



SCBWI Sample Children's Book Contract

by Mary Flower and Sue Alexander

To give SCBWI members a sense of what can or cannot be altered/adjusted on a publishing agreement, we have constructed a sample contract. It is not an idealized contract; rather, it is similar to the one you will receive from your publisher. It is based on standard “boilerplate” contracts from many publishing houses.

There are some differences: The sections listed may not be in the same order, or have the same title, as the ones in the contract you receive — but they are all provisions that you will find somewhere in that contract. Some of the wording in your contract may be slightly different; in some places in this sample contract wording has been simplified where the actual language was too obscure to be clear. (While the language may be obscure in the contract you have, comparing it to the comparable section in this sample contract will make what is being said understandable.)

Additionally, in each section, where it appeared necessary, clarifications, explanations, or suggestions for additions or negotiable changes that you may find useful have been noted. It is often thought that first-book authors or illustrators cannot or should not negotiate any part of

their first contract. This is not true. While there are some parts of any contract that are not negotiable, other parts are indeed negotiable even by first-book authors or illustrators. The notations that have been included in the SCBWI sample contract will help you to determine what you may negotiate. These notations are in boxes (see example at bottom).

It should be understood that while the word “Author” has been used throughout, it stands for “Illustrator” also. Where provisions differ, however, that is indicated.

When you receive your contract, read it very carefully, using this sample contract as a guide. Note the items you question or wish to change, add, or delete. Call your editor and discuss them with him/her. Changes cannot be made without the publisher's concurrence, so do not write them into the contract. **PUT YOUR REQUESTS FOR CHANGES IN A LETTER.** Send that letter to your editor (who will forward it to the contract department) or, if the cover letter that came with the contract contains a person's name to respond to, send it to that person. Be aware that not everything you may request will be granted — and remember that compromise is the key to all successful agreements. ☺

NOTATIONS appear in boxes like this one—sometimes in the text itself or as a footnote at the end of a section.

Sample Book Contract

AGREEMENT made this _____ day of [month], [year]

Between

_____ [author or illustrator's name]

residing at

_____ [street address]

_____ [city]

_____ [state]

_____ [zip code]

_____ [country]

(the "Author") and XYZ Children's Books, an imprint of So-and-So Books for Young Readers, a division of Megamerger, Inc., whose principal office is located at 205 Lexington Avenue, New York, New York 10086 (the "Publisher").

WHEREAS the Author is the proprietor of the following work (the "Work")

Title: [Working title of the book]

Subject matter description: [genre of book and one-sentence synopsis]

AND WHEREAS the Author desires to have the Publisher publish, and the Publisher desires to publish the Work on the terms and conditions and in consideration of the covenants set forth herein:

Grant of Rights

The Grant of Rights sets forth the territories and formats, which are not negotiable, in which the Publisher can publish and/or license the work and the length of time that this contract is in force.

AUTHOR AND PUBLISHER AGREE:

1. The Author hereby grants to the Publisher during the full term of copyright, and any renewals and extensions thereof, in the following countries and territories:

(a) The exclusive right to print, publish, and sell the Work, in whole or in part, in book form in the English language in the United States of America, its territories and possessions, the Philippine Republic, Puerto Rico, and Canada;

(b) The exclusive right to print, publish, and sell the Work, and to license the Work, in whole or in part, for publication, in book form in the English language in all other countries of the world;

(c) The exclusive right to print, publish, and sell the Work, and to license the Work, in whole or in part, for publication throughout the world in all languages other than English;

(d) The exclusive right to license the Work, in whole or in part, for publication in the English language in the following editions: (i) mass market paperback, (ii) trade paperback, (iii) original hardcover, and (iv) hardcover reprint;

(e) The exclusive right to license the Work, in whole or in part, for publication by book clubs and in magazine condensations, newspaper syndications, serializations, and all other subsidiary rights as provided in paragraph 9;

(f) The exclusive right to print, publish, and sell the Work and to license the Work, in whole or in part, for publication in textbook editions, large print editions, anthologies, picture book editions, photonovels; premium, direct mail, coupon advertising; mechanical audio recordings, and mechanical audiovisual recordings;

The following items—(h), (i), (j), (j)(ii)—should be subject to consultation with the author. This phrase can be added to the contract.

(h) The exclusive right to license or otherwise exploit the Work throughout the world in respect to all forms of commercial tie-ins and adaptations, including (but not limited to) the exclusive right to use and license others to use the Work, or the title of the Work, in whole or in part for (i) trademarks or trade names for other products, (ii) toys or games, and (iii) otherwise reproducing the Work, its cover,¹ or associated artwork on any material or in any medium;

(i) The exclusive right to license or otherwise exploit motion picture, dramatic, television, radio, lyric, and all other forms of performance rights to the Work throughout the world; and

(j)(i) The exclusive right to display the Work in any manner designed to be read and to license the display of the Work in any manner designed to be read, in whole or in part, by any means, method, device, or process now known or later developed, and whether the images of the Work are shown sequentially or nonsequentially² (“Display Rights”), including without limitation online or offline electronic displays, mechanical visual recordings, or reproductions (together with accompanying sounds, if any, including a mechanical reading of the Work), microfilm, microfiche, data retrieval and storage systems, computer software systems, and all other forms of copying, recording, or transmitting of Author’s words and/or illustrations in any manner designed to be read, which are not either granted to the Publisher elsewhere in this Agreement or reserved to the Author.

