

(This is a generally author-friendly trade publishing agreement. Note that this agreement takes foreign and film rights for the publisher; in most cases, writers should try to retain these. The option clause is of the most benign type, but ideally should be eliminated entirely. The royalty percentages are typical for trade publishers.)

AGREEMENT

AGREEMENT made this ____ day of _____, 200_ between _____ (hereafter known as "Publisher") and _____ (hereinafter referred to as "Author"), whose mailing address is _____ concerning a work presently known as: _____ (hereinafter referred to as "The Work")

1. RIGHTS GRANTED

- (a) The Author hereby grants, transfers and assigns to the Publisher for the full term of copyright and all extensions thereof including any supplementary materials and revised editions, including but not limited to the right, by itself or with others, throughout the world, to print, publish, republish, distribute and transmit the Work and to prepare, publish, distribute and transmit derivative works based thereon, in English and in other languages, in all media or expression, digital and print, no known or later developed, and to license or permit others to do so. The Publisher's rights shall include but not be limited to:
 - (1) The exclusive right to publish and sell the Work in the English language in North America (the United States, its possessions and territories, Canada and Mexico), the Philippines, the British Commonwealth and the Republics of Ireland and South Africa;
 - (2) Foreign-language rights throughout the world;
 - (3) Periodical or newspaper rights prior to or following book publication, including syndication rights throughout the world;
 - (4) Non-dramatic audio recording rights throughout the world;
 - (5) Motion picture, television, radio, stage dramatic and musical rights throughout the world;
 - (6) Commercial and merchandising rights throughout the world.
- (b) All rights to the Work not specifically granted to Publisher in this Agreement are reserved by the Author. Author also retains the rights to all characters created in the Work.

2. DELIVERY OF THE WORK

- (a) The Author shall deliver to the Publisher by _____ one copy of the complete manuscript for the work approximately _____ words in length and acceptable to the Publisher in content and form and computer disk(s) or files compatible with the Publisher's computerized system on which the work is stored. The Publisher shall use its best efforts to advise the Author within 45 days of its receipt of the complete Work whether or not the Work is acceptable to Publisher. If the Work is not acceptable to the Publisher, the Publisher shall give the Author a request for changes and revisions. The Author shall have

60 days from the Author's receipt of such a request to deliver to the Publisher a revised Work that is acceptable to the Publisher.

- (b) In the event the Publisher has requested a revised Work, the Publisher shall use its best efforts to advise the Author within 45 days of its receipt of the revised Work whether or not the revised Work is acceptable to Publisher. If the Work as resubmitted is deemed unacceptable, the Agreement may be terminated at the option of the Publisher as set forth in Paragraph 12(b) hereof.
- (c) If the Author does not receive any notice from the Publisher within the 45-day periods set forth in Paragraphs 1(a) and 1(b) above, the Author may at any time thereafter give written notice by certified mail or overnight delivery service to the Publisher demanding notice of acceptance or rejection, such notice to specify that failure to respond within 15 days from the receipt of such notice shall be deemed acceptance. If the Author receives no response from the Publisher within 15 days from the Publisher's receipt of such demand, the manuscript shall be deemed accepted by the Publisher.
- (d) The Work shall be the Author's next book and the Author shall not offer rights to another book to another publisher nor accept an offer for another book from another publisher until a complete manuscript for the Work has been delivered to the Publisher and the Author has complied with the option provision of Paragraph 13. This provision shall apply to books co-authored by the Author as well as to books written solely by the Author.

3. QUOTED MATERIAL

The Work shall contain no material including but not limited to art, illustrations, and quotes, from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents at his or her own expense and file them with the Publisher at the time the Work is delivered. Any obligations associated with permissions, such as free copies, will be the obligation of the Author.

