

4. While intervening non-necessary defendants are not required to establish the jurisdictional minimum amount in controversy, the amount in controversy does in fact exceed \$75,000. As set forth more fully below, this intervening counterclaim seeks a declaratory judgment regarding and future specific performance of a series of contracts between Ellora's Cave and Josephson, as well as damages for past breaches of those contracts. The future value of the specific performance and declaratory judgment is unknown, but the damages incurred from Ellora's Cave's breaches are at least \$193,000. Given the sums accrued in the past, given the potential future sales at issue, and given the attorney's fee shifting provision included in the contracts, it is clear that more than \$75,000 is at issue.

5. Because of the complete diversity of the parties and an amount in controversy that exceeds \$75,000, this Court has subject matter jurisdiction under 28 USC 1332. Additionally, because this controversy includes a dispute about the transfer of copyrights, this Court has subject matter jurisdiction under 28 USC 1338 and 1367. Venue is proper in this Court pursuant 28 USC 1391(b)(1), because Ellora's Cave resides in Akron, Ohio.

GENERAL AND BACKGROUND FACTS

6. Exhibit 1 to this intervening counterclaim is a contract between Ellora's Cave and Josephson for a work of fiction titled *A Mutual Favor* (the "Mutual Favor Publishing Agreement").

7. The Mutual Favor Publishing Agreement is substantially identical to the publishing contracts between Ellora's Cave and Josephson for 32 other works: *A Gift of Gold*, *Another Love*, *Awakenings*, *Bittersweet Homecoming*, *Colors of Love*, *Colors of Magic*, *Commitment*, *Dallas Heat*, *Dark Side of the Moon*, *Entrapped*, *Eternal Surrender*, *Eternal Victory*, *Eternally His*, *Eye of the Storm*, *Firestorm*, *Forever Enslaved*, *Gates of Hell*, *Gettin It On*, *Haunted*, *He Calls Her Jasmine*, *Hitched*, *Illusions*, *In His Own Defense*, *Lassoed*, *Love Slave*, *Mastered*, *Out of Bounds*,

Roped, Tip of the Iceberg, Vampire Justice, Wrong Place Wrong Time, and Zayed's Gift.

8. Exhibit 2 to this intervening counterclaim is a contract between Ellora's Cave and Josephson for a work of fiction titled *Learning Control* (the "Learning Control Publishing Agreement").

9. The Learning Control Publishing Agreement is substantially identical to the publishing contracts between Ellora's Cave and Josephson for three other works: *Loving Control*, *Switching Control*, and *Unexpected Control*.

10. Exhibit 3 to this intervening counterclaim is a contract between Ellora's Cave and Josephson for a work of fiction titled *Naked Bootleg* (the "Naked Bootleg Publishing Agreement").

11. The Naked Bootleg Publishing Agreement is substantially identical to the publishing contracts between Ellora's Cave and Josephson for three other works: *Forward Pass*, *Hot in the Club*, and *Coach Me*.

12. Exhibit 4 to this intervening counterclaim is a contract between Ellora's Cave and Josephson for a work of fiction titled *Topaz Dream* (the "Topaz Dream Publishing Agreement").

13. Under all of the Publishing Agreements, Josephson granted to Ellora's Cave the rights to publish and sell the applicable works.

ROYALTIES ARE UNDERPAID, UNPAID, OR UNTIMELY PAID

14. Under the Publishing Agreements, Ellora's Cave agreed, among other things, to pay royalties to Josephson and to regularly account to Josephson for sales and royalties of the works.

15. Josephson fully performed all of her obligations under the Publishing Agreements, and Ellora's Cave did in fact publish each of the works pursuant to the Publishing Agreements, but Ellora's Cave has failed to pay royalties to Josephson in accordance with the Publishing Agreements.

16. By way of example, §10 of the Mutual Favor Publishing Agreement provides that “In regard to all of Publisher’s royalty provisions as specified below, Publisher shall pay royalties based on cover price.”

17. Under § 10.1 of the Mutual Favor Publishing Agreement, the applicable royalty rate for digital formats of *A Mutual Favor* is 37.5% of cover price.

18. Under § 10.2 of the Mutual Favor Publishing Agreement, the royalty rate for print books of *A Mutual Favor* is 7.5% of cover price.

19. Notwithstanding the language in the contracts, Ellora’s Cave has stated that it believes it is entitled to calculate and pay (and has in fact calculated and paid) royalties to Josephson—and, upon information and belief, other similarly situated authors—based not on *cover price*, but on the *actual sales price* of the works. For example:

- a. One of the books published under a contract substantially identical to the Mutual Favor Publishing Agreement was *In His Own Defense*.
- b. Under §10.1 of the applicable contract, the royalty owed to Josephson for each digital copy of *In His Own Defense* was 37.5% of the cover price.
- c. The cover price of *In His Own Defense* was \$5.95.
- d. The periodic accountings provided by Ellora’s Cave to Josephson reflect that in March of 2012, Ellora’s Cave sold 257 digital copies of *In His Own Defense* for Amazon’s Kindle e-reader devices.
- e. Multiplying the cover price (\$5.95) times the contractual royalty rate (37.5%) times the number of Kindle books sold (257), Josephson was entitled to receive a total royalty of \$573.43 for March 2012 Kindle sales of *In His Own Defense*.
- f. However, Ellora’s Cave paid Josephson a royalty of only \$77.49. The reason for

the discrepancy is that in March 2012 Kindle copies of *In His Own Defense* were sold at a substantial discount from the cover price, and Ellora's Cave improperly calculated the royalty based on the sale price rather than cover price.

20. Ellora's Cave has made similar underpayments for most or all of Josephson's works, and upon information and belief has made similar underpayments for many other authors.

21. After complaints about the improper royalty payments, Ellora's Cave attempted to modify its publishing contracts with its authors, including Josephson, by unilaterally informing the authors that Ellora's Cave would begin paying an increased royalty rate (45% or 40%) but pay the royalty rate based on the sales price, which was often substantially lower than the cover price. The net result was that even with a supposedly higher royalty rate, the royalty payments were below those provided for in the contracts.

22. Ellora's Cave's attempts to change the royalty payment structure by unilateral notice is not permitted under any of the Publishing Agreements, all of which contain provisions requiring any modifications to be made in a writing signed by both Josephson and Ellora's Cave. The attempts at modification are, however, indicative of Ellora's Cave's knowledge that its prior royalty payments were not consistent with the Publishing Agreements.

23. Ellora's Cave has also breached the Publishing Agreements by failing to pay royalties on time. For example, §18.1 of the Mutual Favor Publishing Agreement (Exhibit 1) provide that royalties shall be paid on a schedule determined by Ellora's Cave, but that royalties may not be paid less than frequently than every three months. Notwithstanding this provision, at times in 2013, 2014, and 2015, payments have been remitted to authors less frequently than every three months.

24. While Ellora's Cave may have discretion regarding the establishment of a royalty payment

schedule, Ellora's Cave has improperly altered the royalty payment schedule—both expressly and without notice—in order to delay payment to authors.

25. For example, up to December 2013, the royalty payment policy was that payments and accountings would be received by the 15th day of the third month of the applicable accounting period (i.e., for January receipts, royalties and account statements were to be received by the author by April 15th). In May 2014 that policy was modified to extend receipt of payment and accounting out by a month (i.e., for January receipts, royalties and account statements were to be received by the author by May 15th).

26. Moreover, Ellora's Cave has been preparing royalty checks but holding them before mailing them to Josephson. For example, the royalty check to Josephson for the period purporting to end on October 31, 2014, was dated January 27, 2015, and was not mailed by Ellora's Cave until February 6, 2015, meaning that there was a span of as much as four and a half months between Ellora's Cave's receipt of funds for Josephson's works and Josephson's receipt of the royalties.

27. Josephson has been monetarily damaged by the underpayment and late payment of royalties in an amount to be determined.

COPYRIGHTS NOT REVERTED

28. Under the Publishing Agreements Josephson granted to Ellora's Cave her copyright in the works, subject to a right of reversion that is triggered if total sales fall below a specified threshold (which is 100 or 150 books, depending on which Publishing Agreement is applicable) in any twelve-month period.

29. By delaying not only the payments but also the accounting statements as described in ¶24, Ellora's Cave has delayed the reversion of copyrights to Josephson. For example, the accounting received by Josephson in and prior to February 2015 reflect that less than 100 copies of the work

Learning Control were sold between November 2013 and October 2014. Because of the lengthy—and growing—gap between the October 2014 accounting period and Josephson’s February 2015 receipt of the account statement, Ellora’s Cave enjoyed approximately four and a half months of the benefits of ownership of the *Learning Curve* copyright after it should have reverted to Josephson.

30. Ellora’s Cave has additionally improperly extended its copyright ownership by counting free copies as “sales,” and/or has counted a “sale” whenever a work was included in a multi-book set.

31. Ellora’s Cave has benefitted and Josephson has been damaged by Ellora’s Cave’s improper retention of copyrights that should have reverted to Josephson and the proceeds of sales of those works.

COUNT ONE
Declaratory Judgment Regarding Publishing Agreements

32. Josephson realleges and reincorporates all prior allegations.

33. An actual controversy has arisen between Josephson and Ellora’s Cave regarding the parties’ rights and obligations under the Publishing Agreements.

34. The parties’ controversy includes but is not necessarily limited to:

- a. Whether Ellora’s Cave is entitled to calculate royalty payments based on the sales price instead of the cover price;
- b. Whether Ellora’s Cave is entitled to modify its Publishing Agreements with Josephson and other authors by notifying them of its intent to modify, rather than through a writing executed by the parties to the Publishing Agreements;
- c. Whether Ellora’s Cave is entitled to extend indiscriminately the period of time between the sales of books and the payment of royalties to authors, under the guise

of establishing a discretionary payment schedule;

d. Whether Ellora's Cave is properly reverting the copyright of works to Josephson.

35. Direction from this Court in the form of a declaratory judgment of the parties' rights will afford the parties relief from uncertainty regarding their future rights and obligations under the Publishing Agreements, in particular with respect to the calculation and timing of royalty payments, whether and how the formula for determining such payments may be modified; and whether and when the copyright of works revert to Josephson.

COUNT TWO
Specific Performance of Royalty and Reversion Provisions

36. Josephson realleges and reincorporates all prior allegations.

37. As prayed for above, Josephson is entitled to a declaration that royalty payments must be calculated based on cover price rather than sales price; that Ellora's Cave may not modify its Publishing Agreements unilaterally; and that Ellora's Cave may not extend indiscriminately the royalty payment and accounting schedule.

38. While Josephson is entitled to monetary damages for past breaches of the agreement as alleged below, monetary damages are not an adequate remedy, especially with respect to the reversion of copyrights but also with respect to the timing and structure of royalty payments.

39. Josephson seeks and is entitled to an order from this Court requiring Ellora's Cave to transfer to Josephson the copyrights in all works which have met the criteria for reversion as of the date of this intervening counterclaim, as well as an order requiring compliance with the copyright reversion and royalty payment and structure obligations in the future.

COUNT THREE
Breach of Contract

40. Josephson realleges and reincorporates all prior allegations.

41. The Publishing Agreements are contracts.
42. Josephson has performed all of her obligations under the Publishing Agreements.
43. Ellora's Cave has breached the Publishing Agreements by, among other things, failing to properly calculate the royalties owed to Josephson; failing to timely pay the appropriate royalties to Josephson; and failing to revert copyrights to Josephson.
44. Josephson has been damaged in an amount to be determined, but not less than \$75,000, exclusive of interest and costs.
45. In addition to actual damages, Josephson is contractually entitled to recover attorneys' fees for Ellora's Cave's breaches of the Publishing Agreements, in an amount to be determined.

WHEREUPON, having fully pleaded, intervening counterclaimant Ann Josephson respectfully requests this Court to issue a declaration regarding the parties' rights and obligations under the Publishing Agreements; to order Ellora's Cave to transfer copyrights to Josephson and to comply with the royalty requirements in the future; to award monetary damages including contractual attorneys' fees for Ellora's Cave's breaches of the Publishing Agreements; and for such other relief as to which Josephson is entitled under the law.

Respectfully submitted,

Jeffrey M. Nye (0082247)
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& PATTERSON CO., L.P.A.
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Cincinnati, Ohio 45208
(513) 533-6714
(513) 533-6711-facsimile
jmn@sspfirm.com
**Attorney for intervening counterclaimant
Ann Josephson**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing will be served on all parties of record through the court's CM/EF system as of the date of filing.

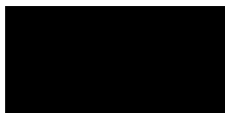
Jeffrey M. Nye (0082247)

ELLORA'S CAVE PUBLISHING INC.
PUBLISHING AGREEMENT

This Publishing Agreement ("Agreement") is made on this 10th day of May 2006 between

Ellora's Cave Publishing, Inc.
1056 Home Avenue
Akron OH 44310-3502 ("Publisher")

and:



("Author")

writing as [Redacted] concerning a work presently titled or to
be titled A Mutual Favor ("the Work").

1. **Grant of Rights:** Author, on behalf of himself and his heirs, executors, administrators, successors and assigns, exclusively grants to the Publisher for seven (7) years from date of contract the right to print, publish, sell and license The Work throughout the world, and in any and all media and forms of expressions now known, and all subsidiary rights therein.

1.1 If the Work shall be out of print and if, after written notification from the Author to this effect, Publisher shall fail to place the Work in print or license publication of a reprint edition by another publisher as permitted herein, with a period of six (6) months after the date of such notice, this Agreement shall thereupon terminate and all rights shall revert to the Author solely with the exception of any outstanding licenses entered into by Publisher prior to such termination. A Work shall not be deemed to be out of print so long as it is under option or contract for publication or on sale in any 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 150 copies per year. Should annual sales fall below 150 copies in such on demand or electronic edition, Publisher shall additionally have the option of paying the Author royalty income equal to the sale of 150 such copies and thereby maintaining the book in print on such basis.

