

Model standard contract

1. Memorandum of Agreement

Made this day of between (hereafter called the Author, which expression shall, where the context admits, include the Author's executors, administrators and assigns) of the one part and (hereafter called the Publisher) of the other part.

Whereby it is mutually agreed as follows concerning a work original to the Author and entitled (hereafter called the Work).

2. Rights granted – copyright and licence territories

The Publisher, subject to the conditions following, shall for a period of years from the date of delivery of the Work have exclusive licence to produce, publish and themselves further to license the publication of the Work in the English language: (a) in print in New Zealand and (b) in digital form in New Zealand in the digital form(s) and format(s) as specified in Appendix I only. If the Work is still in print at the end of years after delivery of the Work, the publisher shall have first right of refusal to enter into a further agreement with the Author. The copyright in the Work shall remain the property of the Author.

3. Delivery of the work

The Author shall deliver the Work together with any illustrations and/or other material in accordance with the form requested by the publishers not later than

4. Acceptance and conditions of acceptance

The Publisher shall accept the Work provided that the Work as delivered by the Author conforms to a reasonable extent in nature, scope and style to the specifications agreed upon; and they shall have the right as a condition of acceptance to require amendments by the Author to ensure that the Work does so conform. If the Author is unable or unwilling to undertake such amendments or arrange for them to be made within such reasonable period of time as shall be mutually agreed, then the Publisher shall after consultation with the Author have the right to employ a competent person or persons to make the amendments and any fees payable shall be deducted from any sums due to the Author under this agreement.

5. Competing works

The Author shall not during the continuance of this Agreement without the previous written consent of the Publisher prepare or publish any work of a nature which may be reasonably considered by the Publisher to be likely to compete with or to affect prejudicially the sales of the Work or the exploitation of any rights in the Work granted to the Publisher under this Agreement.

6. Publisher's responsibility to publish

The Publisher shall unless otherwise mutually agreed or unless prevented by circumstances beyond their control, at their own risk and expense produce and publish the Work in print within months.

The Publisher shall unless otherwise mutually agreed or unless prevented by circumstances beyond their control, at their own risk and expense also produce and publish the Work in at least one of the digital forms and format(s) as specified in Appendix I within months. In the event that the Publisher fails to publish the Work in the stipulated digital format within the stipulated timeframe, then the Author may, by notice in writing to the Publisher, terminate this Agreement with respect only to the publication of the Work in digital formats.

7. Textual copyright material

Should the text of the Work contain extracts from other copyright works, the Author shall at his/her own expense obtain from the owners of the respective copyrights permission to reproduce such extracts in the Work.

8. Illustrations

The Author and Publisher shall meet in equal share the cost of all illustrations for inclusion in the Work supplied by the Author to the requirements of the Publisher. The Publisher shall take reasonable care of the illustrations supplied but shall not be liable for accidental damage thereto or loss thereof while in the absence of negligence on his or her part or on the part of his or her employees. All original artwork supplied by the Author or an illustrator in respect of the Work shall be insured by the Publisher, including insurance to cover time spent restoring lost, damaged or destroyed artwork.

9. Index

If in the reasonable opinion of the Publisher an index is required, it shall

be supplied by the Author. If the Author is unable to supply the index, then the Publisher shall arrange for it to be done and the cost shared equally between Author and Publisher.

10. Production, promotion and negotiation responsibility

The negotiation of and final agreement to terms of exploitation of rights granted under this Agreement shall be in the control of the Publisher, who shall wherever practicable consult the Author concerning the sale of overseas, paperback, serial, book club and digital rights. The Author shall be shown artist's roughs or proofs of the jacket/cover design and shall be consulted thereon and on the jacket/cover copy in good time before they are passed for press.

Subject only to the above, all matters relating to the publication of the Work including the paper, printing, design, binding and jacket or cover, the manner and extent of promotion and advertising, the number and distribution of free copies for the press or otherwise, the print number and the price and terms of sale of the first or any subsequent edition or impression of the Work shall be under the entire control of the Publisher.