4. EDITORIAL CHANGES AND PROOFS

- (a) After the Work has been accepted by the Publisher, no material change may be made without the Author's prior written approval. The Publisher, however, may copyedit the Work in accordance with its standards of punctuation, spelling, capitalization, and usage. The Publisher shall send the copyedited Work to the Author, who shall make any revisions and corrections and return it within two weeks of receipt.
- (b) The Author shall review and return with two weeks of receipt proofs or other production materials submitted by the Publisher. For print editions, the Author shall pay all charges in excess of 5% of the cost of composition for changes (other than corrections of printer's errors or changes made at the Publisher's request) that the Author makes in the Work after type has been set in conformity with the copyedited manuscript and all charges for changes requested by the Author in second or subsequent printings. These costs will be charged to the Author's royalty account, except the Author shall upon request pay directly such charges that are in excess of 15% of the original cost of composition.

5. PUBLICATION

- (a) The Publisher shall publish a print version of the Work in such style and manner as the Publisher deems appropriate within eighteen (18) months from the date of Publisher's acceptance of the Work.
- (b) Publisher will consult in advance with the Author concerning the format and style of all trade editions, and concerning the text, graphic material, and style of the dust jacket.
- (c) In the event of a sale of periodical rights for publication prior to book publication, book publication shall be delayed until such periodical publication is completed.
- (d) Upon print publication of the Work, the Publisher shall give 45 free copies of the Work to the Author, who may purchase, for personal use only, additional copies of the Work at a discount of 40% from the then current United States catalog list price.

6. COPYRIGHT

- (a) The Publisher shall include a copyright notice in all publications of the Work in conformity with the United States Copyright Act, as amended, and the Universal Copyright Convention, in the name of the Author, and require its licensees to do the same. The Publisher shall register the copyright on the Work at Publisher's cost in the Author's name with the United States Copyright Office promptly after first publication and may record this Agreement with the United States Copyright Office.
- (b) Any textual or illustrative material prepared for the Work by the Publisher at its expense may be copyrighted separately as the Publisher deems appropriate.

7. ROYALTIES

- (a) As an advance against all royalties and all proceeds from the disposition of subsidiary rights due the Author under this Agreement, the Publisher shall pay to the Author the sum of _____ payable:
 - (1) \$_____ upon execution of this Agreement;
 - (2) \$_____ upon the Publisher's acceptance for publication of the complete Work.
- (b) The Publisher shall pay to the Author royalties on sales, less returns, the following percentages of the Work's retail price:

	Percentages:
(1) on all hardcover copies sold through ordinary channels of trade in the United States, its possessions, and Canada:	1 to 5,000 copies: 10%;
	5,001 to 10,000 copies: 12½%;
	in excess of 10,000

	copies: 15%
(2) on all trade paperback copies sold through ordinary channels of trade in the United States, its possessions, and Canada:	10½%
(3) on all mass-market copies sold through ordinary channels of trade in the United States, its possessions, and Canada:	7½%
(4) From sales of a hardcover edition elsewhere:	10%
(5) From sales of a trade paperback or other softcover edition (including mass market paperback edition) elsewhere:	7½%
(6) From sales or licenses of the Work or materials from the Work in electronic form, whether directly by the Publisher or indirectly with others:	10%
(7) From sales of any edition, print or electronic, through direct to consumer marketing (including direct mail), but not including sales made through Publisher's own website	5%
(8) From sales of the Work at discounts of 56% or more from list price or sold in bulk for premium or promotional use, or special uses outside the ordinary channels of trade:	5%
(9) From "on demand" publishing of the Work	10%
(10) From sales of non-dramatic audio/video recording and audio/video adaptations:	7½%
(11) From "remainder" sales at more than the cost of manufacture	10%

(c) No royalties shall be paid on print or digital copies sold to the Author, distributed for review, advertising, publicity, or sales promotion, sold at or below the cost of manufacture or damaged or destroyed.

(d) Only copies sold under Paragraph 7 (b) (1) shall be counted in determining the royalty escalations described in under Paragraph 7 (b) (1).