1.2 Work shall be published in digital format no more than six (6) months after completed and edited manuscript is accepted by Publisher for publication.

Work shall be published in print format no more than twenty-four (24) months from original digital release. Should Publisher fail to place the Work in print within that time, subsidiary rights to the print book (mass market, trade paperback, or hardcover) will revert to the Author, upon written application by Author to Publisher.

1.3 This agreement is effective upon execution and supersedes all previous agreements regarding the Work between Author and Publisher.

1.4 All rights not specifically granted herein are reserved to the Author.

2. **Copyright:** Publisher shall, in all versions of the Work published by Publisher under this Agreement, place 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.

3. **Manuscript:** Author agrees to deliver to Publisher, in .rtf or .doc form, via email the manuscript of the Work and shall be acceptable to Publisher in format, content and substance. Author agrees to make and keep at least one (1) complete copy of the Manuscript and such disk(s).

4. **Artwork, Permissions, Index and Other Materials:**

4.1 Should Author desire to have included in the Work any original art, illustrations and/or photographs and Publisher shall approve such inclusion, at Publisher's sole discretion, Author shall deliver such material in a form suitable for reproduction to be included in Work.

4.2 Should Author desire to have included in the Work, any material of any nature which is the property of others and for which written permission or authorization is necessary, Author shall deliver to Publisher, at Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art, illustrations and photographs) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted or depicted in the Work (collectively "Permissions"). If Author does not deliver the Permissions, Publisher shall have the right, but not obligation, to obtain such Permissions on its own initiative, and Author shall reimburse Publisher for all expenses incurred by Publisher in obtaining such Permissions or Publisher may remove such material from the Work, prior to publication.

4.3 Author acknowledges and confirms that Publisher shall have no liability of any kind for the loss or destruction of the Manuscript, Artwork, or any other documents or materials provided by Author to Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

4.4 All decisions regarding the design, manufacture, appearance, promotion, title and format of the Work shall be solely at the Publisher's discretion. Additionally, all decisions regarding the pricing, distribution, discounts and all business decisions regarding the printing, sale, and licensing of the Work shall be solely at the Publisher's discretion.

5. **Revisions and Corrections:** If Publisher, in its sole discretion, deems the Manuscript, Artwork (if any), Permissions (if any) and/or any other materials delivered by Author (if any) to be unacceptable in form and substance, then Publisher shall so advise Author by written notice, and Author shall cure any defects and generally revise and correct the Manuscript, Artwork, Permissions and/or other materials to the satisfaction of Publisher, and deliver fully revised and corrected Manuscript, Artwork, Permissions and/or other materials no later than thirty (30) days after receipt of Publisher's notice.

6. **Editing and Publication Format:** Author agrees to undertake such revisions and editing to the Work as are deemed appropriate by Publisher or any of its editors. In the event that Author refuses to undertake said revisions and editing or fails to accomplish such in a manner acceptable in the sole judgment of Publisher, Publisher may reject the Work outright and return it to Author, terminating this agreement.

7. **Termination for Non-Delivery:** If Author fails to deliver the completed and edited Manuscript, Artwork (if any), Permissions (if any) or other materials required under this Agreement (if any), and/or any revisions and corrections thereof as requested by Publisher no less than one month prior to scheduled release date, or if Author fails to do so in a form and substance satisfactory to Publisher, then Publisher shall have the right to terminate this Agreement by so informing Author by letter sent by traceable mail to the address of Author set forth above.

8. **Proofs:** Publisher shall furnish Author with a proof of the Work as prepared for print publication. Author agrees to read, correct and return all proof sheets within thirty (30) calendar days after receipt thereof. If Author fails to return the corrected proof sheets within the time set forth, Publisher may publish the Work without Author's approval of proof sheets.

9. **Author's Copies:** Publisher shall provide Author with five (5) copies, free of charge, of each edition of the Work published electronically. If printed in hardcover or soft cover, Publisher shall provide Author with five (5) copies, free of charge, upon request, and shall allow Author to purchase thirty (30) copies, at cost, of each edition of the Work published by Publisher. Author shall also be permitted to purchase additional copies of the Work, for personal use and/or for resale, at the normal dealer discount, to be paid upon receipt of Publisher's invoice.

10. Royalty on Publisher's Editions. In regard to all of Publisher's royalty provisions as specified below, Publisher shall pay royalties based on cover price.

FOR EACH EDITION of the Work published by the Publisher under this Agreement, Publisher shall credit Author's account with the following royalty:

10.1 Digital: Each book shall earn:

For a Single (1) Author title, 37.5% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Two (2) Author Anthology, 18.75% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Three (3) Author Anthology, 12.5% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Four (4) Author Anthology, 9.375% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Five (5) Author Anthology, 7.5% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Six (6) Author Anthology, 6.25% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

10.2 Print: Each book shall earn:

For a Single (1) Author title, 7.5% of Cover Price of all copies sold minus credited returns.

For a Two (2) Author Anthology, 3.75% of Cover Price of all copies sold, minus credited returns, per Author.

For a Three (3) Author Anthology, 2.5% of Cover Price of all copies sold, minus credited returns, per Author.

For a Four (4) Author Anthology, 1.88% of Cover Price of all copies, minus credited returns, per Author.

For a Five (5) Author Anthology, 1.5% of Cover Price of all copies, minus credited returns, per Author.

For a Six (6) Author Anthology, 1.25% of Cover Price of all copies, minus credited returns, per Author.

10.3. Remainders:

Copies of work sold as remainders are sold at or below Publisher's cost and shall not be subject to the royalties stated in Paragraph 10.2.

10.4. Buyout Upon Termination:

Upon termination of this Agreement for any reason, including the expiration of the stated term, Publisher grants Author the right to buy back any or all copies of the printed Work then remaining in stock at Publisher's cost. If Author fails to exercise the buyback option for any or all of the copies of the Work remaining in stock, Publisher shall have the right to sell any copies of the Work remaining in stock at the best price Publisher can obtain. If copies are sold at a price that exceeds Publisher's cost, sales of said copies shall be subject to the royalties stated in Paragraph 10.2.

11. **Subsidiary and Secondary Rights:** Except as otherwise provided below, Publisher shall credit Author's account with a royalty equally divided between Publisher and Author/s of all Net Revenues actually received by Publisher for the exploitation or disposition of secondary and Subsidiary Rights in the Work.

11.1 **Subsidiary rights shall include the following:**

Mass Market Paperback, Trade Paperback, Hardcover Edition (before or after first publication in whatever format), Book Club editions, Syndication, Second Periodical Rights (after first book publication) serialization, digest, abridgment, condensation, excerpt, Anthology and Other Selection Reprint, in whole or in part, in complete, condensed, adapted or abridged versions, Premium, Direct Mail, Coupon Advertising.

Publication in the English Language worldwide, Publication in Other languages (translation) worldwide, First Periodical Rights (prior to first book publication), ~~Motion Picture, Television, Radio and Dramatic Rights, Commercial Adaptations and Tie-Ins,~~ Audio Rights, Multimedia Rights, Display rights (the right to electronically display the text of the book in whatever format and over whatever media).

12. **Agency Clause:** Author hereby appoints, if applicable

("Agent") as Author's sole and exclusive agent with respect to the Work which is the subject of this Agreement, and authorizes and directs Publisher to pay to Agent all amounts owing to Author under this Agreement, and to render to Agent all statements of account required under this Agreement. Any sums payable to Author and paid to the Agent pursuant to this Section shall constitute a full and valid discharge of Publisher's obligation to Author with respect to such sums.

13. **Author's Representations and Warranties:** Author represents and warrants to Publisher that:

(i) the Work is not in the public domain; (ii) Author is the sole proprietor of the Work and has full power and authority, free of any rights of any nature whatsoever by any other person, to enter into this Agreement and to grant the rights which are granted to Publisher in this Agreement; (iii) the Work has not heretofore been published, in whole or in part, in any form; or is not currently in publication and rights belong to Author; (iv) the Work does not, and if published will not, infringe upon any copyright or any proprietary right at common law; (v) The Work contains no matter whatsoever that is obscene, libelous, violative of any third party's right of privacy or publicity, or otherwise in contravention of law or the right of any third party; (vi) Author will not hereafter enter into any agreement or understanding with any person or entity which might conflict with the rights granted to Publisher under this Agreement.

14. **Author's Indemnity of Publisher:**

14.1 Author shall indemnify, defend and hold harmless Publisher, its subsidiaries and affiliates, and their respective shareholders, officers, directors, employees, partners, associates, affiliates, joint ventures, agents and representatives, from any and all claims, debts, demands, suits, actions, proceedings, and/or prosecutions ("Claims") based on allegations which, if true, would constitute a breach of any of the foregoing warranties, and any and all liabilities, losses, damages, and expenses (including attorneys' fees and costs) in consequence thereof.

14.2 Each party to this Agreement shall give prompt notice in writing to the other party of any Claims.

14.3 No compromise or settlement of any Claims shall be made or entered into without the prior written approval of Publisher and Author.

14.4 In the event of any claims, Publisher shall have the right to suspend payments otherwise due to Author under the terms of this Agreement as security for Author's obligations under this Section. Any payments withheld by the Publisher pursuant to this paragraph shall be released to the Author after a period of one (1) year in the case of any claim, action, or proceeding that is threatened but not pursued, or within thirty (30) days of the discontinuance of any claim, action, or proceeding.

14.5 Author's representations, warranties and indemnities as set forth above and in this Section shall extend to any person or entity against whom any Claims are asserted by reason of the exploitation of the rights granted by Author in this Agreement, as if such representations, warranties and indemnities were originally made to such third parties. All such warranties, representations and indemnities shall survive the termination or expiration of this Agreement.

15. Advertising and Promotion:

15.1 Publisher shall have the right to use, and to license others to use, Author's pseudonym, image (if provided), likeness (if provided) and biographical material (as provided) for advertising, promotion, and other exploitation of the Work and the other rights granted under this Agreement.

15.2 Author has the right to promote and advertise the Work. Any cover art used to represent the Work must be the cover art specifically created by the Publisher for the Work.

16. Author's Non-Competition: Author agrees that s/he shall not, during the term of this Agreement, without the express prior written consent of Publisher, write, print or publish, or cause to be written, printed or published, any other edition of the Work, whether revised, corrected, enlarged, abridged, or otherwise that will directly compete or interfere with or injure the sales of the Work. This provision shall not be construed to prohibit Author from publication of excerpts as permitted or exercise of any other subsidiary rights possessed by or reverted to Author.

17. Copyright Infringement: If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her or its name. Notwithstanding the foregoing, Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

18. Accounting:

18.1 Publisher shall render to Author a statement of account on sales of the Work in all Publisher's editions, and other exploitation and disposition of rights to the Work, and other credits and debits relating to the Work and the rights granted in this Agreement, and pay Author any amount(s) then owing, as follows: Publisher shall pay Author royalties in accordance with a schedule to be determined at Publisher's discretion but in no event shall payment be made less frequently than three (3) calendar months.

18.2 Publisher shall have the right to debit the account of Author for any overpayment of royalties, any and all costs, charges or expenses which Author is required to pay or reimburse Publisher under this Agreement.

18.3 If royalties have been paid on copies that are thereafter returned or refused, then Publisher shall have the right to deduct the amount of such royalties on such returned or refused copies from any future payments under this Agreement.

18.4 As set forth in the Indemnity Clause above, in the event that any Claims are asserted against Author or Publisher, Publisher shall have the right to withhold royalties and other payments otherwise payable under this Agreement as a reserve pending a final determination thereof. Publisher shall have the right to apply any of such withheld royalties and other payments then or thereafter accruing to the reduction, satisfaction or settlement of such Claims.

18.5 Author shall have the right, upon reasonable notice and during usual business hours but not more than once each year, to engage a certified public accountant to examine the books and records of

Publisher relating to the Work for a period of one (1) calendar year at the place where such records are regularly maintained. Author shall provide thirty (30) days written notice, deliverable through traceable mail, of intent to exercise such right. Any such examination shall be at the sole cost of the Author, and may not be made by any person acting on a contingent fee basis (other than the Author's literary agent during the course of the agent's regular and customary representation of Author). Statements rendered under this Agreement shall be final and binding upon Author unless Author sets forth the specific objections in writing and the basis for such objections within eighteen months after the date the statement was rendered. If error in favor of Author exceeding five percent (5%) is detected, then Publisher shall pay amounts found to be owing for the Work and the actual cost of the audit of the Work.

19. **Rights Surviving Termination:** Upon the expiration or termination of this Agreement, any rights reverting to Author shall be subject to all licenses and other grants of rights made by Publisher to third parties pursuant to this Agreement. Any and all rights of Publisher under such licenses and grants of rights, and all representations, warranties and indemnities of Author, shall survive the expiration or termination of this Agreement.

20. **Bankruptcy:** If a petition in bankruptcy or a petition for reorganization is filed by or against Publisher, or if Publisher makes an assignment for the benefit of creditors, or if Publisher liquidates its business for any cause whatsoever, Author may terminate this agreement by written notice within sixty (60) days after receipt of notification by Author, and all rights granted by Author to Publisher shall thereupon revert to Author.

21. **Applicable Law:** Regardless of the place of its physical execution, this Agreement shall be interpreted, construed and governed in all respects by the laws of the State of Ohio and Author hereby agrees to submit to jurisdiction to the Courts of the State of Ohio.

22. **Modification and Waiver:** This Agreement may not be modified or altered except in writing and signed by both Author and Publisher.

23. **Notices:** Any written notice or delivery under any of the provisions of this Agreement shall be deemed to have been properly made by delivery in person to Author, or by mailing via traceable mail to the address(es) set forth in the Recitals and General Provisions above, except as the address(es) may be changed by notice in writing. Author and Publisher agree to accept service of process by mailing in the same manner.