The Author undertakes to be available, if so requested in advance by the Publisher, to assist the Publisher in the promotion of the Work.

The Publisher undertakes to set the name of the Author in its customary form with due prominence on the title page and on the binding, jacket and/or cover of every copy of the Work published by them and shall use their best endeavours to ensure a similar undertaking is made in respect of any editions/forms of the Work licensed by them.

The Publisher undertakes to provide the right of approval (not to be unreasonably withheld) to decisions concerning Publisher's model and contracts for exploitation of digital rights.

11. Proofs and author's corrections

The Publisher undertakes to consult the Author on the editing of the Work and to send the Author a full set of typeset proofs for final correction before the Work is sent to the printer. The Author undertakes to read, check and correct the proofs and return them to the Publisher within fourteen (14) days of receipt of the same, and shall bear the expense of all corrections (other than printers' errors) in excess of ten per cent (10%) of the cost of composition. The Publisher shall inform the Author of the amount of

any excess proof correction charges within one month after receipt of the printers' bill. Any amount may be deducted from any sums due to the Author under the terms of this Agreement.

All parts of the Work supplied by the Author shall, when done with, be returned to the Author if he/she so requests in writing.

12. Warranties and indemnities

The Author warrants to the Publisher that the Work is an original work and that the Author is the sole proprietor and that the Work does not infringe any existing copyright and has not been published in book form in the territories covered by this agreement and that it contains nothing which to the knowledge of the Author is libellous. The Author will indemnify the Publisher against loss, injury or damage (including any legal costs properly incurred) occasioned to the Publisher in consequence of any wilful breach by the Author (unknown to the Publisher) of this warranty.

The Publisher reserves the right, having first notified the Author, to alter the text of the Work as may appear to them appropriate for the purpose of modifying or removing any passages which in their absolute discretion or on the advice of lawyers may be considered objectionable or actionable at law, but any such alteration or removal shall be without prejudice and shall not affect the Author's liability under this warranty and indemnity.

13. Royalties and fees payable on own editions

The Publisher shall pay royalties to the Author at the following rates:

- i. 10% of RRP on the first 5000 copies sold (or 17.5% of price received by publisher); 12.5% (or equivalent) on the next 5000 copies sold and 15% (or equivalent) thereafter.
- ii. On copies sold overseas a royalty rate to be mutually agreed.
- iii. On remainder copies sold below cost no royalty shall be paid.
- iv. 35% of list price for a maximum period of 3 years, which may be renewed by mutual agreement in writing, from the sale of the digital forms of the Work as specified in Appendix I published by the Publisher.

14. Royalties and fees paid on licensed editions

Subject to the terms and conditions set out in this Agreement, the Publisher shall make the following payments on printed editions licensed

to another publisher: 75% of the net amount received by the Publisher.

Subject to the terms and conditions set out in this Agreement the Publisher shall make the following payments in respect of digital rights licensed to a third party:

- i. 75%–80% of the net amount received by the Publisher in respect of the digital forms of the Work as specified in Appendix I published under licence by a third party; and
- ii. 75%–80% of the net amount received by the Publisher in respect of all other digital forms of the Work published under licence by a third party.

15. Royalties and fees paid on subsidiary rights

(a) This agreement shall not be construed as granting or conveying to the publisher any rights or interests other than those which are specifically set forth herein. The Author agrees that the following subsidiary rights shall be licensed, subject to clause 15(b), for a maximum period of three (3) years from the signing of the Agreement at the rate of 75%, and may be renewed by mutual agreement in writing: anthology, digest book, periodical, serial, strip cartoon, translation, dramatisation and documentary, radio, film, television and merchandising.

(b) The following provisions apply to the subsidiary rights licensed above:

- i. The Publisher undertakes to consult with the Author before finally signing off on any of the above-mentioned rights.
- ii. The Publisher agrees to show the Author all applicable documentation if the Author so wishes.
- ii. The Author may terminate the licence for each such subsidiary right in the event that the Publisher has not commercially exploited that right within one (1) year of the first publication of the Work.

