

PENGUIN USA

AGREEMENT, made this 23rd day of May, 1991 by and between New American Library, a Division of Penguin Books USA Inc., having its office at 375 Hudson Street, New York, New York 10014-3657, hereinafter termed "Publisher" and Andre Norton whose address is 1600 Spruce Street, Winter Park, Florida 32789 hereinafter termed the "Author"

WITNESSETH

WHEREAS, the Author has agreed to deliver to Publisher a manuscript tentatively entitled A VERY DICKENSY CHRISTMAS by Andre Norton hereinafter termed the "Work", and

WHEREAS, Publisher agrees to publish the Work and any revisions thereof, on the terms and conditions specified hereinafter,

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties covenant and agree with each other as follows:

AUTHOR'S UNDERTAKINGS

Publication
Rights

1. (a) The Author hereby grants and assigns to the Publisher for the full term of copyright as may now or hereafter exist, the sole and exclusive right to publish the Work in volume form in all languages and any revised editions thereof throughout the world, together with

(b) the following subsidiary rights*: publication or sale by book clubs, ~~condensations or abridgements; publication in magazines or newspapers (whether before or after book publication and whether in one or more installments); publication of the complete Work or selections therefrom in anthologies, compilations and digests; reprint editions; quotation in other works;~~ large print editions and Braille versions; audio and audio-visual discs, cassettes or other means of reproduction; information storage and retrieval including computer software.

(c) All rights not specifically granted to Publisher herein are reserved for the Author. During the term of this agreement, Author will not exercise or dispose of any reserved rights, nor cause to be published any version of the Work or any similar work, in such a way as to affect adversely the value of any of the rights granted to Publisher hereunder.

* Said rights in the Work shall be exercised by the Publisher solely in connection with the licensing of rights in the 1992 Roc Christmas anthology as a whole.

Title Length
and
Description

2. (a) The Title of the Work shall be determined by mutual agreement between the Author and Publisher.

(b) The length of the Work shall be approximately 6,673 words.

(c) The Work shall be a Christmas/holiday science fiction/fantasy story for the 1992 Roc Christmas anthology.

Manuscript
Delivery

3. (a) Author has delivered to Publisher one complete copy of the manuscript of the Work satisfactory in form and content to Publisher together with all necessary permissions and clearances, all at the Author's own expense.

(b) ~~In the event of non-delivery, Publisher shall not make any further payments to Author and Author shall repay to Publisher all monies previously paid by Publisher to Author. In the event Author does not promptly repay such monies Publisher shall have the right to offset such monies from monies due to Author's account pursuant to any other agreement between Author and Publisher and thereupon all rights granted then shall revert to Author. In the event of non-acceptance of a timely delivered manuscript, or any part thereof, which Publisher shall deem unsatisfactory in its sole discretion for any reason, the Author shall use his best efforts to resell the manuscript and Publisher shall revert all rights herein granted to accomplish such resale provided all monies previously paid by Publisher to Author shall be repaid to Publisher by Author out of the first proceeds of said resale.~~

(c) ~~If the physical condition of the manuscript is unsatisfactory for Publisher's and the printer's use, Publisher shall have the right, after giving the Author a reasonable opportunity to rectify the deficiency, to have all or a portion of the manuscript retyped or duplicated and to charge the reasonable cost thereof to the Author's royalty account.~~

(d) ~~The time of delivery in the manner specified is of the essence of this agreement.~~

(e) Author represents that (s)he shall have retained a copy of the manuscript, and that Publisher shall not be liable for any loss resulting to Author from the injury, destruction, or loss of the manuscript of the Work.

Proof
Corrections

4. The Author agrees to read, revise, correct, and return within fourteen (14) days of receipt all proofs supplied by Publisher. If alterations in the proofs are made at the Author's request (or because of the Author's failure to deliver accurate copy for the printer) which cost more than ten percent (10%) of the cost of composition, exclusive of the cost of correcting printer's and/or Publisher's errors, the Author shall be charged for such excess. All such charges shall be charged against any sums accruing to the Author hereunder.

Revised
Edition

5. Should the Author, if called upon by the Publisher, agree to edit, revise, and update the Work, the Author shall supply such new matter that the Publisher deems necessary. The terms and conditions of this agreement shall be applicable to revised editions of the Work except that Author's compensation for such revisions shall be at an amount to be mutually agreed upon and shall be deemed an additional advance against royalties; and the delivery schedule shall reflect the less time-consuming nature of revising rather than producing an original manuscript. In the event of the Author's neglecting or being unable by reason of death or otherwise to edit or revise the work, or supply such new matter, the Publisher may procure some other person to edit or revise the Work, or supply new matter, and may deduct the expenses thereof from the royalties payable to the Author, and in such revised edition may describe such person as editor or if at least fifty percent (50%) of the work is revised, as coauthor. If the royalty rates provided in Paragraph 10 have royalty rate escalators, the rate on the new edition shall begin at the original rate provided for the first edition.