(j)(ii) The exclusive right to produce, publish, sell, and license the Work in Interactive Multimedia Form. “Interactive Multimedia Form” shall mean any electronic magnetic, optical, digital, laser-based, or related form now known or later developed in which the Work, or any interactive adaptation, condensation, or abridgment thereof,³ may be, in whole or in part, captured, stored, published, displayed, transmitted, broadcast, downloaded, or distributed, in a manner designed to be viewed and interacted with, sequentially or nonsequentially (together with accompanying sounds and images from the Work or other works, including a reading of the Work), including without limitation by magnetic tape, floppy disk, interactive CD, CD-ROM, laser disc, optical disc, integrated circuit card or chip, and any other human or machine-readable medium, and by transmission or broadcast, whether online, wireless, or by broadband, narrow band, coaxial cable, twisted pair, fiber optic, or satellite.

¹ You should ask to add a statement here or elsewhere in the contract that says that you may use the cover of the book for publicity purposes—on your Web site, on postcards, etc. Sample language has been included in this agreement in paragraph 29.

² This means whether the text appears in the order in which it does in the book or whether it is taken out of order.

³ This sentence is what makes (j)(ii) different from (j)(i). This gives the publisher the right to change the work as described. This is something you may wish to consider very carefully before agreeing to any such license.

DELIVERY OF MANUSCRIPT AND CORRECTIONS

[For the Author]

2. (a) The Author shall deliver to the Publisher on or before [a specified date] one (1) paginated, double-spaced typed copy and one (1) computer disk copy in a format designated by the Publisher [if requested to do so].

[For the Illustrator]

2. (a) The Illustrator shall deliver to the Publisher on or before [a specified date] complete sketches for the Work, including sketches for jacket art and shall deliver to the Publisher on or before [a specified date] the complete, final artwork from the approved sketches of the Work.

(b) If the Author fails to deliver the manuscript by that date, the Publisher shall have the right to terminate this Agreement upon written notice to the Author, in which event the Author shall promptly repay to the Publisher any and all sums paid to the Author. Any extension of the delivery date must be agreed to in writing by the Publisher.

(c) If the Publisher should terminate this Agreement due to nondelivery of the manuscript, the Author shall not publish or permit the publication of the Work or any other work of a substantially similar nature or subject matter by any other publisher without first offering the manuscript for any such work to the Publisher upon the terms set forth in this Agreement.

(d) If the manuscript or any portion thereof, when delivered, is not satisfactory to the Publisher in style, content, length, and form, the Publisher, in its sole discretion, shall have the option¹ either to notify the Author in writing to what extent the manuscript (or relevant portion) is not satisfactory, in which event the Author shall have thirty (30) days following the receipt of such notice to submit a manuscript that is satisfactory as provided by such notice, or to terminate this Agreement upon written notice to the Author.

(e) If the Author fails or refuses to comply with the notice or the manuscript is still unsatisfactory to the Publisher, the Publisher, in its sole discretion, shall have the option to terminate this Agreement upon written notice to the Author.

(f) If the Publisher exercises its option to terminate this Agreement, the Author shall use his best efforts to sell the Work elsewhere and shall repay any and all sums paid to him under this Agreement out of the first payments due him when and if another publisher accepts the Work for publication. (Such payments from another publisher, up to the total amount of any and all sums paid to the Author under this Agreement, being "First Proceeds.") The author hereby (1) assigns and transfers to the Publisher the Author's right to receive First Proceeds and (2) authorizes and directs any other publisher from which the Author is entitled to receive First Proceeds to pay such sums directly to the Publisher on Publisher's written demand.

(g) Simultaneously with the delivery of the manuscript, the Author shall deliver to the Publisher, at the Author's sole cost and expense, all photographs, drawings, captions, maps, charts, tables, appendixes, notes, bibliography, and other matters required by this Agreement.² If the Author fails to do so, the Publisher shall have the option to supply such materials itself, if necessary employing outside editorial and artistic assistance, and to charge the cost thereof to the Author against the Work.

(h) If copyrighted material is included in the Work (other than that for which the Author is the lawful proprietor), the Author, at his sole expense, shall secure from the copyright proprietor and deliver to the Publisher written permission, in a form satisfactory to the Publisher, to reproduce such materials in the Work and in all editions, adaptations, and media and in the territory and during the entire term permitted in this Agreement.

(i) The Author shall promptly read, revise, correct, and return to the Publisher all proofs of the Work submitted to him by the Publisher. The Author shall pay for all alterations in the proof made at the Author's request (exclusive of the cost of correcting typesetter errors or making publisher alterations), to the extent that such alterations exceed ten percent (10%) of the cost of composition. The Author shall pay for all alterations (exclusive of the cost of correcting typesetter errors or making Publisher alterations) that he requests after page proofs have been made or typesetting of the Work has been corrected in conformity with the Author's corrected galley proof.

¹ It would be advisable to negotiate some language similar to this to allow you to revise the manuscript or artwork if necessary before the agreement can be terminated: "Should the manuscript as submitted not be acceptable to the Publisher for editorial reasons, the Publisher will provide the Author the opportunity to make the Work acceptable before exercising its option to terminate the Agreement."

² If an index is desired, who provides and pays for it should be negotiated.

TERMS AND CONDITIONS OF PUBLICATION

3. (a) The Publisher will, within eighteen (18) months after acceptance of the Work,¹ publish or cause publication of the Work in such editions, imprints, style, and manner and at such prices as it deems suitable. The Publisher shall be authorized to exercise the usual editorial privileges in the course of preparing the Work for composition and to make the manuscript conform to its standard style of punctuation, spelling, capitalization, and usage.

