

## PUBLISHING AGREEMENT

This Agreement, effective this 29th day of May, 1997, is made between SAS Institute Inc. ("Institute") and Michael Friendly ("Author").

WHEREAS, Author intends to write a work now entitled *Visualizing Categorical Data* ("Work"); and

WHEREAS, Author desires that said Work be published by Institute;

NOW, THEREFORE, in consideration of publication of the Work by Institute, the parties hereby agree as follows:

**I. The above recitals are incorporated herein by reference.**

**II. Book Publishing and Translation Rights.**

- A. Author hereby grants Institute the exclusive rights to reproduce and/or publish (in book or other form), to adapt to other media, to license other parties to publish in whole or in part or adapt to other media, and to distribute and sell or license other parties to distribute and sell, this Work and any revisions or future editions of this Work. This grant expressly includes the right to create, publish and/or license a derivative work of the Work, including, but not limited to, translation. This exclusive right to publish, adapt, license, distribute, and sell shall be applicable to the original English language version of the manuscript, and to any translations into all other languages and shall extend to all nations and territories of the world without exception.
- B. Institute hereby expressly reserves the right to write and/or publish works on the same or similar subjects as those set forth in the Work.

**III. Warranties. Author represents and warrants that:**

- A. Author is the sole author of the Work; now owns all rights in it granted hereunder, free of liens or encumbrances; and has full power to execute this Agreement. If Author created the Work while employed by an entity other than Institute, Author will obtain the necessary releases or assignments relevant to the Work (Exhibit A) and will provide same to Institute at the time this Agreement is signed.
- B. The Work is original to Author, and either no portion of the Work has ever been published or, if any copyrighted materials or illustrations have been included, permissions to include such materials or illustrations have been obtained from the owner(s) of the copyrighted materials. It shall be the responsibility of Author to obtain written permissions from the owner(s) of such copyrighted materials as are used in the Work and to furnish copies of said permissions to Institute along with the manuscript. At Institute's sole discretion, it may assist in obtaining such permissions; however, such assistance shall not in any way be construed to release Author from the obligations set forth herein.
- \* C. The Work does not infringe statutory copyrights or other proprietary rights, and to Author's knowledge, does not violate the rights and privacy of, or libel, other persons.

**IV. Indemnities.**

- A. Author agrees to indemnify and hold harmless Institute and the publisher of any other editions of the Work licensed by Institute pursuant to this Agreement, for any damages or costs, including, but not limited to, reasonable attorneys' fees incurred by Institute or its licensees in any action arising out of facts which constitute a breach of the foregoing warranties.
- B. Institute shall give Author prompt notice of any suit brought against Institute or its licensees alleging facts which, if proven, would constitute a breach of the warranties in Section III. Institute may defend such suit with counsel of its own choosing, in which case Institute shall have sole control of the litigation and agrees that no attorneys' fees will be sought from Author. Should Institute choose to control such litigation, Author may participate in the defense with counsel of Author's own choosing at Author's own expense.
- C. If such suit is brought, Institute may hold in escrow payments due under Section IX until after the suit is terminated.

**V. Copyright.**

- A. Institute shall copyright the Work in its own name in the United States and such other countries as it deems appropriate.
- B. To the fullest extent allowed by law, Author hereby expressly waives in favor of Institute any and all moral rights arising under statute, treaty or at common law that Author has now or may have in the future with respect to the Work, including, without limitation, the right to restrain modification of the Work and the right to prohibit any use of the Work in association with a product, service, cause or institution that might be prejudicial to Author's reputation, excepting the right of attribution.
- C. Nothing herein shall be construed to grant Author any rights with respect to the use of Institute trademarks, trade names or other Institute proprietary materials.

**VI. Acceptance of Manuscript Changes and Delivery of Work.**

- A. Author agrees to deliver the manuscript, being all of the text of the Work, to Institute in accordance with the following schedule, time being of the essence:
  - 1. Within three (3) months from the date of Author's receipt of Institute's software and documentation described in Section XVI hereof, Author shall deliver no fewer than three (3) chapters in draft form for review, as well as a revised outline of chapters, developed in cooperation with Institute and in the same level of detail as that delivered in the Proposal. In the same time frame, Institute shall make available to Author specifications for the machine-readable format for the manuscript to be required for the final draft;
  - 2. Within five (5) months from the date of Author's receipt of all Institute review notes and edits of the first three (3) chapters, Author shall deliver the complete draft of the manuscript for review and substantive edit; and

3. Within three (3) months from the date of Author's receipt of all Institute review notes and edits from the manuscript, Author shall deliver the final manuscript, as well as all frontmatter, backmatter and sketches for figures, in machine-readable form previously specified by Institute.
- B. Author acknowledges and agrees that the manuscript will undergo technical reviews and substantive edits during development of the Work, and copyediting prior to publication. Author agrees to make any and all revisions necessary to implement the results of such technical reviews and substantive edits.