8. SUBSIDIARY RIGHTS

- (a) The subsidiary rights to the Work granted to the Publisher, and the allocation of proceeds received by the Publisher from the grant of such rights to third parties, are:

	<u>Author's Percentage</u>	<u>Publisher's Percentage</u>
(1) periodical or newspaper publication prior to book publication;	90	10
(2) periodical or newspaper publication following book publication, including syndication rights;	50	50
(3) permissions, including publication of portions of the Work in anthologies;	50	50
(4) condensations and abridgements;	50	50
(5) book club publication;	50	50
(6) publication of editions for premium or special use or for direct sale to consumers	50	50
(7) English-language publication outside the United States and Canada (including the right to sublicense the other rights granted in this Agreement to English-language publishers);	80	20
(8) paperback reprint editions;	50	50
(9) hardcover reprint editions;	50	50
(10) audio recordings of all or parts of the Work or of adaptations of the Work;	50	50
(11) the right to record and transmit and display the Work, or parts of the Work, by any means, electronic or otherwise, in the form in which the Work is published by the Publisher, including the right to include the Work or quotations from the Work in information storage and retrieval systems and databases and in multimedia products;	50	50
(12) the right to produce and distribute multimedia products adapted from the Work;	50	50
(13) non-exclusive public reading rights, including the right to authorize the reading of parts of the Work on radio or television (it being understood that the Publisher may grant such rights for publicity purposes without charge and without	50	50

payment to the Author);

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|---|----|----|
| (14) Braille, large-type and other editions for the handicapped (the Publisher may grant such rights to recognized non-profit organizations for the handicapped without charge and without payment to the Author. | 50 | 50 |
|---|----|----|
- (b) If the Publisher desires to exercise any of the rights described above (as opposed to licensing them to third parties), other than those rights for which royalty rates are already provided in this paragraph 8, the Author and Publisher shall negotiate in good faith the royalties payable thereon.

9. ACCOUNTING

- (a) Following the first publication of the Work by the Publisher, an accounting of the Author's earnings under the terms of this Agreement, accompanied by payment of amounts due on such accounting, shall be rendered no later than April 1 and October 1 of each year of the periods ending the preceding December 31, and June 30, respectively.
- (b) The Publisher may take a credit for any returns for which royalties have been previously paid. If the balance due the Author for any royalty period is less than \$10, no payment shall be due until the next royalty period at the end of which the cumulative balance has reached \$10. The Publisher may retain a 20% reserve for future returns for no more than three royalty periods, provided the accounting statements indicate the amount of the reserve and how it has been applied. Any offsets against royalties or sums owed by the Author to the Publisher under this Agreement or any other agreement between the Author or the Publisher may be deducted from any payments due the Author under this Agreement or any other Agreement between the Author and Publisher.
- (c) Upon written request and reasonable notice to Publisher, the Author's certified public accountant may, within one year of any royalty statement, examine the Publisher's records of accounts as they relate to the sales and inventory of the Work for the purpose of certifying the accuracy of Publisher's accounting to the Author. The audit shall be during regular business hours and Publisher shall reasonably assist in the audit. The Author shall pay for all costs in connection with such an examination unless errors of accounting amounting to five percent (5%) or more of the total sum paid to the Author shall be found to the Author's disadvantage, in which case the cost shall be borne by the Publisher. At Author's option, the records of account may be performed through examination of photocopies or facsimiles of Publisher's applicable records.

