



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

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

Plaintiff,

- against -

ELIZABETH WURTZEL

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 ELIZABETH WURTZEL (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 New York at 12 East 11<sup>th</sup> Street, New York, New York 10003.
3. As explained in more detail below, Defendant is indebted to Plaintiff in the amount of \$33,000.00 paid to Defendant by Plaintiff, which represents the unpaid portion of an 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 February 14, 2003 (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 October 27, 2008,, Plaintiff terminated the Agreement and demanded repayment of the Advance..

7. Despite repeated and frequent demand by Plaintiff, including by letters dated as of October 27, 2008 and August 17, 2011 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 \$33,000.00.

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 \$ 33,000.00 as well as interest of not less than \$7,500.00.

## COUNT II

**(ACCOUNT STATED)**

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

13. On or about October 27, 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 \$33,000.00 plus interest of not less than \$7,500.00

**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 \$33,000.00 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 \$33,000.00 plus interest of not less than \$7,500.00.

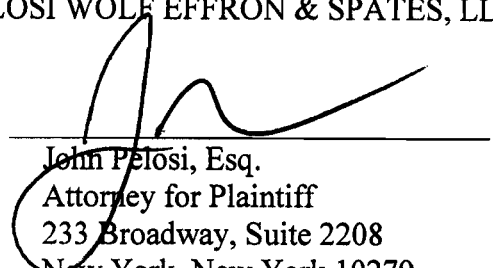
WHEREFORE, Plaintiff requests judgment against Defendant for:

- a. The sum of an amount to be determined at trial but not less than \$ 33,000.00;
- b. Interest according to law but not less than \$ \$7,500.00;
- 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: \_\_\_\_\_



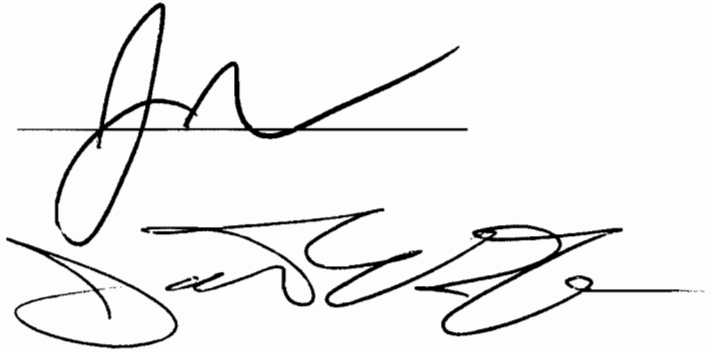
John Pelosi, Esq.  
Attorney for Plaintiff  
233 Broadway, Suite 2208  
New York, New York 10279  
(212) 334-3599

To: Elizabeth Wurtzel

**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



JAIME WOLF  
Notary Public, State of New York  
No. 31-4953089  
Qualified in New York County  
Commission Expires ~~August 11, 19~~  
12-1-2013

# EXHIBIT A

AGREEMENT made this fourteenth day of August 2003

between Elizabeth Wurtzel  
(name)

residing at c/o Collins McCormick Literary Agency, 10 Leonard Street, Attn: Nina Collins  
(address)

New York New York 10013  
(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 work (the "Work"):

Tentative Title\*:

**UNTITLED FOR TEENAGERS ON DEPRESSION**

Subject Matter Description:

**A book for teenagers to help them cope with depression.**

\* (the final title of the Work shall be subject to the Author's approval, such approval not to be unreasonably withheld or delayed)

(including the proprietor or authorized licensee of the any mutually agreed upon 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:**

**Author's Grant**

1. The Author hereby grants to the Publisher during the full term of copyright, and any renewals, continuations and extensions 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;~~



#(e): (i.e. a leatherbound or special limited edition prior to the Publisher's initial hardcover publication)

+ (f): (abridgements, condensations and adaptations of the Work [but excluding normal second serial, excerpt permissions, and any Reader's Digest condensation], whether issued by the Publisher or its licensees, will be published only with the Author's approval as to the content of the text, such approval not to be unreasonably withheld or delayed)

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

//(g): (the Author may withhold approval on premium sales at the Author's discretion)

#### Author's Representations, Warranties and Indemnities

Whenever in this paragraph 2 provision is made for attorney's fees, it shall mean reasonable attorney's fees.

