

SFWA Model Author-Agent Agreement, Version 3.1

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The following is SFWA's model contract for use between authors and agents.

The model author-agent agreement was written by the SFWA® Contracts Committee with the assistance of SFWA's attorney. SFWA's model contracts are written as generic guides to help writers and others understand common publishing contracts and to help them negotiate better contracts. They are not intended to be and should not be used as boilerplate contracts by publishers, writers, or agents, and any such use is not approved by SFWA. SFWA's model contracts have been written by writers for writers, and are for educational purposes only.

As part of its ongoing efforts to educate writers about publishing contracts, the Contracts Committee periodically writes new sample contracts or updates old sample contracts. Address comments or suggestions to the Chair, SFWA Contracts Committee at contracts@sfgwa.org

The Author-Agent Agreement is based on the model contract prepared by the SFWA Contracts Committee in 1996. That Committee included Michael A. Armstrong, Damon Knight, David Alexander Smith, and John E. Stith. The members of the Contracts Committee who worked on the 2016 revision of the contract were: Michael Capobianco, Jim Fiscus (chair,) Jeff Hecht, Ken Liu, and Rosemary Smith.

Legal Disclaimer: Neither the model contract nor the comments thereto are intended to be or should be understood to be legal advice. The issues presented in the model contract are not an exhaustive list of the issues that may arise, and other important issues may need to be addressed depending on the nature of the relationship of the parties, the jurisdiction that you are contracting in and other factors. As with any legal document, you should consult a competent attorney familiar, in this case, with the business of publishing as well as the law of the applicable jurisdiction for legal advice.

Editing Note: [Brackets] show where information needs to be inserted, such as the names of the parties. In this agreement, we use the term sale as shorthand to mean the sale of a license for use of a work. Unless the work is work for hire, all licenses should be limited and should expire under certain, clearly stated conditions.

Note on Agreements Between Authors and Agents: Traditionally, writers and agents worked on the basis of a handshake. The overwhelming majority of agents have acted ethically and respected the agreements they made. However, there have been enough issues between writers and agents to make it clear to us that writers need to have a formal agreement that protects their interests.

Memorandum of Agreement

This agreement (the "Agreement") dated [date of signing], sets forth the relationship between [author's name here] (the "Author"), also published under the name(s) [pen names here] and [name of literary agency or

agency Here] (the "Literary Agent" or "Literary Agency).

The parties agree as follows:

MODEL CONTRACT

1. LITERARY AGENT [or AGENCY] REPRESENTS AUTHOR. For the term of this agreement, the Author hereby retains the Literary Agent:

1. (a) To represent the Author as Agent-of-Record for the sale of the following works ("Represented Works"), written or to be written by the Author. Represented Works shall not include prior unagented sales or sales covered by a prior agency agreement, unless specified in Appendix A as Represented Works.

Represented Works shall include:

- (i) all previously unpublished works of fiction that are 40,000 words in length or longer, unless the Author and Literary Agent agree that a work shall not be a Represented Work;
- (ii) any previously unpublished works of fiction that are shorter than 40,000 words in length that Author and Literary Agent agree will be Represented Works;
- (iii) any previously published works that Author and Literary Agent agree will be Represented Works, as specified in Appendix A; and,
- (iv) any other writings that Author and Literary Agent may agree upon.

NOTES

Author-Agent agreements may be between the Author and a specific Agent, or between the Author and an entire Agency at which an agent works. The language of the agreement needs to be clear as to what the case is.

IF the agreement is between the Author and an agency, the term Literary Agent needs to be changed to Literary Agency throughout the agreement.

The Represented Works language can be written to exclude prior unagented sales and sales made by prior agents. The Agreement can also be written to allow the Agent to represent additional sales of works originally sold without an agent, if the Author and Agent so agree.

Represented works may include all novel length fiction written by the Author or just those works written in a specific genre. (i.e. Science Fiction and Fantasy, Mysteries, etc.) In some cases, Represented Works may include short fiction. Further, some agents handle both fiction and non-fiction, and there may be cases when an author may chose to have the same agent represent both.