24. **Heading and Footers:** Heading and footers are for convenience only and are not be deemed part of this Agreement.

25. **Binding on Successors:** This Agreement shall be binding on their heirs, executors, administrators, successors or assigns of Author, and the successors, assigns and licensees of Publisher.

26. **Arbitration:** If any dispute shall arise between Author and Publisher regarding this Agreement, such disputed shall be referred to binding private arbitration in the State of Ohio, in accordance with the Rules of the American Arbitration Association, and any arbitration award may be entered and shall be fully enforceable as a judgment in any court of competent jurisdiction. Notwithstanding the foregoing, the parties shall have the right to conduct discovery and the right to seek injunctive relief in any court in the State of Ohio.

27. **Attorney's Fees:** In any action on this agreement, including litigation and arbitration, the losing party shall pay all reasonable attorney's fees and costs incurred by the prevailing party.

28. **Multiple Authors:** Whenever the term "Author" refers to more than one person, such persons will be jointly and severally responsible for all duties, obligations and covenants under this Agreement, and shall share equally in all royalties and other amounts to be paid under this Agreement, unless otherwise specified in writing signed by all parties.

29. **Disclosure of Information:** The Author acknowledges the list of Publisher's customers, vendors, authors and editors is a valuable, special, and unique asset of the Publisher's business. The Author shall not, during and for a period of one year after the term of this contract, disclose all or any part of the said proprietary information including: confidential names of authors, editors or artists, vendors, marketing plans, projects in development, confidential emails—including emails through business groups, where such emails have been clearly labeled as confidential, to any person, firm, corporation, association, or other entity for any reason or purpose. The Author further acknowledges that Publisher has developed or may develop software that is proprietary to Publisher's business. The Author shall not, during and after the term of this Agreement, disclose all or any part of the said software to which Author may have been given access through or by Publisher to any person, firm, corporation, association, or other entity for any reason or purpose. In the event of the Author's breach or threatened breach of this paragraph, Publisher shall be entitled to seek a preliminary restraining order and an injunction restraining and enjoining the Author from disclosing all or any part of the Publisher's said confidential information and from rendering any services to any person, firm, corporation, association, or other entity to whom all or any part of such confidential information has been, or is threatened to be, disclosed. In addition to or in lieu of the above, Publisher may pursue all other remedies available to Publisher for such breach or threatened breach, including the recovery of damages from the Author.

30. **No Solicitation:** The Author shall not, for three years after the execution of this agreement, solicit any or disclose such information to anyone who knowingly intends to solicit any of Publisher's ~~authors,~~ editors, contractors or employees for the purpose of offering them employment with other publishing companies.

IN WITNESS WHEREOF, Author and Publisher have executed this Agreement as of the day and year written above.

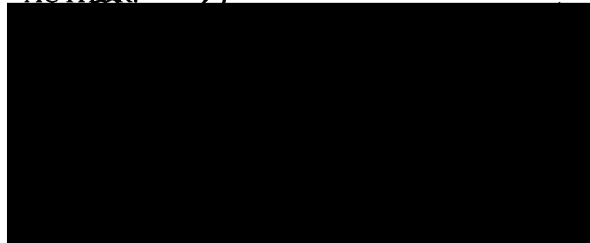
5-19-06
Date

ELLORA'S CAVE PUBLISHING, INC.

Raelene K Gorkhsky
Authorized officer

May 10, 2006
Date

AUTHOR:



Contract Cover Sheet

IMPRINT: ☒ Ellora's Cave ☐ Cerridwen Press ☐ The Lotus Circle

☒ New book contract ☐ Renewal/replacement contract

Story Title: LEARNING CONTROL_____

Series Title, if applicable CLUB RIO BRAVA_____

Author Pen Name: Ann Jacobs_____

Pick one: ☒ Novel (incl. Novella, Plus and Super Plus lengths)

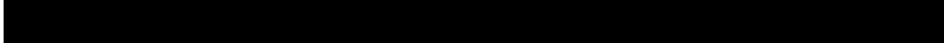
☐ Quickie (EC only) or short book (TLC)

☐ Story in anthology _____

Editor: _____

Author Real Name: Ann Josephson_____

Mailing Address: _____

E-mail address: _____

Contract form instructions:

- List only the book title on the actual contract form, *do not include a series name or anthology title*. The title must be approved in advance.
- Do not handwrite any changes on the contract. Revisions must be negotiated in advance.
- If this book was previously published elsewhere in any form or under any title, the contract must be accompanied by the documentation proving full rights have reverted to the author.
- Mail signed contract plus this cover form to:
Ellora's Cave Publishing
Attn: Raelene Gorlinsky
1056 Home Avenue
Akron, OH 44310-3502

TITLE	LEARNING CONTROL
AUTHOR PEN NAME	Ann Jacobs
GENRE/THEMES	BDSM
SETTING / TIME PERIOD	Contemporary San Antonio, Texas
<p>List the main characters: Name, who/what they are, their role in the story. Mark Blackstone, Eli and Kurt's partner, happily married Lynn Blackstone, Mark's wife and Trace's sister, happily married but looking for a way to spice up their sex life Trace Williams, Lynn Blackstone's sister Shelly Silverman, Kurt's wife and Lynn's closest friend Eli Calhoun, thoracic surgeon at University Hospital, Mark & Kurt's partner Maggie Berman, a surgical resident and Eli's wife Tom Latimore, an anesthesiologist and friend of Eli's Joanna, one of Lynn's college friends—Tom's vanilla girlfriend Kurt Silverman, Mark and Eli's partner</p>	
<p>Provide a complete synopsis of the story. <i>Single spaced; maximum 2 pages; typed, not handwritten.</i> Must outline full plot. Included character motivations, conflict and resolution (GMC), relationship development. Do not mention non-critical secondary characters by name if they are not listed in the section above. Synopsis must be proofed and clean: no spelling or grammatical errors, must conform to our EC Style Guide. If this synopsis is not high quality, the assumption is the story is equally sloppy and unprofessional, and the contract offer may be revoked.</p> <p>Ten years of marriage hasn't lessened the love for her husband Mark, or the lusty feelings she gets every time she gets a spare moment alone with him. The responsibilities of being mom to growing twin girls and an active toddler are taking up a lot of the time and space Lynn and Mark used to have to themselves. Then there's Mark's career, keeping him busier and busier now that he's becoming known as one of the best orthopedic trauma surgeons in San Antonio.</p> <p>In a conversation with Maggie Berman, the wife of Mark's new partner, Lynn learns more than she thought she ever wanted to know about Domination and submission. As the information sinks in, she finds herself warming to the idea of submitting sexually to her husband, especially now when it seems their sex life has to be timed in fleeting moments between work, kids and professional responsibilities. Taking small steps, she begins initiating some light BDSM play with Mark at home.</p> <p>When he responds favorably, Lynn talks Maggie into getting Mark an invitation to Club Rio Brava, the club where the other couple often goes to play. Lynn has quickly come to love being restrained for sex, and she enjoys the extra stimulation from sex toys. Her libido is red-hot, and she's anxious to experience the club scene. The mere idea of having others watch Mark dominating her completely has her longing to experience what to date she has only heard of.</p> <p>Mark gets his invitation from his partner, Eli. Not quite sure this is what he wants but certain he wants to fulfill all of Lynn's newly developed fantasies, he ventures into the club. Doubtful</p>	

at first as he witnesses members violating at least a half-dozen archaic Texas laws, Mark is quickly pulled into the sensual feast. He's ready to join the exclusive club and get into the play that has him primed for action—and the members immediately welcome him into their midst.

Mark will do anything for Lynn. Even if he's not certain about the group scenes, he won't deny her what she's made clear that she needs. As they play, he discovers something highly stimulating about being a Master, holding the key to her sexual satisfaction. In a way, he muses, the responsibility of being a Dom isn't all that different from the responsibilities he takes on when he cuts into a patient's body—except that in that case, no sex is involved.

Not that he's as comfortable in Club Rio Brava as he is in surgery. Mark has doubts about sharing his wife in scenes. He worries that making the time for him and Lynn to indulge their new-found sexual interests may somehow adversely affect their children. Despite reassurances from Eli and the club's long-time manager, he's not sure all members keep information "personal and confidential".

Learning when he voices his concerns to Eli that Club Rio Brava has been around since long before Mark began practicing at University Hospital allays much of his concerns. When Eli reassures Mark that several highly respected hospital staff members founded the club many years ago, he's convinced that all is well..

Mark feels sure now that their practice won't be hurt if people should learn about him and Lynn indulging in a little harmless sexual kink. As they explore anew world of sexual sensation, voyeurism, Domination and voluntary submission, they fall more deeply in love than ever, pushing their sensual play to the limit and savoring memories of ecstasy when they're back in their routine, everyday world.

THIS BOOK IS BASED LOOSELY ON A SHORT STORY RELEASED BY CHANGELING PRESS AS MEMBERS ONLY: HEARTS AND HANDCUFFS. It has been completely rewritten as the story of two secondary characters introduced in A MUTUAL FAVOR, and is at least three times as long as HEARTS AND HANDCUFFS. Here is a copy of the email reverting the book and the other three MEMBERS ONLY books to Ann Jacobs

As of 1 April 2008, all contracts have expired or been canceled on the following titles by Ann Jacobs:

Bound By Blood

Members Only: Rx for Pleasure

Members Only: Hearts & Handcuffs

Members Only: Rx for Seduction

Members Only: Rx for a Dom

Please contact me if you have any questions.

Margaret Riley

Publisher, www.ChangelingPress.com

ELLORA'S CAVE PUBLISHING INC.
PUBLISHING AGREEMENT

This Publishing Agreement ("Agreement") is made on this sixth day of April 2008 between
Ellora's Cave Publishing, Inc.

1056 Home Avenue

Akron OH 44310-3502 ("Publisher") and:

Ann Josephson ("Author")

at _____

writing as Ann Jacobs concerning a work presently titled or to
be titled Learning Control ("the Work").

1. Grant of Rights: Author, on behalf of himself and his heirs, executors, administrators, successors and assigns, exclusively grants to the Publisher during the full term of copyright and any renewals and continuations and extensions thereof, the right to print, publish, sell and license The Work throughout the world, and in any and all media and forms of expressions now known, and all subsidiary rights granted in the Subsidiary and Secondary Rights clause hereunder.

1.1 If the Work shall be out of print and if, after written notification from the Author to this effect, 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, this Agreement shall thereupon terminate and all rights shall revert to the Author solely with the exception of any outstanding licenses entered into by Publisher prior to such termination.

A Work shall be considered in print based on the following standards:

for a fixed initial term of eighteen (18) months after first digital release.

for a fixed term of twelve (12) months after first print release.

if the Work is under option or contract for publication or on sale in any edition in the United States, whether under the imprint of the Publisher or a licensee.

if combined sales of all Publisher's editions, both digital and print (from whatever technology), exceed 100 copies in any 12-month period. Should sales fall below 100 copies in print and digital editions for that period, Publisher shall have the option of paying the Author royalty income equal to that on the sale of the difference between actual sales and 100 such copies, and thereby maintaining the book in print status on such basis.

Should the Work be out of print in accordance with the standards specified above, Author shall have the right to revert rights in accordance with the terms of paragraph 1.1.

1.2 Work shall be published in digital format no more than six (6) months after completed and edited manuscript is accepted by Publisher for publication; unless a longer term is jointly agreed to by Publisher and Author.

Work shall be published in print format no more than twenty-four (24) months from original digital release. Should Publisher fail to place the Work in print within that time, subsidiary rights to the print book (mass market, trade paperback, or hardcover) will revert to the Author, upon written application by Author to Publisher.

1.3 This agreement supersedes all previous agreements regarding the Work between Author and Publisher.

1 All rights not specifically granted herein are reserved to the Author.

2 **Copyright:** Publisher shall, in all versions of the Work published by Publisher under this Agreement, place 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.

3 **Manuscript:** Author agrees to deliver to Publisher, in .rtf or .doc form via email, the manuscript of the Work acceptable to Publisher in format, content and substance. Author agrees to make and keep at least one

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1.4 All rights not specifically granted herein are reserved to the Author.

2. Copyright: Publisher shall, in all versions of the Work published by Publisher under this Agreement, place 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.

3. Manuscript: Author agrees to deliver to Publisher, in .rtf or .doc form via email, the manuscript of the Work acceptable to Publisher in format, content and substance. Author agrees to make and keep at least one (1) complete copy of the Manuscript and such disk(s).

4. Artwork, Permissions, Index and Other Materials:

4.1 Should Author desire to have included in the Work any original art, illustrations and/or photographs and Publisher shall approve such inclusion, at Publisher's sole discretion, Author shall deliver such material in a form suitable for reproduction to be included in Work. Author grants Publisher the right to use said material for all uses covered by this agreement and subject to its terms.

4.2 Should Author desire to have included in the Work, any material of any nature which is the property of others and for which written permission or authorization is necessary, Author shall deliver to Publisher, at Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art, illustrations and photographs) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted or depicted in the Work (collectively "Permissions"). If Author does not deliver the Permissions, Publisher shall have the right, but not obligation, to obtain such Permissions on its own initiative, and Author shall reimburse Publisher for all expenses incurred by Publisher in obtaining such Permissions or Publisher may remove such material from the Work, prior to publication.

4.3 Author acknowledges and confirms that Publisher shall have no liability of any kind for the loss or destruction of the Manuscript, Artwork, or any other documents or materials provided by Author to Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

4.4 All decisions regarding the design, manufacture, appearance, promotion, title and format of the Work shall be solely at the Publisher's discretion. Additionally, all decisions regarding the pricing, distribution, discounts and all business decisions regarding to the printing, sale, and licensing of the Work shall be solely at the Publisher's discretion.