10. AUTHOR'S WARRANTIES AND INDEMNITY

- (a) Author warrants to the Publisher that:
- (1) The Author is the sole author of the Work and sole owner of the rights granted in this Agreement, has not assigned, pledged or otherwise encumbered them and has the right to enter this Agreement and can convey the rights granted to Publisher;

- (2) The Work is original except for material for which written third party permissions have been obtained; the Work has not been previously published and is not in the public domain, and does not infringe upon or violate any copyright, trademark, or trade secret; statements in the Work asserted as fact are true or based upon generally accepted research practices;
 - (3) To the best of Author's knowledge, the Work contains no material that is libelous, in violation of any right of privacy or publicity, or harmful so as to subject the Publisher to liability to any third party or otherwise contrary to law.
- (b) The Author shall indemnify and hold the Publisher and its distributors and licensees harmless against all liability, including expenses and reasonable attorneys' fees, from any claim finally sustained against the Publisher resulting from a breach by Author of the foregoing warranties. Each party will give prompt notice to the other if any claim is made and the Author will cooperate with the Publisher, who will direct the defense thereof. Pending any settlement, final resolution or clear abandonment of the claim, the Publisher may engage counsel of its choice and may withhold in a reasonable amount sums due the Author under this or any other Agreement between the parties. The provisions of this paragraph shall survive termination of this Agreement.

11. TERMINATION BY AUTHOR

- (a) If the Publisher does not publish the Work within the time specified in Paragraph 5 for reasons other than delays of the Author in returning the copyedited manuscript or proofs, the Author's failure to comply with requests made by the Publisher's counsel or delays caused by circumstances beyond the Publisher's control and if the Publisher at any time thereafter receives written notice from the Author demanding publication, the Publisher shall within 90 days of the Publisher's receipt of such written demand either publish the Work or revert to the Author in writing all rights to the Work granted to the Publisher in this Agreement, subject to any outstanding licenses, which shall be assigned to the Author, and the Author shall retain any advance payments made under this Agreement prior to such reversion as liquidated damages for the Publisher's failure to publish the Work.
- (b) If the Work is out-of-print and the Publisher receives from the Author a written request for a reversion of rights, the Publisher shall within thirty (30) days of the Publisher's receipt of such request do one of the following: (i) announce that it will reissue an edition of the Work under one of its imprints within six months from the date of the request; or (ii) enter a license providing for the publication in the United States of an edition of the Work within one year from the date of the license; or (iii) revert in writing to the Author the rights granted to the Publisher in this Agreement. If the Publisher does announce that it will reissue an edition of the Work but has not reissued an edition within six months after the Publisher's receipt of a request for reversion, the rights shall on such date automatically revert to the Author.
- (c) Any reversion shall be subject to grants of rights made to third parties prior to the date of the reversion and the right of the Author and the Publisher to participate in the proceeds from such grants.

- (d) The Work shall be considered “out of print” if it is not available in the U.S. through regular retail channels in an English language book form edition (not print-on-demand, digital, or other mechanical means of reproduction) and listed in the publisher’s catalog.

12. TERMINATION BY PUBLISHER

- (a) If the Author does not deliver the complete manuscript and/or computer disk(s) or files for the Work within three months of the delivery date in Paragraph 2(a) or, if requested to do so, does not deliver a revised, complete manuscript and/or computer disk(s) or files for the Work within the time specified in Paragraph 2(b), the Publisher shall not be required to publish the Work and shall have the right exercisable at the Publisher’s discretion at any time thereafter to recover from the Author any advances made to the Author under this Agreement. When such advances are fully repaid, this Agreement shall terminate.
- (b) If the complete manuscript and/or computer disk(s) or files as first submitted by the Author are unacceptable and the Author, after receiving the Publisher’s request for changes and revisions, in good faith makes a timely delivery of a revised, complete manuscript and/or computer disk(s) or files for the Work that satisfies all the provisions of this Agreement except the requirement of being acceptable to the Publisher in content and form, the Publisher shall not be required to publish the Work and the Publisher shall give the Author notice of its decision not to publish. In that event, the Author shall be at liberty to submit the manuscript to others. The Author shall make every effort to sell the Work elsewhere, and the Author shall be obligated to repay all advances and other charges, previously paid hereunder, but such obligation shall be limited to repayment from the first (and all) proceeds of any contracts with others concerning the Work or any rights thereto.

