

Book Publishing Agreement (Trade Books)

by Practical Law Intellectual Property & Technology
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An agreement for the right to publish a literary work as a trade book and in other common formats, including as an audiobook and as an electronic book (e-book). This Standard Document has integrated notes with important explanations and drafting tips.

Book Publishing Agreement

This Agreement (the "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is made by and between [AUTHOR NAME] ("**Author**"), residing at [ADDRESS], and [PUBLISHER NAME] ("**Publisher**"), a [STATE OF ORGANIZATION] [LEGAL ENTITY TYPE], whose principal office is located at [ADDRESS].

WHEREAS, the Author is or will be the proprietor of a literary work [tentatively entitled [TITLE OF LITERARY WORK]/as defined in Schedule 1 attached to this Agreement] (the "**Work**").

WHEREAS, the Author desires to have the Publisher publish and the Publisher desires to publish the Work on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Author's Grant of Rights. Subject to the terms and conditions of this Agreement, the Author grants to the Publisher for the full term of the US copyright in the Work, including any renewals and extensions thereof, the exclusive right throughout the world to:

(a) print, publish, and sell the Work in print book form in the English language and in languages other than English in the following editions:

(i) trade hardcover;

(ii) trade paperback; and

(iii) mass market paperback;

(b) authorize on the Author's behalf the right to print, publish, and sell the Work in the English language and in languages other than English:

- (i) in hardcover, paperback, and large-type reprint editions;
- (ii) as selections, condensations, or abridgments in anthologies, textbook editions, or book digests;
- (iii) through book clubs in complete, condensed, or abridged editions;
- (iv) as an excerpt in magazines, newspapers, and other periodicals before the first publication of the US trade hardcover edition of the Work in the English language ("**First Serial Rights**");
- (v) as an excerpt in magazines, newspapers, and other periodicals after the first publication of the US trade hardcover edition of the Work in the English language ("**Second Serial Rights**");
- (vi) for use as premiums or giveaways; and
- (vii) as an audiobook;

(c) [authorize on the Author's behalf the right to use and exploit the Work in the English language and in languages other than English, in respect to all forms of commercial tie-ins and adaptations ("**Commercial Rights**"), including the use of the Work, or the title of the Work, for:

- (i) trademarks or trade names for other products; and
- (ii) toys or games;]

(d) [authorize on the Author's behalf the right to exploit motion picture, dramatic, television, radio, lyric, and all other forms of performance rights to the Work in the English language and in languages other than English ("**Performance Rights**");] and

(e) publish, display, and sell the Work, and to authorize on the Author's behalf the right to publish, display, and sell

the Work, as an electronic book ("**e-book**"). As used in this Agreement, an e-book means the full-length verbatim text of [and illustrations or other materials contained in] the Work in the English language and in languages other than English in digital form without the inclusion of additional materials, enhancements, or elements, including sound, images, graphics, and animation ("**Additional Content**"), unless the Author gives express prior approval of the inclusion of such Additional Content in the e-book edition of the Work.

The rights described in Sections 1(b)-(e) are referred to collectively herein as ("**Subsidiary Rights**"). The Publisher shall provide the Author with copies of any Subsidiary Rights licenses granted to third parties under this Agreement. The Author may terminate the Publisher's authorization to license any Subsidiary Right at any time after [NUMBER] [months/years] after the first publication of the US trade hardcover edition of the Work in the English language, for any country and/or language for which a license has not been granted, has terminated, or is terminable. If the Author terminates the Publisher's authorization to license any Subsidiary Right under this paragraph, those rights revert back to the Author under Section 29.

2. Use of Author's Name and Likeness. The Publisher, and any licensees or assigns of the Publisher's rights under this Agreement, have the right to use the Author's name and approved image, likeness, and biography for advertising, promotion, and other exploitation of the Work and other rights granted under this Agreement.

3. Author's Reservation of Rights. All rights not expressly granted by the Author to the Publisher under this Agreement, including all other electronic rights, multimedia rights, app rights, and rights to be exploited in formats not currently in existence, are reserved by the Author. The Author shall notify the Publisher promptly of the exercise or disposition (whichever is earlier) of any right that is reserved by the Author.