Author's
Next Work

~~6. The Author agrees to offer to Publisher in good faith the same exclusive rights contained herein in his/her next written book-length work whether written under Author's real name or any pseudonym, and shall submit thereof to Publisher before offering such rights to any other publisher directly or indirectly. It is understood that should Publisher and Author fail to reach an agreement, Author shall be free to offer said rights elsewhere provided; however, that the Author will not license the publication rights in the Work to any other publisher on terms equal to or less favorable than those offered by Publisher. Author agrees that Publisher shall not be required to exercise this option as to Author's next book-length work until after the acceptance of the Work pursuant to this agreement.~~

Warranty
and
Indemnification

7. (a) Author warrants with respect to the Work and every part thereof, that (s)he is the legal proprietor of all rights therein hereby granted and has the full power to enter into this agreement, that the Work has not heretofore been published, is original, not in the public domain, free of any lien, claim or debt of any kind, and that, as submitted, the Work will not violate any statutory or other copyright or any other right of third parties (including right of privacy), or be libelous or obscene, or in any way illegal and that any recipe, formula or instruction contained in the Work is not injurious to the user.

(b) Subject to subparagraph 7(c) the Author shall indemnify Publisher, its licensees and assigns against any loss, expense or damage, including any reasonable attorneys' fees, occasioned by any claim, demand, suit, or recovery arising out of the breach or alleged breach of any of the foregoing warranties, but shall not be liable for any matter inserted in the Work by Publisher or its licensees. All warranties and indemnifications made by the Author herein shall survive the termination of this agreement.

(c) Publisher agrees to designate Author as to the Work as an additional insured in any Errors and Omissions insurance policy which Publisher may purchase at its expense covering its book publishing activity and shall, except as limited hereinbelow, look solely to the proceeds of such insurance coverage for payment of any sums that may become due from Author by reason of the indemnification undertaken by the Author in subparagraph 7(b) hereinabove regarding risks which are covered by Publisher's Errors and Omissions insurance policy except if the Author's breach of warranties set forth in subparagraph 7(a) hereinabove is done wilfully. Author's obligation to indemnify Publisher shall be limited to thirty-seven thousand, five hundred dollars (\$37,500) which sum is less than one-half (½) of the one hundred thousand dollar (\$100,000) deductible presently in effect on the Errors and Omissions insurance policy. Notwithstanding the foregoing, Author acknowledges that the limits of liability may effectively be decreased or exhausted as a result of occurrences during a year related to other works and other

additional insureds and that Author's liability to Publisher in excess of such coverage is not affected hereby. In consideration for the foregoing, Author agrees that (s)he will fully cooperate with Publisher in the defense of any claims, that Publisher and/or its insurer shall have the right to select counsel, and that Publisher shall have the right to settle any claim upon the terms and conditions it and/or its insurer deems satisfactory.

PUBLISHER'S UNDERTAKINGS

Agreement
to Publish

8. Within 24 months of the Publisher's acceptance of the complete and finished manuscript of the Work, the Publisher agrees to publish the Work, at the Publisher's own expense, in such style and manner and at such price as the Publisher deems best. The Publisher shall not be held responsible for delays caused by circumstances beyond its control. In no event shall the Publisher be obligated to publish or to continue to publish the Work if, in the Publisher's opinion, the Work violates the common law or statutory copyright, or the rights of privacy, publicity, or any other right of any person, or contains libelous or obscene matter.

The Publisher shall have the right to have the Work reviewed by its counsel and, if the Author refuses to make changes or deletions requested by the Publisher's counsel, or if, notwithstanding such changes or deletions, there is still risk of litigation in the Publisher's opinion, the Publisher may postpone publication or may, by written notice to the Author, decline to publish the Work. If the Publisher notifies the Author that it declines to publish the Work for such reason, the Author shall repay to the Publisher all monies advanced to the Author, and this agreement shall terminate. No changes made in the Work upon the advice of the Publisher's counsel shall be deemed to diminish the Author's warranties and indemnities under this Agreement.

If the Publisher has not published the Work within the time specified, unless publication has been delayed for any reason stated herein, and if the Publisher after written demand from the Author, does not schedule the Work for publication within twelve (12) months following receipt of such demand, the Author shall have the right, as the Author's sole and exclusive remedy, to terminate this agreement by written notice to the Publisher, and to keep any advances theretofore paid to the Author hereunder.

