

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X
PENGUIN GROUP (USA), INC.

Plaintiff,

-against-

ANA MARIE COX

Defendant.
-----X

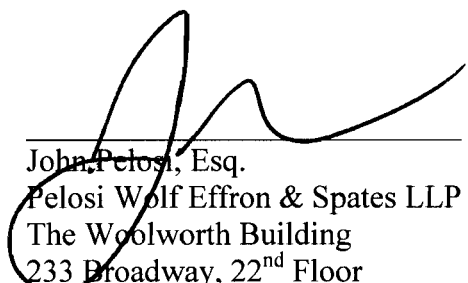
:
:
: Index No.
:
:
: **SUMMONS**
:
:
: Plaintiff designates
: New York County
: the place for trial
:
:
:
: X

To the Above-Named Defendant:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an answer to the complaint in this action to the Supreme Court of the State of New York, County of New York, located at 60 Centre Street, New York, NY 10007 within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete, if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue in this action is predicated upon the fact that the Plaintiff resides within New York County at the time this action was commenced in accordance with CPLR §503(a).

Dated: New York, New York
September 6, 2012



John Pelosi, Esq.
Pelosi Wolf Effron & Spates LLP
The Woolworth Building
233 Broadway, 22nd Floor
New York, NY 10279
(212) 334-3599
(212) 571-9149 (facsimile)

Attorneys for Penguin Group (USA), Inc.

----- x
PENGUIN GROUP (USA), INC.,

Plaintiff,

- against -

ANA MARIE COX

Defendant.
----- x

Index No.

COMPLAINT

Plaintiffs, PENGUIN GROUP (USA), INC (hereinafter referred to as "PENGUIN"), by its attorneys, PELOSI WOLF EFFRON & SPATES LLP, as and for its Complaint against defendant ANA MARIE COX (hereinafter referred to as "DEFENDANT") sets forth and alleges as follows:

1. PENGUIN GROUP (USA), Inc. ("Plaintiff") is a Delaware corporation duly authorized to transact business within the State of New York, with its principal place of business located at 375 Hudson Street, New York, New York 10014. Plaintiff was formerly known as Penguin Putnam, Inc.

2. Defendant, is now, and at all times mentioned in this Complaint was, a resident of Minnesota at 2711 Grand Avenue, Apartment 6, Saint Paul, Minnesota 55105.

3. As explained in more detail below, Defendant is indebted to Plaintiff in the amount of \$81,250.00 paid to Defendant by Plaintiff, which represents the advance (the "Advance") for certain publication rights to a book that Defendant was to write and deliver to Plaintiff (the "Book"), but which Defendant in fact never delivered.

4. Plaintiff and Defendant entered a publishing agreement dated as of January 11, 2006 (the "Agreement") pursuant to which Plaintiff paid the Advance in consideration of Defendant delivering the manuscript of the Book. A copy of the Agreement is annexed hereto and made part hereof as Exhibit A.

5. The agreement also provides in relevant part in Paragraph 3(b): "If the Author fails to deliver the manuscript...the Publishers shall have the right to terminate this Agreement by notice to the Author, in which event the Author shall promptly repay to the Publisher any all sums paid to the author."

6. Defendant never delivered a manuscript of the Book as required under the Agreement. Accordingly, pursuant to Paragraph 3(b) of the Agreement, on or about May 7, 2007 Plaintiff terminated the Agreement and demanded repayment of the Advance.

7. Despite repeated and frequent demand by Plaintiff, including by letter as of August 21, 2007 stating the amount owed to Plaintiff ("Account Stated"), Defendant has refused or failed to repay the Advance and remains indebted to Plaintiff in the amount of \$81,250.00.

8. The Agreement provides in relevant part in Paragraph 33: "Any suit, action, claim or proceeding arising out of or in any way relating to this Agreement or its breach may only be brought in a court (local, state, federal) in the State of New York, and the parties hereby consent to jurisdiction of the said courts in New York and to service of process". This provision provides the basis for jurisdiction of this Court.

COUNT I

(BREACH OF CONTRACT)

9. Plaintiff incorporates and re-alleges the previous paragraphs as if fully set out herein.

10. Defendant has breached **his/her** agreement to repay Plaintiff the Advance.

11. Plaintiff has been injured by Defendant's breach and is entitled to recover damages, in an amount to be determined at trial, including but not limited to \$ 81,250.00 as well as interest of not less than \$ 50,000.00.

COUNT II
(ACCOUNT STATED)

12. Plaintiff incorporates and re-alleges the previous paragraphs as if fully set out herein.

13. On or about April 25, 2008, Plaintiff provided Defendant with the Account Stated setting forth the amount due to Plaintiff's for the Advance.

14. Plaintiff has made frequent demand of defendant that defendants pay the sum set forth in the Account Stated. Defendant has not objected to said amount due, nor paid any part of such sum, and is indebted to Plaintiff in the amount of \$81,250.00 plus interest of not less than \$50,000.00

COUNT III
(UNJUST ENRICHMENT)

15. Plaintiff incorporates and re-alleges the previous paragraphs as if fully set out herein.

16. Defendant, through the acts and omissions described herein, are in possession of the sum of \$81,250.00 that is the rightful property of Plaintiff.

