



UNIVERSITY of HOUSTON



Arte Público Press Publishing Agreement

This Publishing Agreement ("Agreement") is made \_\_\_\_\_, between the University of Houston for and on behalf of Arte Público Press, 4800 Calhoun, Houston, Texas 77204-2090, ("Publisher"), and \_\_\_\_\_, ("Illustrator"), whose address for notice is \_\_\_\_\_, concerning the publication of the "Work" provisionally entitled:

" \_\_\_\_\_ "

1. Nature of Agreement

- a. Delivery of Illustrations. Illustrator agrees to deliver to Publisher completed sketches of the Work for consideration by Publisher as provided in Section 2 on or before \_\_\_\_\_ and final art on or before \_\_\_\_\_, (the "Delivery Date").
b. Acceptance for Publication. Publisher agrees to accept Work for publication provided that (i) the completed illustrations are delivered by the Delivery Date and (ii) the illustrations are satisfactory in form and content to Publisher and otherwise complies with the terms and provisions of this Agreement.
c. Grant of Rights. Subject to the terms of this Agreement, Illustrator hereby grants, transfers and assigns to Publisher, for the duration of the copyright in each territory granted, the following exclusive rights:
(1) to publish Work in hardcover and/or soft-cover book form in all languages, including without limitation, the English language, and throughout the world, including without limitation, the United States of America, its dependencies and territories, the Republic of the Philippines, and Canada;
(2) to publish, use or adapt Work or any part of Work for sale, distribution or other exploitation, in print or through any other form or technology whether now known or invented in the future;
(3) to license third parties to publish, use or adapt Work, or any part thereof, for sale, distribution or other exploitation in print or through any other form or technology whether now known or invented in the future.

In the event that any territorial rights may hereunder be affected by changes in existing laws, market arrangements or otherwise, said changes shall not prevent the continuance of this Agreement in full force and effect, and appropriate adjustments in the grant of territorial rights shall be modified to reflect the agreements between Illustrator and Publisher as set forth herein.

- d. Illustrator's Compensation. As consideration for Illustrator's transfer of rights in Work under Section 1.C., Publisher will pay Illustrator compensation, based on its exercise of those rights, as follows:
(1) Advance. As an advance ("Advance") against Illustrator's anticipated earnings and royalties from Publisher's publication of Work pursuant to this Agreement, Publisher shall pay Illustrator \$ \_\_\_\_\_, \_\_\_\_\_, which shall be payable fifty percent (50%) upon delivery of approved sketches and fifty percent (50%) upon delivery of approved final art. "Publication" for the purpose of this paragraph shall occur when Work is released by Publisher in any form to the public.
(2) Royalties. Publisher shall pay Illustrator royalties on copies of Work sold by Publisher as follows:

- a) **Hardcover and Soft-cover.** On hardcover and soft-cover trade editions sold by Publisher the amount equal to \_\_\_\_\_ percent (\_\_\_%) of the net amount received by Publisher (as defined herein).
- b) **Other Publication or Use.** On the following items sold by Publisher, an amount equal to \_\_\_\_\_ percent (\_\_\_%) of the net amount received by Publisher under such license or grant:
- i. first serial publication rights in a magazine or newspaper before publication of a trade edition;
  - ii. dramatizations or adaptations of Work on the stage, via motion picture, radio, and television or for home video (including, but not limited to CDs, DVDs, films, animated films, video cassettes, and video disks);
  - iii. dramatizations or adaptations of Work via audio recordings;
  - iv. commercial exploitation;
  - v. book club and mail order continuity series;
  - vi. reprint editions, including, but not limited to, large print, hardcover and soft-cover;
  - vii. second serial publication in a magazine or newspaper after publication of the trade edition;
  - viii. abridgment and condensation;
  - ix. photocopies or permission to photocopy Work;
  - x. electronic, computerized or online editions or rights in all formats which use all or part of Work (including, but not limited to, programmed instructions, software, databases, videotext, teletext, information storage and retrieval systems and all other technology now known or to be invented in the future); and
  - xi. the sale in other languages through translation.
- It is understood and agreed that Publisher is authorized to include first and second serial rights in other languages as part of its licenses for translated editions.
- c) **Promotional Copies.** No royalty shall be due Illustrator on copies for promotional purposes.
- (3) **Other Rights.** Illustrator agrees to give Publisher the exclusive first opportunity to consider purchasing additional publishing or sublicensing rights to Work not specifically stated in this Agreement. The parties agree to negotiate in good faith in an effort to agree on mutually acceptable terms for such rights. If the parties are unable to so agree on or before the sixtieth (60th) day following the date the rights were offered in writing to Publisher, Illustrator shall be entitled to offer such rights to other publishers; provided, that in the event Illustrator shall receive a bona fide offer or reach an agreement for the purchase of such rights, Publisher shall have an exclusive right of first refusal to acquire such rights on the same terms as set forth in such bona fide offer or agreement for a period of sixty (60) days after Publisher receives written notice setting forth the terms of such offer or agreement.
- (4) **Definitions of the Net Amount Received.** The “net amount received by Publisher” as used in this Agreement shall mean gross revenues actually received by Publisher for sales of Work, less any of the following charges applicable to any such transactions: (1) appropriate credits and trade discounts given to the customer or rebated by Publisher; (2) foreign agents’ commissions

