

Type/Clase :	Contrat-type et guide de rédaction/Model contract with users's guide/Modelo de contrato con guías de redacción
Source/Procedencia :	Centre du Commerce International CNUCED/OMC International Trade Centre UNCTAD/WTO Centro de Comercio Internacional UNCTAD/OMC
	Palais des Nations 1211 Genève 10 Suisse
Date de publication :	01/06/2000
Date of publication :	
Fecha de publicación :	
Tél/Tel :	(41-22)730 01 11
Fax :	(41-22)733 44 39
Web :	www.intracen.org
✉	itcreg@intracen.org

Avertissement: Les contrats et guides de la présente collection ont été sélectionnés à seule fin d'illustration. Leur contenu et leur utilisation n'engagent pas la responsabilité de *Juris International*.

Please note: The contracts and guides contained in the present collection have been selected for illustrative purposes only. *Juris International* shall not be liable for their contents or use.

Advertencia: Los contratos y las guías de la presente colección han sido seleccionados únicamente a manera de ilustración. Su contenido y utilización no comprometen la responsabilidad de *Juris internacional*.

AUTHOR-LITERARY AGENT LETTER OF AGREEMENT

While many authors have direct contractual relationships with publishers without the intermediation of a literary agent (this is particularly the case in the educational and academic publishing sectors) many authors writing for the mass market, and in particular those who make their living by their writing, may choose to employ the services of a literary agent to handle negotiations and contractual arrangements with publishers and other media businesses on their behalf.

Literary agencies are commercial businesses and operate on the basis of retaining commission from the earnings of the writers they represent; the percentage is normally not less than 10% and could be as high as 25% depending on what type of rights are being handled. The bulk of agency business depends on handling the work of established writers, but agents are also prepared to take on unpublished authors whom they feel have creative potential, and are often prepared to invest time in advising and guiding promising writers to enable them to present their work more effectively for exploitation by publishers and other media such as the film and television industries.

In some cases the author-agent relationship may have been established without a formal contractual arrangement in place; however, as the media industries have become more complex and subject to change, it is nowadays considered advisable to have a document covering the relationship; this most commonly takes the form of a letter.

Dear

This letter, when signed by you and on behalf of (name of literary agency), will constitute an agreement between us.

1. You wish us to act as your exclusive literary agent throughout the world/in (territories) only and for that territory you will refer all approaches regarding your literary work to us. In turn, we shall represent your interests to the best of our ability and will do our best to maximise the potential of your works. We will use subagents where we deem this to be appropriate. We will not enter into any agreement on your behalf without your prior approval.
2. As author, you warrant to us that you are the creator and owner of the works you ask us to represent and that you have the full right and power to make this agreement. You guarantee that the works are original and contain nothing unlawful, nor do they violate any existing agreements or infringe any existing copyright; that they contain no blasphemous, indecent, defamatory, libellous or otherwise unlawful matter and that all statements therein purporting to be facts are true. You undertake to indemnify the (name of agency) against any loss, injury or damage resulting from any breach or alleged breach of this warranty.

3. We will make every effort to collect all monies due to you under contracts negotiated through us and will remit to you promptly money which we collected after deducting our agreed commission, any expenses incurred by us on your behalf and any other monies due to us from you. We will not enlist legal assistance in collecting such monies without prior authorisation from you.

4. Our commission will be a percentage of the income resulting from any contracts for the exploitation of works created by you which are entered into during the period that we act as your exclusive agent in the territories outlined in Paragraph (1) of this letter, and subsequently in cases outlined below. Our rates are as follows:

- | | | |
|-------|---|---|
| (i) | Books, serial publications and columns in newspapers and magazines: | % |
| (ii) | Radio, television and film | % |
| (iii) | One-off journalism and short stories | % |
| (iv) | Audio recordings, abridged and non-abridged | % |

Our commission fees cover editorial advice and the preparation of presentation material where we consider this appropriate. We will undertake appropriate editorial work in consultation with you to develop projects for publication or for exploitation in radio, televisual or cinematographic film media. Should you receive any income direct we shall be entitled to receive our appropriate commission from such income. You are responsible for any necessary registration of your earnings for tax purposes.

5. You undertake that (insofar as is practical) all contracts relating to the exploitation of your works entered into while we are your exclusive agent (whether or not negotiated through us) will include a provision for income payable under such contracts to be payable to us, both during and after the term of our exclusive agency period. You authorise us to make the aforementioned deductions from all such income.

It is important that you understand that it is your responsibility to ensure that you study and understand any contract negotiated by us on your behalf and that your signature to any such contract will constitute an acceptance of the terms negotiated by us. Please contact us if you do not understand or do not wish to accept any points in such contracts before signature.

6. Our agency shall be entitled to charge you for the following costs relating to works written by you:

- (i) books and proofs bought in by the agency for promotional purposes and for submission to publishers abroad,
- (ii) photocopying of manuscripts and sales material (e.g reviews and interview features),

- (iii) courier charges,
- (iv) other exceptional expenses which may be incurred with your prior approval.

