



THE NEW ZEALAND
SOCIETY OF AUTHORS
(PEN NEW ZEALAND INC) TE PUNI KAITIHI O AOTEAROA

Suggested Clauses for Rights and Co-editions Contract

Memorandum of Agreement

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

Whereby it is mutually agreed as follows concerning a work entitled..... (hereinafter called the Work).

Grant of Rights

In consideration of the payments and subject to the terms and conditions specified in this Agreement the Licensor hereby grants to the Publisher for the Territory, Term, Language and Format respectively specified in the Schedule (attached to and forming part of this Agreement) the sole and exclusive licence (*or non-exclusive licence*) to print, publish and sell the Work in book form ('the Licensed Edition').

All rights not specifically granted herein to the Publisher are reserved to the Licensor.

If the work is to be translated the Publisher shall own the translation of the Work as published in the Licensed Edition but shall be entitled to use it only as permitted under this Agreement and only during the term of this Agreement.

Licensed Edition

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 the formats specified within the Schedule within months.

In the event that the Publisher fails to publish the Work in the stipulated formats within the stipulated timeframe, then the Licensor may, by notice in writing to the Publisher, terminate this Agreement with respect to this Work.

The Publisher shall not publish a mass-market paperback edition of the Licensed Edition earlier than one (1) year following first trade paperback publication of the Licensed Edition with the Licensor's prior written permission.

The Publisher warrants to the Licensor that the reproduction and any translation (if any) of the Work shall be made faithfully and accurately and that it will not be altered, abridged, condensed or expanded. The entire cost of reproduction and translating (if relevant) to the work will be the Publisher's responsibility.

The Publisher undertakes to notify the Licensor of any changes made to the Work (excluding house style, copy editing, Americanising/Anglicising) and to take account of the Author's comments, if any, with regard to such changes.

Advertisements may not be printed in or inserted in the Licensed Edition, whether issued by the Publisher or any sub licensee, without the Licensor's prior written consent except for titles published by the Publisher under the same imprint.

The Publisher agrees to include in the Licensed Edition the dedication, acknowledgements and Author biography included in the Licensor's edition.

If at any time during the term of this Agreement the Licensor substantially revises or updates the Work the Publisher undertakes to take into the Licensed Edition at the first reprint thereafter any such revisions or updating.

The Licensor may, at the Publisher's request, supply Reproduction Material as specified in the Schedule at the cost specified in the Schedule. Where possible, the Licensor will obtain the rights to reproduce in the Territory, at the Publisher's cost, any illustrative material used on the cover of the book or internally, and the Licensor shall supply those materials to the Publisher at the cost of duplication plus the cost of shipping plus a reproduction fee.

Copyright and Acknowledgements

The Publisher undertakes that the Copyright Notice and Acknowledgement specified in the Schedule shall appear in the Licensed Edition and any sublicensed editions of the Licensed Edition. The original title of the Work and the Acknowledgement shall appear in English and where relevant, the Language specified in the Schedule.

The Publisher undertakes to credit the Author and the illustrator (if any) in due prominence on the cover, jacket (if any), spine and title page of every copy of the Licensed Edition and in all advertisements for the Licensed Edition and in connection with the exercise of all the rights in the Licensed Edition granted to the Publisher under this agreement.

The Publisher agrees that it will take, at its own expense, all action that may be necessary or advisable in the Territory to protect the copyright in the Licensed Edition of the Work.

Copyright in the Work shall remain the property of the Author.

Moral Rights

The Licensor asserts his/her moral rights to be identified as the Author of the Work.

Advances & Royalties

Royalties on each new edition of the work will start at the original starting rate.

The Publisher shall pay the Licensor the sum of NZ\$..... in advance on account of all sums due under this Agreement, payable as follows NZ\$..... on signature, NZ\$..... on print and NZ\$..... on bill of lading. This advance may not be charged against royalties on any other Licensed Edition.

The Publisher shall pay royalties to the Licensor at the following rates:
.....% of RRP on the first 5,000 copies printed
.....% of RRP on the next 5,000 copies printed

Subsidiary Rights

The Publisher is further granted the right to sublicense the use of the Licensed Edition by others in the Territory, such licensing to be subject to the Licensor's prior written consent. The gross

proceeds of such sublicensing shall be divided between the Licensor and the Publisher as shown below and payment of the Licensor's share (less the amount of any advance then unearned) shall be made within thirty (30) days of its receipt by the Publisher. No deduction whatsoever may be made for any agent's fees, commissions, administrative charges or otherwise. The Publisher shall furnish the Licensor a copy of each licensing agreement and shall supply free of charge to the Licensor two (2) samples of any publications arising from exploitation of the subsidiary rights specified in this clause.

First Serial Rights

Second Serial Rights

Anthology or quotation rights (permissions)

Book club rights (including clubs owned and operated by the Publisher) in full-length, condensed or abridged versions

Large print rights

Audio rights

The Publisher shall not sell or license any such rights for a period that will exceed the period of licence granted in this Agreement by two (2) years.

The conditions imposed in this Agreement regarding alterations to the Work shall be imposed on any approved sub licensee of the Publisher.

Warranties and Indemnity

The Licensor warrants to the Publisher that:

- (i) To the best of their knowledge and belief the Licensor has in respect of the Work all necessary rights of copyright and all necessary power and authority to enter into and perform this Agreement;
- (ii) To the best of their knowledge and belief the Work is not a violation or infringement of the copyright of any other party and that it contains nothing libellous or unlawful according to the laws of

The Licensor agrees to hold the Publisher harmless against any claim, demand, action, or proceeding which may be brought or had against the Publisher, including reasonable counsel fees incurred, by reason of a proven breach of the foregoing warranties. The Publisher shall notify the Licensor promptly in writing of any claim or action, and shall promptly forward to the Licensor all documentation relating to such claim or action. The Licensor shall have the right to select counsel and shall have the final decision as to whether to compromise, settle, or contest any action or threatened action. The Licensor shall not be liable for any damages, cost or expenses incurred as a result of any action taken by the Publisher without the Licensor's prior written consent.

The warranties and indemnity shall survive termination of this Agreement.

Accounting

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.

The Licensor or his/her authorised representative shall have the right upon written request to examine the records of accounts of the Publisher in so far as they relate to the sales and

receipts in respect of the Work, which examination shall be at the expense of the Licensor unless errors exceeding 10 percent of such sales and receipts to his/ her disadvantage are found, in which case the cost shall be borne by the Publisher.

Any overpayment made by the Publisher in respect of the Work may be deducted from any sums subsequently due to the Licensor from the Publisher in respect of the Work.

Remainders/disposal of surplus stock

If, after a period of one year from the date of publication, the Work shall in the opinion of 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 Licensor 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 plus transport costs. The Licensor shall inform the Publishers 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 Licensor 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 Licensor 10 percent of the net amounts received by the Publisher.

Termination

This Agreement shall terminate (including any benefits from sublicenses) and all rights shall automatically revert to the Licensor without prejudice to the Licensor's right to claim damages or to obtain any money then owed by the Publisher, in any of the following situations:

- (i) if the Publisher fails to pay the Advance within thirty (30) days after the execution of this Agreement
- (ii) if the Publisher fails to publish the Work within the time agreed in this Agreement and does not apply to the Licensor for an extension of time in which to publish and does not respond within six (6) weeks to any inquiry made by the Licensor
- (iii) if the Licensed Edition goes out of print or is remaindered and the Publisher does not reprint and re-issue the Licensed Edition with six (6) months from an inquiry from the Licensor
- (iv) if the Publisher fails to fulfill or comply with any of the conditions accepted by it in this Agreement within thirty (30) days after the Licensor has given notice of such failure
- (v) if the Publisher becomes insolvent or bankrupt or goes into liquidation or makes an assignment for the benefit of creditors or its business is liquidated or ceases to trade or is otherwise unable to meet its commitments and obligations hereunder
- (vi) if shares of the Publisher are transferred to effect a change in control

In the event of termination for any reason whatsoever the Licensor shall, for ninety (90) days thereafter, have the option of buying any plates and/or remaining copies of the Licensed Edition, bound or unbound, at the fair market value, to be determined by agreement or by arbitration, all without prejudice to whatever other rights the Licensor may have for monies then due or to be come due there under.

For the purposes of this Agreement the Licensed Edition shall be deemed out of print when the Publisher's stocks are less than fifty (50) copies or when less than fifty (50) copies of the Licensed Edition are sold in any six (6) monthly accounting period as specified herein.

Termination of this agreement for any reason is without prejudice to any right or obligation which may have accrued prior to the date of termination.

Assignment

The Licence herein granted is granted to the Publisher solely and shall not be transferred by it

either voluntarily or by operation of the law.

Interpretation

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

Governing Law

Regardless of the place of its physical execution, this Agreement shall be governed by and construed and interpreted under the laws of New Zealand.

Signed for and on behalf of the Publisher

Signed for and on behalf of the Licensor

SCHEDULE

Territory – specify geographic

Term – specify term – usually for 5 years.

Language – specify language translations

Format – specify format:

Hardcover

Trade paperback

Mass-market paperback

Bookclub/pocketbook

Digital ebook rights

Subsidiary rights