paid by Publisher; (3) reasonable reserves or deductions for returns, and (4) any other amounts or charges set forth herein.

2. **Preparation of Work: Review and Acceptance by Publisher**

a. **Delivery Date.** Illustrator and Publisher have entered into this Agreement in reliance on the Delivery Date and in anticipation that Work will be satisfactory in form and content to Publisher. Any change in the Delivery Date must be agreed to by both parties in writing. The parties acknowledge that time is of the essence in the delivery of the illustrations.

b. **Conformance of Illustrations to Illustrator’s Warranties.** Illustrator agrees to prepare Work in accordance with Illustrator’s Warranties as set forth in Section 6.a.

c. **Completed Copy.** Illustrator will provide to Publisher \_\_\_\_\_  
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d. **Permissions, Authorizations and Research Materials.**

(1) **Text.** If any text, charts, illustrations or research material created or controlled by others (“Third Party Materials”) is incorporated into Work, Illustrator will obtain, at Illustrator’s expense, written permission (the “Permissions”) for any and all such Third Party Materials. It is understood and agreed that the rights granted by Permissions shall extend to all of the publishing, distribution, promotional, advertising, licensing and sublicensing rights granted by Illustrator to Publisher in this Agreement. If requested by Publisher, Illustrator shall immediately deliver such Permission to Publisher. Publisher may delete from Work any Third Party Material that has not been properly authorized.

(2) **Other Material.** Publisher may commission third parties to contribute or prepare any text, index, illustrations, maps, charts, research, or other material in connection with Work as has been mutually agreed by Illustrator and Publisher to be necessary to Work. Any expenses incurred by Publisher to obtain such other material and the proper authorization for the use of such material in Work will reduce the net amounts received.

(3) **Records and Documentation.** Illustrator agrees to maintain appropriate records and documentation of Work, including without limitation, permissions and copies of research notes and tape recordings for a period of not less than three (3) years and one (1) day from the date of Publisher’s last publication of Work.

e. **Review and Acceptance of the Completed Illustrations.** If Publisher receives the completed illustrations on or before the Delivery Date, Publisher will review the illustrations and notify Illustrator whether Publisher considers the illustrations satisfactory for publication. Failure of Illustrator to deliver the completed illustrations to Publisher on or before the Delivery Date shall give Publisher the right to terminate this Agreement and shall relieve Publisher from all liability hereunder; provided that Publisher may accept illustrations which are delivered after the Delivery Date if Publisher notifies Illustrator in writing within thirty (30) days after the receipt of illustrations that Publisher is accepting the illustrations under the terms of this Agreement.