The Author and Agent should be able to exclude future works that they do not want included as Represented Works.

Whatever is agreed upon, the language in the Agreement must be clear. Any works covered by sub-clause (iii) should be listed in Appendix A or added to the agreement as a written amendment.

1. (b) Subject to the Author's approval, to negotiate licenses ("Represented Sales/Licenses") for the following rights:
- (i) Represented Works in the U.S., its territories, and Canada ("Domestic Rights");
 - (ii) Represented Works in non-domestic markets ("Foreign Rights");
 - (iii) derivative or secondary rights in the Represented Works for film and television ("Subsidiary Film and Television Rights");
 - (iv) other derivative or secondary rights in the Represented Works (such as other dramatic media) anywhere in the world ("Subsidiary Rights");
 - (v) digital rights to Represented Works; and
 - (vi) audio rights to Represented Works.
- (vii) The Literary Agent may not negotiate for any rights not listed above without the Author's prior written approval.

1. (c) To receive payments and royalties from all Represented Sales as long as the contracts for such licenses remain in force.

Money due the Literary Agent is a commission and grants no interest or any other form of ownership or claim of right in Author's work or an Agency With Interest in any form to the Literary Agent.

1. (d) Agency With Interest Prohibited: Nothing in this

1. (b) Copyright law refers to Derivative Works, meaning works based on the primary copyright (e.g., media adaptations, sequels, translations -- sometimes, etc.) In practice, three terms are in general use for such rights: derivative rights, secondary rights, and subsidiary rights. Actual usage varies by industry, and you may come across any of these terms.

The contract should spell out the exact licenses that the Literary Agent may sell for the Author.

Keep in mind that some authors have different agents representing them in domestic and foreign markets, or for film and television rights. Some authors may wish agent representation for digital and audio rights. Be careful to include only the appropriate subsections.

How money is paid by a publisher determines how reporting to the IRS is handled.

If all royalties are sent to the Agent, the Agent will receive an IRS Form 1099 (reporting miscellaneous income) from the publisher for all payments. The Agent then deducts the commission and forwards the remainder to the Author. The Agent later sends a 1099 to the Author, and deducts the money sent the Author as an expense.

When the publisher splits the payments and directly pays both the Agent and the Author, the publisher sends 1099s to both the Author and the Agent.

Clause 10, below, discusses how payments may be handled should the author or agent terminate the agreement.

Agency With Interest Language

agreement shall create an Agency With Interest. This Agreement revokes any such clause in any other agreement between Author and Literary Agent and Literary Agent agrees to release Author from any such agreement in writing, if so requested.

Literary Agent will not allow inclusion of an Agency with Interest clause in any publishing contract negotiated for the author or any wording that grants Agent an interest in Author's work.

1. (e) Agency Clause: In any publishing contract negotiated by Literary Agent on Author's behalf, no agency clause shall be inserted or accepted which would compel the publisher or any third party to use the Literary Agent for any subsequent negotiations involving new works by the Author. The Literary Agent agrees not to enforce any prior clause/s, should they exist, and to release the Author in writing, if so requested.

2. Author attests that, during the term of this Contract, the Author will employ no other Literary Agent to represent the Author for the Author's Represented Works.

It is acknowledged that some of the Author's works may be excluded from this contract because they are covered by a prior agreement with another agency or because the Author intends to publish or otherwise deal with those works personally without the Literary Agent.

See Appendix A for a list of all previously published works that are included in this agreement as Represented Works.

3. CONTRACTS. Literary Agent shall use best efforts to promote the Author's Represented Works. No proposed Represented Sale shall be binding unless approved by the Author in a signed contract ("Represented Contract".)

4. AGENT'S COMMISSION. The Literary Agent shall be

Some agents have tried to include language granting them actual rights in the works they are trying to sell, giving them "an agency coupled with an interest" in the work. Any such clause should be struck out. An agent's only legitimate interest in a work is to a reasonable commission.