5. Revisions and Corrections: If Publisher, in its sole discretion, deems the Manuscript, Artwork (if any), Permissions (if any) and/or any other materials delivered by Author (if any) to be unacceptable in form and substance, then Publisher shall so advise Author within ninety (90) days of receipt, by written notice. Author shall cure any defects and generally revise and correct the Manuscript, Artwork, Permissions and/or other materials to the satisfaction of Publisher, and deliver fully revised and corrected Manuscript, Artwork, Permissions and/or other materials no later than sixty (60) days after receipt of Publisher's notice.

5.1 Editing: Author agrees to undertake such revisions and editing to the Work as are deemed appropriate by Publisher or any of its editors. In the event that Author refuses to undertake said revisions and editing or fails to accomplish such in a manner acceptable in the sole judgment of Publisher, Publisher may reject the Work outright and return it to Author, terminating this agreement.

5.2 Proofs: Publisher may, at Publisher's option, furnish Author with an electronic proof of the final revised text of the Work. Author agrees to read, correct and return such proof copy within ten (10) calendar days after receipt thereof. If Author fails to return the corrected proof sheets within the time set forth, Publisher may publish the Work without Author's approval of proof.

6. Termination for Non-Delivery: If Author fails to deliver the completed and edited Manuscript, Artwork (if any), Permissions (if any) or other materials required under this Agreement (if any), and/or any revisions and corrections thereof as requested by Publisher no less than eight weeks prior to scheduled release date, or if Author fails to do so in a form and substance satisfactory to Publisher, then Publisher shall have the right to terminate this Agreement by so informing Author by letter sent by traceable mail to the address of Author set forth above.

7. Author's Copies: Publisher shall provide Author with five (5) copies, free of charge, of each edition of the Work published electronically.

If printed by Publisher in hardcover or soft cover, Publisher shall provide Author with five (5) copies free of charge, upon request, and shall allow Author to purchase fifty (50) print copies at one-third of the cover price of the Work published by Publisher. Author shall also be permitted to purchase additional print copies of the Work for personal use and/or for resale, at forty-two percent (42%) discount from cover price. Author shall pay shipping costs for all print copies requested by Author from Publisher. Author payment for print copies and shipping must be received before copies will be shipped.

8. Royalty on Publisher's Editions: In regard to all of Publisher's royalty provisions as specified below, Publisher shall pay royalties based on cover price.

FOR EACH EDITION of the Work published by the Publisher under this Agreement, Publisher shall credit Author's account with the following royalty:

8.1 Digital: Each book shall earn:

For a Single (1) Author title, 37.5% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Two (2) Author Anthology, 18.75% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Three (3) Author Anthology, 12.5% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Four (4) Author Anthology, 9.375% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Five (5) Author Anthology, 7.5% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

For a Six (6) Author Anthology, 6.25% of Cover Price of all copies sold, minus discounts to third party vendors (which shall not net less than the cover price as listed at the corporate webstore) and credited returns.

8.2 Print: Each book shall earn:

For a Single (1) Author title, 7.5% of Cover Price of all copies sold minus credited returns.

For a Two (2) Author Anthology, 3.75% of Cover Price of all copies sold, minus credited returns, per Author.

For a Three (3) Author Anthology, 2.5% of Cover Price of all copies sold, minus credited returns, per Author.

For a Four (4) Author Anthology, 1.88% of Cover Price of all copies, minus credited returns, per Author.

For a Five (5) Author Anthology, 1.5% of Cover Price of all copies, minus credited returns, per Author.

For a Six (6) Author Anthology, 1.25% of Cover Price of all copies, minus credited returns, per Author.

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8.3. Remainders: Copies of work sold as remainders are sold at or below Publisher's cost and shall not be subject to the royalties stated in Paragraph 8.2.

8.4. Buyout Upon Termination: Upon termination of this Agreement for any reason, including the expiration of the stated term, Publisher grants Author the right to buy back any or all copies of the printed Work then remaining in stock at one-third of cover price. If Author fails to exercise the buyback option for any or all of the print copies of the Work remaining in stock, Publisher shall have the right, for a period of six months from termination of Agreement, to sell any copies of the Work remaining in stock at the best price Publisher can obtain. If copies are sold at a price that exceeds Publisher's cost, sales of said copies shall be subject to the royalties stated in Paragraph 8.2.

9. Subsidiary and Secondary Rights: Except as otherwise provided below, Publisher shall credit Author's account with a royalty equally divided between Publisher and Author/s of all Net Revenues actually received by Publisher for the exploitation or disposition of secondary and Subsidiary Rights in the Work.

9.1 Subsidiary rights shall include the following:

Mass Market Paperback, Trade Paperback, Hardcover Edition (before or after first publication in whatever format), Book Club editions, Syndication, Second Periodical Rights (after first book publication) serialization, digest, abridgment, condensation, excerpt, Anthology and Other Selection Reprint, in whole or in part, in complete, condensed, adapted or abridged versions, Premium, Direct Mail, Coupon Advertising.

Publication in the English Language worldwide, Publication in Other languages (translation) worldwide, First Periodical Rights (prior to first book publication), ~~Motion Picture, Television, Radio and Dramatic Rights, Commercial Adaptations and Tie-Ins~~, Audio Rights, Multimedia Rights, Display rights (the right to electronically display the text of the book in whatever format and over whatever media).

10. Agency Clause: Author hereby appoints, if applicable

("Agent") as Author's sole and exclusive agent with respect to the Work which is the subject of this Agreement, and authorizes and directs Publisher to pay to Agent all amounts owing to Author under this Agreement, and to render to Agent all statements of account required under this Agreement. Any sums payable to Author and paid to the Agent pursuant to this Section shall constitute a full and valid discharge of Publisher's obligation to Author with respect to such sums.

11. Author's Representations and Warranties: Author represents and warrants to Publisher that:

(i) the Work is not in the public domain;

(ii) Author is the sole proprietor of the Work and has full power and authority, free of any rights of any nature whatsoever by any other person, to enter into this Agreement and to grant the rights which are granted to Publisher in this Agreement;

(iii) the Work has not heretofore been published except at Ellora's Cave Publishing, in whole or in part, in any form; or is not currently in publication and rights belong to Author;

(iv) the Work does not, and if published will not, infringe upon any copyright or any proprietary right at common law;

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(v) The Work contains no matter whatsoever that is obscene, libelous, violative of any third party's right of privacy or publicity, or otherwise in contravention of law or the right of any third party;

(vi) Author will not hereafter enter into any agreement or understanding with any person or entity which might conflict with the rights granted to Publisher under this Agreement.

12. Author's Indemnity of Publisher:

12.1 Author shall indemnify, defend and hold harmless Publisher, its subsidiaries and affiliates, and their respective shareholders, officers, directors, employees, partners, associates, affiliates, joint ventures, agents and representatives, from any and all claims, debts, demands, suits, actions, proceedings, and/or prosecutions ("Claims") based on allegations which, if true, would constitute a breach of any of the foregoing warranties, and any and all liabilities, losses, damages, and expenses (including attorneys' fees and costs) in consequence thereof.

12.2 Each party to this Agreement shall give prompt notice in writing to the other party of any Claims.

12.3 No compromise or settlement of any Claims shall be made or entered into without the prior written approval of Publisher and Author.

12.4 In the event of any claims, Publisher shall have the right to suspend payments otherwise due to Author under the terms of this Agreement as security for Author's obligations under this Section. Any payments withheld by the Publisher pursuant to this paragraph shall be released to the Author after a period of one (1) year in the case of any claim, action, or proceeding that is threatened but not pursued, or within thirty (30) days of the discontinuance of any claim, action, or proceeding.

12.5 Author's representations, warranties and indemnities as set forth above and in this Section shall extend to any person or entity against whom any Claims are asserted by reason of the exploitation of the rights granted by Author in this Agreement, as if such representations, warranties and indemnities were originally made to such third parties. All such warranties, representations and indemnities shall survive the termination or expiration of this Agreement.

13. Advertising and Promotion:

13.1 Publisher shall have the right to use, and to license others to use, Author's pseudonym, image (if provided), likeness (if provided) and biographical material (as provided) for advertising, promotion, and in connection with other exploitation of the Work and the other rights granted under this Agreement.

13.2 Author has the right to promote and advertise the Work. Any cover art used to represent the Work must be the cover art specifically created by the Publisher for the Work.

14. Author's Non-Competition: Author agrees that s/he shall not, during the term of this Agreement, without the express prior written consent of Publisher, write, print or publish, or cause to be written, printed or published, any other edition of the Work, whether revised, corrected, enlarged, abridged, or otherwise that will directly compete or interfere with or injure the sales of the Work. This provision shall not be construed to prohibit Author from publication of excerpts as permitted or exercise of any other subsidiary rights possessed by or reverted to Author.

15. Copyright Infringement: If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her or its name. Notwithstanding the

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foregoing, Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

16. Accounting:

16.1 Publisher shall render to Author a statement of account on sales of the Work in all Publisher's editions, and other exploitation and disposition of rights to the Work, for all monies actually received by publisher and other credits and debits relating to the Work and the rights granted in this Agreement, and pay Author any amount(s) then owing, as follows: Publisher shall pay Author royalties in accordance with a schedule to be determined at Publisher's discretion but in no event shall payment be made less frequently than three (3) calendar months.

16.2 Publisher shall have the right to debit the account of Author for any overpayment of royalties, any and all costs, charges or expenses which Author is required to pay or reimburse Publisher under this Agreement.

16.3 If royalties have been paid on copies that are thereafter returned or refused, then Publisher shall have the right to deduct the amount of such royalties on such returned or refused copies from any future payments under this Agreement.

16.4 As set forth in the Indemnity Clause above, in the event that any Claims are asserted against Author or Publisher, Publisher shall have the right to withhold royalties and other payments otherwise payable under this Agreement as a reserve pending a final determination thereof. Publisher shall have the right to apply any of such withheld royalties and other payments then or thereafter accruing to the reduction, satisfaction or settlement of such Claims.

16.5 Author shall have the right, upon reasonable notice and during usual business hours but not more than once each year, to engage a certified public accountant to examine the books and records of Publisher relating to the Work for a period of one (1) calendar year at the place where such records are regularly maintained.

- Author shall provide thirty (30) days written notice, deliverable through traceable mail, of intent to exercise such right.
- Any such examination shall be at the sole-cost of the Author, and may not be made by any person acting on a contingent fee basis (other than the Author's literary agent during the course of the agent's regular and customary representation of Author). If error in favor of Author exceeding five percent (5%) is detected, then Publisher shall pay the actual cost of the audit of the Work.
- Statements rendered under this Agreement shall be final and binding upon Author unless Author sets forth the specific objections in writing and the basis for such objections within eighteen (18) months after the date the statement was rendered.
- If error in favor of Author is detected, then Publisher shall pay amount found to be owing for the Work.

17. Rights Surviving Termination: Upon the expiration or termination of this Agreement, any rights reverting to Author shall be subject to all licenses and other grants of rights made by Publisher to third parties pursuant to this Agreement. Any and all rights of Publisher under such licenses and grants of rights, and all representations, warranties and indemnities of Author, shall survive the expiration or termination of this Agreement.

18. Bankruptcy: If a petition in bankruptcy or a petition for reorganization is filed by or against Publisher, or if Publisher makes an assignment for the benefit of creditors, or if Publisher liquidates its business for any cause whatsoever, Author may terminate this agreement by written notice within sixty (60) days after receipt of notification by Author, and all rights granted by Author to Publisher shall thereupon revert to Author.

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19. Applicable Law: Regardless of the place of its physical execution, this Agreement shall be interpreted, construed and governed in all respects by the laws of the State of Ohio and Author hereby agrees to submit to jurisdiction to the Courts of the State of Ohio.

20. Modification and Waiver: This Agreement may not be modified or altered except in writing and signed by both Author and Publisher.

21. Notices: Any written notice or delivery under any of the provisions of this Agreement shall be deemed to have been properly made by delivery in person to Author, or by mailing via traceable mail to the address(es) set forth in the Recitals and General Provisions above, except as the address(es) may be changed by notice in writing. Author and Publisher agree to accept service of process by mailing in the same manner.

22. Heading and Footers: Heading and footers are for convenience only and are not be deemed part of this Agreement.

23. Binding on Successors: This Agreement shall be binding on their heirs, executors, administrators, successors or assigns of Author, and the successors, assigns and licensees of Publisher.

24. Arbitration: If any dispute shall arise between Author and Publisher regarding this Agreement, such disputed shall be referred to binding private arbitration in the State of Ohio, in accordance with the Rules of the American Arbitration Association, and any arbitration award may be entered and shall be fully enforceable as a judgment in any court of competent jurisdiction. Notwithstanding the foregoing, the parties shall have the right to conduct discovery and the right to seek injunctive relief in any court in the State of Ohio.

25. Attorney's Fees: In any action on this agreement, including litigation and arbitration, the losing party shall pay all reasonable attorney's fees and costs incurred by the prevailing party.

26. Multiple Authors: Whenever the term "Author" refers to more than one person, such persons will be jointly and severally responsible for all duties, obligations and covenants under this Agreement, and shall share equally in all royalties and other amounts to be paid under this Agreement, unless otherwise specified in writing signed by all parties.