13. OPTION

In further consideration of this Agreement the Author grants to the Publisher an option on the Author’s next book-length work (“the option book”), such option to be exercised as follows. The Author shall submit to the Publisher an outline and three sample chapters for the option book before offering rights to the option book to any other party. The Publisher shall have 30 days from its receipt of the outline and sample chapters for the option book to advise the Author whether it wishes to publish the option book and upon what financial terms, such 30 day period to commence no earlier than 60 days following the Publisher’s acceptance of the Work. If within such 30-day period the Publisher does not advise the Author that it wishes to publish the option book, the Author may offer the option book to other parties without further obligation to the Publisher. If within such 30-day period the Publisher does advise the Author that it wishes to publish the option book but within 30 days of the Publisher so advising the Author, the Author and the Publisher have not agreed on financial terms for such publication, the Author may offer the option book to other publishers without further obligation to the Publisher. This option provision shall apply to the next book co-authored by the Author as well as the next book solely authored by the Author.

14. COMPETING AND FUTURE WORKS

- (a) During the term of this Agreement, the Author has not prepared and published, and shall not prepare or publish, or participate in the preparation or publication of, any competing work

that is substantially similar to the Work, or which is reasonably likely to injure the sales of the Work. Notwithstanding the above, the Author may draw on and refer to material contained in the Work in preparing articles for publication and papers for delivery at professional meetings, provided that credit is given to the Work and the Publisher.

- (b) Author may not copy or sell copies of Work other than those procured through Publisher. Author may purchase unlimited electronic format books for Author's resale use at conferences, signings, local booksellers, etc., at full price from Publisher, and will receive royalties on said purchase. Any other sales must be through Publisher or Publisher-approved vendor.
- (c) If Author has a website, Author may use up to one chapter, or the prologue and one chapter, of the final, approved version of the Work as a promotional teaser on website. Author's website must include a link to Publisher's website.

15. REVISED EDITION

- (a) The term "Revised Edition" shall mean a substantial modification of the Work, including, but not limited to, rewriting, reorganizing, and adding additional material, as the Publisher deems appropriate. If the Publisher determines that a revision of the Work is desirable, the Publisher shall request that the Author prepare the Revised Edition and the Author shall advise the Publisher within sixty (60) days of receipt of such notice whether the Author will prepare the Revised Edition. If the Author elects to prepare the Revised Edition, the Author shall prepare and deliver a manuscript for the Revised Edition within twelve (12) months following the date on which the Publisher notified the Author that it wishes to publish the Revised Edition.
- (b) If the Author does not agree to prepare the Revised Edition, the Publisher shall have the right to arrange with others for the preparation of the Revised Edition. In such case, the Publisher shall have the right to deduct from the Author's royalties any fees or royalties paid to the reviser(s) provided that the Author's royalties shall not be reduced by more than 50% for the first such revised edition. If a second revised Edition is prepared by other than the Author, the Publisher shall have the right to deduct from the Author's royalties any fees or royalties paid to the reviser(s) of the second Revised Edition provided that the Author's royalties shall not be reduced by more than 75% for the second such revised edition. No royalties shall be paid to the Author with respect to further revised editions not prepared by the Author. The Revised Editions may be published under the same title and may refer to the Author by name, but credit may be given to the reviser(s) in the Revised Edition(s) and in advertising and promotional material with respect thereto.
- (c) Except as otherwise provided herein, the provisions of this Agreement, including royalty terms (but excluding the advance provided herein) shall apply to each successive revised edition, and royalties for Revised Editions shall be calculated cumulatively with sales of the original edition.

16. FORCE MAJEURE

The failure of the Publisher to publish or reissue the Work shall not be a breach of this

Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of governmental agencies, labor disputes, inability to obtain materials necessary for manufacture of the Work or any other reason beyond the Publisher's control; in the event of delay from such cause, the publication or reissue shall be postponed for a period of time reasonably related to such cause.