¹ This applies to text-only manuscripts — which basically means novels. The publication time for picture books and nonfiction that requires author-supplied photographs or other material will depend on when the artwork, photographs, or other material is received, in which case the language will read: The publisher shall, except for circumstances beyond its control, publish the work no more than eighteen (18) months after receipt of such artwork, photographs, or other material.

(b) The failure of the Publisher to publish or cause publication of the Work within the time period set forth above shall not be deemed to be a violation of this Agreement if such failure to publish is caused by restrictions of governmental agencies, labor disputes, inability to have the book manufactured or to obtain the materials necessary for its manufacture, or by any delay occasioned by the assertion of any claim, or warranties contained in paragraph 13, or for any other cause beyond the control of the Publisher. In the event of a delay resulting from any cause referred to in this paragraph, the publication date may, at the Publisher's option, be postponed accordingly, provided, however, that if the delay is occasioned by the assertion of any claim, action, or proceeding covered, and such claim, action, or proceeding is not resolved by settlement or final judgment within six (6) months, the Publisher shall have the option to terminate this Agreement and the Author shall thereupon repay any advance paid to him.

(c) If the Publisher fails to publish the Work within the agreed time period, the Author may, at his option, by written notice to the Publisher demand that the Publisher, publish the Work. In the event the Publisher has not published within six (6) months of such notice, the Author may terminate this Agreement. If, however, the Publisher's failure to publish is the result of delays in delivery and acceptance of the text and/or artwork for the Work, the Publisher's time to publish shall be extended accordingly. In such event the only damages recoverable by the Author shall be limited to the total advance payable under this Agreement.

(d) Nothing herein shall require the Publisher to publish or license each and every edition permitted to be published or licensed hereunder. Furthermore, the Publisher shall not be required to continue publication of the Work if, in its opinion, it violates the right of privacy or any property or personal right of any person, or contains any libelous, scandalous, or other unlawful matter, or presents a substantial risk of liability or injury to third persons or of governmental action against the Work. If in the good faith opinion of Publisher's legal counsel, the Publisher is unable to publish the Work for the reasons set forth in this paragraph, the Publisher shall have the right to terminate this Agreement, and the Author shall thereupon repay any advance paid to him.

(e) The Publisher may elect to have the Work reviewed by its counsel prior to publication, in which event the Author shall cooperate in the vetting process and shall make such changes in the Work as are requested by the Publisher's counsel. Such vetting and review made as a result of the vetting shall not diminish the Author's representations, warranties, and indemnities under paragraph 13 of this Agreement.

ADVANCES AND ROYALTIES

4. The Publisher shall pay to the Author as an advance against all royalties and other sums accruing to the Author under this Agreement, the sum of [total amount of the advance to be agreed upon by Author and Publisher] to be paid as follows:

One-half upon execution of this Agreement; and

One-half upon the Publisher's receipt and acceptance of the final complete manuscript.¹

¹ This is the usual way that the advance is paid. It may, however, be paid in full on signing (when the final manuscript has been accepted), or it may be split into three payments (this is the usual schedule for illustrators, who will receive one-third on signing, one-third on delivery of sketches, and one-third on final acceptance of artwork). Some publishing houses have instituted a three-tiered schedule for payment of the advance—1/3 on signing, 1/3 on delivery of acceptable manuscript, and 1/3 on publication. Usually, this is applied to large advances; however, it may be found in other contracts as well. The third tier—payment on publication—is the most objectionable. Though you may not be able to eliminate the third tier, you may be able to negotiate the payout schedule. Try to get 75% (seventy-five percent) or more of the advance paid on signing and delivery with only 25% (twenty-five percent) or less to be paid on publication.

If you are an established author or illustrator and/or your publisher is enthusiastic about the book, you may be able to negotiate an additional advance should the book win or be named an honor book for either the Caldecott or Newbery awards. Suggested wording follows:

In the event the Work is awarded a Caldecott/Newbery Award, the Publisher shall pay an additional advance as follows:

\$00,000 if the Work wins a Caldecott Medal/Newbery Medal; or

\$00,000 if the Work is named a Caldecott/Newbery Honor Book.

Such payment shall be made within thirty (30) days of the announcement of the award.

Hardcover

5. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any trade hardcover edition of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns:

(a) Except as otherwise provided below, the following percentages of the Publisher's suggested retail price of each copy sold in the United States through normal channels:

10%² on the first 20,000 copies of the Work sold; and

12.5% on all copies of the Work sold thereafter.³

(b) Where the discount to jobbers or to wholesale distributors or booksellers on copies of any edition published by the Publisher is fifty-two percent (52%) or more, the Publisher shall pay to the Author one-half the prevailing royalty rate under paragraph 6(a);

*** If there are two people involved, the royalties marked with an asterisk below will be split between them in accordance with the agreement they have reached with the publisher.**

*(c) A royalty of ten percent (10%) of the amount in excess of the Publisher's manufacturing cost received by the Publisher on sales of overstock and damaged copies that the Publisher deems expedient to sell at a discount of sixty percent (60%) or more. No sale of overstock shall take place within the first year after publication of the Work in book form, except upon the written consent of Author (or the Author's agent); such consent shall not be unreasonably withheld;

*(d) A royalty of ten percent (10%) of the amount received by the Publisher for copies, bound or in sheets, sold for export, for copies, bound or in sheets, sold in bulk to book clubs, or for copies sold at a special discount of sixty percent (60%) or more of the Publisher's suggested retail price;

*(e) A royalty of twelve and one-half percent (12.5%) of the amount received by the Publisher on all sales in Canada on copies of any edition published by the Publisher;

*(f) A royalty of five percent (5%) of the actual selling price on copies sold directly to commercial purchasers as a premium or to the consumer through the medium of mail-order coupon advertising, direct by-mail circularization or solicitation by radio or television;