27. Disclosure of Information: The Author acknowledges the list of Publisher's customers, vendors, authors and editors is a valuable, special, and unique asset of the Publisher's business. The Author shall not, during and for a period of one year after the term of this contract, disclose all or any part of the said proprietary information including: confidential names of authors, editors or artists, vendors, marketing plans, projects in development, confidential emails—including emails through business groups, where such emails have been clearly labeled as confidential, to any person, firm, corporation, association, or other entity for any reason or purpose. The Author further acknowledges that Publisher has developed or may develop software that is proprietary to Publisher's business. The Author shall not, during and after the term of this Agreement, disclose all or any part of the said software to which Author may have been given access through or by Publisher to any person, firm, corporation, association, or other entity for any reason or purpose. In the event of the Author's breach or threatened breach of this paragraph, Publisher shall be entitled to seek a preliminary restraining order and an injunction restraining and enjoining the Author from disclosing all or any part of the Publisher's said confidential information and from rendering any services to any person, firm, corporation, association, or other entity to whom all or any part of such confidential information has been, or is threatened to be, disclosed. In addition to or in lieu of the above, Publisher may pursue all other remedies available to Publisher for such breach or threatened breach, including the recovery of damages from the Author.

28. No Solicitation: The Author shall not, for three years after the execution of this agreement, solicit any or disclose such information to anyone who knowingly intends to solicit any of Publisher's authors, editors, contractors or employees for the purpose of offering them employment with other publishing companies.

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IN WITNESS WHEREOF, Author and Publisher have executed this Agreement as of the day and year written above.

ELLORA'S CAVE PUBLISHING, INC.

Date Authorized officer Rachelle Gorkensky 5/5/05

AUTHOR

Date April 6, 2008

PrintName Ann Josephson

SSN or Tax ID number 4260

Contract Cover Sheet

IMPRINT: ☒ Ellora's Cave ☐ Cerridwen Press ☐ The Lotus Circle

☒ New book contract ☐ Renewal/replacement contract

Story Title: Naked Bootleg_____

Series Title, if applicable Gridiron Lovers_____

Author Pen Name: Ann Jacobs

Pick one: ☒ Novel (incl. Novella, Plus and Super Plus lengths)

☐ Quickie (EC only) or short book (TLC)

☐ Story in anthology _____

Editor: _____

Author Real Name: Ann Josephson

Mailing Address: _____

E-mail address: _____

Contract form instructions:

- List only the book title on the actual contract form, ***do not include a series name or anthology title***. The title must be approved in advance.
- Do not handwrite any changes on the contract. Revisions must be negotiated in advance.
- If this book was previously published elsewhere in any form or under any title, the contract must be accompanied by the documentation proving full rights have reverted to the author.
- Mail signed contract plus this cover form to:
Ellora's Cave Publishing
Attn: Raelene Gorlinsky
1056 Home Avenue
Akron, OH 44310-3502

TITLE	Naked Bootleg
AUTHOR PEN NAME	Ann Jacobs
GENRE/THEMES	Moderne
SETTING / TIME PERIOD	contemporary

List the main characters: Name, who/what they are, their role in the story.

Brian Anthony, 22-year-old rookie quarterback for the Memphis Maulers, set to back up future Hall of Famer Keith Connors, until Keith is hurt in the season's second game.

Marly Ragusa, a Maulers cheerleader who attracts Brian first with her hot looks and keeps him on the hook with her keen intellect.

Tina Black, Brian's former long-time girlfriend from back home.

[NOTE: All the characters in this and the other three novellas will be introduced in the freebie lead-in story, which will feature a former Hedgecock County high-school hero who didn't make it to the pros.]

Provide a complete synopsis of the story. *Single spaced; maximum 2 pages; typed, not handwritten.* Must outline full plot. Included character motivations, conflict and resolution (GMC), relationship development. Do not mention non-critical secondary characters by name if they are not listed in the section above. Synopsis must be proofed and clean: no spelling or grammatical errors, must conform to our EC Style Guide.

If this synopsis is not high quality, the assumption is the story is equally sloppy and unprofessional, and the contract offer may be revoked.

When college all-American Brian Anthony is drafted by the Memphis Maulers, he doesn't anticipate that anything will change. His plans are to concentrate on football, avoid trouble and keep up his long-distance relationship with high school sweetheart Tina Black. During the off-season at home, ~~he and~~ Tina will explore their on-again-off-again relationship. Brian plans to follow in the footsteps of his childhood idol, Keith Connors, who he expects to learn a lot from as he backs up the all-Pro and consensus Hall of Famer.

In NFL football, though, unexpected things happen. Connors goes down in the second game with what may be a season-ending injury, and Brian has to step in. It's up to him. He does well, so well he starts getting a lot of notice—from hot chicks as well as reporters. Though he considers himself halfway promised to Tina, he's not immune to the determined pursuit of cheerleader Marly Ragusa. Not at all. Soon they are spending all his free moments together and Brian is falling hard. Where Tina's as comfortable as a well-broken-in shoe, Marly fires

his blood. In less than a month he's moving her into his apartment, trying to figure a way to let Tina down easy. He knows he should go home and tell her face-to-face, but there's no way he can get away with the division race tightening, so he does the only thing he can and breaks up with her by phone.

Not believing it's really over between them, Tina appears at Brian's apartment. Fortunately Brian's at practice and Marly is off shopping somewhere. When Tina calls him, he arranges to meet her. Feeling guilty and awkward as hell, he reiterates how things have changed—something Tina guessed when his calls and emails dropped off to almost nothing. Despite his telling her he's in love with someone else, Tina isn't ready to give up on him yet, so she takes a job with a temporary agency and hovers on the edge of Brian's life.

Meanwhile, Keith's terminally ill wife dies. Grief-stricken, he carries on, bringing his infant son with him to team practice because he has no one he can trust to care for the baby. Brian puts him in touch with Tina, and she becomes Keith's live-in nanny.

Although Brian believes Marly will dump him when Keith is able to re-claim his starting job, he's wrong. It's him, not his position, that got her hooked on him, she says, suggesting that it may be time for them to think about getting married. He rushes his decision when the Maulers trade him to the Orlando Wildcats, a move he wants since Keith is well and won't be retiring any time soon—and since the Wildcats are in desperate need of a starting quarterback.

At Keith's house, he tells Tina that it's over—that he loves her as a sister, but it's Marly with whom he wants to share his life. Tina takes the news well, considering, and Brian and Marly move together to Orlando, where he quickly wins over the fans and media, as well as his new teammates. At the end of the season, with his future bright, Brian marries Marly and decides to live year-round in Orlando. This is their home, and while he'll miss his friends and family back in Hedgecock County, he's happy to be moving on in his new life with Marly and the Wildcats.

In an epilogue, he receives an invitation to a reunion honoring all the Hedgecock County sports stars who've gone on to play in the NFL. Marly encourages him to go, and in spite of his reluctance to rub in the fact he dumped Tina for her, he agrees. After all, the idea that he's actually being singled out with the likes of Keith Connors, Dave Delaney and Colin Zanardi is so beyond his wildest dreams that he can't say no.

ELLORA'S CAVE PUBLISHING INC.
PUBLISHING AGREEMENT

This Publishing Agreement ("Agreement") is made on this 13th day of January 20 09 between
Ellora's Cave Publishing, Inc.
1056 Home Avenue
Akron OH 44310-3502 ("Publisher")

and:

Ann Josephson ("Author")

at _____

writing as Ann Jacobs concerning a work presently titled or to
be titled Naked Bootleg ("the Work").

1. Grant of Rights: Author, on behalf of herself/himself and her/his heirs, executors, administrators, successors and assigns, exclusively grants to the Publisher during the full term of copyright and any renewals and continuations and extensions thereof, the right to print, publish, sell and license the Work throughout the world, and in any and all media and forms of expressions now known, and all subsidiary rights granted in the Subsidiary and Secondary Rights clause hereunder.

1.1 If the Work shall be out of print and if, after written notification from the Author to this effect, 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, this Agreement shall thereupon terminate and all rights shall revert to the Author solely with the exception of any outstanding licenses entered into by Publisher prior to such termination.

A Work shall be considered in print based on the following standards:

- for a fixed initial term of eighteen (18) months after first digital release.
- for a fixed term of twelve (12) months after first print release.
- if the Work is under option or contract for publication or on sale in any edition in the United States, whether under the imprint of the Publisher or a licensee.
- if combined sales of all Publisher's editions, both digital and print (from whatever technology), exceed 100 copies in any 12-month period. Should sales fall below 100 copies in print and digital editions for that period, Publisher shall have the option of paying the Author royalty income equal to that on the sale of the difference between actual sales and 100 such copies, and thereby maintaining the book in print status on such basis.

Should the Work be out of print in accordance with the standards specified above, Author shall have the right to revert rights in accordance with the terms of paragraph 1.1.

1.2 Work shall be published no more than twelve (12) months after completed and edited manuscript is accepted by Publisher for publication; unless a longer term is jointly agreed to by Publisher and Author.

Work shall be published in print format no more than twenty-four (24) months from original digital release, unless a longer term is jointly agreed to by Publisher and Author. Should Publisher fail to place the Work in print within that time, subsidiary rights to the print book (mass market, trade paperback, or hardcover) will revert to the Author, upon written application by Author to Publisher.

1.3 This agreement supersedes all previous agreements regarding the Work between Author and Publisher.

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1.4 All rights not specifically granted herein are reserved to the Author.

2. Copyright: Publisher shall, in all versions of the Work published by Publisher under this Agreement, place 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.

3. Manuscript: Author agrees to deliver to Publisher, in .rtf or .doc form via email, the manuscript of the Work acceptable to Publisher in format, content and substance. Author agrees to make and keep at least one (1) complete copy of the Manuscript and electronic copy as backup.

4. Artwork, Permissions, Index and Other Materials:

4.1 Should Author desire to have included in the Work any original art, illustrations and/or photographs and Publisher shall approve such inclusion, at Publisher's sole discretion, Author shall deliver such material in a form suitable for reproduction to be included in Work. Author grants Publisher the right to use said material for all uses covered by this agreement and subject to its terms.

4.2 Should Author desire to have included in the Work, any material of any nature which is the property of others and for which written permission or authorization is necessary, Author shall deliver to Publisher, at Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art, illustrations and photographs) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted or depicted in the Work (collectively "Permissions"). If Author does not deliver the Permissions, Publisher shall have the right, but not obligation, to obtain such Permissions on its own initiative, and Author shall reimburse Publisher for all expenses incurred by Publisher in obtaining such Permissions or Publisher may remove such material from the Work, prior to publication.

4.3 Author acknowledges and confirms that Publisher shall have no liability of any kind for the loss or destruction of the Manuscript, Artwork, or any other documents or materials provided by Author to Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

4.4 All decisions regarding the design, manufacture, appearance, promotion, title and format of the Work shall be solely at the Publisher's discretion. Additionally, all decisions regarding the pricing, distribution, discounts and all business decisions regarding to the printing, sale, and licensing of the Work shall be solely at the Publisher's discretion.

5. Revisions and Corrections: If Publisher, in its sole discretion, deems the Manuscript, Artwork (if any), Permissions (if any) and/or any other materials delivered by Author (if any) to be unacceptable in form and substance, then Publisher shall so advise Author within ninety (90) days of receipt. Author shall cure any defects and generally revise and correct the Manuscript, Artwork, Permissions and/or other materials to the satisfaction of Publisher, and deliver fully revised and corrected Manuscript, Artwork, Permissions and/or other materials no later than sixty (60) days after receipt of Publisher's notice, unless otherwise mutually agreed by Publisher and Author.

5.1 Editing: Author agrees to undertake such revisions and editing to the Work as are deemed appropriate by Publisher or any of its editors. In the event that Author refuses to undertake said revisions and editing or fails to accomplish such in a manner acceptable in the sole judgment of Publisher, Publisher may reject the Work outright and return it to Author, terminating this agreement.

5.2 Proofs: Publisher may furnish Author with an electronic proof of the final revised text of the Work, at Publisher's discretion. If Publisher does furnish such proof, Author agrees to read, correct and return such proof copy within a reasonable amount of time as Publisher shall direct after receipt thereof. If Author fails to return the corrected proof copy within the time set forth, Publisher may publish the Work without Author's approval of proof. Changes made by Publisher and its editors based on routine copyediting and proofreading shall not be subject to the Author's review or approval.

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6. Termination for Non-Delivery: If Author fails to deliver the completed and edited Manuscript, Artwork (if any), Permissions (if any) or other materials required under this Agreement (if any), and/or any revisions and corrections thereof as requested by Publisher no less than eight weeks prior to scheduled release date, or if Author fails to do so in a form and substance satisfactory to Publisher, then Publisher shall have the right to terminate this Agreement by so informing Author by letter sent by traceable mail to the address of Author set forth above.

7. Author's Copies: Publisher shall provide Author with one copy, free of charge, of each digital format of the Work published electronically.

If printed by Publisher in hardcover or soft cover, Publisher shall provide Author with five (5) copies free of charge and royalty-free, upon request, and shall allow Author to purchase fifty (50) print copies, royalty-free, at one-third of the cover price of the Work published by Publisher. Author shall also be permitted to purchase additional, non-returnable, print copies of the Work for personal use and/or for resale, at forty-two percent (42%) discount from cover price. Author shall pay shipping costs for all print copies requested by Author from Publisher. Author payment for print copies and shipping must be received before copies will be shipped.

8. Royalty on Publisher's Editions: In regard to all of Publisher's royalty provisions as specified below, Publisher shall pay royalties based on cover price.

FOR EACH EDITION of the Work published by the Publisher under this Agreement, Publisher shall credit Author's account with the following royalty:

8.1 Digital: Each book shall earn:

For a Single (1) Author title, 37.5% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Two (2) Author Anthology, 18.75% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Three (3) Author Anthology, 12.5% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Four (4) Author Anthology, 9.375% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Five (5) Author Anthology, 7.5% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Six (6) Author Anthology, 6.25% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Seven (7) Author Anthology, 5.35% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For an Eight (8) Author Anthology, 4.7% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

8.2 Print: Each book shall earn:

For a Single (1) Author title, 7.5% of Cover Price of all copies sold minus credited returns.

For a Two (2) Author Anthology, 3.75% of Cover Price of all copies sold, minus credited returns, per Author.