If at any time Author fails to make such revisions, Institute shall have the absolute right to make such editorial changes in the manuscript as Institute deems necessary.
- C. Institute will submit either galley proofs or page proofs to Author. Author shall be responsible for verifying that technical content and intent have not been affected by the copyedit.
- D. Author further understands and agrees that, if in the sole opinion of Institute, the manuscript is unacceptable or unsatisfactory, or if Institute, in its sole discretion, determines that publication of the Work would not be in its best interests, Institute shall have the right to terminate this Agreement, and all rights granted Institute hereunder shall revert to Author.
- E. The manuscript shall be deemed satisfactory in content to Institute unless within ten (10) business days of receiving the final manuscript for copyedit, Institute gives written notice, specifying, with particularity, those portions or pages in the manuscript that are unsatisfactory.
- F. Similarly, at all stages, the manuscript and/or the proofs shall be deemed satisfactory in content to Author unless within five (5) business days of receiving the proof for review from Institute, Author gives written notice, specifying, with particularity, those portions or pages of the proof that are unsatisfactory.
- G. Institute shall provide indexing services for the Work. Author shall be given the opportunity to review such index.
- H. In consultation with Author, Institute shall give a title to the Work in accordance with Institute's standards and practices.
- I. Anything to the contrary notwithstanding, should Author be prevented by illness, accident, or military service from giving necessary approval at any stage of production, the other author(s), if any, and Institute have the right to proceed with publication of the Work under the terms of this Agreement.

**VII. Publication of the Work.**

- A. Institute shall first publish the Work in the United States in English, reflecting standard American usage and spelling.
- B. The format, style of composition, cover and, if appropriate, dustcover design and content, and price of any edition of the Work shall be determined solely by the Institute. The Institute shall consult with Author in deciding these issues.

**VIII. Revised Editions.**

- A. If at any time following publication, Institute determines that revisions or updates are needed to the Work, it shall notify Author of the nature of the desired revisions and Institute's schedule for such revisions.
- B. Within fifteen (15) business days of receipt of such notification, Author shall advise Institute in writing whether Author wishes to participate in writing such revisions or updates, as described and scheduled.
- C. Should Author decline to participate or fail to give notice of Author's intent to participate in accordance with VIII.B above, Institute shall have the right to make such revisions or updates as it deems appropriate without further consultation with Author. Author hereby acknowledges and agrees that the Institute may appropriately reduce the royalty percentage due Author under Section IX, based on the costs associated with the revised edition made by Institute. Such costs shall include Institute expenses, including, but not limited to, printing, production, indexing, and other related expenses.

**IX. Royalties.**

Institute shall pay royalties to Author on each copy of the Work sold by Institute, not including copies which are returned. Royalties shall be twelve percent (12%) and shall become due and owing upon Institute's receipt of payment for said copies. Royalties shall be calculated based on the actual selling price of the Work.

**X. Advances.**

Institute shall pay to Author as an advance against all sums payable by Institute to Author under Section IX hereof, the sum of One Thousand and no/100 Dollars (\$1000.00) payable upon acceptance by Institute of the final manuscript as set forth in Section VI.A.3 above. The foregoing advance shall not be refundable and shall be recouped by Institute only from royalties and other amounts payable to Author under this Agreement.

**XI. Grant-In-Aid**

Institute shall pay to Author a grant-in-aid as additional consideration for its obligations performed hereunder, in the sum of Two Thousand Two Hundred Fifty and no/100 Dollars (\$2,250.00) payable within thirty (30) days from the date of execution of this Agreement by the Institute. Provided, however, that the foregoing amount paid to Author shall be refunded to the Institute in full, if Author fails to perform the obligations as specified in Sections VI (A) and (B) above, in addition to the manuscript being unacceptable or unsatisfactory to the Institute. If such refund amount is owing to Institute, Institute shall

have the right to recoup such amount from any royalties due Author hereunder, if any, and invoice Author for the net balance due.