# in the event the claim, action, or proceeding is finally sustained in a court of competent jurisdiction, without any obligation on the part of the Publisher to appeal a judgment against the Publisher, or if the claim, action, or proceeding is settled with the Author's consent, the Author

+ (any payments withheld by the Publisher pursuant to this paragraph shall be released to the Author promptly 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 a legally binding discontinuance of any such claim, action, or proceeding)

(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: (i) mass market paperback\*, (ii) trade paperback, (iii) original hardcover\*# 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;~~

(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 and to license \* the display of the verbatim text of the Work by any means now known or later developed designed to be read, electronic or otherwise, the result of which may serve as a substitute for the sales of the Work in book form ~~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. The Publisher and its licensees shall not edit or change the text of the Work, and / or include any additional material or sounds with any display version of the Work without the Author's approval. In addition, the Author hereby grants the Publisher the first opportunity right to acquire interactive multimedia rights by matching any bona fide third party offer for such rights within thirty (30) days of written submission to the Publisher of such offer.~~

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 (i.e. third party sub-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. The warranties and representations in this paragraph 2 do not extend to any material not submitted or approved by the Author.

In the event of the assertion of any claim, action or proceeding the basis of which would constitute a material breach inconsistent with any of the foregoing representations and warranties, (a) the Publisher shall have the right to defend the same through counsel of its own choosing, and (b) the Author shall fully cooperate in the Publisher's defense and # shall indemnify and hold harmless the Publisher, any seller or distributor of the Work, and the Publisher's successors, licensees and assigns, and any officers, agents (i.e. third party sub-agents) and employees of the foregoing, from and against any and all liability, damage, loss, reasonable and documented expense (including outside attorneys' fees to the extent provided below) and settlement costs, resulting from any such settled or finally and judicially sustained 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.

Subject to the extent that the Publisher's Insurance Policy does not apply, if such claim, action or proceeding is successfully defended, or settled as provided above, the Author and the Publisher will share the Publisher's attorneys' fees equally; if such claim, 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 event that the allegations that are the basis thereof would constitute a material breach of this Agreement, the Publisher, in the Publisher's sole and reasonable discretion, may withhold payments which in Publisher's good-faith opinion are reasonably related to the amount of such claim + due the Author under this or any other previously executed agreement between the Publisher and the Author, subject to the Author's right to draw on such sums to defray expenses of the Publisher in defending such claim, action or proceeding (to the extent covered by this indemnity) and to satisfy and discharge any judgment or decree rendered. In the event that a judgment or decree shall be entered in any court based upon any such claim, action or proceeding and the Author shall desire to appeal, the Author shall indemnify and hold harmless the Publisher, any seller or distributor of the Work, and the Publisher's successors, licensees and assigns, and any officers, agents (i.e. third party sub-agents) and employees of the foregoing, from and against any and all liability, damage, loss, and expense (including all outside 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 sole behalf and sole expense to settle any such claim, action or proceeding without the Author's consent.

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

**Delivery of Manuscript and Corrections**

3. (a) (a) The Author shall deliver to the Publisher on or before the 15<sup>th</sup> day of March 2004 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 250 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 twelve (12) months after termination 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 either to notify the Author in writing to what extent the manuscript (or relevant portion) is not satisfactory, in which event the Author shall have sixty (60) ~~thirty (30)~~ 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. See Rider to Subparagraph 3(d).

(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, 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.

(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 photographs and mutually agreed upon 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, 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. The Publisher shall provide the Author with permission forms upon the Author's request.

(i) The Publisher shall provide the Author with page proofs of the Work for review and 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 or Publisher 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 or Publisher 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. Any such costs shall be charged to the royalty account for the Work.