- f. **Illustrator's Right to Resubmit Revised Illustrations.** If Publisher finds the completed illustrations to be unsatisfactory, Publisher will specify in writing the reasons why Publisher believes the completed illustrations are unsatisfactory. Illustrator shall then have the right to resubmit revised illustrations at a mutually agreed delivery date which shall be reasonable under the circumstances, but which in no event shall be more than 90 days after the date on which Publisher notifies Illustrator of rejection of the illustrations. Although Publisher shall not be required to provide additional editorial services to assist Illustrator in rendering the completed illustrations satisfactory for publication, Publisher may do so after consultation with Illustrator.
- g. **Acceptance of the Revised Illustrations.** If Publisher finds the revised, completed illustrations to be satisfactory in form and content under Section 2.f. (including the material stipulated under Section 2.d.), Publisher will notify Illustrator of Publisher's acceptance of Work for publication. Actual publication of Work by Publisher shall be deemed acceptance of Work; provided, however, any action other than notice or actual publication by Publisher (such as the payment of any advances or the commencement of the editorial process) shall not be construed as acceptance of Work.
- h. **Publisher's Revision of Illustrations.** Publisher shall be authorized to edit the illustrations of Work for style and usage, but shall not be entitled to make substantive changes in Work without Illustrator's prior written approval.
- i. **Termination Prior to Publication.** If any of the following circumstances arise, this Agreement may be terminated by the party and in the manner set forth below:
- (1) **Failure to Deliver.** If Illustrator fails to deliver the completed illustrations by the Delivery Date, if Illustrator delivers complete illustrations but Publisher has rejected the illustrations on the basis of timeliness under Section 2.e., or if Illustrator delivers completed but unsatisfactory illustrations by the Delivery Date and fails to resubmit revised illustrations by the agreed-upon date as stipulated in Section 2.f., or under Section 6.c., then Publisher may terminate this Agreement and pursue any other remedies provided herein or by applicable law, and Illustrator shall promptly repay all advances, if any, received from Publisher.
  - (2) **Unsatisfactory Illustrations.** If Publisher informs Illustrator that the revised illustrations (under Section 2.f.) is not satisfactory for any reason, or if Illustrator fails to make changes to eliminate legal risk (under Section 6.c.), this Agreement shall terminate and Illustrator will reimburse Publisher for advances if any, paid to Illustrator, if and when Illustrator receives advances or other revenues from another source for uses (in any form) of Work or a work based on Work. Notwithstanding Publisher's right of termination herein, Illustrator shall be free to offer Work or any rights in or from Work to another party, it being understood that Publisher's exclusive rights granted hereunder will continue in full force and effect.
  - (3) **Refusal to Revise.** Illustrator may choose to terminate this Agreement instead of revising the illustrations in accordance with Section 2.f. or Section 6.c. In this event, Illustrator shall promptly repay all advances, if any, received from Publisher.
  - (4) **Failure to Publish.**
    - i. If Publisher fails to give notice to Illustrator as required in Section 2.e. and such failure continues for sixty (60) days after receipt of written notice from Illustrator of such failure, Illustrator may terminate this Agreement.
    - ii. If after acceptance Publisher fails to publish Work on or before the date set forth in Section 3.a. or any extension thereof as provided for herein, Illustrator may send Publisher written notice demanding that Publisher begin acts toward publication of Work within thirty (30) days after receipt

of such notice. If Publisher does not provide written verification that such acts have been commenced within the thirty (30) day time period, Illustrator may terminate this Agreement.

iii. Upon termination as a result of either (i) or (ii), Illustrator shall retain all advance payments made up to that time by Publisher as Illustrator's sole and exclusive remedy for non-publication.

(5) **Publisher's Right to First Refusal after Certain Terminations.** In the event that this Agreement is terminated by Publisher under this Section 2.i. and, within five (5) years from such termination date, Illustrator shall receive a bona fide offer or reach an agreement for the purchase of rights relating to Work or any part thereof, Publisher shall have an exclusive right to first refusal to acquire such rights on the same terms as set forth in such bona fide offer or agreement for a period of sixty (60) days after Publisher receives written notice set forth the terms of such offer or agreement.

j. **Postponement of Publication.** Publisher may delay its decision whether to accept the illustrations and/or postpone publication or distribution of Work during legal review under Section 6.c.; provided that the time period of such delay shall be reasonable under the circumstances

### 3. **Publication**

a. **Date of First Publication.** Provided that the illustrations and all required consents are delivered to Publisher on or before the Delivery Date, Publisher will publish Work at its expense on or before \_\_\_\_\_, unless publication is delayed by circumstances beyond Publisher's reasonable control or by legal review of Work under Section 6.c.