For a Three (3) Author Anthology, 2.5% of Cover Price of all copies sold, minus credited returns, per Author.

For a Four (4) Author Anthology, 1.88% of Cover Price of all copies, minus credited returns, per Author.

For a Five (5) Author Anthology, 1.5% of Cover Price of all copies, minus credited returns, per Author.

For a Six (6) Author Anthology, 1.25% of Cover Price of all copies, minus credited returns, per Author.

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For a Seven (7) Author Anthology, 1.07% of Cover Price of all copies, minus credited returns, per Author.

For an Eight (8) Author Anthology, .94% of Cover Price of all copies, minus credited returns, per Author.

~~8.3. Digital Sales Through Third Party Vendors: Each digital book sold through a third party vendor of digital books shall earn the royalties as stated in Paragraph 8.1, except that such royalties shall be based on the actual amount received by the Publisher and not on the cover price of the Work.~~

8.4. Print books, High Discount Sales: Each print book sold at discount greater than 55% shall earn the royalties as stated in Paragraph 8.2, except that such royalties shall be based on the actual amount received by the Publisher and not on the cover price of the Work.

8.5. If a book is offered for sale as part of a multi-item product or kit, royalties to Author will be based on the cover price of the book only, or the value as defined by Publisher of the book only if the book is not available for sale as an individual product, not on the full price of the multi-item package.

8.6. Free Copies: No royalties shall be payable for copies of the Work:

- Distributed for free for publicity or promotional purposes or to induce additional sales.
- Given to Author at no charge.
- Sold to Author at one-third cover price, as described in Paragraph 7.

8.7. Remainders: Copies of work sold as remainders are sold at or below Publisher's cost and shall not be subject to the royalties stated in Paragraph 8.2.

8.8. Buyout Upon Termination: Upon termination of this Agreement for any reason, including the expiration of the stated term, Publisher shall have the right, for a period of six months from termination of Agreement, to sell any print copies of the Work remaining in stock at the best price Publisher can obtain. At end of that period, or sooner at Publisher's discretion, Publisher grants Author the right to buy back any or all copies of the printed Work then remaining in stock, at one-third of cover price.

9. Subsidiary and Secondary Rights: Except as otherwise provided below, Publisher shall credit Author's account with a royalty equally divided between Publisher and Author/s of all Net Revenues actually received by Publisher for the exploitation or disposition of secondary and Subsidiary Rights in the Work.

9.1 Subsidiary rights shall include the following:

Mass Market Paperback, Trade Paperback, Hardcover Edition and any other reprint edition (before or after first publication in whatever format), Book Club editions, Syndication, Second Periodical Rights (after first book publication) serialization, digest, abridgment, condensation, excerpt, Anthology and Other Selection Reprint, in whole or in part, in complete, condensed, adapted or abridged versions.

Publication in the English Language worldwide, Publication in Other languages (translation) worldwide, First Periodical Rights (prior to first book publication), ~~Motion Picture, Television, Radio and Dramatic Rights, Commercial Adaptations and Tie-Ins~~, Audio Rights, Multimedia Rights, Display rights (the right to electronically display the text of the book in whatever format and over whatever media).

Author shall not have the right to review or approve any foreign edition of the work (English language or translation), and such editions may be altered by the foreign publisher at their discretion, including editing the work for length and content.

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Author acknowledges that subsidiary or secondary rights licenses may continue after termination of this agreement and that Publisher may enter into such licenses at any time during the term of this agreement regardless of the termination date of the foreign license. In all such cases, Publisher shall continue to credit Author with Author's share of income from all such licenses, and agrees to revert rights to that particular license to the Author upon termination of the license with the foreign publisher.

10. Agency Clause: Author hereby appoints, if applicable

N/A

("Agent") as Author's sole and exclusive agent with respect to the Work which is the subject of this Agreement, and authorizes and directs Publisher to pay to Agent all amounts owing to Author under this Agreement, and to render to Agent all statements of account required under this Agreement. Any sums payable to Author and paid to the Agent pursuant to this Section shall constitute a full and valid discharge of Publisher's obligation to Author with respect to such sums.

11. Author's Representations and Warranties: Author represents and warrants to Publisher that:

- (i) the Work is not in the public domain;
- (ii) Author is the sole proprietor of the Work and has full power and authority, free of any rights of any nature whatsoever by any other person, to enter into this Agreement and to grant the rights which are granted to Publisher in this Agreement;
- (iii) the Work has not heretofore been published except at Ellora's Cave Publishing, in whole or in part, in any form; or is not currently in publication and rights belong to Author;
- (iv) the Work does not, and if published will not, infringe upon any copyright or any proprietary right at common law;
- (v) The Work contains no matter whatsoever that is libelous, violative of any third party's right of privacy or publicity, or otherwise in contravention of law or the right of any third party;
- (vi) Author will not hereafter enter into any agreement or understanding with any person or entity which might conflict with the rights granted to Publisher under this Agreement.

12. Author's Indemnity of Publisher:

12.1 Author shall indemnify, defend and hold harmless Publisher, its subsidiaries and affiliates, and their respective shareholders, officers, directors, employees, partners, associates, affiliates, joint ventures, agents and representatives, from any and all claims, debts, demands, suits, actions, proceedings, and/or prosecutions ("Claims") based on allegations which, if true, would constitute a breach of any of the foregoing warranties, and any and all liabilities, losses, damages, and expenses (including attorneys' fees and costs) in consequence thereof.

12.2 Each party to this Agreement shall give prompt notice in writing to the other party of any Claims.

12.3 No compromise or settlement of any Claims shall be made or entered into without the prior written approval of Publisher and Author.

12.4 In the event of any claims, Publisher shall have the right to suspend payments otherwise due to Author under the terms of this Agreement as security for Author's obligations under this Section. Any payments withheld by the Publisher pursuant to this paragraph shall be released to the Author after a period of one (1) year in the case of any claim, action, or proceeding that is threatened but not pursued, or within thirty (30) days of the discontinuance of any claim, action, or proceeding.

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12.5 Author's representations, warranties and indemnities as set forth above and in this Section shall extend to any person or entity against whom any Claims are asserted by reason of the exploitation of the rights granted by Author in this Agreement, as if such representations, warranties and indemnities were originally made to such third parties. All such warranties, representations and indemnities shall survive the termination or expiration of this Agreement.

13. Advertising and Promotion:

13.1 Publisher shall have the right to use, and to license others to use, Author's pseudonym, image (if provided), likeness (if provided) and biographical material (as provided) for advertising, promotion, and in connection with other exploitation of the Work and the other rights granted under this Agreement.

13.2 Author has the right to promote and advertise the Work. Any cover art used to represent the Work must be the cover art specifically created by the Publisher for the Work.

14. Author's Non-Competition: Author agrees that s/he shall not, during the term of this Agreement, without the express prior written consent of Publisher, write, print or publish, or cause to be written, printed or published, any other edition of the Work, whether revised, corrected, enlarged, abridged, or otherwise that will directly compete or interfere with or injure the sales of the Work. This provision shall not be construed to prohibit Author from publication of excerpts as permitted or exercise of any other subsidiary rights possessed by or reverted to Author.

15. Copyright Infringement: If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her or its name. Notwithstanding the foregoing, Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

16. Accounting:

16.1 Publisher shall render to Author a statement of account on sales of the Work in all Publisher's editions, and other exploitation and disposition of rights to the Work, for all monies actually received by publisher and other credits and debits relating to the Work and the rights granted in this Agreement, and pay Author any amount(s) then owing, as follows: Publisher shall pay Author royalties in accordance with a schedule to be determined at Publisher's discretion but in no event shall payment be made less frequently than three (3) calendar months.

16.2 Publisher shall have the right to debit the account of Author for any overpayment of royalties on this or any other titles by Author, or for any sums due to the Publisher from the Author.

16.3 If royalties have been paid on copies that are thereafter returned or refused, then Publisher shall have the right to deduct the amount of such royalties on such returned or refused copies from any future payments under this Agreement.

16.4 As set forth in the Indemnity Clause above, in the event that any Claims are asserted against Author or Publisher, Publisher shall have the right to withhold royalties and other payments otherwise payable under this Agreement as a reserve pending a final determination thereof. Publisher shall have the right to apply any of such withheld royalties and other payments then or thereafter accruing to the reduction, satisfaction or settlement of such Claims.

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16.5 Author shall have the right, upon reasonable notice and during usual business hours but not more than once each year, to engage a certified public accountant to examine the books and records of Publisher relating to the Work for a period of one (1) calendar year at the place where such records are regularly maintained.

- Author shall provide thirty (30) days written notice, deliverable through traceable mail, of intent to exercise such right.
- Any such examination shall be at the sole cost of the Author, and may not be made by any person acting on a contingent fee basis (other than the Author's literary agent during the course of the agent's regular and customary representation of Author). If error in favor of Author exceeding five percent (5%) is detected, then Publisher shall pay the actual cost of the audit of the Work.
- Statements rendered under this Agreement shall be final and binding upon Author unless Author sets forth the specific objections in writing and the basis for such objections within eighteen (18) months after the date the statement was rendered.
- If error in favor of Author is detected, then Publisher shall pay amount found to be owing for the Work.

17. Rights Surviving Termination: Upon the expiration or termination of this Agreement, any rights reverting to Author shall be subject to all licenses and other grants of rights made by Publisher to third parties pursuant to this Agreement. In accordance with Paragraph 9, Publisher may license Subsidiary rights at any time during this Agreement and such licenses shall survive termination of this Agreement. Any and all rights of Publisher under such licenses and grants of rights, and all representations, warranties and indemnities of Author, shall survive the expiration or termination of this Agreement.

18. Bankruptcy: If a petition in bankruptcy or a petition for reorganization is filed by or against Publisher, or if Publisher makes an assignment for the benefit of creditors, or if Publisher liquidates its business for any cause whatsoever, Author may terminate this agreement by written notice within sixty (60) days after receipt of notification by Author, and all rights granted by Author to Publisher shall thereupon revert to Author.

19. Applicable Law: Regardless of the place of its physical execution, this Agreement shall be interpreted, construed and governed in all respects by the laws of the State of Ohio and Author hereby agrees to submit to jurisdiction to the Courts of the State of Ohio.

20. Modification and Waiver: This Agreement may not be modified or altered except in writing and signed by both Author and Publisher.

21. Notices: Any written notice or delivery under any of the provisions of this Agreement shall be deemed to have been properly made by delivery in person to Author, or by mailing via traceable mail to the address(es) set forth in the Recitals and General Provisions above, except as the address(es) may be changed by notice in writing. Author and Publisher agree to accept service of process by mailing in the same manner.

22. Heading and Footers: Heading and footers are for convenience only and are not be deemed part of this Agreement.

23. Binding on Successors: This Agreement shall be binding on their heirs, executors, administrators, successors or assigns of Author, and the successors, assigns and licensees of Publisher.

24. Arbitration: If any dispute shall arise between Author and Publisher regarding this Agreement, such dispute shall be referred to binding private arbitration in the State of Ohio, in accordance with the Rules of the American Arbitration Association, and any arbitration award may be entered and shall be fully enforceable as a judgment in any court of competent jurisdiction. Notwithstanding the foregoing, the parties shall have the right to conduct discovery and the right to seek injunctive relief in any court in the State of Ohio.

7

25. Attorney's Fees: In any action on this agreement, including litigation and arbitration, the losing party shall pay all reasonable attorney's fees and costs incurred by the prevailing party.

26. Multiple Authors: Whenever the term "Author" refers to more than one person, such persons will be jointly and severally responsible for all duties, obligations and covenants under this Agreement, and shall share equally in all royalties and other amounts to be paid under this Agreement, unless otherwise specified in writing signed by all parties.

27. Confidentiality and Disclosure of Information: The Author acknowledges the list of Publisher's customers, vendors, authors and editors is a valuable, special, and unique asset of the Publisher's business. Author shall keep confidential all personal or business information gained in the course of dealings with and on behalf of Publisher. Specifically:

- Personal Information. Any information relating to the actual identity, personal details, and contact information of vendors, authors, artists, editors, employees, as well as submitters to, Publisher shall be held strictly confidential and shall not be disclosed except by express prior written consent of the person or persons to whom it relates or where legally required.
- Propriety Information. Any proprietary information, such as that dealing with Publisher earnings, profits, marketing plans, projects in development, future plans and such forms, images, or business methods as may be used by Publisher in its regular course of dealing, shall be held strictly confidential and shall not be disclosed except by express prior written consent of an authorized agent or officer of the Company.
- Software. Any software Publisher has developed or may develop that is proprietary to Publisher's business may not be disclosed to any person, firm, corporation, association, or other entity for any reason or purpose.
- Emails. Email from Publisher's business email list, author chat list, editor list, graphic artist list, or any private email relating to any of the aforementioned information or to any other dealings of Publisher or Publishers agents, employees or independent contractors may not be disseminated or reposted elsewhere without express prior written consent of an authorized agent or officer of the Company, as well as any affected party.

In the event of the Author's breach or threatened breach of this paragraph, Publisher shall be entitled to seek a preliminary restraining order and an injunction restraining and enjoining the Author from disclosing all or any part of the Publisher's said confidential information and from rendering any services to any person, firm, corporation, association, or other entity to whom all or any part of such confidential information has been, or is threatened to be, disclosed. In addition to or in lieu of the above, Publisher may pursue all other remedies available to Publisher for such breach or threatened breach, including the recovery of damages from the Author.

28. No Solicitation: The Author shall not, for three years after the execution of this agreement, solicit any or disclose such information to anyone who knowingly intends to solicit any of Publisher's ~~authors~~, editors, contractors or employees for the purpose of offering them employment with other publishing companies.

8

IN WITNESS WHEREOF, Author and Publisher have executed this Agreement as of the day and year written above.

ELLORA'S CAVE PUBLISHING, INC.