**Publication**

4. (a) Except as provided in subparagraphs 4(b) and 4(c) below, the Publisher will, within eighteen (18) months after acceptance of the Work ~~as provided in paragraph 5 below~~, publish or cause publication of the Work, in such editions, imprints, style and manner and at such prices as it deems suitable. The Publisher shall be authorized to exercise the usual editorial privileges in the course of preparing the Work for composition and to make the manuscript conform to its standard style of punctuation, spelling, capitalization and usage.\*

(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 for no longer than a period of time equal to the time of the delay 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 twelve (12) ~~six (6)~~ months, the Publisher shall have the option to terminate this Agreement and the Author shall thereupon repay any advance paid to him.

(c) In the case of prepublication serialization, initial book publication may be delayed, by mutual consent ~~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 entire advance due under Paragraph 5 of this Agreement ~~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. Upon such termination, all rights granted to the Publisher herein shall revert to the Author.

\* (a) The Author shall have final approval of the copyedited manuscript, such approval not to be unreasonably withheld or delayed.

(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 the good-faith its opinion of its legal counsel it violates the right of privacy or any property or personal right of any person, or contains any libelous, scandalous or other unlawful matter, or presents a substantial risk of liability or injury to third persons or of governmental action against the Work. If in the good faith opinion of Publisher's legal counsel the Publisher is unable to publish the Work for the reasons set forth in this subparagraph, and if the Author has been unable to remedy such inability to publish the Work to the satisfaction of the Publisher, in its sole discretion, then the Publisher shall have the right to terminate this Agreement, and the Author shall thereupon repay any advance paid to him. Upon such repayment all rights granted to the Publisher herein shall revert to the Author.

(f) Publisher may elect to have the Work reviewed by its counsel prior to publication in which event the Author shall cooperate in the vetting process and shall make such changes in the Work as are reasonably 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.

**Advance**

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

One Hundred Thousand . . . . . Dollars (\$100,000.00)  
to be paid as follows:

\$33,300.00 upon the execution of this Agreement; and

\$33,400.00 upon delivery and Publisher's acceptance of the complete and finished manuscript of the Work; and

\$33,300.00 upon the Publisher's initial publication of the Work but in no event later than eighteen (18) months after the Publisher's acceptance of the manuscript of the Work.

**Royalties for Trade Hardcover Edition**

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\*:

(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 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;

\* (such reserves to be held for no longer than four [4] full royalty periods after publication of any edition or reissue)

(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) & (i): (only one such reprinting may be made per year at the reduced royalty)

(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#;

(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, subject to the Author's approval, such approval not to be unreasonably withheld or delayed.

#### Royalties for Mass Market Paperback Edition

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

(a) Except as otherwise provided in this paragraph 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.

\* (such reserves to be held for no longer than four [4] full royalty periods after publication of any edition or reissue)

#### Royalties for Trade Paperback Edition

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\*:

(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 (7.5%) 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 percent (50%) 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.

\* (such reserves to be held for no longer than four [4] full royalty periods after publication of any edition or reissue)

#### Royalties for Other Editions

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  
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, subject to the approvals specified in paragraph 1 hereinabove:

<i>Right</i>	<i>Percentage to be Paid to Author</i>
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%
Publication in the English language in the Schedule A Countries	80%
Publication in the English language in Canada	66 <sup>2</sup> / <sub>3</sub> %
<del>Publication in other Languages</del>	
First Periodical Rights (prior to first book publication)	90%
<del>Motion Picture, Television, Radio and Dramatic Rights</del>	
<del>Lyric Rights</del>	
<del>Commercial Adaptations and Tie-Ins</del>	
<del>Mechanical Audiovisual Rights</del>	
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.~~

**No Royalties**

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

(a) Sales made at or below Manufacturing Cost, copies destroyed, copies furnished gratis to the Author, editorial review copies, or copies otherwise used to promote the sale of the Work;

(b) Licensing publication of the Work without fee, in Braille (or similar tactile symbols), or by mechanical audio recordings or visual recordings, solely for the blind and other physically handicapped persons; and

(c) Publishing or permitting others to publish, broadcast or transmit by radio, television or on-line selections from the Work (not to exceed 10,000 words), 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.