b. **Illustrator's Correction in Proof.** Publisher shall send Illustrator proofs of Work, and Illustrator agrees to read, correct, and return them promptly, but in no event later than ten (10) days after receipt of the proofs. Any changes requested by Illustrator shall be incorporated at Publisher's sole discretion. Failure of Illustrator to respond with any corrections within the ten (10) day period shall be deemed to be an acceptance of the proof by Illustrator. Illustrator agrees to pay the cost of alterations initiated by Illustrator that exceed ten percent (10%) of the initial composition expense. Such amounts may be deducted from the determination of net amount revised by Publisher. Illustrator will not be required to pay for printer's or Publisher's errors.

c. **Title of Work.** Illustrator and Publisher shall mutually agree upon the title of Work.

d. **Style of Publication.** Publisher shall determine the style and manner of publication, including design, form, printing, production, price, sale, promotion and distribution of free copies. These decisions shall be based solely on Publisher's own experience and judgment and will reflect its business decisions made in good faith.

e. **Advertisements.** Publisher or its licenses will not insert or authorize the insertion of advertisements in any book edition of Work without Illustrator's written consent, with the exception that mention may be made of other books published by Publisher or its licenses in soft-cover editions of Work.

f. **Promotion of Work.** Publisher may use and authorize others to use Illustrator's name, likeness, and biographical information in connection with the exercise of the rights granted under this Agreement and in any related advertising and promotion. Illustrator agrees to cooperate with Publisher in promoting Work as Publisher may reasonably request, in accordance with a mutually agreeable schedule. Illustrator acknowledges and agrees that he or she shall not be entitled to any additional consideration for the rights set forth in this Section 3.f.; it being understood that the royalties set forth herein shall constitute the consideration for these rights.

g. **Illustrator's Free Copies.** Illustrator shall receive 20 free copies of Work on first publication in book form, and may purchase, at Illustrator's discount of forty percent (40%) from Publisher's list price for Work, further copies of Work for personal use and

for limited resale at promotional events; provided that such re-sales may not be made to trade and must be in compliance with all agreements of Publisher relating to Work.

4. **Copyright and Selections**

- a. **Assignment, Registration and Notice.** Illustrator hereby assigns any and all copyrights which Illustrator may have in Work to Publisher and agrees to take such actions, and to execute and deliver to Publisher such documents, as are necessary and reasonable to secure such assignment. Upon first publication of Work in the United States, Publisher will insert the copyright notice for Work in the name of Illustrator in every copy of Work and will require the same of its licensees. Publisher will register copyright for Work in the United States within ninety (90) days of its first publication.
- b. **Notification of Prior Publication.** If Illustrator grants or has granted any rights for other to publish or otherwise exploit part or all of Work before Publisher's publication and if such rights have not been transferred to Publisher under this Agreement, Illustrator will promptly notify Publisher of the dates of such publications and will deliver to Publisher the documents (such as assignments of copyrights) which Publisher deems necessary to secure copyright for Work.
- c. **Selections for Promotion.** If Publisher believes it will benefit Work, for promotional purposes, to publish or to permit critics, reviewers or others to publish or otherwise use excerpts of less than five hundred (500) words from Work or summaries of Work, it may do so without charge to them or payment to Illustrator. If Illustrator or Illustrator's licensees make written requests to reproduce short excerpts from Work or summaries of Work for promotional purposes and not for sale, Publisher and Illustrator will permit such uses if they do not exceed a total of seven thousand five hundred (7,500) words or ten percent (10%) of the text, whichever is shorter. A proper copyright notice will be used. The use of said material shall not generate income for either party.
- d. **Non-profit Uses.** Publisher may permit third parties to reproduce or record Work in appropriate forms for the physically or mentally disabled on a non-profit basis, without charge to such third parties or payment to Illustrator.
- e. **Infringement by Others.** If during the existence of this Agreement, the copyright for Work or any part thereof shall be infringed or a claim for unfair competition shall arise from the unauthorized use of Work or any part of it, the parties may proceed jointly to protect rights in Work, and share expenses and recoveries jointly. Either party shall have the right to prosecute such action, and such party shall bear the expenses, and any recoveries shall belong to such party. Publisher shall not be liable to Publisher's failure to take such legal steps. Each of the parties shall give the other prompt written notice of any claims that Work infringes on any rights of third parties, or of any known infringement of Work by a third party.