The Agent must not allow creation of an Agency With Interest in any publishing contract involving the Author's work.

Many authors are publishing their own backlists of previously published works themselves, either digitally as e-books or as print-on-demand editions. By default, a writer's backlist should be excluded from the agreement.

Appendix A should list any of the Author's backlist that are to be included in this Agreement as Represented Works.

In addition, Appendix B may be needed if the Literary Agent is to act as a publisher for the backlist.

In all but the most extraordinary circumstances, writers should guard against giving powers of attorney -- or authority close to them -- to agents.

If circumstances make it difficult for the writer to sign a specific contract, any power of attorney should be limited to the specific contract.

While authors would like these commission

entitled to a commission ("Agent's Commission") equal to [X] percent of all Domestic Sales, [Y] percent of all Subsidiary Sales, and [Z] percent of all Foreign Sales.

rates as low as possible, we recognize that agents would prefer them as high as possible. Most agents charge 15 percent for sale of domestic licenses, 15 percent for subsidiary rights, and 20 percent for foreign sales. Obviously, these rates play a part in the determination of whether a particular agent is the one to sign with.

5. SUBSIDIARY AGENTS. Subject to Author's reasonable approval and Sub-Section 1 (b) above, the Literary Agent shall engage all subsidiary or co-agents which the Literary Agent believes best represent the Author in foreign markets.

As noted above, many authors prefer to have separate film agents, while some authors have existing relationships with agents representing them in foreign markets, and may wish to continue working with those agents. Whichever way you go, the decision should be clear to both author and agent.

6. EXPENSES BORNE BY LITERARY AGENT. From the Literary Agent's Commission, the Literary Agent shall pay all subsidiary or split commissions required by foreign or subsidiary agents. The Literary Agent shall not be reimbursed for expenses, except those extraordinary expenses that the Author shall approve, in writing, in advance.

In all but the most extraordinary circumstances, the agent should not charge the author for the normal expenses of doing business.

7. DISBURSEMENTS. On behalf of the Author, the Literary Agent shall collect all payments due the Author under any Represented Contract ("Author's Payments") and shall, within ten (10) days of the funds clearing, disburse the amount of such Author's Payments to the Author, less any Literary Agent's Commission and less any mutually approved expense charges.

8. (a) STATEMENTS. In January of each year, the Literary Agent shall provide the Author with statements showing all Author's Payments, Agent's Commissions, and other itemized deductions for the previous calendar year. The statements shall clearly detail payments by work.

Some agents only provide an IRS Form 1099 that identifies the total payments and total commissions, but do not provide detailed accounting of payments. For sound accounting, authors need detailed statements clearly showing how much money has been received for each work represented by the Agent.

Upon request, Literary Agent shall provide additional statements showing cumulative payments, commissions, and deductions at any time.

8. (b) The Literary Agent shall send copies of all royalty statements and related communications from publishers to the Author within ten (10) days of receiving them.

Again, if authors are going to maintain sound accounting of their works, they need to be able to review royalty statements.

9. NOTICES. The Literary Agent and Author shall promptly send each other copies of (a) any legal notice under any Represented Contract, (b) any important communication from any publisher under any Represented Contract, and any material correspondence.

If to Literary Agent, at [Literary Agent's address]

If to Author, at [Author's address]

or such other address as either party may designate in writing to the other.

10. (a) VOLUNTARY TERMINATION. This contract may be terminated voluntarily for any reason by either party upon thirty days' prior written notice to the other, detailing causes for termination, sent via certified mail, return receipt requested (or the international mail equivalent,) to the persons at the addresses in Clause 9.

10. (b)

(i) Unless his or her authority is revoked pursuant to Clause 13, after termination the Literary Agent shall continue to administer Represented Contracts which the Literary Agent negotiated while this Contract was in force, and retain Agent's Commission on those Represented Contracts. The Literary Agent may make no further sales of the Represented Works.

(ii) Unless its authority is revoked pursuant to paragraph 12, after termination the Literary Agent shall have 60 days during which foreign agents can obtain and report on any submissions they have made for Literary Agent acting for Author.

10. (c) Notwithstanding 10(b) following termination of this Agreement for any reason, the Author may direct the publishers of any works covered by this agreement to divide payments, sending the Agent's percentage of money to the Agent and the Authors percentage to the Author. The Author may further direct publishers to send the Author copies of all royalty statements and other relevant documents.

The notices shall be sent to publishers in writing, and copies shall be sent to the Literary Agent.

As stated here, should the relationship between an Author and Agent end, the Author should have the absolute right to require the publisher to direct payments be divided and sent to the author and agent separately.

Authors do need to be sure that nothing in their contracts with publishers would block this clause.

10. (d) After termination of this Agreement and discharge of Literary Agent, Literary Agent shall neither state nor imply that he/she continues to represent Author, except to protect Author's interests under any contracts previously negotiated by Literary Agent.

10. (e) REPRESENTATION OF WORKS AFTER TERMINATION: Unless the Literary Agent's authority has been revoked pursuant to Clause 13 (in which case any and all rights, subsidiary rights, Foreign Rights, or right to represent Works not sold at the time of termination shall immediately revert to Author), such rights shall revert to the author as follows:

(i) 90 days from termination if, within such time, Literary Agent has received no firm letters of intent to purchase those rights at a reasonable price, "reasonable" to be defined by the Author; or

(ii) The Author may agree, in writing, that Literary Agent shall continue to represent a specific Work.

10. (f) Should the Author reasonably believe Literary Agent has failed to forward money or copies of communications specified in 8(b) to the Author, the Author may request a list of all payments and documents sent to the Literary Agent by any publisher of works covered by this agreement. The Author shall make the request to both the Literary Agent and publishers.

Failure of Literary Agent to forward all money and documents owed the Author in a timely manner shall be deemed to be a substantial breach of this agreement.

10. (g) Unless such authority is revoked pursuant to Clause 13, so long as the Literary Agent continues to properly perform his/her duties under this Agreement after termination Literary Agent shall continue as Agent-of-Record for Works covered by this Agreement without restriction for a period of five (5) years. After that period, Literary Agent's rights and duties as agent-of-record for any Work shall terminate whenever four consecutive royalty reporting periods pass without producing royalties totaling _____ percent (or more) of the dollar value of the total original advance for the Work.

11. ASSIGNMENT. This agreement may not be assigned or transferred by either party without the written consent of the other.

12. APPROVAL-OF-TRANSFER. Agent may not transfer this

agreement to any person or business entity without prior written approval of Author.

13. BREACH, DEATH OF AGENT OR DISSOLUTION OF AGENCY AND REVOCATION.

(a) In the event that the Literary Agent dies; stops working as an agent; leaves the Literary Agency at which he/she was working when this Agreement was signed or that Agency is dissolved; or commits a substantial breach of this agreement, the Author or his successors, executors, heirs or assigns may revoke all rights granted to the Literary Agent hereunder.

(b) If a Literary Agency is the signer of this Agreement, and it is acquired by another entity or commits a substantial breach of this agreement, the Author or his successors, executors, heirs or assigns may revoke all rights granted to the Literary Agent hereunder.

(c) The Author or his successor, heirs or assigns shall provide notice of such revocation to the persons at the addresses in Clause 9 of this Agreement, and such revocation shall be effective immediately upon delivery of such notice.

14. DEATH OF THE AUTHOR.

In the event that the Author dies, rights to all of the Author's works shall be controlled by the Author's successors, executors and assigns. This Agreement shall continue in force unless Clause 10 (Voluntary Termination) or Clause 12 (Breach, Death of Agent or Dissolution Of Agency and Revocation) is invoked by either the Author's successors, executors or assigns or by the Literary Agent, as the case may be.