(c) The royalty on reprographic rights through Copyright Licensing New Zealand shall be 50%.

(d) Non-commercial rights for the sight-impaired – the right to convert the work into Braille or to record for the sole use of the sight-impaired there – are licensed free of charge.

(e) Digital rights that are not explicitly licensed under this agreement, are reserved, and may only be exercised by the Publisher under a separate mutually agreed contract.

16. Advance payments

The Publisher shall pay the Author the sum of \$ in advance and on account of all sums due under this Agreement, payable on signature, payable on delivery of the finished manuscript, payable on publication of the Work. This advance may not be charged against royalties on any other book by the Author.

17. Accounting

- (i) Royalty accounts shall be made up half yearly to 30 June and 31 December and shall be rendered and settled a maximum of three months thereafter. Such accounts will show the number of copies printed, sold, spoiled, given away, destroyed and remaining in stock, together with a full accounting of all payments due. Any monies due in respect of subsidiary rights shall be paid similarly and shall not be offset against royalty advances in respect of primary publication, except that advances in respect of subsidiary rights shall not be held until the next accounting period but be paid within one month of receipt.
- (ii) The Author or his/her authorised representative shall have the right upon written request to examine the records of accounts of the Publisher insofar as they relate to the sales and receipts in respect of the Work, which examination shall be at the expense of the Author unless errors exceeding 10 per cent of such sales and receipts to his/her disadvantage are found, in which case the cost shall be borne by the Publisher.
- (iii) Any overpayment made by the Publisher in respect of the Work may be deducted from any sums subsequently due to the Author from the Publisher in respect of the Work.

18. Copyright

The copyright in the Work shall remain the property of the Author and the copyright notice to be printed in every copy of the Work shall be in the Author's name with the year of publication.

19. Moral rights

The Author hereby asserts to the Publisher and to their licensees his/her moral rights (a) to be identified as the Author of the Work; and (b) to the integrity of the Work as defined under the Copyright Act 1994. The Publisher undertakes to print on every edition of the Work published by

them the words, "The author has asserted his/her moral rights".

20. Infringement of copyright

If during the life of the Agreement the Publisher shall believe that the copyright or some proprietary right to the Work is being infringed or injured by the act of another, the Publisher shall give written notice to the Author. If, after conference, the Publisher and Author shall proceed jointly, then the costs and recovery arising out of any action shall be shared equally. If no agreement is reached for joint action either party may proceed as they see fit, bearing all costs incidental thereto and enjoying all the benefits arising therefrom. If one party shall decline to proceed, they shall upon being indemnified against all costs connected with any proceedings, execute all instruments necessary or convenient to permit the other party to proceed at their own cost either in their own name or in their joint names as the law may require or provide.

21. Author's copies

The Author shall be entitled to receive on publication presentation copies of the first edition and three copies of any subsequent revised edition of the Work and shall have the right to purchase further copies at trade terms. The Publisher shall also send the Author a copy of each sub-licensed edition on receipt from the sub-licensing publisher.

22. Revision of work

In order to keep the Work up to date, the Author shall if called upon by the Publisher and on agreed terms, revise or edit all editions of the Work during the currency of this Agreement and shall supply any new matter which may be needful to that end. In the event of the Author neglecting, or being unable by reason of death or otherwise to edit or revise the work or supply new matter where needful, the Publisher may procure some other person to edit or revise the work, and may deduct the expense or an appropriate portion thereof from royalties payable to the Author. The amount of payment for editing, revising or supplying new material for the Work shall be made by agreement with the Author or his or her heirs or assigns.

23. Remainders/disposal of surplus stock

If, after a period of one year from the date of first publication, the Work shall in the opinion of the Publisher have ceased to have a remunerative

sale, the Publisher shall be at liberty to dispose of any copies remaining on hand as a remainder or overstock. The Publisher shall inform the Author of their decision to remainder, pulp or dispose of the stock in some other way, and shall give him/her the opportunity of purchasing copies at the remainder price on offer, or in the case of pulping, free-of-charge. The Author shall inform the Publisher whether he/she wishes to acquire part or all of the stock, and shall notify the Publisher within three weeks of posting of their decision. If the Author fails to do this the Publisher may remainder, or dispose of, the Work forthwith. If the price obtained by remaindering is more than the cost of production the Publisher shall pay to the Author 10 per cent of the net amounts received by the Publisher.

24. Termination of contract

- (i) Either party may terminate this Agreement by summary notice in writing to the other party if the other party is in material breach of any of the provisions of this Agreement and has failed to remedy such breach within three months of said notice.
- (ii) This Agreement shall automatically terminate if and when a supervisor, receiver, administrative receiver or other such person takes possession of, or is appointed over the whole or any substantial part of, the Publisher's assets; or if and when the Publisher enters into any arrangement or composition with or for the benefit of its creditors; or if and when a petition is presented or a meeting is convened for the purpose of considering a resolution for the making of an administrative order, the winding up or dissolution of the Publisher (other than a voluntary liquidation for the purpose of reconstruction).
- (iii) Upon termination of this Agreement howsoever occurring, all rights granted herein shall revert to the Author without further notice, without prejudice to any rights of the Publisher in respect of contracts or negotiations properly and in good faith entered into by them with an arms-length third party prior to the date of such reversion, and without prejudice to any money already paid or then due to the Author from the Publisher.

25. Reversion of rights

If the Work shall become out of print and not available in any edition issued by the Publisher or authorised by them, then the Author may give six months' notice in writing to the Publisher to reissue or reprint 1000

copies of the said Work. If the Publisher fails to comply with such notice other than through circumstances beyond their control all rights granted under this Agreement shall revert to the Author forthwith and without further notice, without prejudice to all rights of the Publisher in respect of any contracts or negotiations properly entered into by them with any third party prior to the date of such reversion and without prejudice to any monies already paid or then due to the Author from the Publisher.

Unless otherwise mutually agreed in writing, the Work shall be deemed to be out of print where the Publisher's stocks are less than fifty (50) copies. The Work shall not be deemed in print by reason only of it being available in any digital medium or by any digital means, including without limitation on-demand digital printing.

[See an alternative reversion clause that takes into consideration digital formats never going out of print in Section D: Annotations to a model standard contract.]

26. Option on future work

The Author agrees to offer the Publisher on fair and reasonable terms the right and licence to publish their next work before offering the said right and licence to any other Publisher.

27. Goods and Services Tax (GST)

All payments, royalties and percentages as set out in this Agreement are exclusive of GST. The Author undertakes to notify the Publisher if he/she is registered for GST.

28. Agency

The Author hereby authorises and empowers his/her Agent to collect and receive all sums of money payable to the Author under the terms of this Agreement and declares that the receipt by the Agent shall be a good and valid discharge to all persons paying such monies to them and that they shall be empowered to act in all matters arising out of this Agreement unless the Publisher is notified otherwise in writing by the Author.

29. Arbitration

If any difference shall arise between the Author and the Publisher touching the meaning of this Agreement or the rights and liabilities of the parties thereto, the same shall be referred to the arbitration of two persons (one named by each party) or their umpire in accordance with the provisions

of the New Zealand Arbitration Act 1996, or any subsisting statutory modification or re-enactment thereof. The arbitration shall be held in, and the decision of the arbitrator shall be final, with no right of appeal to the Courts.

30. Interpretation

The headings in this Agreement are for convenience only and shall not affect its interpretation.

31. Governing law

This Agreement shall be interpreted in all respects with the law of New Zealand.

Signed for and on behalf of the Publisher
.....

Signed for and on behalf of the Author
.....

SCHEDULE

The Work shall comprise:
Text of approximately words
Illustrations

APPENDIX I

Digital form(s) and format(s) in New Zealand to which this contract applies: [Examples only]

- PDF (Portable Document Format)
- EPUB (.epub file format)
- Amazon Kindle (.azw file format)
- Microsoft LIT (.lit file format)
- eReader (.pdb file format)