Steve Sowle, a chess grandmaster, is negotiating with Santana Press about publishing his autobiography, *Sowle Sacrifice*. Sowle is also the President and CEO of Chess Press, the publisher of *Play Chess with Sowle*, a series of books about how to play chess. Sowle has transferred the copyright of *Sowle Sacrifice* to Chess Press and is negotiating with Santana Publishing on behalf of Chess Press. In the middle of the negotiations, Sowle meets with Carlos, who runs a marketing firm. Carlos explains that his firm, Oye Como Va, specializes in social media marketing and that he is confident that marketing in this way will increase the sales of *Sowle Sacrifice*. Carlos says, “Our marketing will get you double what you pay us,” and he produces data to back this up. Sowle is skeptical at first. He explains that he once ran a marketing company, and he tells Carlos, “I was one of the best. If you fail to perform, I will do the marketing myself. I still have the knack.” Finally, however, Sowle says, “Send me a proposal.” Carlos sends Sowle a letter explaining in detail the options Oye Como Va offers its clients. He includes an unsigned copy of the firms standard form agreement between Sowle and Oye Como Va says in the letter, “I numbered the various options we offer in the letter. Just circle the numbers of the options you want and attach the letter to the contract. Sign the agreement and return it to me. I am sure we have a deal, but I have to run it by my partner first. When he gives his OK, we will sign the agreement on behalf of Oye Como Va.”

Is the letter from Carlos an offer?

1. Yes
2. No

Sowle does just as Carlos asks. Carlos’s partner does give his OK, and, as representatives of Oye Como Va, they both sign and return the agreement (along with the letter with the circled options) to Sowle; they include a note that says, “We are delighted our deal is done in accord with the agreement and attached letter with circled options. We wanted to let you know that we have added a new service, described below. That service is included at the same price. Interested?” Sowle signs and returns the agreement, but he never responds to the note.

Pick one:

1. Oye Como Va made an offer in the signed agreement which Sowle accepted.
2. Oye Como Va made an offer in the signed agreement but Sowle did not accept it.
3. The inclusion of the note means that the signed agreement is not by itself an offer.

In reliance on the agreement with Oye Como Va, Sowle spends $2,000 on an expert to develop his own LinkedIn and Facebook sites. Oye Como Va does not require this, but Sowle correctly believes that good looking sites of his own will supplement Oye Como Va’s efforts.

 A bit later, Santana Publishing sends Sowle its standard publishing contract in a letter that says, “Enclosed please find our signed contract for your consideration and acceptance.” It specifies all relevant details of the deal. Among other things, it contains these two clauses:

*Entire agreement clause*: this agreement represents the complete and final statement of the parties’ obligations. Neither party is relying on any oral or written representations not contained in this agreement.

*Other royalties*: On translations, licensing sales, electronic database sales, excerpts, abridgments, direct response sales, deep discount sales (sales at a discount of fifty percent or greater of the Publisher’s established list price of the Work), the Publisher shall pay royalties at one-half of the rate set forth in Paragraph 6(b) above in respect of the Publisher’s net receipts. In the event the Work is included in an electronic database with other works, or is otherwise exploited in combination with other works, royalties shall be apportioned by Publisher in its sole discretion, exercised in good faith.”

Sowle is concerned that the “other royalties” provision may mean that Santana Publishing can license the entire work to Google Books and determine the royalty due Sowle at its discretion. He calls Santana Press to talk with its president, who says, “No problem. We will agree that if Santana Press licenses *Sowle Sacrifice* to Google Books, the press shall pay royalties at one-half of the rate set forth in Paragraph 6(b) above in respect of the Publisher’s net receipts.” Sowle says, “Good! It’s a deal then?” The president responds, “Deal. Put that in your acceptance if you want.” Later, just before he signs the publishing agreement, he calls the president of Santana Press and says, “We have talked about a lot of things in our negotiations. I want everything to be clear. I note the entire agreement clause, and I would like us both to acknowledge now that the written agreement really is the complete and final statement of our obligations.” The president responds, “So acknowledged.” When Sowle, as President of Chess Press, signs and returns the agreement, he includes a note that says in full, “I hereby accept your kind offer to publish *Sowle Sacrifice*. Should Santana Press license *Sowle Sacrifice* to Google Books, it shall pay royalties at one-half of the rate set forth in Paragraph 6(b) above in respect of the Publisher’s net receipts.”

Assuming that the presentation of the standard contract via the letter was an offer, did Sowle accept it?

1. Yes
2. No