Date 2/5/09 Authorized officer Raulene Gorkunsky

AUTHOR

Date January 13, 2009 Ann Josephson

Ann Josephson

4260
SSN or Tax ID number

Exhibit 4

Contract Cover Sheet

IMPRINT: ☒ Ellora's Cave ☐ Cerridwen Press ☐ The Lotus Circle

☒ New book contract ☐ Renewal/replacement contract

Story Title: Topaz Dream_____

Series Title, if applicable part of the Topaz Birthstone series

Author Pen Name: Ann Jacobs_____

Pick one: ☒ Novel (incl. Novella, Plus and Super Plus lengths)

☐ Quickie (EC only) or short book (TLC)

☐ Story in anthology _____

Editor: _____

Author Real Name: Ann Josephson_____

Mailing Address: _____

E-mail address: _____

Contract form instructions:

- List only the book title on the actual contract form, ***do not include a series name or anthology title.*** The title must be approved in advance.
- Do not handwrite any changes on the contract. Revisions must be negotiated in advance.
- If this book was previously published elsewhere in any form or under any title, the contract must be accompanied by the documentation proving full rights have reverted to the author.
- Mail signed contract plus this cover form to:
Ellora's Cave Publishing
Attn: Raelene Gorklinsky
1056 Home Avenue
Akron, OH 44310-3502

TITLE	Topaz Dream
AUTHOR PEN NAME	Ann Jacobs
GENRE/THEMES	Futuristic ménage a trois
SETTING / TIME PERIOD	Earth during the New Order, and a newly discovered planet he calls Luna Ten because of its ten topaz moons
<p>List the main characters: Name, who/what they are, their role in the story.</p> <p>Darth Williams: hero #1. Starfighter pilot for Earth's Federation Star Command, discovers Luna Ten and claims it for his own</p> <p>Vance: hero #2. Wealthy earthling with tight connections to Federation officials</p> <p>Gabrielle (Gaby): the woman Darth loves, carrier of mutant gene left by the first Earth invaders, slave of Vance—and indirectly of Vance's bonded mate, Darth</p> <p>Goku: Darth's robot co-pilot</p>	
<p>Provide a complete synopsis of the story. <i>Single spaced; maximum 2 pages; typed, not handwritten.</i> Must outline full plot. Included character motivations, conflict and resolution (GMC), relationship development. Do not mention non-critical secondary characters by name if they are not listed in the section above. Synopsis must be proofed and clean: no spelling or grammatical errors, must conform to our EC Style Guide. If this synopsis is not high quality, the assumption is the story is equally sloppy and unprofessional, and the contract offer may be revoked.</p> <p>Earth is not as it was during the past millennium. After an attack from powerful aliens nearly destroyed the planet and its people, there is now a New Order. Controlled by the Federation, it is a place where every facet of its people's lives are regulated, where freedom no longer exists. When Darth discovers a glittering golden planet far out in the galaxy, he at first believes it's only a figment of his imagination.</p> <p>At his commander's order, starfighter pilot Darth Williams has mated with his wealthy friend Vance. Because Gabrielle, his longtime sweetheart, has been made a slave because she carries a dreaded mutant gene, Darth accepts a relationship with Vance that is at first repugnant. Soon, however, he accepts his fate and becomes the other man's willing sex slave. In return, Vance surprises Darth by offering to buy Gabrielle as a slave they will share.</p> <p>Darth goes on a mission, anticipating once again touching and loving Gaby. With only a few weeks left on his patrol, he and his copilot Goku, a robot, encounter and defeat an alien starship. But the computer that controls Goku's "brain" is hit, and Darth must risk his ship and his life by attempting a landing on an uncharted planet—he hopes.</p> <p>The planet is beyond his wildest dreams. A verdant glade for landing, scattered with golden topaz crystals that seem to be guiding him out of the blackness, it is a fantasy paradise, complete with abundant crystals of the gold-to-brown semiprecious stones revered back home as symbols of beauty and splendor. A vision appears, the embodiment of Gaby. Fitting, Darth thinks as he recalls the topaz is her birthstone. While he sorts out the problems with Goku's computer and does makeshift repairs,</p>	

he enjoys an idyllic interlude with Gaby's spirit. Before he goes home again, he stakes an official claim for Luna Ten, dreaming that someday he may take Gaby away from a life of slavery to freedom on the glorious, golden planet.

At home once more, Darth finds Gaby. Not the free spirit he'd loved on his little piece of heaven, but a slave, stripped not only of freedom but of the trappings he'd grown to love. At first furious with Vance for having allowed these indignities, Darth soon realizes his friend has done only what Federation law requires and that instead of the utilitarian adornments she came with, Vance has adorned her in gold and topazes. Not only Gaby's birthstone, the faceted gold and brownish stones dispel sadness and make sterile women fertile, according to ancient Earth legend.

At first as repelled by what Gaby has become as he was when Vance first claimed him a year ago, Darth soon comes to love the golden aura that surrounds them all when the three make love. It's the topazes, Gaby's special stones, that make the difference, take them on a sexual journey where they learn they can find joy within the constraints of slavery, loyalty to the New Order...and bind the three together emotionally for all time—for eternity.

Vance is reluctant to leave his Earthly home, relinquish the power granted to him by his birthright and wealth. Still, he loves Darth—Gaby, too, if he is truthful with himself. The prospect of a life on Luna Ten, supported by gathering and selling its precious topazes throughout the Universe, doesn't appeal much to him. He can give up the two people who mean most to him, or go with them in search of Utopia in a place he's not completely certain exists except in Darth's mind.

Their choices are limited once the New Order police get wind of the fact Vance and Darth are living in *ménage a trois* with a slave whose body is forbidden. Barely escaping in a merchant spaceship belonging to Vance's company, they set course for Luna Ten. Gaby steps off the ship onto the verdant grass, moves to the glade where Darth had seen her image. He sees her, brighter than the topaz hills and crystals lining the stream, and starts to run toward her then stops. He realizes he loves Vance, too, and that they're not two but three. As they enjoy a pleasant interlude on the planet of the topaz moons, the birthmark that marks Gaby a mutant fades away, leaving only a golden tattoo in its place.

Released from the taint that has ruled them for so long, they return to Earth to live out their unconventional lives, vowing to return and experience once more their topaz dream.

ELLORA'S CAVE PUBLISHING INC.
PUBLISHING AGREEMENT

This Publishing Agreement ("Agreement") is made on this 25th day of September 20 08
between

Ellora's Cave Publishing, Inc.
1056 Home Avenue
Akron OH 44310-3502 ("Publisher")

and:

Ann Josephson ("Author")

at _____

writing as Ann Jacobs concerning a work presently titled or to
be titled Topaz Dream ("the Work").

1. Grant of Rights: Author, on behalf of herself/himself and her/his heirs, executors, administrators, successors and assigns, exclusively grants to the Publisher during the full term of copyright and any renewals and continuations and extensions thereof, the right to print, publish, sell and license the Work throughout the world, and in any and all media and forms of expressions now known, and all subsidiary rights granted in the Subsidiary and Secondary Rights clause hereunder.

1.1 If the Work shall be out of print and if, after written notification from the Author to this effect, 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, this Agreement shall thereupon terminate and all rights shall revert to the Author solely with the exception of any outstanding licenses entered into by Publisher prior to such termination.

A Work shall be considered in print based on the following standards:

- for a fixed initial term of eighteen (18) months after first digital release.
- for a fixed term of twelve (12) months after first print release.
- if the Work is under option or contract for publication or on sale in any edition in the United States, whether under the imprint of the Publisher or a licensee.
- if combined sales of all Publisher's editions, both digital and print (from whatever technology), exceed 100 copies in any 12-month period. Should sales fall below 100 copies in print and digital editions for that period, Publisher shall have the option of paying the Author royalty income equal to that on the sale of the difference between actual sales and 100 such copies, and thereby maintaining the book in print status on such basis.

Should the Work be out of print in accordance with the standards specified above, Author shall have the right to revert rights in accordance with the terms of paragraph 1.1.

1.2 Work shall be published no more than twelve (12) months after completed and edited manuscript is accepted by Publisher for publication; unless a longer term is jointly agreed to by Publisher and Author.

Work shall be published in print format no more than twenty-four (24) months from original digital release, unless a longer term is jointly agreed to by Publisher and Author. Should Publisher fail to place the Work in print within that time, subsidiary rights to the print book (mass market, trade paperback, or hardcover) will revert to the Author, upon written application by Author to Publisher.

1.3 This agreement supersedes all previous agreements regarding the Work between Author and Publisher.

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1.4 All rights not specifically granted herein are reserved to the Author.

2. Copyright: Publisher shall, in all versions of the Work published by Publisher under this Agreement, place 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.

3. Manuscript: Author agrees to deliver to Publisher, in .rtf or .doc form via email, the manuscript of the Work acceptable to Publisher in format, content and substance. Author agrees to make and keep at least one (1) complete copy of the Manuscript and electronic copy as backup.

4. Artwork, Permissions, Index and Other Materials:

4.1 Should Author desire to have included in the Work any original art, illustrations and/or photographs and Publisher shall approve such inclusion, at Publisher's sole discretion, Author shall deliver such material in a form suitable for reproduction to be included in Work. Author grants Publisher the right to use said material for all uses covered by this agreement and subject to its terms.

4.2 Should Author desire to have included in the Work, any material of any nature which is the property of others and for which written permission or authorization is necessary, Author shall deliver to Publisher, at Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art, illustrations and photographs) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted or depicted in the Work (collectively "Permissions"). If Author does not deliver the Permissions, Publisher shall have the right, but not obligation, to obtain such Permissions on its own initiative, and Author shall reimburse Publisher for all expenses incurred by Publisher in obtaining such Permissions or Publisher may remove such material from the Work, prior to publication.

4.3 Author acknowledges and confirms that Publisher shall have no liability of any kind for the loss or destruction of the Manuscript, Artwork, or any other documents or materials provided by Author to Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

4.4 All decisions regarding the design, manufacture, appearance, promotion, title and format of the Work shall be solely at the Publisher's discretion. Additionally, all decisions regarding the pricing, distribution, discounts and all business decisions regarding to the printing, sale, and licensing of the Work shall be solely at the Publisher's discretion.

5. Revisions and Corrections: If Publisher, in its sole discretion, deems the Manuscript, Artwork (if any), Permissions (if any) and/or any other materials delivered by Author (if any) to be unacceptable in form and substance, then Publisher shall so advise Author within ninety (90) days of receipt. Author shall cure any defects and generally revise and correct the Manuscript, Artwork, Permissions and/or other materials to the satisfaction of Publisher, and deliver fully revised and corrected Manuscript, Artwork, Permissions and/or other materials no later than sixty (60) days after receipt of Publisher's notice, unless otherwise mutually agreed by Publisher and Author.

5.1 Editing: Author agrees to undertake such revisions and editing to the Work as are deemed appropriate by Publisher or any of its editors. In the event that Author refuses to undertake said revisions and editing or fails to accomplish such in a manner acceptable in the sole judgment of Publisher, Publisher may reject the Work outright and return it to Author, terminating this agreement.

5.2 Proofs: Publisher may furnish Author with an electronic proof of the final revised text of the Work, at Publisher's discretion. If Publisher does furnish such proof, Author agrees to read, correct and return such proof copy within a reasonable amount of time as Publisher shall direct after receipt thereof. If Author fails to return the corrected proof copy within the time set forth, Publisher may publish the Work without Author's approval of proof. Changes made by Publisher and its editors based on routine copyediting and proofreading shall not be subject to the Author's review or approval.

6. Termination for Non-Delivery: If Author fails to deliver the completed and edited Manuscript, Artwork (if any), Permissions (if any) or other materials required under this Agreement (if any), and/or any revisions and corrections thereof as requested by Publisher no less than eight weeks prior to scheduled release date, or if Author fails to do so in a form and substance satisfactory to Publisher, then Publisher shall have the right to terminate this Agreement by so informing Author by letter sent by traceable mail to the address of Author set forth above.

7. Author's Copies: Publisher shall provide Author with one copy, free of charge, of each digital format of the Work published electronically.

If printed by Publisher in hardcover or soft cover, Publisher shall provide Author with five (5) copies free of charge and royalty-free, upon request, and shall allow Author to purchase fifty (50) print copies, royalty-free, at one-third of the cover price of the Work published by Publisher. Author shall also be permitted to purchase additional, non-returnable, print copies of the Work for personal use and/or for resale, at forty-two percent (42%) discount from cover price. Author shall pay shipping costs for all print copies requested by Author from Publisher. Author payment for print copies and shipping must be received before copies will be shipped.

8. Royalty on Publisher's Editions: In regard to all of Publisher's royalty provisions as specified below, Publisher shall pay royalties based on cover price.

FOR EACH EDITION of the Work published by the Publisher under this Agreement, Publisher shall credit Author's account with the following royalty:

8.1 Digital: Each book shall earn:

For a Single (1) Author title, 37.5% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Two (2) Author Anthology, 18.75% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Three (3) Author Anthology, 12.5% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Four (4) Author Anthology, 9.375% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Five (5) Author Anthology, 7.5% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Six (6) Author Anthology, 6.25% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For a Seven (7) Author Anthology, 5.35% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

For an Eight (8) Author Anthology, 4.7% of Cover Price of all copies sold, minus discounts to third party vendors and credited returns.

8.2 Print: Each book shall earn:

For a Single (1) Author title, 7.5% of Cover Price of all copies sold minus credited returns.

For a Two (2) Author Anthology, 3.75% of Cover Price of all copies sold, minus credited returns, per Author.

For a Three (3) Author Anthology, 2.5% of Cover Price of all copies sold, minus credited returns, per Author.

For a Four (4) Author Anthology, 1.88% of Cover Price of all copies, minus credited returns, per Author.