We will not charge for other administrative, postage, telephone, fax or other overhead costs.

7. This exclusive agency arrangement will continue until terminated by either party by giving not less than ___ days' written notice to the other. On termination, unless we both agree otherwise, our agency will cease to represent you but we shall continue to be entitled to receive commission in respect of all income arising from contracts for your works entered into during the term of this agreement and from all extensions and renewals of such contracts. We shall also be entitled to commission from any arrangement for exploitation of your works made as a result of a submission made by us before we ceased to represent you even if the contract for that arrangement was made after we ceased to represent you.

8. Although we will take all reasonable care of manuscripts, outlines and other materials relating to your work whilst they are in our possession, we will not be liable in respect of their loss or damage. All manuscripts and outlines should be submitted to us in duplicate and we strongly advise you to retain a copy of all such material in your possession .

9. This agreement shall be interpreted and construed in accordance with the law of _____ and shall be subject to the jurisdiction of the _____ courts.

Please confirm your agreement to the above terms by signing and returning the enclosed duplicate of this letter. We look forward to working with you and to representing your work.

Signed

Date
For (name of agency)

I agree to the terms set out in your letter, of which this is a duplicate. I confirm that I have read and understood the terms of the letter.

Signed

Date

USER'S GUIDE for the AUTHOR/LITERARY AGENT LETTER OF AGREEMENT

Many authors develop a close personal relationship with their literary agents, particularly if that agent has nurtured the writer and fostered their creative abilities when they were relatively unknown. For many years, formal agreements spelling out the details of such arrangements were uncommon; however, today when established authors can change agents and publishing houses regularly and where substantial sums of money can be involved, it is considered advisable to have a document outlining the arrangement in place. Most commonly, this takes the form of a letter rather than a contract couched in legalistic language. Such letters may vary, but the sample provided seeks to include the key points on which both author and agent should be clear.

It is inadvisable for an author to sign with any agency which seeks to charge for editorial advice or to tie the author to representation for a set number of years or for a given number of works. Author-agent relations depend on a high degree of mutual respect and trust and if either side becomes disillusioned with the arrangement it is preferable to terminate it swiftly, provided that provision is made for the agent to continue to benefit from any arrangements set up during the life of the agency arrangement. If the author moves to an alternative literary agency, it is important to be clear which rights will be transferred over to that agency.

1. Most commonly, author and agent will be domiciled in the same country. Since a good agent will seek to make arrangements to exploit the works of the author both in the domestic market and abroad (either in the original language or through the medium of translation rights) most agents will seek to represent the author on a worldwide rather than a more restricted territorial basis. However, in turn the author should ask the agent what facilities they have to make arrangements abroad; for example, many agents may place translation rights through the medium of subagents in countries where such agents are dominant, e.g. in Japan. The commission charged by such subagents will normally be covered by the prime agency.
2. The author must warrant that the work is original, that it does not infringe copyright and that it does not contain any actionable material. The agency must be indemnified against any breach of this warranty.
3. It is the agency's responsibility to collect all monies due to the author from contracts negotiated by them; any legal action to recover monies must be approved by the author in advance.
4. Rates of commission are set out depending on the type of work the agency is being asked to represent on the author's behalf; they are calculated on the gross income received from the arrangements made. Rates may vary but could range from 15% for books, regular journalism columns, radio, television and film to 25% for short stories and occasional newspaper features. It is common for commission to be charged at 5%

above the normal rates for rights negotiated abroad (e.g. translation rights). The letter should define what editorial and creative presentation services are included in the commission rates. Agents are often prepared to devote considerable time and input to developing a writer for publication and to provide moral and creative support to established writers.

5. The author agrees that even for deals negotiated direct the agent is entitled to commission on gross receipts during the life of the agency arrangement and will provide that all revenue from such deals is paid via the agency which is authorised to deduct the appropriate commission.

6. The letter should define what administrative services will be charged to the author; these include the purchase of proofs and reading copies from publishers for promotional purposes (e.g. to overseas publishers, newspapers and magazines, film and television companies) as well as the photocopying of manuscripts and sales material and courier services; basic administrative costs will be absorbed by the agency.

7. The contract can be terminated by either party by giving adequate written notice; a minimum period of 30 days would be reasonable. The agency is entitled to continue to receive commission for the life of all deals negotiated or instigated by the agency during the term of the arrangement.

8. The agency will take reasonable care of all materials supplied by the author but cannot be liable for loss or damage.

9. The contract will normally be covered by the law of the country in which author and agent are domiciled and any disputes arising therefrom will normally be submitted to the local courts. Should they be domiciled in different countries, then a national law should be selected by the parties. As to jurisdiction, where both parties reside in different countries, they may decide to submit their dispute to arbitration rather than to state courts, in which case they should refer to arbitration by using a wording similar to that contained in Clause 21 of the Author/Publisher Agreement.