4. Manuscript Delivery.

(a) The Author shall deliver [NUMBER] copies of the final and complete manuscript of the Work in the English language, as well as an electronic file in [PROGRAM TYPE] format containing the manuscript of the Work, which is in form and content, [professionally competent and fit for publication/satisfactory to the Publisher], together with any permissions, clearances, or other materials required under Section 5, no later than [DATE] ("**Manuscript Due Date**"). The Author shall also supply by the Manuscript Due Date, at the Author's expense, all photographs, drawings, charts, indexes, or other materials mutually agreed upon as necessary to the completion of the manuscript. The Publisher shall advise the Author within [NUMBER] days of receipt of the manuscript whether or not the Work is, in form and content, [professionally competent and fit for publication/satisfactory to the Publisher].

(b) If the Author does not deliver the complete manuscript of the Work by the Manuscript Due Date, the Publisher may terminate this Agreement upon written notice to the Author.

(c) If the Author fails to supply the additional materials other than the manuscript by the Manuscript Due Date, the Publisher has the right to supply them and charge the cost against any sums accruing to the Author.

(d) If, after delivery of the complete manuscript of the Work, the Publisher believes that the Work is, in form and

content, [not professionally competent and fit for publication/unsatisfactory], the Publisher shall provide written notice to the Author stating the reasons for its determination that the Work is [not professionally competent and fit for publication/unsatisfactory] and providing the Author with [NUMBER] days within which to make such changes or revisions required by the Publisher. If the Author fails to deliver to the Publisher within such time period a manuscript of the Work revised in accordance with the Publisher's notice, the Publisher may terminate this Agreement upon written notice to the Author.

(e) If the Publisher terminates this Agreement under Sections 4(b) or 4(d), all of the parties' obligations under this Agreement cease except for those that expressly survive this Agreement. In such event, the Author shall return within [NUMBER] days of such termination any advance payments already made to the Author under Section 8. If, after termination for non-delivery the Author does complete the Work, the Author must first offer the Work to the Publisher for consideration for publication on the terms and conditions set out in this Agreement before publishing the Work or offering the Work to another publisher. The obligations in this Section to return payments and to offer the Work to the Publisher survive the termination of this Agreement.

(f) The Publisher shall return the original manuscript of the Work [and any original materials submitted therewith] to the Author within [NUMBER] days after its first publication under Section 7.

5. Permissions and Clearances. The Author shall obtain, at the Author's expense, all permissions and other clearances that the Publisher deems necessary for the inclusion of any textual, illustrative, or other material in the Work selected by the Author, and to deliver with the complete manuscript copies of all agreements, correspondence, and copyright assignments relating thereto, together with acknowledgements and copyright notices.

6. Editorial Changes and Proofs.

(a) After the Publisher has accepted the Work, no material changes may be made to it without the Author's prior written approval. The Publisher, however, may copyedit the Work in accordance with its standards of spelling, punctuation, capitalization, style, and usage. The Publisher shall send the copyedited Work to the Author, who shall make any revisions or corrections and return it to the Publisher no later than [NUMBER] days after its receipt.

(b) The Publisher shall furnish the Author with page proofs of the Work, including cover art and any other artwork contained in the Work. The Author shall read, correct, and return all page proofs within [NUMBER] days after their receipt. If any changes in the page proofs (other than corrections of typographical errors) are made at the Author's request, then the Author shall pay the cost of such changes in excess of 10% of the typesetting cost (exclusive of the cost of setting corrections). If the Author fails to timely return the corrected page proofs, the Publisher may publish the Work without the Author's approval of the page proofs.

7. Publication.

(a) The Publisher shall publish the Work in the US in trade hardcover book form in the English language, at the Publisher's expense, in the format and style and at the price determined by the Publisher, within [NUMBER] months

after acceptance of the Work. [The Publisher shall [give final approval to/consult in advance with] the Author concerning the Author's photograph, the dust jacket design, cover art, the size and placement of the Author's credits, and advertising and promotional materials supporting sales of the Work.]

(b) If the Publisher is unable to publish the Work within the time frame set forth in Section 7(a) due to external events beyond the Publisher's control, such as labor disputes, war, or natural disasters, the Publisher shall publish the Work no later than [NUMBER] months after the termination of such circumstances.

(c) If the Publisher sells First Serial Rights in the Work, publication of the Work will be delayed no later than [NUMBER] months after such periodical publication.