17. As a result, Defendant have been unjustly enriched by their activities and Plaintiffs have suffered a detriment.

18. Accordingly, Plaintiff seeks restitution and disgorgement of \$81,250.00 plus interest of not less than \$50,000.00.

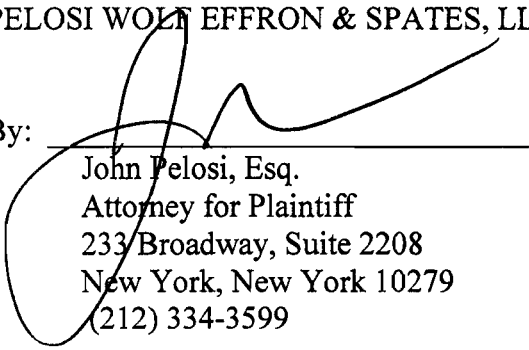
WHEREFORE, Plaintiff requests judgment against Defendant for:

- a. The sum of an amount to be determined at trial but not less than \$ 81,250.00;
- b. Interest according to law but not less than \$ 50,000.00;
- c. Attorney Fees and costs of suit; and
- d. Such other and further relief as to the Court may seem proper.

Dated: September 6, 2012

PELOSI WOLF EFFRON & SPATES, LLP

By: _____



John Pelosi, Esq.
Attorney for Plaintiff
233 Broadway, Suite 2208
New York, New York 10279
(212) 334-3599

To: Ana Marie Cox

VERIFICATION

I, the undersigned, have read the foregoing Verified Complaint and know the contents thereof are true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe to be true. I affirm and verify that the foregoing statements are true, under the penalties of perjury.

DATED: New York, New York
SEPT. 6, 2012

A handwritten signature in black ink, appearing to read 'Jaime Wolf', written over a horizontal line.

JAIME WOLF
Notary Public, State of New York
No. 31-4953089
Qualified in New York County
Commission Expires ~~August 11, 10~~

12-1-2013

AGREEMENT made this eleventh day of January, 2006

between Ana Marie Cox
(name)

residing at c/o The David Black Agency, Inc., 156 Fifth Avenue, Suite 608, Attn: Gary Morris
(address)

New York , New York 10010
(city) (state, zip code, country)

and _____
(name)

residing at _____
(address)

_____ , _____
(city) (state, zip code, country)

(individually or collectively the "Author")
and Riverhead Books, a division of Penguin Group (USA) Inc., whose principal office is located at 375 Hudson Street, New York, NY 10014 (the "Publisher").

WHEREAS the Author is or will be the proprietor of the following described literary works (/the "Work"):

Tentative Title*:

UNTITLED NON-FICTION

Subject Matter Description:

A humorous examination of the next generation of political activists.

~~(including the proprietor or authorized licensee of the photographs, drawings, captions, maps, charts, tables, appendixes, notes, bibliography and index included in the Work and such other matter as set forth herein); 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;

AUTHOR AND PUBLISHER AGREE:

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

(a) The exclusive right to print, publish and sell the Work, in whole or in part, in the English language in the United States of America, its territories and possessions, the Philippine Republic and Puerto Rico (the "Exclusive Territory"), and to sell the same nonexclusively for export to the "Nonexclusive Territory," that is all countries other than those designated as exclusive in this subparagraph and in subparagraph 1(b) and in Schedule A, which is attached to and is part of this Agreement (the "Schedule A Countries");

(b) The exclusive right to print, publish and sell the Work and to license the Work, in whole or in part, for publication, in the English language in Canada (which shall be included in the designation "Exclusive Territory");

(c) The exclusive right to print, publish and sell the Work and to license the Work, in whole or in part, for publication, in the English language in the Schedule A Countries and in the Nonexclusive Territory;

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

*: The Author shall be consulted with regards to the final title of the Work.

Author's Grant

(e) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory, to license the Work, in whole or in part*, for publication in the English language in the following editions: (it being understood that trade paperback and mass market paperback licensing shall be subject to the Author's approval, such approval not to be unreasonably withheld or delayed) (i) mass market paperback*, (ii) trade paperback*, (iii) original hardcover (i.e., a leatherbound or special limited edition prior to the Publisher's first hardcover publication and (iv) hardcover reprint*;

(f) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory, to license the Work, in whole or in part, for publication by book clubs and in magazine condensations #, newspaper syndications #, serializations, and as provided in paragraph 10;

(g) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory, to print, publish and sell the Work and to license the Work, in whole or in part, for publication, in textbook editions, large type editions, anthologies #, picture book editions, photonovels; premium*, direct mail, coupon advertising; mechanical audio recordings, and mechanical audiovisual recordings; **Premium licensing of the Work shall be subject to the Author's approval, not to be unreasonably withheld or delayed.

(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 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) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory, to display the verbatim text of 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 nonsequentially ("Display Rights"), including without limitation on-line or off-line 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 the transmitting of the 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, provided however that such reservation of rights shall not preclude the exercise of Display Rights. ~~In addition, the Author hereby grants the Publisher the right to acquire interactive multimedia rights by matching any bonafide third party offer for such rights within thirty (30) days of written submission to the Publisher of such offer.~~ Author's reserved rights shall include, without limitation, dramatic, audio-visual, and multimedia interactive rights. Any additions to or abridgments of the Display of the Work shall be subject to the Author's approval, such approval not to be unreasonably withheld or delayed, and any license of Display Rights in the Work shall include a provision that the licensee shall not edit or change the text of the Work, and/or will not include any additional material with the display version of the Work without the Author's approval.

2. 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: that he is the sole Author of the Work; that the Work is or will be the Author's next book length work written under his name or a pseudonym or in collaboration with any other person; 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; that the Work is original, has not been published in book form, and is not in the public domain; that he has full power to enter into this Agreement and to make the grants herein contained; 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; that no recipe, formula or instruction contained in the Work is injurious to the user; and 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 the basis of which would constitute a violation of 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 in addition, the Author may retain his own counsel at his own expense; and (b) the Author shall notify the Publisher promptly and 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 with the Author's consent as provided above, the Author and the Publisher will share the Publisher's attorneys' fees equally; if such claim, or 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 (1/2) of 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 (in an amount reasonably related to such claim) 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. Any claim of plagiarism or copyright infringement so settled by the Publisher shall be without admission of liability on the part of the Publisher or the Author and the Publisher will inform the Author of any such settlement.

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

*(e), (f), (g) & (j): Subject to Author's approval, such approval not to be unreasonably withheld or delayed

*(f) & (g): subject to the Author's approval with respect to the content of any abridgment or condensation of the Work, such approval not to be unreasonably withheld or delayed

Author's Representations, Warranties and Indemnities

*: Wherever in this paragraph 2 provision is made for the payment of attorney's fees, it shall mean reasonable attorney's fees.

#: The Publisher shall promptly release to the Author any payments so withheld after a period of one (1) year in the case of any claim, action or proceeding that is threatened but not pursued, or within thirty (30) days of the discontinuance of any claim, action or proceeding.

The warranties and representations in this paragraph 2 do not extend to any material not submitted or approved by the Author. Publisher shall bear no liability for changes made in the Work at the Author's direction.

Delivery of Manuscript and Corrections

3. (a) The Author shall deliver to the Publisher on or before the 1st day of March 2007, one (1) disc and two (2) complete typewritten copies of the manuscript of the Work in its final form, in the English language, consisting of approximately 304 book pages words in style, content, length, and form satisfactory to the Publisher.

(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.

(c) If the Publisher should terminate this Agreement pursuant to subparagraph 3(b), the Author shall NOT for a period of nine (9) months from the effective date of termination enter into any oral or written contract, agreement or understanding to 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 or work (in the form delivered to such other publisher) 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 option~~ within forty-five (45) days following its receipt of the manuscript either to notify the Author in writing in a detailed editorial letter to what extent the manuscript (or relevant portion) is not satisfactory, in which event the Author shall have ~~thirty (30) days~~ sixty (60) days following the receipt of such notice to submit a manuscript (or relevant portion) that is satisfactory as provided in subparagraph 3(a) above and as provided by such notice, ~~or to terminate this Agreement upon written notice to the Author.~~ *If the Publisher does not notify the Author within such forty-five (45) day period, then upon Author's written notice to Publisher (with a copy to Publisher's Corporate Counsel or General Counsel) of Publisher's failure to so advise the Author, the Publisher shall have another fifteen (15) days to notify the Author.

(e) ~~If the Publisher shall exercise the first option in subparagraph 3(d) above, and the Author fails or refuses to comply with the notice, the Publisher, in its sole discretion, shall have the option either to terminate this Agreement upon written notice to the Author, or to have the necessary work done upon the manuscript, if need be employing outside editorial assistance, with the approval of the Author as to (i) the exercise of the option, (ii) any changes made to the Work, and (iii) the cost (if any) thereof and to charge the cost thereof to the Author against the Work or past works of the Author.~~

(f) If the Publisher exercises its option to terminate this Agreement as provided in subparagraph ~~3(d)~~ or 3(e) above, the Author shall use his best efforts to sell the Work or any portion thereof elsewhere and shall repay any and all sums paid to him under this Agreement out of the first and subsequent payments due him when and if another publisher accepts the Work or any portion thereof 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 whom the Author is entitled to receive First Proceeds to pay such sums directly to the Publisher on Publisher's written demand therefore ~~until such sums have been repaid in full.~~

(g) Simultaneously with the delivery of the manuscript as provided in subparagraph 3(a) above, the Author shall deliver to the Publisher, at the Author's sole cost and expense, all mutually agreed upon ~~all~~ photographs, drawings, captions, maps, charts, tables, appendixes, notes, bibliography, and other matters required by this Agreement, ~~and an index@ within 10 days after the Author's receipt of page proofs.~~ If the Author fails to do so, the Publisher shall have the option, in its sole discretion, ~~either to terminate this Agreement upon written notice to the Author and to recover any and all sums paid hereunder, or to supply such materials itself, if necessary employing outside editorial and artistic assistance with the approval of the Author as to (i) the exercise of the option, (ii) any changes made to the Work, and (iii) the cost (if any) thereof, and to charge the cost thereof to the Author against the Work or past works of the Author.~~

(h) If copyrighted material is included in the Work (other than that of 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 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 errors of the typesetter 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.

@(g): If the Publisher wishes to include an index for the Work, the Publisher shall supply one and shall charge the cost thereof against Author's royalty account.

Publication

4. (a) Except as provided in subparagraphs 4(b) and 4(c) below, the Publisher will, within 18 months after acceptance of the Work ~~as provided in paragraph 5 below,~~ publish or cause publication of the Work initially in hardcover format under the Riverhead imprint and 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. The Author shall have final approval of the copy-edited manuscript, which approval shall not be unreasonably withheld or delayed.

(b) The failure of the Publisher to publish or cause publication of the Work within the time period set forth in subparagraph 4(a) 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, action or proceeding covered by any of the representations and warranties contained in paragraph 2, 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 subparagraph 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 by any of the representations and warranties contained in paragraph 2 hereof and such claim, action or proceeding is not resolved by settlement or final judgment within ~~six (6)~~ twelve (12) months, the Publisher shall have the option to terminate this Agreement and the Author shall thereupon repay any advance paid to him.

(c) In the case of prepublication serialization, initial book publication may be delayed, by mutual agreement, for a period of time to be mutually determined at the Publisher's option, ~~for a period not to exceed six (6) months after completion of publication of such serialization.~~

(d) 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 and in the event the Publisher has not published within six (6) months of such notice the Author may, terminate this Agreement. In such event the only damages recoverable by the Author shall be limited to the advance * ~~paid by the Publisher up to the date of termination.~~ No other damages, actions or proceedings, either legal or equitable, including (but not by way of limitation) specific performance, shall be claimed, instituted or maintained by the Author against the Publisher.

*(d): payable under Paragraph 5 hereunder

(e) 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 the 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 of the Work for the reasons set forth in this subparagraph and the Publisher, in its sole discretion, determines that the manuscript may be revised so as to render it publishable, the Publisher shall notify the Author in writing of its reason for such opinion and, insofar as possible, the Publisher shall provide guidance as to how such legal problems may be resolved. If the Author then fails to correct the problems in the Work to the Publisher's satisfaction within thirty (30) days following the Author's receipt of such notice, the Publisher shall have the right to terminate this Agreement, and the Author shall thereupon repay any advance paid to him.

(f) Publisher may elect to have the Work reviewed by its in-house 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 Publisher's counsel. Such vetting and changes made as a result of the vetting shall not diminish the Author's representations, warranties and indemnities under paragraph 2 of this Agreement.

5. 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

Three Hundred Twenty-Five Thousand Dollars (\$325,000.00)
to be paid as follows:

Eighty-One Thousand Two Hundred Fifty Dollars (\$81,250.00) due upon the execution of this Agreement; and

Eighty-One Thousand Two Hundred Fifty Dollars (\$81,250.00) due upon the Publisher's receipt and acceptance of the complete manuscript of the Work; and

Eighty-One Thousand Two Hundred Fifty Dollars (\$81,250.00) due upon the Publisher's initial hardcover publication of the Work but in no event later than twelve (12) months following the Publisher's acceptance of the complete manuscript of the Work; and

Eighty-One Thousand Two Hundred Fifty Dollars (\$81,250.00) due upon the Publisher's initial paperback publication of the Work but in no event later than twelve (12) months following the Publisher's initial hardcover publication of the Work.

6. 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 (such reserve shall be computed with respect to each of the first four (4) full accounting periods after initial publication and any reissue, and in each instance shall be distributed at the time of the next accounting):

(a) Except as otherwise provided in this paragraph 6 or subparagraph 11(a) below, the following percentages of the Publisher's suggested retail price as defined in subparagraph 35(a) below ("Suggested Retail Price"), of each copy sold in the United States through normal channels:

Ten percent (10%) on the first 5,000 copies of the Work sold;

Twelve and one-half percent (12½%) on the next 5,000 copies of the Work sold; and

Fifteen percent (15%) on all copies of the Work sold thereafter.

Copies covered by any other subparagraph of this paragraph 6, other than subparagraphs 6(b) and 6(h), and 6(i), shall not be included in the computation of total copies sold for purposes of this subparagraph 6(a);

(b) Where the discount to jobbers or to wholesale distributors or booksellers (except as provided for in subparagraph 6(d) below) on copies of any edition published by the Publisher is more than fifty percent (50%), the Publisher shall pay to the Author the prevailing royalty rate under subparagraph 6(a) above less one-half (½) the difference between a forty-four percent (44%) discount and the discount granted (it being understood that in no event shall the amount paid to the Author be less than one-half (½) the prevailing royalty rate under subparagraph 6(a) above), but the regular rate of royalty, regardless of discount, shall be paid on books delivered to booksellers and bookdealers in payment for trade advertising;

(c) A royalty of ten percent (10%) of the amount received as defined in subparagraph 35(b) below ("Amount Received"), by the Publisher on sales of overstock and damaged copies (it being understood that overstock copies shall be offered first to the Author at the estimated remainder price; however any inadvertent failure on the part of the Publisher to do so shall not be deemed a breach of this agreement) that the Publisher deems expedient to sell at a discount of sixty percent (60%) or more; provided that the royalty shall in no event exceed one half (½) of the excess of the Amount Received by the Publisher over the Publisher's manufacturing cost as defined in subparagraph 35(c) below ("Manufacturing Cost"). 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 the Author or the Author's agent pursuant to paragraph 27 below, which consent shall not be unreasonably withheld;

(d) For sales outside normal wholesale and retail trade channels, a royalty of ten percent (10%) of the Amount Received by the Publisher on sales at a discount between fifty percent (50%) and sixty percent (60%) of the Publisher's Suggested Retail Price and five percent (5%) of the Amount Received on sales at a discount of sixty percent (60%) or more; provided that the royalty shall in no event exceed one-half (½) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost;

(e) A royalty of ten percent (10%) of the Amount Received by the Publisher for copies, bound or in sheets, sold for export (except as provided in subparagraph 6(f) below); provided that the royalty shall in no event exceed one-half (½) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost;

(f) A royalty of twelve and one-half percent (12½%) of the Amount Received by the Publisher on all sales in Canada of copies of any edition published by the Publisher;

Advance

Royalties for
Trade Hard-
cover Edition

(g) A royalty of five percent (5%) of the actual selling price on copies sold by the Publisher 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;

(h) A royalty of ten percent (10%) of the Publisher's Suggested Retail Price or a royalty equal to the initial royalty rate under subparagraph 6(a) above, 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 publication (only one such reprinting may be made per year at the reduced royalty);

(i) A royalty of one-half (½) of the prevailing royalty rate under subparagraph 6(a) above on all copies sold from a reprinting of two thousand five hundred (2,500) copies or less made no earlier than two (2) years after first publication, provided that sales under subparagraphs 6(a) and 6(b) above in the six (6) month period immediately preceding such reprinting do not exceed five hundred (500) copies; and

(j) 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 (⅔) of the original Suggested Retail Price.

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

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 (such reserve shall be computed with respect to each of the first four (4) full accounting periods after initial publication and any reissue, and in each instance shall be distributed at the time of the next accounting):

(a) Except as otherwise provided in this paragraph 7 or subparagraph 11(a) below, the following percentages of the Publisher's Suggested Retail Price of each copy sold in the United States through normal channels:

Eight percent (8%) on the first 150,000 copies of the Work sold; and

Ten percent (10%) on all copies of the Work sold thereafter.

Copies covered by any other subparagraph of this paragraph 7 shall not be included in the computation of total copies sold for purposes of this subparagraph 7(a);

(b) A royalty of five percent (5%) of the Publisher's Suggested Retail Price on all copies sold for export, or outside the United States; and

(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, to a book club, through the medium of mail order, to commercial purchasers as a premium, in bulk outside normal (wholesale and retail) channels, and for each copy sold at a discount of more than fifty-five percent (55%) from the Publisher's Suggested Retail Price of the mass market edition of the Work; provided that the royalty shall in no event exceed one-half (½) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost.

8. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any trade paperback edition of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns (such reserve shall be computed with respect to each of the first four (4) full accounting periods after initial publication and any reissue, and in each instance shall be distributed at the time of the next accounting):

(a) Except as otherwise provided in this paragraph 8 or subparagraph 11(a) below, the following percentages of the Publisher's Suggested Retail Price of each copy sold in the United States through normal channels:

Seven and one-half percent (7½%) on all copies of the Work sold.

Copies covered by any other subparagraph of this paragraph 8 shall not be included in the computation of total copies sold for purposes of this subparagraph 8(a);

(b) A royalty of two-thirds (⅔) of the prevailing royalty rate under subparagraph 8(a) above, based upon the Amount Received by the Publisher, on all copies sold for export, or outside the United States; and

(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, through the medium of mail order, to commercial purchasers as a premium, in bulk to book clubs and outside normal (wholesale and retail) channels, and for each copy sold at a discount of more than fifty-two percent (52%) from the Publisher's Suggested Retail Price of the trade paperback edition of the Work; provided that the royalty shall in no event exceed one-half (½) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost.

9. (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:

except as otherwise provided in subparagraph 10(a) below, a royalty of eight percent (8%) of the net amount received by the Publisher.

(b) 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 versions of the Work resulting from Publisher's exercise of Display Rights as defined in paragraph 1(j) above, less any credited returns and a reasonable reserve for estimated returns and except as provided in subparagraph 10(a) below:

Fifteen Percent (15%) of the Suggested Retail Price on all copies of the Work sold.

~~Irrespective of price, in the event the Publisher receives less than forty percent (40%) of the Suggested Retail Price for such edition, the royalty shall be reduced by one-half (½) of the difference between forty percent (40%) of the suggested retail price and the Amount Received by the Publisher for such edition; but in no event shall the royalty exceed one-half (½) of the Amount Received by the Publisher.~~

**Royalties for
Mass Market
Paperback
Edition**

**Royalties for
Trade Paper-
back Edition**

**Royalties for Other
Editions**

**See RIDER TO
SUBPARAGRAPH 9(b).**

**Royalties
from Licens-
ing**

10. (a) 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:

	<i>Right</i>	<i>Percentage to be Paid to Author</i>
*: Subject to the Author's approval, such approval not to be unreasonably withheld	*Mass Market Paperback	50%
	*Trade Paperback	50%
	*Hardcover Reprint	50%
	Book Club	50%
	**Syndication	50%
	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 Type Edition, Picture Book Edition, Photonovel	50%
	*Premium, Direct mail, Coupon Advertising	50%
	Hardcover Original	50%
**: See Paragraph 1(f) and (g).	Publication in the English language in the Schedule A Countries	80%
	Publication in the English language in Canada	66 2/3%
	Publication in other Languages	75%
# The licensing of first periodical rights is subject to the Author's approval with respect to placement and cut, such approval not to be unreasonably withheld or delayed.	First Periodical Rights (prior to first book publication)#	90%
	Motion Picture, Television, Radio and Dramatic Rights	
	Lyric Rights	
	Commercial Adaptations and Tie-Ins	
	Mechanical Audiovisual Rights	
	Mechanical Audio Recordings	50%
	*Display Rights	50%

(b) ~~In the event the Author retains Canadian book club rights, the Publisher shall have the nonexclusive right to permit book club editions of the Work licensed by the Publisher to be sold in Canada and the Publisher shall remit to the Author all royalties received on such Canadian sales.~~

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

(c) Publishing or permitting others to publish, broadcast or transmit by radio, television or on-line selections from the Work/, for publicity and promotion purposes only, in a manner which in the opinion of the Publisher would benefit its sale, provided such rights do not conflict with the rights acquired by the purchaser (if any) of the motion picture rights.

No Royalties

/: not to exceed 7,500 words

**Statements
and Payments**

12. The Publisher shall render semiannual statements of account in accordance with its regular accounting practices, 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, such periods ending January 31 and July 31 during the fourth month following the close of 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 ~~or any other previous~~ agreement with the Publisher, and all sums owing by the Author to the Publisher under this ~~or any other~~ agreement may be deducted from payments accruing to the Author under this ~~or any other previous~~ agreement with the Publisher (except in the event of termination as set forth herein, unearned advances shall not be deemed sums owing to the Publisher). If after the termination for nondelivery under subparagraph 3(b) hereof the Author fails to repay to the Publisher any and all sums paid to the Author under this Agreement, such payments shall be chargeable against and recoverable by the Publisher from any and all monies accruing to the Author under this or any other 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, 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 twenty-five dollars (\$25), no statement payment shall be rendered, and the amount due shall be carried forward. The Author or his duly authorized representatives 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 and the amount due the Author shall be paid within thirty (30) days.

Copyright

*/(a): within a period of
three (3) months after
the publication of the
Work*

13. (a) The Publisher shall print in each edition of the Work published by it a proper United States copyright notice in the name of the Author sufficient to secure United States copyright and Universal Copyright Convention protection in the work to such person. 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/, and for any renewals, 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 to be a breach of this Agreement unless the Publisher shall not use its best efforts to cure such failure as soon as the matter is brought to its attention.~~ ~~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 if ~~legally necessary~~ (but not by way of limitation) 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 In-
fringement**

14. 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 had therein shall belong to such party. If the party bringing action does not hold the record title of the 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.

**Author's
Property**

15. 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.

**Author's
Copies**

16. The Author shall be entitled to receive on publication ~~ten (10) twenty-five (25) free copies and fifteen (15) free copies to the agent free copies~~ of each edition of the Work published by the Publisher, and shall have the right to purchase further copies for personal use and not for re-sale at a discount of forty percent (40%) from the Publisher's Suggested Retail Price.

**Contracts
With Others**

17. The Publisher shall notify the Author of the terms of any contracts 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 and copies of statements of account arising from such contracts and agreements.

**Use of Au-
thor's Name
and Likeness**

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

**Motion Pic-
ture and
Television
Tie-Ins**

19. In the event that motion picture or telecast rights in the Work are reserved to the Author and the Author is successful in selling or licensing such rights to a third party, the Author hereby consents and agrees to ~~make best efforts to see that any such sale or license shall contain a provision in favor of the Publisher, its licensees, successors and assigns, at no additional cost, permitting use of the title used in or suggested by the motion picture or telecast together with or as an alternative to the original title of the Work.~~

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 book-length work ~~substantially similar to~~ based on the Work or which is ~~reasonably likely to~~ would injure its sale or the merchandising of the other rights granted herein.

Out of Print Provisions

21. If the Work shall be out of print and if, after written notification from the Author to this effect, 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 the provisions of subparagraph 4(b) hereof in respect to delay from causes beyond the control of the Publisher), this Agreement shall thereupon terminate with such effect as provided in paragraph 24 below. The Work shall not be deemed to be out of print so long as it is under ~~option or~~ contract for publication or on sale in any complete and unabridged edition in the United States and available for reorder through regular wholesale and retail channels, whether under the imprint of the Publisher or a licensee. ~~Notwithstanding the foregoing, the Publisher may not license the Work after receipt of a reversion request if Publisher has decided to revert rights and will not reissue the Work; however, the Publisher shall be able to complete any licenses in negotiation at the time of such reversion request.~~ The existence of an individual print on demand edition or an electronic edition shall not constitute the Work being in print unless there are total sales of 300 copies per year.

Termination by Publisher

22. If (no sooner than one (1) year after respective hardcover publication of the Work) 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, 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 upon notice from the Author to the Publisher, with such effect as provided in paragraph 24 below.

Rights on Termination

24. (a) Upon the termination of this Agreement for any cause, all rights (except as provided in subparagraph 24(b) below) granted to the Publisher shall revert to the Author, subject to the Publisher's continued participation, to the extent provided, in any licenses granted by the Publisher. Upon the Author's request, the Publisher shall provide the Author with fully-executed copies of any and all outstanding licenses for the Work. 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. Remaining hardcover stock will be offered to the Author at the estimated remainder price; however, any inadvertent failure to do so shall not be deemed a breach of this Agreement. However, for a period of thirty (30) days after termination the Author shall have the right to purchase remaining stock at the estimated remainder price plus freight.

See RIDER TO PARAGRAPH 24

(b) If, pursuant to the United States Copyright Act, Author (or, if deceased, the successors of Author) has the right to terminate the rights granted hereunder, and elects to exercise such rights as provided pursuant to such Act, after such termination, Author shall not exercise or dispose of such rights except in accordance with the following procedure; commencing with the date of such termination, Author and Publisher shall negotiate in good faith for a period of not less than sixty (60) days with respect to mutually agreeable terms and conditions. If the parties are unable in good faith to arrive at a mutually satisfactory agreement, Author shall be free to offer the terminated rights elsewhere, provided, however, that prior to entering into any agreement with any such third party, Author shall first give Publisher the opportunity to agree, within ten (10) business days, to match the terms offered by such third party which Author is willing to accept.

Revision

25. If the Publisher, in its sole discretion, determines that a revision of the Work is desirable, the Author/ ~~shall have the thirty (30) days after receipt of a request from the Publisher to notify the Publisher that he will make the revision himself within one (1) year. 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, at its option, to make the revision, charging any outside editorial fee or other fee or royalty to the Author against the Work or past works of the Author. 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.~~

/: and Publisher will negotiate for mutually agreeable terms.

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. The Author shall submit ~~the completed manuscript~~ of such work to the Publisher before offering or submitting same to any other party. The Publisher shall have a period of thirty (30) days after submission of such work or ~~ninety (90) sixty (60) days~~ after the Publisher's first publication acceptance of the Work hereunder, whichever is later, within which to notify the Author whether it desires to publish such work. 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. During this entire period the Author shall not submit or offer such work to any other party or negotiate with any other party with respect to such work. If the Author and 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. In the event that the Author is unable to reach an agreement with either the Publisher or any other party for the publication of such work, this option will continue to apply with the same force and effect to the succeeding book-length work of non-fiction created by the Author, until such an agreement is reached with either the Publisher or any other party.~~

*: a detailed proposal

#: for a period of thirty (30) days

Agency Clause

27. The Author hereby authorizes and appoints, to act as his agent and to collect and receive all sums of money payable to him under the terms of this Agreement, and the receipt by such person shall be a valid discharge in that respect. Such person is hereby fully empowered to act on behalf of the Author in all matters in any way arising out of this Agreement, and is hereby designated as the Author's agent upon whom notices regarding this agreement may be delivered. The designation of such person as agent shall survive the incapacity (physical or mental) or death of the Author, and may be terminated only upon written notice to the Publisher signed jointly by the Author (or his heirs, executors, administrators, successors or assigns) and by such agent.

See RIDER TO PARAGRAPH 27

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. (a) All rights in the Work either now in existence or later coming into existence not specifically 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, subject to the provisions of paragraph 20 hereof.

~~(b) In the event the Author retains such rights, he agrees not to license or otherwise permit the publication of any other English language hardcover or paperback edition of the Work in the Nonexclusive Territory earlier than the respective dates of the Publisher's publication of its hardcover and paperback editions (either the Publisher's own or sublicensed editions) of the Work in the Nonexclusive Territory, except that if no United States paperback edition is published within twelve (12) eighteen (18) months from the date of first hardcover publication the Author may permit release of an English language paperback edition in the Nonexclusive Territory.~~

Assignment of Publication Under Affiliated Imprint

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, in whole or in part, to any parent, subsidiary or affiliated company, or to an assignee expressly assuming all of the obligations of the Publisher who or which 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 prior written approval of the other party.

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 in writing and signed by or on behalf of the party granting such waiver or modification. No waiver by either party of any breach or default hereunder shall be deemed a waiver of any repetition of such breach or default or in any way affect any of the other terms or conditions hereof.

Severability

32. If any provision of this Agreement is judicially declared to be invalid, unenforceable or void by a court of competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, and the part or parts of this Agreement so 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 New York, applicable to contracts made and to be entirely performed therein. The state courts of the State of New York in and for New York County and, if the jurisdictional prerequisites exist, the United States District Court for the Southern District of New York, and no other court or tribunal, shall have sole and exclusive jurisdiction to hear and determine any suit, action, proceeding, claim, controversy or dispute arising under or concerning this Agreement. The parties hereby consent to the 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 statements used in the margins of this Agreement to summarize the contents of the paragraphs hereof are not to be deemed a part of this Agreement or an interpretation or representation as to the contents of such paragraphs.

Additional Provisions

37. If the Author licenses motion picture or television rights in the Work, the Publisher shall grant to the purchaser the right to publish excerpts and summaries of the Work, provided they do not exceed 10,000 words in length, that they are used solely for the purpose of advertising, publicity and promotion, that use in photonovels is specifically excluded (to the extent that the Author controls such photonovels), and that their publication is in such form that it does not defeat the Author's claim to copyright.

38. Advertisements may not be inserted or printed in any edition of the Work, whether issued by the Publisher or its licensees, other than listings of books published by the Publisher, or by its licensees of their own publications, without the Author's prior written permission.

39. The Publisher shall consult with the Author regarding the cover copy and design for the Publisher's edition of the Work. However, it is understood that this is a right of consultation, not approval, and in the event of a dispute the Publisher shall prevail.

40. In the event that the Publisher's edition of the Work appears on The New York Times Hardcover Bestseller list, the Publisher shall pay to the Author, on the Author's written notification, as an additional advance against royalties, the following:

Fifteen Thousand Dollars (\$15,000.00) if the Work appears in positions #1-5; and

Ten Thousand Dollars (\$10,000.00) if the Work appears in positions #6-#10; and

Five Thousand Dollars (\$5,000.00) if the Work appears in positions #11-15.

Anything to the contrary in this paragraph notwithstanding, the total amount payable shall not exceed Thirty Thousand Dollars (\$30,000.00).

RIDER TO SUBPARAGRAPH 9(b):

In the event that the industry standard royalty for e-books has changed at any time up to five (5) years from the date of the publication of the electronic edition of the Work, the Author and Publisher will negotiate a new royalty in accordance with such new industry standard. "Industry Standard" as used herein shall mean the royalty rate routinely paid by at least two (2) major publishers (such as Random House, Harper/Morrow, Warner/Little Brown and Simon & Schuster) to authors whose stature is similar to that of the Author.

RIDER TO PARAGRAPH 24:

However, the Publisher may not renew any such licenses after reversion of the rights, and in the case of licenses that continue indefinitely will cancel such licenses as soon as it is reasonably possible under the terms of the license, after reversion.

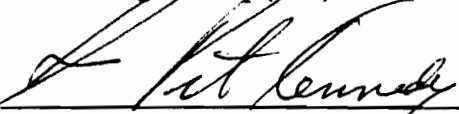
RIDER TO PARAGRAPH 27:

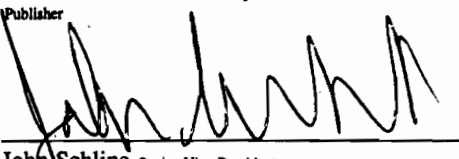
The Author irrevocably appoints The David Black Literary Agency, Inc. (attn: David Black), of 156 Fifth Avenue, Suite 608, New York, NY 10010 as the Author's sole and exclusive agent (the "Agent") with respect to the said Work and authorizes and directs Publisher to make all payments due or to become due to the Author hereunder to and in the name of said Agent, and to accept the receipt of the Agent as full evidence and satisfaction of such payments. As sole and exclusive Agent, the Agent is authorized to negotiate for the Author throughout the world as to the disposal of all other rights in and to the said Work (including without limitation works to which any option herein shall apply). The Agent is further empowered to engage sub-agents for the sale of British Commonwealth and/or translation rights in and to the Work (and said optioned works) and to pay such sub-agents commission of up to ten percent (10%) of the monies collected from the disposition of any such British Commonwealth and/or translation rights through such sub-agents. In consideration for services rendered, the Agent is entitled to receive or retain as its commission fifteen percent (15%) of all monies due and payable to the Author hereunder and from all other rights in and to the Work (including the said optioned works), except that such commission shall be reduced to ten percent (10%) as to those monies out of which a sub-agent's commission of ten percent (10%) is also paid. The provisions of this clause shall survive the expiration of the Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

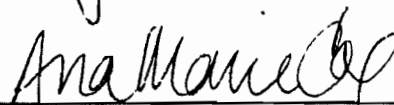

Witness:


RIVERHEAD BOOKS,
a division of Penguin Group (USA) Inc.

By 
Susan Petersen Kennedy
Publisher

By 
John Schline Senior Vice-President,
Corporate Director of Business Affairs

Witness:


Ana Marie Cox Author
USA
Citizenship  Date of Birth


Social Security Number (for U.S. individuals), or
Individual Taxpayer Identification Number (for non-U.S. individuals), or
Employer Identification Number (for all other entities, domestic and foreign)

SCHEDULE A

Australia

British West Indies

Burma

Egypt

Fiji

Ghana

Iraq

Irish Republic

Jamaica

Jordan

Kenya

Namibia

New Zealand (including Ross)

Nigeria and the Cameroons

Sierra Leone

South African Republic

Trinidad and Tobago

United Kingdom (including Northern Ireland, the Isle of Man and Channel Islands)

Zambia

Zimbabwe

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PENGUIN GROUP (USA), INC.

-against-

ANA MARIE COX

VERIFIED COMPLAINT

PELOSI WOLF EFFRON & SPATES LLP

The Woolworth Building
233 Broadway, 22nd Floor
New York, NY 10279
(212) 334-3599
(212) 571-9149 (facsimile)

Attorneys for Penguin Group (USA), Inc.