

MWA MODEL NOVEL CONTRACT

[The following model agreement is provided for illustration only. Its terms are designed to be fair both to the author and the publisher. Contracts always are negotiable; consult a literary agent or publishing attorney before signing any agreement.]

AGREEMENT made this __ day of _____, 20__ between _____ (“Publisher”), and _____ (“Author”), concerning a work presently known as: _____ (hereinafter referred to as the “Work”).

1. Rights Granted and Territory.

1.1 Author grants to Publisher during the full term of copyright the exclusive right to publish the Work, including the right to exercise or license the rights set forth in Section 2, in the English language throughout the United States, its territories and possessions, the Philippine Republic and Canada.

1.2 All rights not expressly granted by the Author to the Publisher hereunder are reserved to the Author. Such reserved rights include, but are not limited to dramatic, motion picture, television, radio, commercial tie-in and merchandising, British Commonwealth, and foreign language rights in and to the Work.

2. Subsidiary Rights.

2.1 The Publisher shall have the right, in the territories set forth in Section 1.1, to exercise the following rights in the Work or to license such rights upon such terms as Publisher deems advisable: electronic text rights (“e-book”); audio rights; book club rights; anthology/permission rights; serial rights; abridgment/condensation and digest rights; large print rights; reprint and special edition rights.

2.2 The Publisher shall notify the Author promptly after each disposition of rights, and shall provide the Author with copies of all license agreements relating to the Work. The Author shall have the right to approve the text of any abridged, condensed, or digest version of the Work.

2.3 Publisher shall have the right to license the rights set forth in Sections 1.1 and 2.1 above to Publisher’s parent, subsidiaries, affiliates and divisions, provided that the terms for such license are no less favorable to the Author than the terms which Publisher in its reasonable judgment would accept from an unrelated third party licensee for the same rights. Any such license shall be subject to the approval of the Author, such approval not unreasonably to be withheld or delayed.

3. Delivery of the Work.

3.1 The Author shall deliver to the Publisher by _____ one copy of the complete manuscript for the work approximately _____ words in length and acceptable to the Publisher in content and form. The Publisher shall advise the Author within 45 days of its receipt of the complete Work whether or not the Work is acceptable to Publisher. If the Work is not acceptable to the Publisher, the Publisher may, at its option and in its sole

discretion, give the Author a request for changes and revisions. The Author shall have 60 days from the Author's receipt of such a request to deliver to the Publisher a revised Work that is acceptable to the Publisher.

3.2 In the event the Publisher has requested a revised Work, the Publisher shall advise the Author within 45 days of its receipt of the revised Work whether or not the revised Work is acceptable to Publisher. If the Work as resubmitted is deemed unacceptable, the Agreement shall be terminated at the option of the Publisher and neither party shall have any further liability to the other, subject to the provisions of Section 12.2 below.

3.3 If the Author does not receive any notice from the Publisher within the 45-day periods set forth in Sections 3.1 and 3.2 above, the Author may at any time thereafter give written notice by certified mail or overnight delivery to the Publisher demanding notice of acceptance or rejection, such notice to specify that failure to respond within 15 days from the receipt of such notice shall be deemed acceptance. If the Author receives no response from the Publisher within 15 days from the Publisher's receipt of such demand, the manuscript shall be deemed accepted by the Publisher.

4. Quoted Material.

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

5. Editorial Changes and Proofs.

5.1 After the Work has been accepted by the Publisher, no material change may be made without the Author's approval. The Publisher, however, may copyedit the Work in accordance with its standards of punctuation, spelling, capitalization, and usage. The Publisher shall send the copyedited Work to the Author, who shall make any revisions and corrections and return it within two weeks of receipt.

5.2 The Author shall review and return with two weeks of receipt proofs or other production materials submitted by the Publisher. For print editions, the Author shall pay all charges in excess of 15% of the cost of composition for changes (other than corrections of printer's errors or changes made at the Publisher's request) that the Author makes in the Work after type has been set in conformity with the copyedited manuscript and all charges for changes requested by the Author in second or subsequent printings. These costs will be charged to the Author's royalty account, except the Author shall upon request pay directly such charges that are in excess of 15% of the original cost of composition, and provided also, that the Publisher shall promptly furnish to the Author an itemized statement of such additional expenses.

6. Publication.

6.1 The Publisher shall publish a print version of the Work in such style and manner as the Publisher deems appropriate within eighteen (18) months from the date of Publisher's

acceptance of the Work, provided Author has complied with Section 4 above; and further provided, that Publisher will consult in advance with the Author concerning the format and style of all trade editions, and concerning the text, graphic material, and style of the dust jacket. The Publisher will use its best efforts to promote the sale of copies of the Work, and to exploit the rights therein which Publisher is authorized by this Agreement to license.