For a Five (5) Author Anthology, 1.5% of Cover Price of all copies, minus credited returns, per Author.

For a Six (6) Author Anthology, 1.25% of Cover Price of all copies, minus credited returns, per Author.

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For a Seven (7) Author Anthology, 1.07% of Cover Price of all copies, minus credited returns, per Author.

For an Eight (8) Author Anthology, .94% of Cover Price of all copies, minus credited returns, per Author.

~~8.3. Digital Sales Through Third Party Vendors: Each digital book sold through a third party vendor of digital books shall earn the royalties as stated in Paragraph 8.1, except that such royalties shall be based on the actual amount received by the Publisher and not on the cover price of the Work.~~

8.4. Print books, High Discount Sales: Each print book sold at discount greater than 55% shall earn the royalties as stated in Paragraph 8.2, except that such royalties shall be based on the actual amount received by the Publisher and not on the cover price of the Work.

8.5. If a book is offered for sale as part of a multi-item product or kit, royalties to Author will be based on the cover price of the book only, or the value as defined by Publisher of the book only if the book is not available for sale as an individual product, not on the full price of the multi-item package.

8.6. Free Copies: No royalties shall be payable for copies of the Work:

- Distributed for free for publicity or promotional purposes or to induce additional sales.
- Given to Author at no charge.
- Sold to Author at one-third cover price, as described in Paragraph 7.

8.7. Remainders: Copies of work sold as remainders are sold at or below Publisher's cost and shall not be subject to the royalties stated in Paragraph 8.2.

8.8. Buyout Upon Termination: Upon termination of this Agreement for any reason, including the expiration of the stated term, Publisher shall have the right, for a period of six months from termination of Agreement, to sell any print copies of the Work remaining in stock at the best price Publisher can obtain. At end of that period, or sooner at Publisher's discretion, Publisher grants Author the right to buy back any or all copies of the printed Work then remaining in stock, at one-third of cover price.

9. Subsidiary and Secondary Rights: Except as otherwise provided below, Publisher shall credit Author's account with a royalty equally divided between Publisher and Author/s of all Net Revenues actually received by Publisher for the exploitation or disposition of secondary and Subsidiary Rights in the Work.

9.1 Subsidiary rights shall include the following:

Mass Market Paperback, Trade Paperback, Hardcover Edition and any other reprint edition (before or after first publication in whatever format), Book Club editions, Syndication, Second Periodical Rights (after first book publication) serialization, digest, abridgment, condensation, excerpt, Anthology and Other Selection Reprint, in whole or in part, in complete, condensed, adapted or abridged versions.

Publication in the English Language worldwide, Publication in Other languages (translation) worldwide, First Periodical Rights (prior to first book publication), ~~Motion Picture, Television, Radio and Dramatic Rights, Commercial Adaptations and Tie-Ins~~, Audio Rights, Multimedia Rights, Display rights (the right to electronically display the text of the book in whatever format and over whatever media).

Author shall not have the right to review or approve any foreign edition of the work (English language or translation), and such editions may be altered by the foreign publisher at their discretion, including editing the work for length and content.

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Author acknowledges that subsidiary or secondary rights licenses may continue after termination of this agreement and that Publisher may enter into such licenses at any time during the term of this agreement regardless of the termination date of the foreign license. In all such cases, Publisher shall continue to credit Author with Author's share of income from all such licenses, and agrees to revert rights to that particular license to the Author upon termination of the license with the foreign publisher.

10. Agency Clause: Author hereby appoints, if applicable

N/A

("Agent") as Author's sole and exclusive agent with respect to the Work which is the subject of this Agreement, and authorizes and directs Publisher to pay to Agent all amounts owing to Author under this Agreement, and to render to Agent all statements of account required under this Agreement. Any sums payable to Author and paid to the Agent pursuant to this Section shall constitute a full and valid discharge of Publisher's obligation to Author with respect to such sums.

11. Author's Representations and Warranties: Author represents and warrants to Publisher that:

- (i) the Work is not in the public domain;
- (ii) Author is the sole proprietor of the Work and has full power and authority, free of any rights of any nature whatsoever by any other person, to enter into this Agreement and to grant the rights which are granted to Publisher in this Agreement;
- (iii) the Work has not heretofore been published except at Ellora's Cave Publishing, in whole or in part, in any form; or is not currently in publication and rights belong to Author;
- (iv) the Work does not, and if published will not, infringe upon any copyright or any proprietary right at common law;
- (v) The Work contains no matter whatsoever that is libelous, violative of any third party's right of privacy or publicity, or otherwise in contravention of law or the right of any third party;
- (vi) Author will not hereafter enter into any agreement or understanding with any person or entity which might conflict with the rights granted to Publisher under this Agreement.

12. Author's Indemnity of Publisher:

12.1 Author shall indemnify, defend and hold harmless Publisher, its subsidiaries and affiliates, and their respective shareholders, officers, directors, employees, partners, associates, affiliates, joint ventures, agents and representatives, from any and all claims, debts, demands, suits, actions, proceedings, and/or prosecutions ("Claims") based on allegations which, if true, would constitute a breach of any of the foregoing warranties, and any and all liabilities, losses, damages, and expenses (including attorneys' fees and costs) in consequence thereof.

12.2 Each party to this Agreement shall give prompt notice in writing to the other party of any Claims.

12.3 No compromise or settlement of any Claims shall be made or entered into without the prior written approval of Publisher and Author.

12.4 In the event of any claims, Publisher shall have the right to suspend payments otherwise due to Author under the terms of this Agreement as security for Author's obligations under this Section. Any payments withheld by the Publisher pursuant to this paragraph shall be released to the Author after a period of one (1) year in the case of any claim, action, or proceeding that is threatened but not pursued, or within thirty (30) days of the discontinuance of any claim, action, or proceeding.

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12.5 Author's representations, warranties and indemnities as set forth above and in this Section shall extend to any person or entity against whom any Claims are asserted by reason of the exploitation of the rights granted by Author in this Agreement, as if such representations, warranties and indemnities were originally made to such third parties. All such warranties, representations and indemnities shall survive the termination or expiration of this Agreement.

13. Advertising and Promotion:

13.1 Publisher shall have the right to use, and to license others to use, Author's pseudonym, image (if provided), likeness (if provided) and biographical material (as provided) for advertising, promotion, and in connection with other exploitation of the Work and the other rights granted under this Agreement.

13.2 Author has the right to promote and advertise the Work. Any cover art used to represent the Work must be the cover art specifically created by the Publisher for the Work.

14. Author's Non-Competition: Author agrees that s/he shall not, during the term of this Agreement, without the express prior written consent of Publisher, write, print or publish, or cause to be written, printed or published, any other edition of the Work, whether revised, corrected, enlarged, abridged, or otherwise that will directly compete or interfere with or injure the sales of the Work. This provision shall not be construed to prohibit Author from publication of excerpts as permitted or exercise of any other subsidiary rights possessed by or reverted to Author.

15. Copyright Infringement: If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her or its name. Notwithstanding the foregoing, Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

16. Accounting:

16.1 Publisher shall render to Author a statement of account on sales of the Work in all Publisher's editions, and other exploitation and disposition of rights to the Work, for all monies actually received by publisher and other credits and debits relating to the Work and the rights granted in this Agreement, and pay Author any amount(s) then owing, as follows: Publisher shall pay Author royalties in accordance with a schedule to be determined at Publisher's discretion but in no event shall payment be made less frequently than three (3) calendar months.

16.2 Publisher shall have the right to debit the account of Author for any overpayment of royalties on this or any other titles by Author, or for any sums due to the Publisher from the Author.

16.3 If royalties have been paid on copies that are thereafter returned or refused, then Publisher shall have the right to deduct the amount of such royalties on such returned or refused copies from any future payments under this Agreement.

16.4 As set forth in the Indemnity Clause above, in the event that any Claims are asserted against Author or Publisher, Publisher shall have the right to withhold royalties and other payments otherwise payable under this Agreement as a reserve pending a final determination thereof. Publisher shall have the right to apply any of such withheld royalties and other payments then or thereafter accruing to the reduction, satisfaction or settlement of such Claims.

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16.5 Author shall have the right, upon reasonable notice and during usual business hours but not more than once each year, to engage a certified public accountant to examine the books and records of Publisher relating to the Work for a period of one (1) calendar year at the place where such records are regularly maintained.

- Author shall provide thirty (30) days written notice, deliverable through traceable mail, of intent to exercise such right.
- Any such examination shall be at the sole cost of the Author, and may not be made by any person acting on a contingent fee basis (other than the Author's literary agent during the course of the agent's regular and customary representation of Author). If error in favor of Author exceeding five percent (5%) is detected, then Publisher shall pay the actual cost of the audit of the Work.
- Statements rendered under this Agreement shall be final and binding upon Author unless Author sets forth the specific objections in writing and the basis for such objections within eighteen (18) months after the date the statement was rendered.
- If error in favor of Author is detected, then Publisher shall pay amount found to be owing for the Work.

17. Rights Surviving Termination: Upon the expiration or termination of this Agreement, any rights reverting to Author shall be subject to all licenses and other grants of rights made by Publisher to third parties pursuant to this Agreement. In accordance with Paragraph 9, Publisher may license Subsidiary rights at any time during this Agreement and such licenses shall survive termination of this Agreement. Any and all rights of Publisher under such licenses and grants of rights, and all representations, warranties and indemnities of Author, shall survive the expiration or termination of this Agreement.

18. Bankruptcy: If a petition in bankruptcy or a petition for reorganization is filed by or against Publisher, or if Publisher makes an assignment for the benefit of creditors, or if Publisher liquidates its business for any cause whatsoever, Author may terminate this agreement by written notice within sixty (60) days after receipt of notification by Author, and all rights granted by Author to Publisher shall thereupon revert to Author.

19. Applicable Law: Regardless of the place of its physical execution, this Agreement shall be interpreted, construed and governed in all respects by the laws of the State of Ohio and Author hereby agrees to submit to jurisdiction to the Courts of the State of Ohio.

20. Modification and Waiver: This Agreement may not be modified or altered except in writing and signed by both Author and Publisher.

21. Notices: Any written notice or delivery under any of the provisions of this Agreement shall be deemed to have been properly made by delivery in person to Author, or by mailing via traceable mail to the address(es) set forth in the Recitals and General Provisions above, except as the address(es) may be changed by notice in writing. Author and Publisher agree to accept service of process by mailing in the same manner.

22. Heading and Footers: Heading and footers are for convenience only and are not be deemed part of this Agreement.

23. Binding on Successors: This Agreement shall be binding on their heirs, executors, administrators, successors or assigns of Author, and the successors, assigns and licensees of Publisher.

24. Arbitration: If any dispute shall arise between Author and Publisher regarding this Agreement, such dispute shall be referred to binding private arbitration in the State of Ohio, in accordance with the Rules of the American Arbitration Association, and any arbitration award may be entered and shall be fully enforceable as a judgment in any court of competent jurisdiction. Notwithstanding the foregoing, the parties shall have the right to conduct discovery and the right to seek injunctive relief in any court in the State of Ohio.

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25. Attorney's Fees: In any action on this agreement, including litigation and arbitration, the losing party shall pay all reasonable attorney's fees and costs incurred by the prevailing party.

26. Multiple Authors: Whenever the term "Author" refers to more than one person, such persons will be jointly and severally responsible for all duties, obligations and covenants under this Agreement, and shall share equally in all royalties and other amounts to be paid under this Agreement, unless otherwise specified in writing signed by all parties.

27. Confidentiality and Disclosure of Information: The Author acknowledges the list of Publisher's customers, vendors, authors and editors is a valuable, special, and unique asset of the Publisher's business. Author shall keep confidential all personal or business information gained in the course of dealings with and on behalf of Publisher. Specifically:

- **Personal Information.** Any information relating to the actual identity, personal details, and contact information of vendors, authors, artists, editors, employees, as well as submitters to, Publisher shall be held strictly confidential and shall not be disclosed except by express prior written consent of the person or persons to whom it relates or where legally required.
- **Propriety Information.** Any proprietary information, such as that dealing with Publisher earnings, profits, marketing plans, projects in development, future plans and such forms, images, or business methods as may be used by Publisher in its regular course of dealing, shall be held strictly confidential and shall not be disclosed except by express prior written consent of an authorized agent or officer of the Company.
- **Software.** Any software Publisher has developed or may develop that is proprietary to Publisher's business may not be disclosed to any person, firm, corporation, association, or other entity for any reason or purpose.
- **Emails.** Email from Publisher's business email list, author chat list, editor list, graphic artist list, or any private email relating to any of the aforementioned information or to any other dealings of Publisher or Publishers agents, employees or independent contractors may not be disseminated or reposted elsewhere without express prior written consent of an authorized agent or officer of the Company, as well as any affected party.

In the event of the Author's breach or threatened breach of this paragraph, Publisher shall be entitled to seek a preliminary restraining order and an injunction restraining and enjoining the Author from disclosing all or any part of the Publisher's said confidential information and from rendering any services to any person, firm, corporation, association, or other entity to whom all or any part of such confidential information has been, or is threatened to be, disclosed. In addition to or in lieu of the above, Publisher may pursue all other remedies available to Publisher for such breach or threatened breach, including the recovery of damages from the Author.

28. No Solicitation: The Author shall not, for three years after the execution of this agreement, solicit any or disclose such information to anyone who knowingly intends to solicit any of Publisher's ~~authors~~, editors, contractors or employees for the purpose of offering them employment with other publishing companies.

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IN WITNESS WHEREOF, Author and Publisher have executed this Agreement as of the day and year written above.

ELLORA'S CAVE PUBLISHING, INC.

10-7-08 Rauline Gorkinsky
Date Authorized officer

AUTHOR

Ann Josephson
Date September 25, 2008

Ann Josephson

4260
SSN or Tax ID number