## **XII. Accounting and Payments.**

- A. Each month, Institute shall prepare a statement for Author accounting for all payments due under this Agreement. Such statements shall be mailed to Author within thirty (30) days after the close of each month, accompanied by payment of the amounts due hereunder for that month.
- B. Author may have an independent public accounting firm inspect the sales records of Institute as they pertain to the Work only, at reasonable times during normal business hours. Such inspection shall be at the sole expense of the requesting party. No accounting may be made for sales less than three months from the date of audit nor for sales more than three years and three months prior to the start of the audit.

## **XIII. Author's Copies.**

On publication of the first edition, Institute will give to Author five (5) free copies of that edition. On subsequent editions of the English version, Institute will give to Author one (1) free copy of such edition.

## **XIV. Out-of-Print Provisions.**

Author understands and agrees that Institute may, in its sole discretion, discontinue publication of the Work. Institute shall notify Author in writing of such discontinuance and, upon giving of such notice, Author shall have the right to publish the Work independently.

## **XV. Suits for Infringement of the Work.**

- A. If the copyright in the Work is infringed, and if the parties proceed jointly in an action for such infringement, they shall share the expenses of the action equally and shall recoup such expenses from any sums recovered in the action. The balance of the proceeds shall be divided equally between them. Each party shall notify the other of infringements coming to its attention.
- B. If the parties do not proceed jointly, any party shall have the right to prosecute such action. The parties maintaining the action shall bear all costs and expenses which shall be recouped from any damages recovered, and the balance of such damages shall be divided equally among the parties to this Agreement.

## **XVI. Institute Software and Documentation.**

- A. Institute hereby agrees to enter into a separate Software License Agreement ("Software Agreement") granting to Author a license, at no charge, to use certain of its software products ("Software") in conjunction with development of the Work. Use of the Software shall be in accordance with the provisions of such Software Agreement, which Author agrees to sign. The license granted under said Software Agreement shall continue until first publication of the Work, termination of the Software Agreement, or termination of this Agreement, whichever occurs first.

- B. Institute agrees to provide at no charge to Author such documentation as Institute determines to be necessary until completion of the Work. Such documentation is provided solely for use in connection with completion of Author's obligations set forth herein. Author shall not have the right to reproduce, copy, adapt or otherwise commercially exploit Institute's documentation, in whole or in part, without the prior express written permission of Institute.
- C. ANY INFORMATION OR SOFTWARE FURNISHED BY INSTITUTE TO AUTHOR UNDER THIS AGREEMENT AND THE SOFTWARE AGREEMENT IS FURNISHED ON AN "AS IS" BASIS AND INSTITUTE SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **XVII. Confidentiality**

Author acknowledges and agrees that information and materials not listed in the Software Agreement which may be provided to Author by Institute for the purpose of allowing Author to fulfill Author's obligations hereunder, regardless of the medium, shall be deemed proprietary to the Institute. Such information and materials shall include but are not limited to any preliminary product documentation. Author further agrees that Author shall not disclose such information or materials to any person, other than Author's employees who have a need to know. Upon request by Institute, all such information and materials, and any copies thereof, shall be returned to Institute.

## **XVIII. General.**

- A. This Agreement shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the United States of America and the State of North Carolina.
- B. This Agreement shall be binding on the parties and upon their respective heirs, administrators, successors and assigns. This Agreement may not be assigned by any party without prior written consent of the other except to majority controlled companies of the parties.
- C. This Agreement constitutes the complete understanding of the parties and may not be modified except in a writing signed by the parties. The failure of the parties hereto to enforce, or the delays by either party in enforcing, any of their rights under this Agreement shall not be deemed to be a waiver by the parties of any of their rights under this Agreement.
- D. If any part of this Agreement is held unenforceable or invalid or prohibited under law, it shall be struck from this Agreement and shall not affect the enforceability of the remaining provisions thereof.
- E. Any notice required to be sent hereunder will be deemed sufficient if sent by certified or registered mail, postage prepaid, if it is for the Institute to:

Julie Platt  
SAS Institute, Inc.  
SAS Campus Drive  
Cary, NC 27513

if it is to the Author, to:

Michael Friendly  
Psychology Department  
York University  
4700 Keele Street  
North York, Ontario  
Canada M3J 1P3

or at such other addresses as the parties shall have specified in writing to each other.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

SAS INSTITUTE INC.

AUTHOR

By: David D. Baggett  
David D. Baggett  
Director, User Group and  
User Publishing Support

Date: June 25, 1997

By: Michael Friendly  
Name: Michael Friendly  
(type or print)  
Date: June 16 1997