*(g) A royalty of ten percent (10%) of the Publisher's suggested retail price or a royalty equal to the initial royalty rate, whichever is lower, on all copies sold from a reprinting of two thousand five hundred (2,500) copies or less made within the first two years after publication⁴;

(h) A royalty of one-half the prevailing royalty rate on all copies sold from a reprinting of two thousand five hundred (2,500) copies or less made two (2) years or more after first publication, provided that sales in the six (6)-month period immediately preceding such reprinting do not exceed five hundred (500) copies,⁵ it is understood that there shall be no more than one (1) printing per calendar year; and

*(i) A royalty of five percent (5%) of the Publisher's suggested retail price of each copy sold within the United States of any hardcover reprint edition issued by the Publisher at a suggested retail price of not more than two-thirds (2/3) the original suggested retail price.

*(j) A pro-rata share of five percent (5%) of the suggested retail price of any omnibus edition in which the Work appears.

² Where there are two people involved—e.g., author and illustrator or coauthors—the ten percent will be split between them. Most often it is an equal split, but there are a number of circumstances in which it may be unequal, for example: (i) when an unknown author or illustrator is paired with a well-known illustrator or author; or (ii) when illustrations make up less than half the book.

³ This is the common escalation—if the publisher will agree to an escalation at all.

⁴ This stipulation is intended to allow the book to remain in print even when the sales do not meet the publisher's expectations.

⁵ The purpose of this stipulation is to keep the book in print.

Trade Paperback

6. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any trade paperback edition⁶ of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns:

(a) Except as otherwise provided in this paragraph 6, the following percentages of the Publisher's suggested retail price of each copy sold in the United States through normal channels:

6% on all copies of the Work sold.⁷

(b) A royalty of two-thirds (2/3) of the above royalty rate based upon the amount received by the Publisher, on all copies sold for export, or outside the United States;

*(c) A royalty of five percent (5%) of the amount received by the Publisher on sales of overstock and damaged copies, and on all copies sold to a governmental agency, or through the medium of mail order;

*(d) A royalty of five percent (5%) of the amount received by the Publisher on special sales, to commercial purchasers as a premium, in bulk to book clubs, and outside normal wholesale and retail channels⁸ and for each copy sold at a discount of fifty percent (50%) or more from the Publisher's suggested retail price of the trade paperback edition of the Work.

⁶ These are different from mass market editions.

⁷ Where there are two people involved this will be split between them.

⁸ This refers to outlets such as Wal-Mart, Costco, and other companies whose primary business is not selling books.

Mass Market Paperback

7. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any mass-market paperback edition of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns:

(a) Except as otherwise provided in this paragraph the following percentages of the Publisher's suggested retail price of each copy sold in the United States through normal channels:

6% on all copies of the Work sold.⁹

*(b) A royalty of three percent (3%) of the Publisher's suggested retail price on all copies sold for export, or outside the United States;

*(c) A royalty of five percent (5%)¹⁰ of the amount received by the Publisher on sales of overstock and damaged copies, and on all copies sold to a government agency, to a book club, or through the medium of mail order;

*(d) A royalty of five percent (5%) on special sales, to commercial purchasers as a premium, in bulk outside normal (wholesale and retail) channels,¹¹ and for each copy sold at a discount of fifty-five percent (55%) or more from the Publisher's suggested retail price of the mass-market edition of the Work.

⁹ This is fairly standard, though it can vary.

¹⁰ This is fairly standard throughout the industry.

¹¹ This refers to outlets such as Wal-Mart, Costco, and other companies whose primary business is not selling books.

Royalties for Other Editions

8. *(a) The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold by the Publisher of any audio cassette (or other sound recording) of the Work, less credited returns and less a reasonable reserve for estimated returns, a royalty of eight percent (8%)¹² of the net¹³ amount received by the Publisher.

(b) The Publisher shall pay to the Author or credit the Author's account, the following royalties on copies sold by the Publisher of any versions of the Work resulting from Publisher's exercise of Display Rights (as defined in paragraph 1(j)), less any credited returns and a reasonable reserve for estimated returns (i) on copies sold priced comparatively to the hardcover edition, the prevailing royalty rate under paragraph 5(a); or (ii) on copies sold priced comparatively to the trade paperback edition, the prevailing royalty rate under paragraph 6(a).

Irrespective of price, in the event the Publisher receives less than forty percent (40%) of the suggested retail price for such edition, the royalty rate shall be reduced by one-half the difference between forty percent (40%)

and the amount received by the Publisher for such edition, but in no event shall the royalty exceed one-half the amount received by the Publisher.

*(c) The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold by the Publisher of any board book (or other similar edition) of the Work, less credited returns and less a reasonable reserve for estimated returns, a royalty of three percent (3%) of the retail¹⁴ amount received by the Publisher.

¹² This varies widely from publisher to publisher.

¹³ Net is the amount the publisher actually receives on all sales. It is usually about half the retail price.

¹⁴ It should be noted that while most publishers base royalties on retail price, some will pay on the net amount.

Royalties from Licensing

9. The Publisher shall pay to the Author, or credit to the Author's account, the specified percentage of the net proceeds received by the Publisher from the licensing of the following rights:

Right	Percentage to be paid to the Author ¹⁵
Mass market paperback	50%
Trade paperback	50%
Hardcover reprint	50%
Book club	50%
Syndication	50%
First periodical rights (prior to first book publication)	70%
Second periodical rights (after first book publication): serialization, digest, abridgment, condensation, excerpt	50%
Anthology and other selection reprint, in whole or in part: in complete, condensed, adapted or abridged versions	50%
Textbook edition, large print edition, picture book edition, photonovel	50%
Premium, direct mail, coupon advertising	50%
Display rights	50%
Mechanical audiovisual rights	50%
Mechanical audio recordings	50%

Negotiations may be possible on the splits for the following rights:

*Interactive multimedia form	50%
Publication in the English language outside of the United States	70%
Publication in other languages	70%
*Motion picture, television, radio, lyric and dramatic rights	70%
*Commercial adaptations and tie-ins	50%

10.¹⁶ All sums of money due the Author under paragraphs 5(c-g), 5(i-j), 6(c-d), 7(b-d), 8(a), and 9 herein above shall be paid at the rate of [a percentage previously negotiated] of the royalties stipulated in the above paragraphs as printed, provided said sums are related to the use of both text and artwork. If said sums relate only to the use of text, no payments shall be due the Illustrator. If said receipts relate only to the use of artwork, no payments shall be due to the Author.

¹⁵ These are the standard splits; they are rarely open to negotiation. To protect the integrity of your work, ask to have the following inserted: "Any changes proposed to the text of the Work are subject to the Author's approval." Also you can ask to be consulted on the licensing of the rights marked with an asterisk.

¹⁶ This section will appear only in a contract if there is a separate contract with another party — such as an author or an illustrator.

No Royalties

11. No royalty, fee, or other charge shall be payable to the Author for the following, applicable to all editions of the Work published or caused to be published pursuant to this Agreement:

- (a) Sales made at or below Manufacturing Cost, copies destroyed, copies furnished gratis to the Author, editorial review copies, or copies otherwise used to promote the sale of the Work;
- (b) Licensing publication of the Work without fee, in Braille (or similar tactile symbols), or by mechanical audio recordings or visual recordings, solely for the blind and other physically handicapped persons; and publishing or permitting others to publish or broadcast or transmit by radio, television, or online selections from the Work, for publicity and promotion purposes only.

Statements and Payments

12. (a) The Publisher shall render semiannual statements of account no later than May 1 for the period ending December 31 and November 1 for the period ending June 30, except that the first statement shall not be rendered until at least six (6) months after publication date. Such statements shall be submitted to the Author, together with payment for all amounts due for each period so long as any payments are due. All payments made by the Publisher to or for the account of the Author pursuant to this Agreement shall be chargeable against and recoverable by the Publisher from any and all moneys accruing to the Author under this Agreement¹⁷ with the Publisher, and all sums owing by the Author to the Publisher under this Agreement may be deducted from payments accruing to the Author under this Agreement with the Publisher. State, federal, and foreign taxes on the Author's earnings, when required by law to be withheld and paid by the Publisher,¹⁸ shall be proper charges against the Author's earnings hereunder. When the balance to the credit of the Author at the end of any statement period shall be less than fifty dollars (\$50),¹⁹ no statement shall be rendered,²⁰ and the amount due shall be carried forward. The Author or his duly authorized representative shall have the right, upon written request, to examine the Publisher's records that relate to the Work; such examination shall be at the cost of the Author unless errors of accounting amounting to five percent (5%) or more of the total sum paid to the Author during the period covered by such request shall be found to his disadvantage, in which case the cost shall be borne by the Publisher.

¹⁷ Money that is recoverable from this agreement should be recoverable ONLY from this agreement and not from another contract with this publisher. It is highly recommended that this change be made to contract if the agreement states that money is recoverable under this or any other agreement with the publisher.

¹⁸ This is when there is a tax or other lien against the earnings of the author.

¹⁹ This amount varies from publisher to publisher— the standard range is \$10 to \$50.

²⁰ However, a statement can be requested.

AUTHOR'S REPRESENTATIONS, WARRANTIES, AND INDEMNITIES

13. The Author hereby represents and warrants to the Publisher, any seller or distributor of the Work, and to the Publisher's successors, licensees, and assigns, and any officers, agents, and employees of the foregoing: (i) that he is the sole Author of the Work; (ii) that he is the sole and exclusive owner of all rights granted to the Publisher in this Agreement and has not assigned, pledged, or otherwise encumbered the same; (iii) that the Work is original, has not been published in book form, and is not in the public domain; (iv) that he has full power to enter into this Agreement and to make the grants herein contained; (v) that the Work does not, in whole or in part, infringe any copyright or violate any right of privacy or other personal or property right whatsoever, or contain any libelous or scandalous matter or matter otherwise contrary to law; (vi) that no recipe, formula

This section is for your protection. Publishers take out insurance which covers most situations. The following specifies the way in which the situations will be dealt with.

or instruction contained in the Work is injurious to the user; and (vii) that all statements asserted as facts are based on the Author's careful investigation and research for accuracy.

In the event of the assertion of any claim, action, or proceeding inconsistent with any of the foregoing representations and warranties, (a) the Publisher shall have the right to defend the same through counsel of its own choosing, and (b) the Author shall fully cooperate in the Publisher's defense and shall indemnify and hold harmless the Publisher, any seller or distributor of the Work, and the Publisher's successors, licensees, and assigns, and any officers, agents, and employees of the foregoing, from and against any and all liability, damage, loss, expense (including attorneys' fees to the extent provided below), and settlement costs, resulting from any such claim, action or proceeding, provided that no settlement covered by this indemnity shall be effected by the Publisher without the prior written consent of the Author, which consent shall not be unreasonably withheld.

If such claim, action, or proceeding is successfully defended, or settled as provided above, the Author and the Publisher will share the Publisher's attorneys' fees equally; if such claim, action, or proceeding results in a final judgment or decree against the Publisher, the Author will be responsible for the entire amount of such fees. If the Author desires to settle such claim, action, or proceeding and the Publisher desires to continue the defense thereof, the Author's liability under the foregoing indemnity shall be limited to the bona fide settlement amount (evidenced in writing) in respect to such claim, action, or proceeding against the Publisher plus one-half the Publisher's attorneys' fees up to the time that the claimant and the Author agreed upon the amount.

If any such claim, action, or proceeding is threatened or instituted, the Publisher shall promptly notify the Author and, in the Publisher's sole discretion, may withhold payments due the Author under this or any other previously executed agreement between the Publisher and the Author, subject to the Author's right to draw on such sums to defray expenses of the Publisher in defending such claim, action, or proceeding (to the extent covered by this indemnity) and to satisfy and discharge any judgment or decree rendered. In the event that a judgment or decree shall be entered in any court based upon any such claim, action, or proceeding and the Author shall desire to appeal, the Author shall indemnify and hold harmless the Publisher, any seller or distributor of the Work, and the Publisher's successors, licensees, and assigns, and any officers, agents and employees of the foregoing, from and against any and all liability, damage, loss, and expense (including all attorneys' fees) of such appeal and shall furnish and file all bonds necessary to perfect said appeal and to stay execution of any such judgment or decree. If a final adverse judgment or decree is rendered in such action or proceeding and is not promptly paid, bonded, or stayed by the Author, or if costs and expenses (including attorneys' fees) covered by the foregoing indemnity are not promptly paid by the Author, the Publisher may apply the payments so withheld to the satisfaction and discharge of such judgment or decree and to the payment of such costs and expenses.

Irrespective of the foregoing, the Publisher shall have the right at any time on its own behalf and expense to settle any such claim, action, or proceeding without the Author's consent.

The representations, warranties, and indemnities contained herein are continuing representations, warranties and indemnities and shall survive the termination of this Agreement.¹

¹ Even if a book goes out-of-print, years later someone may file a lawsuit and the publisher needs the right to defend the author and itself.

Copyright

14. (a) The Publisher shall print in each edition of the work published by it a proper United States copyright notice in the name of [name of claimant] sufficient to secure United States copyright and Universal Copyright Convention protection in the Work. The Author hereby appoints the Publisher as his attorney-in-fact, and in such capacity the Publisher shall duly register a claim for United States copyright in the Work in such person's name within ninety (90) days of publication and for any renewals,¹ extensions, or continuations thereof if

necessary, and shall deposit the required number of copies of the Work with the Library of Congress. The Publisher shall use its best efforts to see that every license granted by it to publish, reproduce, or otherwise use the Work, in whole or in part, shall contain a specific requirement that the licensee will print a proper copyright notice in each edition of the Work published by such licensee. The Publisher's failure to carry out the obligations in this subparagraph shall not be deemed a breach of this Agreement unless the Publisher shall not use its best efforts to cure such failure after notice from the Author.

(b) The Author, his heirs, executors, administrators, successors, and assigns shall render such cooperation and assistance as the Publisher may reasonably request to protect the rights granted hereunder, including (but not limited to) delivering to the Publisher appropriate transfers of copyright and other documents, in legally recordable form, in respect to all or any portion of the Work or any edition thereof. In addition, the Author shall promptly notify the Publisher of any arrangement he makes for the publication of the Work, in whole or in part, by any person other than the Publisher, as to any rights reserved to the Author hereunder.

(c) If the Work contains a substantial portion of material taken from documents prepared and published by the United States Government and therefore not subject to copyright, the Author shall notify the Publisher in writing of the existence and location of all such material in the Work.

Copyright Infringement

15. In the event that the copyright of the Work shall be infringed, and if no mutually satisfactory arrangement shall be arrived at for joint action in regard thereto, either the Author or the Publisher, jointly or separately, shall have the right to bring an action to enjoin such infringement and to recover damages. If they shall proceed jointly, the expenses and recoveries, if any, shall be shared equally; if they cannot agree to proceed jointly, any party going forward with such action shall bear his or its own expenses, and any recoveries obtained therein shall belong to such party. If the party bringing action does not hold the record title of copyright, the other party will transfer and permit the recordation of such copyright ownership as will permit the former to bring the action in his or its own name.²

¹ The publisher may ask the author to pay for a renewal if that is necessary.

² In order to bring a copyright infringement case to court, the suing party has to be the owner of the copyright. This would be an unusual situation; in most cases such a case would be brought jointly by the author and the publisher.

Author's Property

16. The Publisher shall not be responsible for loss or damage to any property of the Author. In the absence of a written request from the Author made prior to publication, the Publisher, after publication of the Work, may dispose of the original manuscript and proofs.

[Illustrator's Property³]

16. The original artwork is the property of the Illustrator and is to be returned to the Illustrator within six (6) months following publication of the Work. In the event the Author's original artwork, while in the Publisher's possession and control and due to the Publisher's own negligence is lost or damaged so as to render such artwork unsaleable, it is agreed that the Publisher shall reimburse the Author for the value of the lost or damaged artwork, and that such artwork is valued at \$500 per full-color spread, jacket, or full individual page and \$100 per piece of spot art (black/white or color) or black/white full page.⁴ It is agreed that the Publisher shall not be responsible for normal wear and tear.

³ If you are an illustrator, you may have to ask to have this language inserted. Not all publishers include it automatically in illustrators' agreements.

⁴ If the illustrator feels that these figures don't represent the actual value of the artwork, the illustrator must provide documentation that it is worth more.

Author's Copies

17. The author shall be entitled to receive on publication ten (10) free copies⁵ of the Work published by the Publisher, and shall have the right to purchase further copies for personal use and not for resale at a discount of forty percent (40%) from the Publisher's suggested retail price.⁶

⁵ It may be possible to negotiate to raise the number of copies.

⁶ 40% is fairly standard throughout the industry. This discount is not a negotiable item.

Contracts with Others

18. The Publisher shall notify the Author of the terms of any contract or agreements entered into by the Publisher for any grant or license permitted under this Agreement where the Author's share of the proceeds or royalty is or is likely to amount to five hundred dollars (\$500) or more and, upon the Author's request, shall furnish the Author with a copy of each such contract or agreement.⁷

⁷ While permissions are not covered by this statement, it is possible and advisable to request a copy of any permission granted by the publisher. It is also advisable to request that you receive a copy of any print edition in which your work appears. The reason for this being in the contract is so that you have a way to track use of your work or an excerpt and any payments for it.

Use of Author's Name and Likeness

19. The Publisher, in its sole discretion, may use and authorize the use of the Author's name, likeness, photograph, and biographical data in connection with advertising, publicizing, licensing, and promoting the Work, and any commercial adaptation thereof.

No Competing Work

20. The Author agrees that during the term of this Agreement he will not, without the written permission of the Publisher, publish or authorize to be published any work substantially similar to the Work or which is reasonably likely to injure its sale of the merchandising or the other rights granted herein.⁸

⁸ While this language is fairly standard throughout the industry, it is really too broad for the author's protection. We suggest that the author consider revising the language in this section to include limitations— for instance, to limit it to "a work featuring the same character"— and to ensure that if the publisher rejects a work containing that same character that the author is then free to sell that work elsewhere without penalty.

TERMINATION

Out-of-Print Provisions

21. If the Work shall be out-of-print and if, after written request from the Author to put the Work back into print, the Publisher shall fail to place the Work in print, or license publication of a reprint edition by another publisher as permitted herein within a period of six (6) months after the date of such notice (subject, however, to delay from causes beyond the control of the Publisher), this Agreement shall thereupon terminate subject to the terms in paragraph 24. The Work shall not be deemed to be out-of-print so long as it is under contract for publication or on sale in any edition in the United States, whether under the imprint of the Publisher or a licensee. The existence of an individual printondemand edition or an electronic edition shall not constitute the Work being in print unless there are total sales of 300 copies or more per year.

Termination by Publisher

22. If the Publisher shall determine that there is not sufficient sale of the work to enable the Publisher to continue the Work's publication and sale, the Publisher may give written notice of the termination of this Agreement to the Author,¹ with such effect as provided in paragraph 24 below.

Bankruptcy and Liquidation

23. If the Publisher is adjudicated a bankrupt or makes a general assignment for the benefit of creditors or liquidates its business, this Agreement, to the extent permitted by law, shall terminate.²

Rights on Termination

24. Upon termination of this Agreement for any cause, all rights granted to the Publisher shall revert to the Author, subject to the Publisher's continued participation, to the extent provided, in any licenses previously granted by the Publisher.³

The Publisher may dispose of any or all of the copies of the Work remaining on hand as it deems best, subject to the payment of royalties as provided. However, for a period of thirty (30) days after termination the Author shall have the right to purchase any remaining stock at the estimated remainder price plus shipping and handling charges.

¹ It is highly unlikely that the publisher will, in fact, notify the author that the book is going out-of-print. The author should keep himself/herself aware of the sales of the book, recognizing that sales of fewer than 500 copies a year will not normally be enough to keep a book in print.

² In bankruptcy proceedings, the trustee in bankruptcy will make all decisions regarding disposition of the work, regardless of any language in the agreement.

³ You should ask to have language added that states that if there are any such previously granted licenses, the publisher may not renew them upon their expiration and the rights will revert to you.

Revision

25. If the Publisher, in its sole discretion, determines that a revision of the Work is desirable, the Author shall have thirty (30) days after receipt of a request from the Publisher to notify the Publisher that he will make the revision himself within [a period to be mutually agreed]. If the Author fails to deliver such notice, or having delivered such notice he shall fail to deliver a revision satisfactory to the Publisher in style, content, length, and form within that period, the Publisher shall have the right, with the agreement of the Author, to make the revision, charging any outside editorial fee or other fee or royalty to the Author against the Work. It is further agreed that for the purposes of royalty computation, the revised edition shall be considered a new work, and the same scale of royalties shall apply to it as applied to the original edition hereunder.¹

¹ If a royalty escalation has gone into effect, this will eliminate the escalation and the royalty rate will go back to the original rate as set forth in the contract.

Option on Next Work

26. The Author hereby grants to the Publisher the exclusive right and option to publish his next book-length work, subject to the terms and conditions hereinafter set forth.² The Author shall submit the completed manuscript of such work to the Publisher before offering or submitting it to any other party. The Publisher shall have a period of ninety (90) days after submission within which to notify the Author whether it desires to publish the work.³ If within such period the Publisher notifies the Author of its desire to publish such work,

the parties shall negotiate in good faith with respect to the terms of an agreement to publish such work. For ninety (90) days the Author shall not submit or offer such work to any other party or negotiate with any other party with respect to such work. After ninety (90) days, or if the Author and the Publisher are unable to reach an agreement, the Author may offer such work to other parties, provided, however, that he shall not enter into an agreement for the publication of such work with any other publisher upon terms equal to or less favorable than those offered by the Publisher.⁴

² It would be desirable to negotiate the removal of the option clause. If this is not possible, it would be to the author's advantage to make the option as specific as possible— for example, a book featuring the same characters, next book in a series, or a book in the same genre as the contracted work.