5. **Statements to Illustrator**

- a. **Payments.** After publication, Publisher will render annual statements of account on or before December 31 of each year covering the net amounts received from sales and licenses of Work through August 31 of such year, and shall pay with the statements the net amounts due, payable to Illustrator by check at the address contained herein, subject to the following exceptions:
  - (1) **Reserves for Returns.** To avoid overpayment to Illustrator and to provide for possible return of stock by booksellers, Publisher may withhold a reasonable reserve against the royalties accrued to Illustrator on all sales of Work in any of Publisher's editions. Such reserve shall be withheld for not more than 2 months following the date of the annual statement, and any amounts withheld under such reserve shall be due and payable at the earlier of (i) the end of such period or (ii) when they are no longer needed to cover actual or reasonably foreseeable returns.
  - (2) **Illustrator's Charges or Debts; Offset.** Publisher may, in addition to any other remedies provided by law, deduct any charge provided for in this Agreement or

other debt owed to Publisher by Illustrator from any and all monies otherwise due Illustrator from Publisher under this Agreement.

- (3) **Licensees' Statements.** Publisher shall provide copies of statements from subsidiary rights licenses to Illustrator upon Illustrator's reasonable request. License fees collected from subsidiary rights purchasers will first be applied to the repayment of Illustrator's advance; once the advance has been repaid to Publisher, Illustrator's portion of the license fee will be paid along with any royalties earned on/or before the yearly scheduled date (see: 5.a.)
- (4) **Other Information.** Publisher agrees to provide Illustrator, upon reasonable written request which shall not occur more than once in every twelve (12) month period, with specific information regarding inventories, printings, and returns which may not otherwise appear on the records of account.

b. **Verification of Accounting.** Illustrator or Illustrator's representative, at Illustrator's request, may examine Publisher's records of account as they relate to sales or licenses of Work as appropriate to verify the accuracy of Publisher's records of account, provided that any examination is performed no more than once a year, after reasonable notice, during normal business hours of Publisher. If errors of more than five percent (5%) are found, the expense of examining Publisher's records shall be borne by Publisher. Errors not objected to in writing within two (2) years following the end of the fiscal period to which such errors relate shall be deemed waived by Illustrator.

## 6. Legal Undertakings

a. **Illustrator's Warranties.** Illustrator represents and warrants that Work is and will be in accordance with the following "Illustrator's Warranties," which Illustrator makes for the benefit of Publisher and any third party acquiring any right or interest in Work or a copy of Work through Publisher.

- (1) **Disclosure Affecting Rights Granted.** Unless otherwise disclosed to Publisher in writing, Illustrator warrants that:
  - i. Work has not been previously published in whole or in part;
  - ii. Work is not, and prior to the normal expiration of copyright will not be, in the public domain in whole or in part;
  - iii. Work is and will be original and Illustrator is its sole illustrator and creator;
  - iv. no third party has or will have any claim to or interest in Work as a co-illustrator or otherwise; and
  - v. Illustrator has not entered and will not enter into any agreement with any third party conflicting with Publisher's rights relating to the creation, subject matter, or publication of Work, including without limitation any copyright or other similar right in Work.
- (2) **Risk of Liability.** Work will not infringe any valid copyright, or other proprietary or property rights of any other person, contain any matter that libels or violates the privacy or publicity or any rights of any person or entity, or otherwise be in contravention of law; and Illustrator has used and will use all reasonable care in the creation, research, and preparation of Work to ensure that all facts and statements in Work are true and correct in all material respects.
- (3) **Risk of Injury.** Work will not contain any statement, formula, direction, recipe, prescription of other matter that involves a reasonably foreseeable risk of injury or damage to Work's readers or others.
- (4) **Third-Party Claims.** Illustrator is not aware of any claim or proceeding by any third party inconsistent with any of Illustrator's Warranties, and Illustrator will inform Publisher if any such claim is made or threatened in the future.