15. CONTACTS. Mail sent to the Author in care of the Literary Agent may be opened by the Literary Agent and dealt with, unless it is apparently of a personal nature, in which case the Literary Agent shall forward it to the Author promptly. When the Author is approached directly by any party interested in the Author's Represented Works, the Author shall inform the Literary Agent immediately and refer the party to the Literary Agent.

16. (a) CHOICE OF LAW. Regardless of its place of execution,

Problems caused by the death of an agent or the dissolution of an agency have been some of the most serious writers have faced regarding agents.

Related to this clause, agents who leave one agency to work for another agency or start their own agency may be restricted from taking their clients with them by their employment contract with the previous agency. If such restrictions exist, they generally are only for a limited period of time. Depending on the laws governing the Agreement, it might be possible to add language allowing an agent who leaves an agency to continue working with an author.

Bankruptcy is controlled by the Federal Bankruptcy Code, and by its nature is outside the scope of the Model Author-Agent Agreement. If your Agent files for bankruptcy, you should consult with an attorney familiar with bankruptcy law.

It is VITAL for all authors to have a will, or a codicil to their will, that clearly states who will own their copyrights, who will control their estate as literary executor, and how the earnings from the estate will be divided between heirs.

Even if you are 30, you can be hit by a bus. Plan your estate.

Many states do not have laws governing

this agreement shall be interpreted under the laws of the State of [name of state].

the relationship between agents and their clients. Both New York and California do, however. Therefore, the requirement that the agreement be interpreted under the law of a specific jurisdiction may have significant consequences. Be sure to have an attorney admitted to the bar of that specific jurisdiction review any agreement on your behalf. You may also wish to consider a requirement, or the effect of any requirement, that any action to enforce this agreement must be brought (and defended) in a particular jurisdiction.

17. VENUE. The parties agree that any action to enforce this Agreement shall be brought in the appropriate state or federal court in the State of [name of state], and that such court shall have personal jurisdiction over each of the parties.

The main purpose of the clause is to block use of arbitration, which can easily be unfair to the weaker party.

18. AMENDMENT. This Agreement contains the entire agreement between the parties. It supersedes any prior agreement, and any amendment must be contained in a writing signed by all of the parties hereto.

19. PRIMACY OF AGREEMENT: This Agreement shall supersede and have primacy over any previous agreement between the Author and the Literary Agent, written or otherwise.

20. The parties acknowledge that each party has read and understood this contract before execution

In witness whereof the parties have executed this contract in duplication originals on this

_____ day of _____, 20__

Author Date

Author's Social Security or Tax ID Number

[NAME OF LITERARY AGENT], Date

Please sign and return all copies. One copy signed by all parties will be returned for your files.

Appendix A: List of Represented Works

The following is a list of prior unagented sales or sales covered by a prior agency agreement that are included as Represented Works.

<u>Title</u>	<u>Notes On Work</u>	<u>Date of Publication</u>
[Title of Work]	[Notes on Work]	[Date of Publication]
[Title of Work]	[Notes on Work]	[Date of Publication]

Appendix B: Publication of Backlist

NOTE: The situation with agents publishing a writer's backlist is potentially risky, and we will update this agreement when we have a better grasp of the protections writers need.

A number of literary agents are working with their clients to publish writers' backlists, either digitally as e-books or as print-on-demand editions. In some cases, they negotiate publication with an independent electronic or print-on-demand publisher (POD), and in some, the agents have set up their own electronic or POD publishing arm.

Any contract clauses dealing with digital or print-on-demand publishing of a writer's back list must be clear, limited, and crafted with language allowing the writer to withdraw from the agreement, and prohibiting any action that causes a conflict of interest for the agent.

Regardless of how the Agent arranges for publication of works, we strongly believe that the Agent is NOT entitled to a share of sales or royalties. The Agent's only proper compensation is the agreed commission.

In any such arrangement, we believe that agents owe clients a fiduciary duty to place the author's interests above those of the agent. It is also critical that the agent avoid any commingling of funds.