## Statements and Payments

+ (a): If, after termination for nondelivery pursuant to subparagraph 3(b) herein, the Author fails to repay to the Publisher any and all sums paid to the Author under this Agreement, then such payments shall be chargeable against and recoverable by the Publisher from any and all monies accruing to the Author under any other previous agreement with the Publisher.

12. (a) 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, 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 previous~~ agreement may be deducted from payments accruing to the Author under this ~~or any other previous~~ 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 ten dollars (\$10.00), no payment statement shall be rendered; however, all statements 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. The Author's rights pursuant to this paragraph shall survive the termination of this Agreement. Any sums found to be owed to the Author shall be paid by the Publisher within thirty [30] days of such finding.

## Copyright

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 for the sole purpose as set forth in this paragraph of this Agreement only, 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 after notice from the Author.

(b) The Author, his heirs, executors, administrators, successors and assigns shall render such cooperation and assistance as the Publisher may reasonably request to protect the rights granted hereunder, including (but not 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 Infringement

\* (except that the Publisher shall not separately prosecute such action without the Author's written consent) # provided that the other party shall be reimbursed for any reasonably incurred expenses it may have in connection with such action

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 \* and such party shall bear the expenses thereof, and any recoveries shall belong to such party provided that the other party shall be reimbursed for any reasonably incurred expenses it may incur in connection with such action. Each party shall promptly inform the other immediately upon becoming aware of the copyright infringement. 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. Such record title will be transferred back to the original holder at the conclusion of such action.

## Author's Property

15. The Publisher shall not be responsible for loss or damage to any property of the Author but shall exercise reasonable care. ~~In the absence of a written request from the Author made prior to publication,~~ The Publisher, after publication of the Work, shall use best efforts to return ~~may dispose of~~ the original manuscript and proofs.

## Author's Copies

\* and ten (10) free copies for the Author's agent

16. The Author shall be entitled to receive on publication twenty (20) 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 one hundred dollars (\$100.00) ~~five hundred dollars (\$500.00)~~ or more and, upon the Author's request, shall furnish the Author with a copy of each such contract or agreement, as well as copies of statements of account emanating from such contracts or agreements. The Publisher shall use best efforts to have two (2) copies of each sublicensed edition of the Work sent to the Author.

## Use of Author'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, solely in connection with advertising, publicizing, licensing and promoting the Work, ~~and any commercial adaptation thereof.~~

## Motion Picture 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 use best efforts to ensure 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 work ~~substantially similar to~~ based upon the Work or which is ~~reasonably likely to injure~~ would materially adversely impact 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~~ written contract for publication or on sale through regular wholesale and retail channels in any full-length English language edition in the United States, whether under the imprint of the Publisher or a licensee. 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. The existence of a large print or Braille edition of the Work shall not deem the Work to be in print.

Termination by Publisher

22. If eighteen (18) months after publication, 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. The Publisher shall use best efforts to notify the Author of the Publisher's intention to remainder the Work; however, the Publisher's failure to do so shall not be deemed a breach of this Agreement.

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

(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, and to the extent permissible pursuant to the United States copyright laws then in effect, 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 and the Publisher shall negotiate in good faith for mutually agreeable terms upon which the Publisher may publish such revised edition of the Work. 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.~~

Option on Next Work

26. The Author hereby grants to the Publisher the exclusive right and option to publish his next book-length work of non-fiction, 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) 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 for a period of thirty (30) days 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 created by the Author, until such an agreement is reached with either the Publisher or any other party.~~

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. All notices shall be deemed to be given or made on the date of delivery if sent by same-day courier on a business day, the next business day when delivered by overnight courier, or on the fifth business day after mailing if sent by registered or certified mail to the respective address.