6.2 If the Publisher elects to publish an electronic edition of the Work, it shall be published in such style and manner as the Publisher deems appropriate within six (6) months from the date of Publisher's acceptance of the Work, provided Author has complied with Section 4.

6.3 Upon print publication of the Work, the Publisher shall give 45 free copies of the Work to the Author, who may purchase, for personal use only, additional copies of the Work at a discount of 40% from the then current United States catalog list price.

7. Copyright.

7.1 The Publisher shall include a copyright notice in all publications of the Work in conformity with the United States Copyright Act, as amended, and the Universal Copyright Convention, in the name of the Author, and require its licensees to do the same. The Publisher shall register the copyright on the Work in the Author's name with the United States Copyright Office promptly after first publication.

7.2 Any cover art, textual or illustrative material prepared for the Work by the Publisher at its expense shall be the property of the Publisher or its contractors.

8. Royalties.

The Publisher shall pay to the Author the following advances and royalties:

Note: Royalty rates vary widely in the contemporary book publishing industry. More important than the percentage amount, however, is the basis for the percentage. Traditional fiction publishers generally use an author-friendly list or cover price formula, but some major independents (such as Sourcebooks) and many small presses use a "net receipts" formula. That formula is based on the publisher's actual receipts after discounts, rather than the cover price. Under such a formula, the Author will receive fewer royalties – often half as much -- as a "cover price" author would receive from the same amount of sales. The following is a sample author-friendly royalty schedule with key provisions; most royalty schedules will be more detailed and require careful examination.

8.1 An advance of \$ _____ against all sums due the Author under this agreement, payable _____, which advance shall be non-returnable except as provided in Sections 12.1 and 12.2 below.

8.2 The Publisher shall pay the Author royalties on all copies of the Work sold by the Publisher, less returns, as follows;

(a) if published as a hardcover edition, 10% of the catalog retail price on the first 5,000 copies sold, 12.5% of the catalog retail price on the next 5,000 copies sold; and 15% of the catalog retail price on all copies sold thereafter;

(b) if published as a trade paperback edition, 7.5% of the catalog retail price on all copies sold;

(c) if published as a mass-market paperback edition, 8% of the catalog retail price on the first 100,000 copies sold, and 10% of the catalog retail price on all copies sold thereafter;

(d) if published as an electronic text (e-book) edition, 15% of the catalog retail price on all copies sold; and

(e) on special discount sales, the royalty shall be 10% of the net amount actually received from such sales. "Special discount sales" shall mean sales made in the United States outside normal wholesale and retail trade channels at a discount of more than 55% from the catalog retail price.

8.3 The Publisher shall pay the Author one-half of the proceeds received by Publisher from the sale or license of any and all subsidiary rights, except that it shall pay 90% of the proceeds received for the licensing of first serial rights.

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

9. Accounting.

9.1 Following the first publication of the Work by the Publisher, an accounting of the Author's earnings under the terms of this Agreement, accompanied by payment of amounts due on such accounting, shall be rendered no later than April 1 and October 1 of each year of the periods ending the preceding December 31, and June 30, respectively. Royalty statements shall state the number of copies sold and returned during the period covered. If the Author so requests in writing, the Publisher shall, within 60 days after its receipt of such request, advise the Author in available detail of the number of copies printed, sold, and given away during the current period covered by the last royalty statement rendered to the Author, as well as the approximate number of salable copies on hand at the end of said period. Statements rendered hereunder shall be final and binding upon the Author unless objected to in writing, setting forth the specific objections thereto and the basis for such objections, within two years after the date the statement was rendered.

(a) The Publisher may retain a 20% reserve for future returns for two royalty periods provided the accounting statements indicate the amount of the reserve and how it has been applied.

(b) The Publisher may take a credit for any returns for which royalties have been previously paid. If the balance due the Author for any royalty period is less than \$50,

no payment shall be due until the next royalty period at the end of which the cumulative balance has reached \$50.

(c) When the Publisher has disposed of any subsidiary rights in the Work, any proportionate share of the proceeds due to the Author in accordance with Section 8.3, less any unearned advances and after the Publisher's allowance for a reserve for returns, shall be paid at the time the next succeeding royalty statement is rendered; provided, however, that with respect to any advances actually received by Publisher in connection with the disposition of U.S. mass market paperback rights or book club rights, the Publisher shall pay the Author's share of such advance (after such deductions) within 30 days after its receipt of same.