³ Many publishers want to have the right to wait until publication of the contracted work before responding to the submission of the next work. This is blatantly unfair since publication may take three years or more.

⁴ In the event the author and the publisher cannot come to an agreement on this option work, the publisher may want to continue the option. This is unacceptable.

Agency Clause

27. [If you have an agent, there will be an agency clause, inserted by your agent, to authorize the collection and receipt by the agent of all sums of money payable to you under the terms of this Agreement. This clause will also empower your agent to act on your behalf in all matters in any way arising out of this agreement. If you and your Agent terminate your relationship, you both must notify the publisher in writing. The publisher may consider the agent's notification valid without hearing from the author, but the reverse will never be true.]

Notices

28. Any notices required or permitted to be given shall be in writing and shall be delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested, to the Publisher or the Author (or his agent) at the respective addresses given above, or at such other addresses as the parties may from time to time designate by written notice given in the manner provided herein.

Reservation of Rights to Author

29. All rights in the Work not granted to the Publisher are reserved to the Author and may be exercised or disposed of by him at any time during the term of this Agreement.

It is recommended that you ask for the following paragraph to be included in your contract as it is not likely that most contracts will have this provision.

The Publisher acknowledges that the Author has the right to use the cover of the Work for the sole purpose of promotion of the Author on the Author's own Web site and in any publicity material the Author may distribute for any self-promotional purposes such as flyers, postcards, and bookmarks. Additionally the Author may make slides or transparencies of the cover of the Work or illustrations for use in any presentation the Author may make about his work. The Author agrees to acknowledge the Publisher as the publisher of the Work and to provide ordering information for the Work should the Publisher so desire.

Assignment of Publication Under Affiliated Imprint ⁵

30. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained in this Agreement, the Publisher may assign this Agreement to any parent, subsidiary, or affiliated company that expressly assumes all the obligations of the Publisher or that acquires all or a substantial portion of the

business of the Publisher. Any other assignment, whether voluntary or by operation of law, shall be null and void unless the assigning party has obtained the written approval of the other party.

⁵ In the event of the publisher merges with or is purchased by another company, this allows the publisher to continue publishing titles it has accepted.

Entire Agreement; Waiver or Modification

31. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, and proposals (whether written or oral) in respect to the matters specified. No waiver or modification of any of these provisions shall be valid unless done in writing and signed by or on behalf of the party granting such waiver or modification. No waiver of any breach or default shall be deemed a waiver of any subsequent breach or default or in any way affect any of the other terms or conditions contained in this Agreement.

Severability

32. If any provision of this Agreement is judicially declared to be invalid, unenforceable, or void by a court, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, and the part or parts of this Agreement held to be invalid, unenforceable, or void shall be deemed to have been deleted from this Agreement, and the remainder of this Agreement shall have the same force and effect as if such part or parts had never been included.

Interpretation, Venue, and Service of Process

33. This Agreement shall be interpreted and construed in accordance with the laws of the State of [the state or country in which the publisher is located], applicable to contracts made and to be entirely performed therein. Any suit, action, claim, or proceeding arising out of or in any way relating to this Agreement or its breach may be brought only in a court of record in the State of [the state or country in which the publisher is located], and the parties hereby consent to jurisdiction of the said courts and to service of process upon them either personally or by certified or registered mail, postage prepaid, return receipt requested. Service of process made by certified or registered mail as herein provided shall be deemed complete three (3) days after the mailing thereof.

Definition of "Author"; Joint Authors

34. The word "Author" shall include male, female, or a firm or corporation, and the plural. In the case of more than one author, their rights and duties shall be joint and several, and each author is hereby designated as agent for the other for purposes of service of process in any action or proceeding brought by the Publisher against either or both authors arising out of or in any way relating to this Agreement or its breach. In the event this Agreement is with more than one author and a dispute arises between the authors that threatens to involve the Publisher in litigation, the Publisher shall have the right to cancel this Agreement if such dispute is not settled or finally determined by court order within ninety (90) days, and, in that event, any advances paid to or for the account of the authors shall be repaid to the Publisher.

Definition of Terms

35. As used in this Agreement:

(a) "Suggested retail price" will mean the price on the jacket or cover of the applicable edition of the Work or, in the absence of a cover price, the retail list price for the edition suggested by the Publisher in its catalogs, order forms, or promotional material;

(b) “Amount received” will mean amounts actually received by the Publisher, after allowances and return credits, and excluding postage and shipping costs or other similar charges, and sales, excise, or similar taxes, if any; and

(c) “Manufacturing cost” will mean the per-unit cost of plant, paper, printing, and binding of the applicable edition, but any copy sold at a discount of eighty-five percent (85%) or more from the suggested retail price shall be deemed sold below manufacturing cost.

Effect of Headings

36. Descriptive words and general statements used in the paragraph headings of this Agreement to summarize the contents of the paragraphs are not to be considered a legal part of this Agreement.

Appendix

Red Flag Words

There are words that, when found in an agreement that is not a work-for-hire document, should be deleted as they are to the author’s detriment. They are: “perpetuity,” “forever,” and “universe.”

There are other words/phrases that often exist in an agreement that are troublesome, but that can be modified by placing conditions on them. Some contracts, when stating the rights that the publishing house has, and referring to technological changes and inventions (such as CD-Rom, DVD, etc.), include the phrase “now and hereinafter devised.” This is acceptable only if (1) the author is assured, in the agreement, of royalties being paid on whatever is devised or on the derivative works and (2) is consulted on and has approval of any new format. ☹