work and sale or lease of other rights in the Work from October 1 through March 31 and the December statement will cover from April 1 through September 30. If at the end of one of these periods we owe less than fifty dollars, payment shall be deferred until the next period, unless it is a final statement or payment.

## Handling the Manuscript and Proof

**8. Preparation and Delivery of the Manuscript.** You agree to prepare the manuscript according to our specifications and to deliver to the Press on or before **March 1, 2012** one copy of a complete, legible manuscript of the Work. The manuscript shall consist of no more than **90,000 words, 350 pages** and **7 illustrations**. You further agree to provide the manuscript on disk in a standard format, and any materials for photographs, illustrations, charts, maps, tables, or other supporting material in a form suitable for reproduction.

**9. Permissions.** You agree to obtain full written permission for the reproduction or quotation of all material contained in the Work, whether textual or graphic, which is beyond Fair Use and is protected by existing copyright. You agree to submit the letters granting permission when you submit the manuscript and to bear responsibility for all permission fees. It will also be your responsibility to send copies of the Work to all grantors of permission if they so request.

In order to protect copyright fully in the Work, you agree to obtain a written document from any person whom you hire to make illustrations, maps, charts, index, or other supplementary material stating that such work was "work made for hire" and to submit such document to us before publication of the Work.

**10. Insurance.** The Press pledges to take all reasonable precautions with any manuscript, illustrations, or other material that you place in our hands. Nevertheless, it is mutually agreed that we shall not be insurers of the safety of the manuscript of the Work, or of the illustrations or other materials used in connection with the publication of the Work. You agree to retain a duplicate copy of your manuscript. If there are any unique or especially valuable materials in your manuscript, you must provide us with a detailed description, including value, along with written confirmation that such material is properly insured.

**11. Copyediting.** You authorize the Press to make the manuscript conform to the style that we believe most suitable for the Work, but we are not free, in the process of copyediting, to make substantive changes that do not meet with your written approval. Should we find it necessary to retype, extensively edit (aside from routine copyediting), or redraw material in the manuscript, this work shall be performed by us and charged to you.

You agree to review the edited manuscript and return it to the Press promptly according to the direction of the editing department. You agree to make no change of style or substance in the Work subsequent to this review. If the edited manuscript is not returned to the Press by the designated date, we reserve the right to assume your approval and proceed with production. If so required, you agree to provide us with computer disks of the Work that incorporate all copyediting changes and are identical in all respects to the final version of the Work.

**12. Proofs and Alterations.** The Press will send you proofs of the Work, which you agree to read, correct, and return by the date determined by the copyediting department. You agree to pay the cost of any alterations, except those owing to the editor's, compositor's, or printer's errors, in excess of either 5% of composition or one correction per five book pages, and we agree in turn to notify you when it becomes apparent that you are likely to incur such charges. Charges for excess alteration will be paid in full within 90 days unless we agree to deduct these charges from future royalties. Should you have any question as to the extent of these excess alterations, we agree to

present corrected proofs for inspection if requested in writing within three months of the Work's publication.

**13. *Index.*** If we consider an index necessary, you agree to prepare or have prepared at your expense an index to the Work in a form satisfactory to us and to return it by the date agreed upon. This expense cannot be deducted from royalties.

## **Future Works by the Author**

**14. *Revised Editions.*** You agree to correct or revise the first and subsequent editions of the Work at your own expense and to supply upon our written request any material we deem necessary to keep the Work up to date. If you neglect or are unable promptly to make such revision or to supply such new material, you permit us to engage another person or persons to do so and to deduct the resulting expense from royalties accruing to you on the revised or corrected editions.

**15. *Competing Works.*** You agree that while this Agreement remains in force you will not without our written permission publish any other book-length version of the Work that will compete with the sale of this Work.

## **Termination and Resolution**

**16. *Duration and Termination of Agreement.*** This Agreement shall continue for the duration of the copyright on the original and all subsequent editions, subject to conditions agreed upon for earlier termination, as set forth below. In all cases, this Agreement can only be terminated by written notice. Such termination is effective immediately.

(a) The Press shall have the right to terminate this Agreement if you have violated either of the conditions of the author's warranty (clause 2). Moreover, you agree to reimburse the Press for all amounts it becomes legally liable to pay or has agreed to pay with your consent, as well as reasonable costs of defending against such claims. You hereby authorize the Press to defend any and all suits and proceedings that may be brought against us on these grounds.

(b) The Press shall have the right to terminate this Agreement if you fail to inform us of any arrangement to publish the Work in any form, in whole or in part, prior to publication by us. You agree to make no such arrangement without our consent while this Agreement remains in force.

(c) The provisions regarding form and content of the manuscript of the Work, including provisions for your prompt return of the edited manuscript and review of proofs, are material terms of this Agreement. If you fail to comply with any of these provisions, or any other provisions of this Agreement which we consider to be material, we may, at our option, terminate this Agreement.