9.2 Audit Rights. Upon written request and reasonable notice to Publisher, the Author's certified public accountant may, within one year of any royalty statement, examine the Publisher's records of accounts as they relate to the sales and inventory of the Work for the purpose of certifying the accuracy of Publisher's accounting to the Author. The audit shall be during regular business hours and Publisher shall reasonably assist in the audit. The Author shall pay for all costs in connection with such an examination unless errors of accounting amounting to five percent (5%) or more of the total sum paid to the Author shall be found to the Author's disadvantage, in which case the cost shall be borne by the Publisher. At Author's option, the records of account may be performed through examination of photocopies or facsimiles of Publisher's applicable records.

10. Author's Warranties and Indemnity

10.1 Author warrants to the Publisher that, to the best of the Author's knowledge:

(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 right to enter this Agreement and can convey the rights granted to Publisher;

(b) The Work is original except for material for which written third party permissions have been obtained; the Work has not been previously published and is not in the public domain, and does not infringe upon or violate any copyright, trademark, or trade secret;

(c) The Work contains no material that is libelous, in violation of any right of privacy or publicity, or harmful so as to subject the Publisher to liability to any third party or otherwise contrary to law.

10.2 The Author shall indemnify and hold the Publisher and its distributors and licensees harmless against all liability, including expenses and reasonable attorneys' fees, from any claim finally sustained against the Publisher resulting from a breach by Author of the foregoing warranties and which the Publisher is not able to recover under its insurance policies. Each party will give prompt notice to the other if any claim is made and the Author will cooperate with the Publisher, who will direct the defense thereof. Pending any settlement, final resolution or clear abandonment of the claim, the Publisher may withhold in a reasonable amount sums due the Author under this or any other Agreement between the parties. The provisions of this paragraph shall survive termination of this Agreement.

10.3 The Publisher shall indemnify and hold the Author harmless against any loss, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of or for the purpose of avoiding any suit, proceeding, claim or demand or the settlement thereof, which may be brought or made against the Author by reason of matters inserted in the Work by or at the direction of the Publisher without the approval of the Author or involving solely controversies arising out of or based on commercial transactions between the Publisher and its customers.

11. Termination by Author.

11.1 *Out of Print.* In the event that the Work shall at any time be out of print (as defined below in Section 11.1(c)), the Author or the Author's representative may give notice thereof to the Publisher, and in such event the Publisher shall, within sixty (60) days of such notice either: (a) revert to the Author in writing all rights to the Work granted to the Publisher in this Agreement; or (b) declare in writing that it intends to bring out a new printing of the Work under the Publisher's own imprint within six (6) months. Failure to give either the written reversion of rights to the Author, or provide written notice of intent to publish, shall cause all rights herein granted to revert to the Author at the expiration of the 60 day period, without further notice or procedure. The Publisher's failure to publish within six months after providing a notice of intent to publish shall cause all rights herein granted to revert to the Author at the expiration of the six month period without further notice or procedure.

(a) Any reversion of rights shall be subject to grants of rights made to third parties prior to the date of the reversion and the right of the Author and the Publisher to participate in the proceeds from such grants.

(b) If the Publisher fails to provide a written reversion of rights as required under Sections 11.1 and 11.3, the Author may record this page of the Agreement with the United States Copyright office, together with a statement of such default by the Publisher.

(c) The Work shall be considered out of print whenever the Work is not available in the United States through regular retail channels in an English language book form edition (not print-on-demand, e-book, or other electronic or mechanical means of reproduction); or when the Publisher fails to list the Work in the Publisher's catalog; or when annual sales of the Work fall below one hundred (100) copies and/or the stock of the Work falls below fifty (50) copies.

11.2 If the Publisher shall, during the existence of this agreement, default in the delivery of semi-annual statements, or in the making of payments as herein provided, and shall neglect or refuse to deliver such statements or make such payments, or any of them, within thirty (30) days after written notice of such default, this agreement shall terminate at the expiration of such thirty (30) days without prejudice to the Author's claim for any monies which may have accrued under this agreement or to any other rights and remedies to which the Author may be entitled. In such event, all rights to the Work granted to the Publisher in this Agreement shall automatically revert to the Author.

11.3 At Author's request, after termination of this Agreement for any reason, Publisher shall furnish the Author with copies of any subsidiary rights licenses still in effect for the Work. Termination hereunder with respect to a Work shall not be deemed to be a release of any claims which Author may have against Publisher which are unrelated to the termination.

12. Termination by Publisher.

12.1 If the Author does not deliver the complete manuscript and/or computer disk(s) or files for the Work within three months of the delivery date in Section 3.1, or, if requested to do so, does not deliver a revised, complete manuscript and/or computer disk(s) or files for the Work within the time specified in Section 3.2, the Publisher shall not be required to publish the Work and shall have the right exercisable at the Publisher's discretion at any time thereafter to recover from the Author any advances made to the Author under this Agreement. When such advances are fully repaid, this Agreement shall terminate.

12.2 If the complete manuscript and/or computer disk(s) or files as first submitted by the Author are unacceptable and the Author, after receiving the Publisher's request for changes and revisions, in good faith makes a timely delivery of a revised, complete manuscript and/or computer disk(s) or files for the Work that satisfies all the provisions of this Agreement except the requirement of being acceptable to the Publisher in content and form, the Publisher shall not be required to publish the Work and the Publisher shall give the Author notice of its decision not to publish. In that event, the Author shall be at liberty to submit the manuscript to others. The Author shall make every effort to sell the Work elsewhere, and the Author shall be obligated to repay all advances and other charges, previously paid hereunder, but such obligation shall be limited to repayment from the first (and all) proceeds of any contracts with others concerning the Work or any rights thereto.

13. Force Majeure.

13.1 The failure of the Publisher to publish or reissue the Work shall not be a breach of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of governmental agencies, labor disputes, inability to obtain materials necessary for manufacture of the Work or any other reason beyond the Publisher's control; in the event of delay from such cause, the publication or reissue shall be postponed for a period of time reasonably related to such cause.

14. Author's Agent (Optional).

14.1 The Author hereby authorizes the Author's agent, _____ to collect and receive all sums of money payable to the Author with respect to all rights in and to the Work. Publisher may rely on the said agent in all matters arising out of this Agreement until the Publisher shall have received written notice from the Author of the termination of such agency. Further, upon the receipt of such notice, the Publisher shall pay all further sums payable pursuant to this Agreement directly to the Author or to such other persons as the Author shall direct in writing.

15. General Provisions.

15.1 No advertisements (other than advertisements for other publications or audio recordings of the Publisher) shall be included in any edition of the Work published by the Publisher or under license from the Publisher without the Author's written consent.

15.2 The Publisher may use the Author's name, likeness and biographical data on any editions of the Work published by the Publisher and in any advertising, publicity or promotion for the Work and may extend these rights in connection with grants of subsidiary rights made by the Publisher.

15.3 If the Publisher is required by law to withhold and pay to any U.S. or foreign government taxing authority any portion of the amounts due the Author under this Agreement, such payments shall be deducted from the amounts due the Author hereunder.

15.4 If any foreign taxes, bank charges or agents' commissions are imposed on any payments due the Publisher from the exercise of any right granted in this Agreement, the appropriate allocation of proceeds between the Publisher and the Author from the exercise of such right shall be made on amounts received after such charges have been paid.

15.5 In the event of the bankruptcy, insolvency or liquidation of the Publisher, this Agreement shall terminate and all rights granted to the Publisher shall revert to the Author automatically and without the necessity of any demand or notification.

15.6 This Agreement shall be binding upon and inure to the benefit of the heirs, executors or administrators and assigns of the Author and the successors and assigns of the Publisher and may not be assigned by either without the written consent of the other, with the following exceptions. The Author may assign the Author's right to receive payment under this Agreement upon written notice to the Publisher. The Publisher may upon written notice to the Author assign this Agreement to any company that acquires or succeeds to all or a substantial portion of the assets of the Publisher.

15.7 Each party hereto shall, upon request of the other, execute such documents as may be reasonably necessary to confirm the rights of the other party in respect of the Work or to carry out the intention of this Agreement.

15.8 This Agreement contains the entire understanding of the Author and the Publisher with reference to the Work; there are no warranties other than those expressly stated in this Agreement. No waiver or modification of any provision of this Agreement shall be valid unless in writing and signed by both parties. No waiver of any breach shall be deemed a waiver of any subsequent breach. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall not be affected.

15.9 Regardless of its place of physical execution or performance, the provisions of this Agreement shall in all respects be construed according to, and the rights and liabilities of the parties hereto shall in all respects be governed by the laws of the State of _____.

15.10 The caption headings of this Agreement are inserted for convenience only and are without substantive effect.

15.11 This Agreement shall be of no force and effect unless signed by both parties within 60 days of the date first stated above.

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

Publisher:	Author:
<hr/>	<hr/>
Signature	Signature
<hr/>	<hr/>
Name and Title	Social Security No.
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Date	Date
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