- (5) **Other Publication.** Illustrator has not published or authorized publication of any work that would compete directly with Work or materially diminish the value of the rights granted to Publisher in this Agreement, and will not do so during the term of this Agreement.
    - (6) **Ability to Comply.** Illustrator is free to make this Agreement and will remain free to perform all of Illustrator's obligations under this Agreement.
    - (7) **Cooperation.** Illustrator agrees to cooperate with Publisher and its legal counsel and other representatives in the defense of any claim or proceeding arising out of Work.
  - b. **Publisher's Material.** Illustrator's Warranties shall not apply to any material supplied solely by Publisher under Section 2.d.(2) of this Agreement.
  - c. **Legal Review.** Publisher may, but is not required to, investigate whether Work presents legal risk or whether Illustrator's Warranties are accurate, obtain a legal opinion on behalf of Illustrator, or request changes. Any investigation or opinion or requested changes shall not affect Illustrator's Warranties or responsibilities. Publisher may request Illustrator to make changes to Work in consideration of the legal rights of others. If Illustrator is unwilling to make such changes, Publisher or Illustrator may terminate this Agreement as provided in Section 2.i.(2) and 2.i.(3) of this Agreement.
  - d. **Illustrator's Breach.** Illustrator agrees that in the event of a breach or threatened or attempted breach of this Agreement by Illustrator, Publisher would be irreparably injured and would be without adequate remedy at law. Therefore, in the event of a breach or a threatened or attempted breach of any of the provisions hereof, Publisher shall be entitled, in addition to any other remedies which it may have hereunder at law or in equity, to seek a temporary restraining order, temporary and/or permanent injunction and/or a decree for specific performance of the terms hereof without the necessity of showing actual or threatened damage, and without being required to furnish a bond or other security. If a court or arbiter makes findings of fact indicating that Illustrator's breach was intentional, malicious, or willful, Publisher may recover any unearned portion of the advance; and/or Publisher, and any third party acquiring any right or interest in Work or a copy of Work, may recover from Illustrator any costs, expenses, and damages arising from such breach which are not covered by insurance.
  - e. **Indemnification by Illustrator.** To the extent authorized by the laws and constitution of the State of Texas, Illustrator agrees to indemnify, defend and hold Publisher and/or its licensees harmless from any claims, losses, suits, costs, proceedings, damages, or liabilities (including attorney's fees) that arise out of or are based on the grounds that Work, in any form, contains libelous, defamatory, or unlawful material, or that it infringes upon existing proprietary rights, and will reimburse Publisher for any legal or other expenses incurred by Publisher in connection with investigating or defending against such claims, losses, suits, proceedings, damages or liabilities, as and when such expenses are incurred; and until such claim or suit has been settled or withdrawn, Publisher may withhold any sums due Illustrator under this Agreement. Publisher reserves the right to settle any claim, proceeding, or suit at any time.
  - f. **Continuance of Illustrator's Warranties and Responsibilities.** Illustrator's Warranties and Illustrator's other responsibilities under this Section 6 shall be in effect throughout the term of this Agreement and shall survive its termination.
7. **Discontinuance of Publication and Reversion of Rights**
- a. **Definition of "In Print."** Work shall be deemed "in print" when copies of Work are available and offered for sale in any medium authorized under this Agreement, whether issued by Publisher or by its licensees, or when an edition of Work is under license or option to be published by another party within twenty-four (24) months.
  - b. **Request to Place in Print.** If Work is not in print and if three (3) years have elapsed since Work was last in print, Illustrator may request in writing that Publisher place Work in print. Publisher shall notify Illustrator in writing within three (3) months from

the receipt of such request whether it intends to place Work in print, and if within six (6) months from receipt of Illustrator's request Publisher has made arrangements to place Work in print, this Agreement will continue in full force.

If written verification that Work will be placed in print is not supplied by Publisher within six (6) months of the receipt by Publisher of Illustrator's request and Illustrator is in compliance with all other terms of this Agreement, Publisher shall execute and deliver a written document reverting all rights in Work granted herein to Illustrator, except (i) all other covenants, representation and warranties of Illustrator, including without limitation, rights of Publisher to other Works of Illustrator and all indemnification obligations of Illustrator relating to Work, shall remain in full force and effect and shall not be reverted or assigned to Illustrator; and (ii) any existing licenses or options Publisher has granted to a third party for other rights granted to Publisher shall continue in effect according to their terms, and Illustrator and Publisher shall continue to share in the revenues from such licenses subject to Section 1.d.(3).

8. **Miscellaneous**

- a. **Survival.** Upon expiration or termination of this Agreement, the provisions of this Agreement shall be of no further force or effect, except that (i) those provisions of this Agreement that expressly survive, or by their nature are intended to survive, expiration or termination shall so survive and (ii) no party shall be relieved by such expiration or termination from any liability accrued prior to such expiration or termination.
- b. **Notices.** Any notice, consent, approval, request, demand or other communication required or permitted hereunder must be in writing to be effective and shall be deemed delivered and received (i) if personally delivered or if delivered by telecopy with electronic confirmation when actually received by the party to whom sent, or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day next following the day when placed in the federal mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties at their respective address set forth above (or to such other address as any party shall specify by written notice given to the other party).
- c. **Binding Effects; Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- d. **Governing Law; Venue.** This Agreement, and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of action), shall be governed by and construed in accordance with the laws of the State of Texas (exclusive of the conflict of law provisions thereof). With regard to any dispute arising out of or related to this Agreement and to the extent permitted by applicable law, each of the parties submits to the non-exclusive jurisdiction of any state court sitting in Austin, Travis County, Texas, or Houston, Harris County, Texas, (such selection at the sole discretion of Publisher) and agrees that all claims with respect to such action or proceeding may be heard and determined in any such court.
- e. **Headings.** Headings of the Sections of this Agreement are for the convenience of the parties only, and shall be given no substantive or interpretive effect whatsoever.
- f. **Waivers.** Any party hereto may, by written notice to the other party hereto, (i) extend the time for the performance of any of the obligations or other actions of the other party under this Agreement; (ii) waive any inaccuracies in the representations or warranties of the other party contained in this Agreement or in any document delivered pursuant to this Agreement; (iii) waive compliance with any of the conditions or covenants of the other party contained in this Agreement; or (iv) waive performance of any of the

obligations of the other party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement including without limitation any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

- g. **Severability.** If for any reason whatsoever any one or more of the provisions of this Agreement shall be held or deemed to be illegal, inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision illegal, inoperative, unenforceable or invalid in any other case or of rendering any of the other provisions of this Agreement illegal, inoperative, unenforceable or invalid. Furthermore, in lieu of each illegal, invalid, unenforceable or inoperative provision there shall be added automatically, as part of this Agreement, a provision similar in terms of such illegal, invalid, unenforceable or inoperative provision as may be possible and as shall be legal, valid, enforceable and operative.
- h. **Drafting.** The parties acknowledge and confirm that each of their respective attorneys has participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be resolved in the interpretation of this Agreement to favor any party against another.
- i. **Assigns.** This Agreement shall be binding upon and for the benefit of Illustrator and Illustrator’s heirs, executors, administrators, and permitted assigns, and shall also bind and benefit Publisher and its successors and assigns. Neither this Agreement nor any part hereof may be assigned or otherwise transferred by Illustrator except with the written consent of Publisher. Publisher may assign this Agreement in whole or in part.
- j. **Entire Agreement.** This Agreement constitutes the final written expression of parties as to the subject matter hereof, and supersedes all undertakings and negotiations concerning the matters specified herein. No addition to or modification of any provision of this Agreement shall be binding upon any party unless made in writing and signed by all parties.
- k. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

In witness thereof, the parties have executed this Agreement and caused he same to be duly delivered on their behalf on the day and year hereinabove first set forth.

**UNIVERSITY OF HOUSTON**  
**for and on behalf of ARTE PÚBLICO PRESS**

**ILLUSTRATOR**

_____ Signature	_____ Date
Nicolás Kanellos	
Director, Arte Público Press	

_____ Signature	_____ Date
Name: _____	
Title: _____	

**Note: Modification of this Form requires approval of OGC**