(d) If the Publisher fails to publish the Work within the time periods set forth in Sections 7(a), 7(b), or 7(c), the Author may terminate this Agreement upon written notice to the Publisher. Thereafter, all rights in the Work revert to the Author who may retain any advance payments under Section 8 as liquidated damages. The Author shall not claim or institute any other damages, actions, or proceedings, either legal or equitable, including specific performance, against the Publisher.

(e) [The Publisher shall use its best efforts to promote the sale of copies of the Work and to exploit the Subsidiary Rights granted to the Publisher in this Agreement. The Author shall cooperate with the Publisher in promoting the sale of copies of the Work.]

8. Advance. As an advance against all sums payable by the Publisher to the Author under this Agreement, the Publisher shall pay the Author the sum of \$[FULL ADVANCE AMOUNT] as follows:

(a) \$[PARTIAL ADVANCE AMOUNT] upon execution of this Agreement; [and]

(b) \$[PARTIAL ADVANCE AMOUNT] upon the delivery and acceptance of the complete manuscript of the Work[./; and]

(c) [\$/[PARTIAL ADVANCE AMOUNT] upon publication of the Work in the first US trade hardcover edition in the English language.]

The advance is not repayable to the Publisher, provided that the Author has delivered the complete manuscript of the Work in conformity with Section 4 and is not otherwise in default under this Agreement.

9. Royalties. The Publisher shall pay to the Author as royalties on sales, less reasonable returns, the following percentages of the Work's [suggested retail/list] price:

(a) on all copies of the trade hardcover edition of the Work sold through ordinary trade channels: 1 to 5,000 copies: 10%; 5,001 to 10,000 copies: 12.5%; over 10,000 copies: 15%;

(b) on all copies of the trade paperback edition of the Work sold through ordinary trade channels: 7.5% on all copies; and

(c) on all copies of the mass market paperback edition of the Work sold through ordinary trade channels: 1 to 150,000 copies: 8%; over 150,000: 10%.

10. Subsidiary Rights Royalties. The Publisher shall pay to the Author as royalties the following percentages of the Publisher's net receipts (the amount actually received by the Publisher, after allowances and return credits, and excluding postage, shipping and handling costs, insurance charges, and sales and similar taxes) received from the exploitation of Subsidiary Rights:

(a) hardcover, paperback, and large-type reprint editions: 50%;

(b) publication as selections, condensations, or abridgments in anthologies, textbook editions, and book digests: 50%;

(c) book club publication: 50%;

(d) first serial publication: 90%;

(e) second serial publication: 50%;

(f) publication of editions for use as premiums: 50%;

(g) audiobooks: 50%; [and]

(h) [exploitation of Commercial Rights: 90%][./;][and]

(i) [exploitation of Performance Rights: 90%][./;][and]

(j) e-books published by Publisher or a third party: [NUMBER]%.

11. Reduced Royalties. The Publisher shall pay the Author reduced royalties of one-half of the prevailing royalty rate then in effect on copies sold:

(a) outside of ordinary trade channels at discounts of more than 50% of the [suggested retail/list] price; and

(b) from a reprinting of [NUMBER] or less copies made more than two years after the first publication of the US

trade hardcover edition of the Work in the English language.

12. No Royalties. The Publisher shall pay the Author no royalties on copies of the Work sold to the Author, distributed for review, advertising, publicity, or sales promotion, sold at or below the cost of manufacture, or that have been damaged or destroyed.

13. Remainders. There will be no sales of overstock (copies sold in the US at a discount of 70% or higher) during the first 18 months after the first publication of the US trade hardcover edition of the Work in the English language. Thereafter[, or sooner with the Author's written consent,] the Publisher may sell overstock and shall pay the Author 10% of the gross amount that the Publisher receives from those sales. [The Publisher shall not destroy overstock without advance notice to the Author, who may obtain overstock by paying the shipping and handling costs for same.]

14. Accounting and Payments.

(a) The Publisher shall provide the Author with semiannual statements of account in accordance with its regular accounting practices, together with payment for all amounts due for each such semi-annual royalty accounting period, during the [NUMBER] month following the close of each royalty accounting period, so long as any payments are due.