17. GENERAL PROVISIONS

- (a) The Author shall keep at least one copy of the manuscript for the Work and any other materials submitted to the Publisher under this Agreement. The Publisher shall upon the Author's written request, made within a year after first publication by the Publisher, return to the Author the copy of the manuscript used for typesetting, if a print edition was published; the Publisher shall not be required to retain such manuscript for more than one year. If editing of the Work is done solely on disk or electronically, the Publisher shall not be required to return the edited manuscript to Author. The Publisher shall not be responsible for the loss or damage to any manuscript or other materials except in the event of gross negligence.
- (b) No advertisements (other than advertisements for other publications or audio recordings of the Publisher) shall be included in any edition of the Work published by the Publisher or under license from the Publisher without the Author's written consent.
- (c) The Publisher may use the Author's name, likeness and biographical data on any editions of the Work published by the Publisher and in any advertising, publicity or promotion for the Work and may extend these rights in connection with grants of subsidiary rights made by the Publisher.
- (d) If the Publisher is required by law to withhold and pay to any U.S. or foreign government taxing authority any portion of the amounts due the Author under this Agreement, such payments shall be deducted from the amounts due the Author hereunder.
- (e) If any foreign taxes, bank charges or agents' commissions are imposed on any payments due the Publisher from the exercise of any right granted in this Agreement, the appropriate allocation of proceeds between the Publisher and the Author from the exercise of such right shall be made on amounts received after such charges have been paid.
- (f) In the event of the bankruptcy, insolvency or liquidation of the Publisher, this Agreement shall terminate and all rights granted to the Publisher shall revert to the Author automatically and without the necessity of any demand or notification.
- (g) This Agreement shall be binding upon and inure to the benefit of the heirs, executors or administrators and assigns of the Author and the successors and assigns of the Publisher and may not be assigned by either without the written consent of the other, with the following exceptions. The Author may assign the Author's right to receive payment under this Agreement upon written notice to the Publisher. The Publisher may upon written notice to the Author assign this Agreement to any company that acquires or succeeds to all or a substantial portion of the assets of the Publisher.

- (h) If under any provision of this Agreement, the Publisher is required to obtain the Author's approval, such approval shall not be unreasonably withheld or delayed. If the Publisher fails to receive a response from the Author within such time as the Publisher may reasonably designate to accommodate its schedule for publication, promotion or the exercise of rights when any approval is requested, the approval requested shall be deemed granted.
- (i) This Agreement contains the entire understanding of the Author and the Publisher with reference to the Work; there are no warranties other than those expressly stated in this Agreement. No waiver or modification of any provision of this Agreement shall be valid unless in writing and signed by both parties. No waiver of any breach shall be deemed a waiver of any subsequent breach. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall not be affected.
- (j) Regardless of its place of physical execution or performance, the provisions of this Agreement shall in all respects be construed according to, and the rights and liabilities of the parties hereto shall in all respects be governed by the laws of the State of _____.
- (k) The caption headings of this Agreement are inserted for convenience only and are without substantive effect.
- (l) This Agreement shall be of no force and effect unless signed by both parties within 60 days of the date first stated above.
- (m) [OPTIONAL: Agency clause] The Author hereby authorizes the Author's agent, _____, of _____, to be the Author's sole and exclusive agent with respect to all matters arising out of this Agreement and directs the Publisher to make all payments due or to become due to the Author hereunder to such agent and until receipt by the Publisher from the Author of notice canceling the agent's authority hereunder, the Publisher may conclusively rely upon such authority. Receipt by the Author's agent of payments due hereunder shall constitute a full and valid discharge for such payments under the terms of this Agreement. The Author hereby irrevocably assigns and transfers to the _____ Agency and the _____ Agency shall retain a sum equal to fifteen percent (15%) of all money due and payable to and for the Author's account under this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the date first stated above.

Author

Publisher

By: _____

Author's Tax Identification No. _____

Author's citizenship:

Author's birth date:

(This information necessary for copyright purposes)