CHAPTER 2: CONTRACT BASICS
AT ITS CORE, A CONTRACT IS SIMPLY AN agreement between parties to determine the legal rights and obligations they have to each other. Often this is in exchange for money, but it could also be in exchange for a promise to do (or not do) something in the future. Contracts can be as simple as a casual promise between friends (“If you drive me to the movies, I’ll buy your ticket”) or as complex as a multi-national treaty.

Contracts can be created in a variety of ways: orally (“Yes, let’s go to the movies”); in writing (“Here’s a cocktail napkin with an IOU for one movie ticket”); or through your conduct (driving your friend to the theatre). Contracts can even be implied in certain circumstances. Contracts can also be formed through a series of interactions. For example, a contract could be
formed through a thread of emails. But for the purposes of this guide, the terms “contract” or “agreement” refer to a formal written publication contract. The parts of a written contract are its “terms,” “clauses,” or “provisions,” which all mean the same thing.

Certain kinds of contracts, such as those that transfer exclusive copyright rights, must be in writing and signed by the book’s author (or her representative) to be valid and enforceable. (See Chapter 5: The Grant of Rights Clause for more information on assignments and exclusive licenses). For example, if Alyssa Author wants to give Polly Publisher the exclusive right to reproduce and distribute her work, she needs to do so explicitly in a signed, written document.

Likewise, contracts that cannot be performed within one year must be in writing and signed. For example, if Polly Publisher agrees to publish Alyssa Author’s book eighteen months after delivery of an accepted manuscript, their agreement has to be in writing and signed to be binding.
A best practice in negotiating book contracts is to make sure everything the parties agree to is written down, and that everyone signs the document reflecting this agreement. This provides a record of the agreed-upon terms and helps ensure that everyone understands the substance of the agreement.

AREN’T ALL PUBLICATION CONTRACTS THE SAME?
There is no such thing as a “standard” contract that is applicable to all types of publishers and all books. A publisher’s willingness and ability to accommodate your preferred terms will be influenced by its business model. And while there are certainly core terms you’re likely to find in most publication contracts, how these provisions are organized and the language used to describe them will differ, sometimes significantly.

If you haven’t done so already, it is a good idea to set aside time to research potential publishers for your project before you (or your agent) start shopping your book so you can determine if your publishing needs are aligned with a particular publisher’s business goals. For example, it is uncommon for university presses to offer sizeable advances to authors—most don’t
offer advances at all—whereas advances are generally expected in trade publishing. Similarly, university presses may be more amenable to allowing books to be distributed under open access terms (like a Creative Commons license) than a trade publisher, since they are usually less concerned with maximizing profits and open access may align with their academic mission. On the other hand, trade publishers may offer advantages for certain authors. For example, they often have larger distribution networks (though online bookselling has diminished this advantage somewhat), and they may offer better marketing and advertising support. Not all publishers within a category operate in exactly the same way, however, or for the same reasons. And many publishers have imprints that publish different genres of books and follow different business models (and some university presses have substantial trade programs). The bottom line: It pays to do your research so that you can select a publisher with a business model that aligns with your interests. This increases the likelihood that you’ll successfully negotiate a publication contract that meets your needs.

Notwithstanding the importance of selecting a publisher that has a business model that is compat-
ible with your goals, know that each publisher has its own preferred terms, some of which can be quite idiosyncratic. Many contracts contain terms that have been added piecemeal over time in response to specific negotiations. For example, once upon a time, a publisher decided it would be a good idea to protect itself in case it was sued for copyright infringement caused by one of its authors. Poof! An intellectual property indemnity clause was added to the publisher’s contract. Another time, an author wasn’t happy with the cover art her publisher picked for her last book and wanted to have a say over what art was used in the future. Tada! Approval rights were born. Because terms evolve over time, contracts often seem like the legal equivalent of Dr. Frankenstein’s monster, with parts drawn from different sources and grafted together in an unruly whole. Or, in slightly less ghoulish terms, many contracts are like the Chartres Cathedral—the spires were built at different times in completely different styles, but the building still stands up.

This is important because you may encounter terms in your publisher’s standard contract that are relics of past deals and that are inappropriate for your particular project. Not all provisions in a publication
contract work equally well for every author—one size does not fit all—and ideally a contract should reflect an individual author’s goals and priorities.