(b) The Publisher may take a credit against amounts payable to the Author for any returns for which royalties have been previously paid. If the balance due to the Author for any royalty accounting period is less than \$[AMOUNT], no payment will be due until the next royalty accounting period at the end of which the cumulative balance has reached \$[AMOUNT]. The Publisher may retain a [reasonable/[NUMBER] percent ([NUMBER]%)] reserve against amounts payable to the Author for future returns for no more than [NUMBER] royalty accounting periods, provided the accounting statements indicate the amount of the reserve and how it has been applied. Any amounts 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 to the Author under this Agreement or any other agreement between the Author and Publisher.

(c) During the term of this Agreement, [and for [NUMBER] year[s] after,] the Publisher shall maintain complete and accurate books and records regarding its business operations relevant to the payment of royalties and any other information required to be reported to the Author under this Agreement. The Publisher shall make such books and records, and appropriate personnel, available during normal business hours for audit by the Author or its authorized representative; provided that the Author shall:

(i) provide the Publisher with reasonable notice of any audit;

(ii) undertake an audit no more than once per calendar year; and

(iii) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Publisher's normal business operations.

The Author may take copies and abstracts of materials audited. The Author will pay the cost of such audits unless an audit reveals a discrepancy in payment or reporting of [PERCENTAGE IN WORDS] percent

([PERCENTAGE]%) or more, in which case the Publisher shall reimburse the Author for the [reasonable] cost of the audit. The Publisher shall immediately upon notice from the Author pay the Author the amount of any underpayment revealed by the audit [plus interest at the highest rate permissible under applicable law] together with any reimbursement pursuant to the preceding sentence.

15. US Copyright. The Publisher shall register the copyright in the Work with the US Copyright Office in the Author's name at the Publisher's cost and publish the Work with copyright notice in the Author's name in conformity with the US Copyright Act, as amended, and the Universal Copyright Convention, and shall require its licensees to do the same. Both parties shall execute all papers and documents required to protect, assign, record, renew, or otherwise effectuate the rights contained in this Section. [Any textual, illustrative, or other material prepared for the Work by the Publisher at its expense may be copyrighted separately as the Publisher deems appropriate.]

16. Foreign Copyright. The Publisher shall take such steps as it deems appropriate to register the copyright in the Work in the Author's name at the Publisher's cost in countries other than the US, but the Publisher is under no obligation to register the copyright in any such countries, and shall not be liable to the Author for any acts or omissions by it in connection therewith. The Author may register the copyright in the Work in the Author's name at the Author's cost in any foreign country if the Publisher fails to do so within 30 days after receiving a written request from the Author to register the foreign copyright.]

17. Copyright Infringement. In case of any infringement of the Work by others, the Publisher may in its discretion sue or employ such remedies as it deems expedient, and all such suits or proceedings shall be at the joint expense of the Author and the Publisher, and the net proceeds of any recovery shall be divided equally between them, but the Author shall not be liable for any expenditure for such purposes in excess of \$[DOLLAR AMOUNT OF EXPENDITURE] undertaken by the Publisher without the Author's previous consent in writing. If the Author does not consent to all expenditures for such purposes, any recovery shall be divided between the Publisher and the Author in the ratio of their respective expenditures for such purposes.

18. Author's Free Copies of the Work. The Publisher shall give the Author [NUMBER] free copies of each physical edition of the Work published by the Publisher. The Author may purchase additional copies of the Work at a discount of [NUMBER]% from the Publisher's [suggested retail/list] price, or the best discount price offered by the Publisher, whichever price is lower, provided that the copies are for personal use only and not for resale.

19. Publisher's Representations and Warranties. The Publisher represents and warrants to the Author that it has the right to enter into this Agreement and to perform all terms in this Agreement.]

20. Author's Representations and Warranties. The Author represents and warrants to the Publisher that:

(a) 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 full right, power, and authority to enter into this

Agreement and convey the rights granted to the Publisher;

(b) the Work is original, not in the public domain, and previously unpublished[except for third-party material that is either in the public domain or for which appropriate third-party written permissions have been obtained];

(c) to the best of Author's knowledge, the Work:

(i) does not infringe upon or violate any copyright, trademark, or trade secret of others; and

(ii) contains no material that is obscene, 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. All statements in the Work asserted as facts are true and based on the Author's investigation and generally accepted research practices to confirm their accuracy.