Copyright

9. The Publisher shall register the copyright in the Work with the United States Copyright Office in the name of: **Andre Norton** and shall publish the Work with the copyright notice in such name pursuant to the United States Copyright Act and the Universal Copyright Convention. Both parties agree to execute, at any time, all such papers and documents as may be advisable, in the Publisher's opinion, in order to protect, assign, record, renew, or otherwise effectuate the rights herein, whether granted to the Publisher or reserved by the Author.

Royalty
Advance

10. Publisher shall pay to Author as a royalty advance against all royalties and other payments to be earned, pursuant to this Paragraph 10, the sum of **Six Hundred Sixty-seven Dollars and Thirty Cents (\$667.30)**, (representing ten cents (\$.10) per word) payable as follows:

\$667.30 - upon signing of this agreement

Publisher shall credit the Author with the following royalties:

(a) For English Language Softcover Editions Published By Publisher:

(i) on net mass market softcover copies sold by Publisher in the United States and the territories under its administration, a royalty of one and one-third percent (1 1/3%) of the U.S. suggested retail list price per copy.

(ii) on net non-mass market (trade) softcover copies sold by Publisher in the United States and territories under its administration, a royalty of one percent (1%) of the U.S. suggested retail list price per copy on the first fifty thousand (50,000) copies sold and one and one-fourth percent (1 1/4%) thereafter.

(iii) (a) on net copies sold by Publisher in Canada or sold at a discount of sixty percent (60%) or more or sold through special arrangements with book clubs, a royalty of one and two-thirds percent (1 2/3%) of the net amount Publisher receives.

(b) on net copies sold by Publisher outside the United States and the territories under its administration for export other than Canada, one and two-thirds percent (1 2/3%) of the net amount Publisher receives.

(b) For English Language Hardcover Editions Published By Publisher:

(i) on net copies sold by Publisher in the United States and the territories under its administration, a royalty of one and two-thirds percent (1 2/3%) of the U.S. suggested retail list price per copy on the first five thousand (5,000) copies sold, 2.08 percent (2.08%) on the next five thousand (5,000) copies sold, and two and one-half percent (2 1/2%) thereafter.

(ii) on net copies sold at a discount in excess of fifty percent (50%) a royalty of one and two-thirds percent (1 2/3%) of the net amount Publisher receives. In the event Publisher's standard discount for regular sales shall exceed fifty percent (50%) this subparagraph shall be deemed to automatically change from fifty percent (50%) to the new standard higher discount for regular sales.

(iii) on net copies sold of any cheap hardcover edition which Publisher publishes at a price not more than two-thirds of the original suggested retail price, a royalty of one and two-thirds percent (1 2/3%) of the net amount Publisher receives; but if Publisher licenses publication of such edition to another publisher, the Author shall receive eight and one-third percent (8 1/3%) of the amount received by Publisher. Author agrees that Publisher may, after one year from the publication of the Work, bring out such cheap hardcover editions or authorize another publisher to do so, and that if Publisher adjusts the price of copies of the regular hardcover edition remaining unsold in the hands of booksellers, the royalty on such copies shall be adjusted to one and two-thirds (1 2/3%) of the net amount which Publisher receives in excess of manufacturing cost.

(iv) on net copies sold by Publisher outside the United States and the territories under its administration, or within the United States for export, or at a price lower than the lowest regular wholesale price through special arrangements with book clubs, reading circles, sales to employees for personal use, a royalty of one and two-thirds percent (1 2/3%) of the net amount Publisher receives. However if the Work is licensed to a recognized book club which pays an outright sum or royalty for a license to publish such Work for distribution to its members or subscribers, the Author shall receive eight and one-third percent (8 1/3%) of the net amount Publisher receives.

(c) For all editions published by Publisher: (Note: Copies covered by this subparagraph will not be included in computing royalties in subparagraphs 10(a) or 10(b)):

(i) on copies destroyed, given away, or sold at or below cost, no royalties shall be paid. On overstock or damaged copies, Publisher may at its option dispose of all or part of the stock at the best prices it can secure and will pay a royalty of one and two-thirds percent (1 2/3%) of the net amount received in excess of manufacturing cost.

(ii) on net copies sold or distributed direct to the consumer through special arrangements with charitable, fraternal or professional associations or similar organizations, or through the medium of mail order, direct mail, or premium sales, a royalty of 0.83 percent (0.83%) of the net amount Publisher receives.