(d) If you are unable to deliver a manuscript to us by the date set out in clause 8, you agree to notify us in writing. If we are unable to agree on a new delivery date, we may, at our option, terminate this Agreement. You shall not be free, however, to submit the Work elsewhere until it has been offered again to the Press. Furthermore, if you are unable to deliver a manuscript to us by the date set out in clause 8, we reserve the right to renegotiate all royalty rates for the Work.

(e) If the Author delivers a manuscript or related materials, either of which the Press deems, in its sole discretion, to be unsatisfactory in either form or content, or the Author does not deliver the related materials by the agreed due date, then the Press may, at any time thereafter, serve a written notice upon the Author requiring the Author to deliver a satisfactory manuscript or to make revisions in the manuscript previously submitted or to deliver satisfactory related materials. The Press will give the Author a reasonably detailed written description of the ways in which the manuscript is unsatisfactory. The Author will have 60 days in which to respond in writing to address the objections and propose a solution. The Press reserves the right to final judgment regarding acceptability.

(f) You shall have the right to request termination of this Agreement if after three years following the date of publication of the Work we fail to keep the Work available for sale in any format and do not make it available within six months following your written request to us to do so. Within sixty days of receiving such notice to terminate, we shall make any PDFs in our hands available to you for purchase at 50 percent of their original cost of manufacture and shipping, and we shall make any bound copies or unbound sheets remaining in our hands available to you for purchase at the cost of manufacture and shipping. In the printing from the PDFs, or in the sale and distribution of the stock, you shall not use the name of the Regents of the University of Michigan or its Press. If you fail to exercise this option to purchase within sixty days of receiving cost information from us, we shall be free to destroy or otherwise dispose of the PDFs, bound copies, or unbound sheets without payment of royalty.

(g) The Press shall have the right to terminate this Agreement after three years from the date of publication of the Work. You shall have the right within ninety days from the date of such notice to purchase the remaining stock at the Press unit cost at the value set forth in the preceding paragraph, and with the same restriction regarding use of the name of the Regents of the University of Michigan or the University of Michigan Press.

(h) The Author and Press both acknowledge that post-termination distribution of the Work may persist under the by-nc-nd Creative Commons license under the terms of that license.

Upon termination of this Agreement, and upon your written request, we shall assign the copyright for the Work to you, but you must register the assignment with the Library of Congress. All existing rights granted to us under this Agreement, except those rights we have previously granted to licensees, shall then revert to you.

**17. *Transfer.*** No transfer of this Agreement shall be binding upon either party without the advance written consent of the other.

**18. *Heirs and Assigns.*** It is agreed between us that the provisions of this Agreement shall be binding upon you and your legal representatives, heirs, and assigns, and upon us and our successors and assigns, except as otherwise provided by federal copyright law.

**19. *Notification.*** All notices, approvals, requests, or other communications that may be proper or necessary for the termination of this Agreement shall be served in writing either by personal delivery or by registered or certified mail and become effective immediately. We shall mail all royalties and notices to you at the address listed on page one of this Agreement unless we receive your written notification of a change of address. All communications from you in connection with

this Agreement should be directed to **Thomas Dwyer, his successor**, or the Director of the University of Michigan Press.

**20. Law and Liability.** Regardless of where this Agreement is executed, it shall be interpreted under the laws of the State of Michigan. In the event of any suit arising from publication of the Work, neither the signatories nor agents of the Regents of the University of Michigan whose signatures are affixed to the Agreement, nor the Regents of the University of Michigan, in their individual capacities, shall in any manner, individually or collectively, be liable for any damage to anyone. Any suit or claim hereunder shall be filed against the Regents of the University of Michigan in a corporate capacity as duly provided by the law of the State of Michigan.

**21. Surviving Rights and Obligations.** The warranties, representations, and indemnities as outlined above shall survive the termination or expiration of this Agreement.

### **Additional Provisions**

**22. Advance Contract.** Publication of the Work by the Press is conditional upon approval by the Executive Committee of the University of Michigan Press. The decision to approve will be made after review of the manuscript by the University of Michigan Press or its readers.

This Agreement represents the whole, full, and complete Agreement by and between the parties; and no amendments, changes, additions, deletions, or modification to or of this Agreement shall be valid unless reduced to writing, initialed by the parties, and attached hereto. This Agreement will become a contract when and only when it has been approved by the duly authorized officers of the Regents of the University of Michigan.

If these terms are satisfactory to you, please sign the original and all copies and return them to the Press for counter-signature. One copy will then be returned to you.

Author

\_\_\_\_\_  
**John A. Dougherty, aka Jack Dougherty**

Date \_\_\_\_\_

Author

\_\_\_\_\_  
**Kristen Nawrotzki**

Date \_\_\_\_\_

Approved for the Regents of the University of Michigan

By \_\_\_\_\_

**Philip Pochoda**, Director  
The University of Michigan Press

Date \_\_\_\_\_

**Contract Number 2011-4786868**

**Writing History in the Digital Age**

Author

**John A. Dougherty, aka Jack Dougherty**

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