21. Author's Indemnities. The Author shall indemnify, defend, and hold harmless the Publisher and its distributors and licensees against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees and the cost of pursuing any insurance providers arising out of or in connection with any third-party claim, suit, action, or proceeding (each, an "Action") relating to any actual or alleged breach by the Author of its representations, warranties, covenants, or other obligations hereunder. [This indemnity does not apply to any material inserted in the Work by the Publisher or by the Author in response to the Publisher's request, or to any material that the Publisher should reasonably have determined from reading the Work would violate any rights specified in Section 20(c).]

22. Indemnification Procedure. The Publisher shall promptly notify the Author in writing of any Action and cooperate with the Author at the Author's sole cost and expense. The Author shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Author's sole cost and expense. [The Author shall not settle any Action in a manner that adversely affects the Publisher's rights without the Publisher's prior written consent[, which shall not be unreasonably withheld or delayed].] The Publisher's failure to perform any obligations under this Section will not relieve the Author of its obligations under this Section except to the extent that the Author can demonstrate that it has been [materially] prejudiced as a result of such failure. The Publisher may participate in and observe the proceedings at its own cost and expense.

23. Insurance. The Publisher shall include the Author as an additional insured under the Publisher's insurance policy against libel, invasion of privacy, copyright and trademark infringement, and related risks, and agrees to pay the premium for the policy.]

24. Revised Editions. If the Publisher decides that a revised edition of the Work is desirable, the Publisher shall send written notice to the Author requesting that the Author revise the Work. The Author shall advise the Publisher within [NUMBER] days after receipt of such notice whether the Author will revise the Work. The provisions of this Agreement apply to each

revised edition of the Work by the Author, which will be considered a separate work, except that the Author shall deliver the manuscript of each such revision to the Publisher on a delivery date mutually agreed to by the parties. If the Author is unwilling or unable to revise the Work, the Publisher has the right, but not the obligation, to engage a competent person to revise the Work and to charge the cost of such revision against royalties due to the Author for the revised Work [up to a maximum of fifty percent (50%) of the royalties for the revised Work].]

25. Option. The Author grants to the Publisher an option on the Author's next book-length work ("**Option Work**") to be exercised as follows:

(a) the Author shall submit to the Publisher [a proposal/an outline and [NUMBER] sample chapter[s]/a complete manuscript] for the Option Work before offering the Option Work to any other party;

(b) the Publisher has [NUMBER] days from its receipt of the [proposal/outline and sample chapter[s]/manuscript] for the Option Work to notify the Author that it would like to publish the Option Work and an additional [NUMBER] days to reach an agreement with the Author on [the same terms as those under this Agreement/mutually agreeable terms] for publishing the Option Work; and

(c) if the Publisher does not notify the Author that it intends to exercise the option within the initial [NUMBER]-day period, or if after notifying the Author of its intent to exercise the option, the Publisher fails to reach a timely agreement with the Author, the Author may offer the Option Work to any other party without any further obligation to the Publisher.]

26. Non-compete. For [NUMBER] months after the first publication of the US trade hardcover edition of the Work in the English language, the Author shall not, without the Publisher's written permission, publish, or authorize to be published any full-length work that is substantially similar to the Work, specifically intended to compete with the Work in the marketplace, and which would directly injure sales of the Work.

27. Termination.

(a) The Author may terminate this Agreement upon written notice to the Publisher if the Publisher:

(i) fails to publish the Work pursuant to Section 7;

(ii) fails to make any payment or deliver any accounting statement pursuant to Section 14(a);

(iii) otherwise materially breaches the Agreement; or

(iv) files a petition under the bankruptcy laws, makes an assignment of its assets for the benefit of its creditors, or otherwise liquidates its business, or if a court determines that the Publisher is legally bankrupt.

(b) The Publisher may terminate this Agreement upon written notice to the Author if the Author:

(i) does not fulfill the Author's obligations pursuant to Sections 4(b) and 4(d); or

(ii) otherwise materially breaches the Agreement.

Termination of the Agreement will take effect [NUMBER] days after a party's receipt of written notice of termination unless that party has remedied the problem triggering the termination during the [NUMBER]-day period.

28. Out of Print. The Author [or the Publisher] may terminate this Agreement, effective [NUMBER] days after written notice is sent to the [Publisher/other party], if:

(a) The Work is available only as an e-book, in a book edition produced via print-on-demand, and/or in special printings, including book club or large print editions, and the Author's royalties and Subsidiary Rights income from the Work totals less than \$100.00 in a single royalty accounting period[./;][or

(b) The Publisher sends written notice to the Author of its decision to put the Work out of print.]