(iii) on sales of sheets to prebinders: a royalty of eleven and two-thirds percent (11 2/3%) of the prevailing royalty rate then in effect.

(iv) Inasmuch as Publisher has a freight pass through policy with Publisher's customers for hardcover editions of the Work published by Publisher and in the event that Publisher shall initiate a freight pass through policy with Publisher's customers for non-mass market (trade) softcover editions of the Work published by Publisher, wherever in this Agreement Author is to be credited with royalties based upon "U.S. suggested retail list price" Author shall instead be credited with royalties based upon invoice price. "Invoice price" shall be defined as the price shown on Publisher's invoices to its customers upon which Publisher's discounts to its customers are calculated.

(v) On net copies sold from a reprinting of 3,000 copies or less on hardcover and non-mass market (trade) softcover editions and 5,000 copies or less on mass-market softcover editions made two years or more after first publication, one-half of the applicable royalty rates; this provision being made for the purpose of keeping the Work in print and in circulation as long as possible.

(d) (i) For audio cassettes (or other sound recordings) published/distributed by Publisher: on net copies sold by Publisher one and one-third percent (1 1/3%) of the net amount Publisher receives

(ii) For sound recordings including audio cassettes licensed by Publisher: Eight and one-third percent (8 1/3%) of the net amount received by Publisher.

(e) For Domestic Hardcover Editions Licensed By Publisher: eight and one-third percent (8 1/3%) of the net amount received by Publisher.

(f) For Foreign English Language Hardcover and Softcover Editions Licensed By Publisher: twelve and one-half percent (12 1/2%) of the net amount received by Publisher. If Publisher sells sheets or bound books at a price inclusive of royalty, Author shall receive eight and one-third percent (8 1/3%) of Publisher's net profits (gross profits less manufacturing costs.)

(g) For Foreign Language Editions Licensed by Publisher: twelve and one-half percent (12 1/2%) of the net amount received by Publisher.

(h) On all subsidiary publication rights granted in sub-paragraph 1(b), the Author shall be credited with eight and one-third percent (8 1/3%) of the net amount Publisher receives; for any such subsidiary rights exercised by the Publisher, Author shall be credited with the applicable royalties set forth in this Paragraph 10.

(i) Publisher shall render to the Author on or before March 31st and September 30th of each year statements of net sales up to the preceding December 31st and June 30th respectively, and shall make simultaneous settlement in cash. In making accountings, Publisher shall have the right to allow for a reasonable reserve against returns. If royalties in excess of the guaranteed advance payment have been paid on copies which are thereafter returned, Publisher shall have the right to deduct royalties on such returned copies from future payments under this or any other agreement between the parties or in the event there are no such future payments due at the time of the next accounting, Author will promptly return the overpayment. In the event of a claim or suit against Publisher which, if sustained, would constitute a breach of any of the Author's warranties pursuant to this or any other agreement between the parties, Publisher shall have the right to withhold royalties and other payments to the extent Publisher deems reasonable in light of the claim which may be due pursuant to this agreement pending a final determination thereof. In the event that a suit shall not be commenced for a period of one (1) year from the assertion of such claim, all withheld royalties and other payments shall be payable at the end of the next succeeding accounting period. Publisher shall have the right to apply any of said withheld royalties and other payments then or thereafter accruing hereunder in reduction of the obligation of the Author under Paragraph 7 of this agreement.

On written request, no more than twice a year, Publisher agrees to furnish to Author the following information as to the Work:

- (i) number of copies printed; and
- (ii) number of copies shipped; and
- (iii) number of copies sold; and
- (iv) number of copies returned; and
- (v) number of copies being held as a reserve against returns.

Audit

Upon forty five days written notice Author may cause to be examined through an independent Certified Public Accountant the books of account of Publisher insofar as they relate to the sale or the licensing of the Work at his own expense unless errors amounting to five percent (5%) or more of the total sums earned by Author pursuant to his agreement shall be found to his disadvantage, in which case the cost shall be borne by Publisher. Audits shall occur no more than once a year during the normal working hours of Publisher. Publisher shall not be required to retain supporting records for a period of more than two years after the rendition of any statement, such statement being deemed conclusive for all purposes after the elapse of such two-year period.

Author's Agent

11. Author represents to Publisher that Author is not represented by an agent and shall hold Publisher harmless that no other party whatsoever has the right to receive any portion of any sums due Author pursuant to this agreement.

Author's Copies

12. Publisher shall deliver to the Author without charge ten (10) copies of each edition of the Work published by Publisher and shall permit the Author to purchase additional copies at a discount of forty percent (40%) from the retail price. The Author agrees not to resell any of such copies.