Reservation of Rights to Author

29. (a) All rights in the Work 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 except simultaneously than the respective dates of the Publisher's publication of its hardcover and paperback editions (either the Publisher's own or sublicensed editions) in the Nonexclusive Territory, except that if no United States paperback edition is published within eighteen (18) twelve (12) 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. Notwithstanding the foregoing, but subject to the provisions of the Rider to Paragraph 27, the Author may assign or transfer any monies due or to become due to the Author under this Agreement upon giving written notice to the Publisher of such assignment.

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. The provisions of this paragraph shall survive the termination of this Agreement.

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. 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 of record (local, state or federal) in the State of New York, and the parties hereby consent to jurisdiction of the said courts of New York and to service of process upon them in writing 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 or the next business day when delivered by overnight courier or the same business day if sent by same-day courier on a business day.

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.



37. Upon Author's written request, no more than twice per year, and only after the rendering of royalty statements, the Publisher shall use its best efforts to provide the following information: the number of copies of the Work printed, copies shipped, copies sold, copies returned, copies being held as a reserve for future returns, current inventory, and an itemized accounting of all subsidiary rights receipts.

38. The Author's share of any subsidiary rights income received pursuant to paragraph 10, less any outstanding debits and a reasonable reserve for estimated returns under paragraphs 6, 7, 8 or 9, and in the amount which the Publisher feels is appropriate, shall be paid within ninety (90) days of the Publisher's receipt of such monies at the Author's request.

39. 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.

40. 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 within 60 days after delivery of Author's written notice to the editor (with a copy to the Publisher's General Counsel), the Author may elect to terminate this Agreement at the expiration of such sixty day period 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.

41. 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.

RIDER TO SUBPARAGRAPH 3(d):


The Publisher shall respond with a request for revisions or accept the manuscript within sixty (60) days from the delivery of the manuscript and the Author's agent shall notify the Publisher of such sixty day end date no later than two (2) weeks before such date. Such notice shall be delivered by registered or certified mail, postage prepaid, return receipt requested, to the Publisher's in-house legal counsel with a copy to the editor of the Work. In the event that the Publisher does not receive such notice from the Author's Agent as described herein, the Publisher's failure to so respond within such sixty (60) days of delivery of the manuscript shall not be considered a breach of this Agreement.


RIDER TO PARAGRAPH 27:

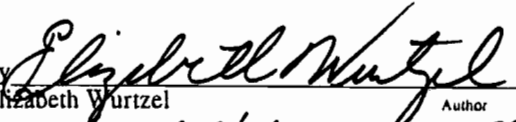


The Author hereby designates and appoints Collins McCormick Literary Agency (the "Agent"), 10 Leonard Street, New York, New York 10013 as the Author's sole and exclusive agent and representative throughout the world with respect to the Work and this Agreement including any options which may be contained herein and any sale, license or other disposition of the Work, including but not limited to publication, film, television, dramatic, lyrical, radio, electronic and mechanical recording rights and rights derivative therefrom in connection with all matters and rights in and to the Work, on any and all media in perpetuity but excluding legal matters and matters requiring the professional services of a CPA. The Author hereby directs and authorizes the Publisher to pay, and the Publisher agrees to pay, all monies due or to become due to the Author under this Agreement with the Publisher pertaining to the Work to and in the name of the Agent and shall be sent to the address stated above. Receipt of such monies by the Agent shall be deemed receipt by the Author and shall be a complete and valid discharge of the Publisher's obligations under this Agreement. Author acknowledges that the Agent is a third party beneficiary to the Agreement to the extent designated for services rendered and to be rendered. The Author hereby assigns and transfers to the Agent as an agency coupled with an interest, its successors and assigns, fifteen percent (15%) of all monies due and payable to the Author on account of such rights.

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

Riverhead Books,  
a division of Penguin Group (USA) Inc.

By   
Susan Petersen Kennedy President

By   
John Sofrine Vice President Corporate Director of Business Affairs

By   
Elizabeth Wurtzel Author  
 United States  
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-

ELIZABETH WURTZEL

---

**VERIFIED COMPLAINT**

---

PELOSI WOLF EFFRON & SPATES LLP

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

*Attorneys for Penguin Group (USA), Inc.*