29. Reversion of Rights to Author. Upon termination of this Agreement pursuant to Sections 1(b)-(e), 27, or 28, all rights in the Work granted to the Publisher in this Agreement will revert back to the Author, provided that any license or contract previously granted to a third party under this Agreement will remain in effect, and the Publisher will continue after the termination to have the right to its share of the proceeds from any such licenses or contracts. In addition, the Author has the right, within [NUMBER] days of the notice of termination, to a single purchase of some or all of the remaining print copies of the Work in inventory at the Publisher's actual cost of manufacture (plus shipping and handling costs) to be prepaid by the Author, and the Publisher shall provide to the Author any remaining printer's files at no cost to the Author (except for costs for retrieval and any transfer or shipping and handling fees to be prepaid by the Author). If the Author does not exercise this right, the Publisher may dispose of these materials in any manner, without any obligation to the Author.

30. Rights Surviving Termination. Upon the termination or expiration of this Agreement, any rights reverting to the Author will remain subject to all licenses and other grants of rights made by the Publisher to third parties under this Agreement. Any rights or obligations of the parties in this Agreement which, by their nature, should survive termination or expiration of the Agreement, will survive any such termination or expiration, including any and all rights of the Publisher under such third-party licenses and grants, the parties' respective obligations to pay any sums owed to the other party, the Author's accounting, reporting, and audit rights in Section 14, and all of the Author's representations, warranties, and indemnities in

Sections 20 and 21.

31. Assignment. This Agreement is binding on and inures to the benefit of the parties hereto, the heirs, executors, and administrators of the Author, and the successors and assigns of the Publisher. The Author shall not assign any of its rights or delegate any of its obligations under this Agreement, in each case whether voluntarily or involuntarily, by operation of law, or otherwise, without the Publisher's prior written consent which will not be unreasonably withheld or delayed. The Publisher may assign this Agreement or its rights hereunder, or delegate its obligations hereunder, only to a company acquiring all or substantially all of the Publisher's assets.

32. Entire Agreement. This Agreement is the sole and entire agreement of the parties with respect to the subject matter herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

33. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

34. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

35. Amendment and Modification; Waiver. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party will operate or be construed as a waiver about any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or will be construed as a waiver thereof; nor does any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

36. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. [Upon such determination that any term or other provision is invalid, illegal, or unenforceable, [the parties shall negotiate in good faith to/the court may] modify this Agreement so as to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.]

37. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Author:[AUTHOR ADDRESS]

Facsimile: [AUTHOR FAX NUMBER]

[Email: [AUTHOR EMAIL ADDRESS]]

Attention: [AUTHOR NAME]

If to Publisher:[PUBLISHER ADDRESS]

Facsimile: [PUBLISHER FAX NUMBER]

[Email: [PUBLISHER EMAIL ADDRESS]]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile [or email] ([in each case,]with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the [NUMBER] day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

38. Interpretation. For purposes of this Agreement, (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein[:] (x) to “Sections” [and “Schedules”] refer to the Sections of[, and Schedules attached to,] this Agreement[./;] (y) “to an agreement, instrument, or other document” means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof[./; and] (z) [”to a statute” means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.] This Agreement is construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. [The Schedules referred to herein are construed with, and are an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.]

39. Governing Law; Submission to Jurisdiction. This Agreement and all related documents [including all exhibits attached hereto][, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute] are governed by, and construed in accordance with, the laws of the State of [STATE], United States of America [(including [its statutes of limitations] [and] [APPLICABLE STATE CHOICE OF LAW STATUTE(S)])] [, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of [STATE]]. Any legal suit, action, or proceeding arising out of or relating to this Agreement [will/may] be instituted [exclusively] in the federal courts of the United States of America or the courts of the State of [RELEVANT STATE] in each case located in the City of [RELEVANT CITY] and County of [RELEVANT COUNTY], and each party irrevocably submits to the [exclusive] jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party’s address set forth herein is effective service of process for any suit, action, or other proceeding brought in any such court.

40. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. [A signed copy of this Agreement delivered by facsimile[, email, or other means of electronic transmission] is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

[AUTHOR NAME]

[PUBLISHER NAME]

By _____

By _____

Name:

Name:

Title:

Title:

[SCHEDULE 1]

[DESCRIPTION OF LITERARY WORK]