Exhaustion
of Edition and
Termination

13. (a) If the Work goes out of print in all editions and if Publisher fails to reprint or to cause a licensee to reprint an edition within twelve (12) months after receipt of a written demand from the Author, provided Author is not in default or breach of this agreement, the Author may terminate this agreement by written notice. Publisher shall notify Author within six (6) months of such demand of its intention to reprint the Work or revert its rights in the Work.

(b) For thirty (30) days after the date of such termination, Author shall have the right, but not the obligation, to acquire from Publisher (a) any printer's materials under the control of Publisher, at the fair market value thereof; and/or (b) any inventory of the Work under control of Publisher, at the manufacturing cost of last printing. If Author does not exercise such right within such thirty (30) days, Publisher may dispose of any such materials or inventory without any further obligation to the Author except payment to Author of any earnings due Author. Any inadvertent disposal or destruction of such printer's materials or inventory by Publisher depriving Author of his or her right to purchase such materials or inventory shall not be deemed a breach of this agreement.

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

Rights
Surviving
Termination

(d) In the event of the termination of this agreement, any rights reverting to the Author shall be subject to all licenses and other grants of rights theretofore made by Publisher to third parties, and to the rights of Publisher to the proceeds of such agreements subject to the payment to Author of Author's share of such proceeds.

14. In the event that the Publisher shall be adjudicated a bankrupt, or a receiver or a trustee shall be appointed for all or substantially all of the Publisher's property, and the order appointing the receiver or trustee shall not have been vacated within sixty (60) days from its entry, or if the Publisher shall seek to take advantage of any so-called insolvency law, all rights hereby granted to the Publisher shall forthwith revert to the Author, and this agreement shall thereupon terminate.

JOINT UNDERTAKINGS

Defense of
Copyright

15. If during the existence of this agreement the copyright shall be infringed, or a claim for unfair competition shall arise from the unauthorized use of the Work or any part thereof, including, but not limited to, the format thereof or the characters or situations contained therein, the Publisher may, at its own cost and expense, take such legal action, in the name of the Author if necessary, as may be required to restrain such wrong or to seek damages therefore. The Publisher shall not be liable to the Author for the Publisher's failure to take such legal steps. If the Publisher does not take such action within a reasonable time, the Author may do so, at Author's own cost and expense and Author shall retain all money damages recovered. If the Publisher does take such legal steps all money damages recovered shall be applied first toward the repayment of the expense of bringing and maintaining the action, and thereafter the balance shall be divided equally between the Author and the Publisher.

Delivery of
Documents

16. The parties shall take any and all steps and execute and deliver any and all documents necessary to effectuate the terms and the intent of this agreement.

Construction

17. This agreement shall in all respects be interpreted, construed and governed by the laws of the State of New York relating to contracts entered into and to be fully performed therein.

Modification
and
Waiver

18. This agreement may not be modified or altered except by written instrument executed by the Author and Publisher. No waiver of any term or condition of this agreement or of any part thereof shall be deemed a waiver of any other term or condition of the agreement or of any later breach of the agreement or any part thereof.

Notices

19. All notices to be given hereunder by either party shall be in writing and shall be sent by registered mail to the other party at her/his or its address as it is given in this agreement, unless such address is changed by a notice in writing similarly given.

Captions
and
Marginal Notes

20. Captions and marginal notes are for convenience only and are not to be deemed part of this agreement.

Assignment

21. This agreement shall be binding upon and inure to the benefit of the heirs, executors administrators or assigns of Author and upon the successors or assigns of Publisher, but no assignment shall be binding on either of the parties without the written consent of the other. For the purposes of this agreement, reference to Publisher shall include any assignee, subsidiary, affiliate, or successor of Publisher by reason of merger, consolidation, sale or exchange of substantially all of the assets of Publisher or other reorganization. No such merger, consolidation, sale or exchange of assets of Publisher or other reorganization shall be deemed to be a breach of the provisions of this paragraph prohibiting assignment nor shall any assignment to a related corporate company. The Author shall have the right to assign any amounts due hereunder to the extent such amounts become due after the Publisher has received written notice from the Author of such assignment.

IN WITNESS WHEREOF the parties hereto have executed and duly attested this agreement as of the day and year first above written.

WITNESS to the signature of

NEW AMERICAN LIBRARY
A Division of Penguin Books USA Inc.



Judith Morse
Director
Contracts and Permissions



by
Arnold Dolin
Vice-President

WITNESS to the signature of

AUTHOR

by
ANDRE NORTON

Author is a citizen of
and resides in

Author's Social Security Number or
Tax Identification Number is: