



# THE NEW ZEALAND SOCIETY OF AUTHORS TE PUNI KAITUHI O AOTEAROA (PEN NZ INC)

## Model Trade Publishing Agreement

The NZSA Te Puni Kaituhi o Aotearoa (PEN NZ) Inc aims to help all writers and illustrators achieve a fair agreement with their publishers.

This model publishing agreement package is comprised of:

- A template trade publishing agreement between publisher and author
- A Guide to completing this Agreement
- A checklist for authors to consider before signing
- A glossary of industry terms to assist your understanding of your publishing offer

This template publishing agreement is suitable for authors of **trade publications**. If you are an author of an educational publication, please use our template for educational publishing agreements. If you are an illustrator, please use our template publishing agreement for illustrators.

If you are self-published on Amazon (digital or print on demand) or have an ebook – this is not the appropriate service for you. This service is for local bookshop publication and distribution.

## Guide to Completing this Agreement

This agreement is provided as a template, intended to be adapted for your circumstances.

All highlighted text requires your consideration. You may need to insert relevant information, or delete text, or accept the clause as drafted. This will be determined by negotiation between the parties.

Many of the specifics about your work and all the key commercial terms are set out in the Schedule to the agreement. You will need to complete the Schedule. We have included explanatory notes to assist you and have also included some recommendations (which are intended as a guide only).

All **text in blue** is explanatory and intended to assist you in adapting this agreement for your purposes. As these notes are not part of the substantive agreement, please **delete this text** when finalising the agreement.

It is important that every author understands their publishing agreement. The NZSA recommends that authors obtain legal advice before signing any publishing agreement. You might like to consider our [Contract Assessment Service](#) for this purpose.

## TRADE PUBLISHING AGREEMENT TEMPLATE BETWEEN AUTHOR AND PUBLISHER

This Agreement dated [*insert date*\_\_\_\_\_202X] is **BETWEEN:**

The Author's name, address:

NZSA Membership number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(the “**Author**”)

AND

The Publisher's name, address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(the “**Publisher or Distributor**”)

\_\_\_\_\_

### BACKGROUND

- A The Author has written a literary Work, as described in the Schedule to this Agreement.
- B The Publisher wishes to publish, promote, and sell the Work.
- C The Author wishes to authorise the Publisher to publish, promote and sell the Work in accordance with the terms of this Agreement.

### 1. DEFINITIONS

In this document:

“**Advance**” means the advance specified at Item 8 of the Schedule.

“**Agent**” means the literary agent representing the Author, specified at Item 7 of the Schedule.

“**Anticipated Minimum Print Run**” has the meaning given at Item 10 of the Schedule.

**“Audio Book”** means a version of the Work which is available for sale as a sound recording only, whether as a physical cassette or compact disc or by digital download in mp3 format.

**“Author”** means the person described above.

**“Author’s Discount”** means the discount at which the Publisher will sell copies of the Work to the Author, as specified at Item 15 of the Schedule.

**“Confidential Information”** means the confidential information outlined at Item 16 of the Schedule.

**“Delivery Date”** means the date specified at Item 2 of the Schedule.

**“Ebook”** means a publication of the Work for reading in a digital format (such as via a PDF or ePub file) including publication designed for devices such as e-readers, smartphones, tablets or computers, provided that the device employed produces the Work that is substantially similar in content to a book.

**“High Discount”** means sales of the Work to retailers at a discount of higher than the normal range discount, as more particularly described at Item 12 of the Schedule.

**“Insolvent”** means insolvent within the meaning set out in the *Corporations Act 2001*, as disclosed in the Publisher’s accounts or otherwise, or where the Publisher is presumed to be insolvent under any applicable law.

**“Languages”** means the languages specified at Item 6 of the Schedule.

**“Net Receipts”** means the Publisher’s invoiced revenue from the sale of the Work (revenue less GST and retailer discount).

**“Print Book”** means a book sold in print form and could include either or both paperback and hardback editions, at the Publisher’s discretion.

**“Remainder”** means copies of the Work sold at or below the cost of production.

**“Required Format”** has the meaning given at Item 3 of the Schedule.

**“RRP”** means the Recommended Retail Price in New Zealand, as specified at Item 9 of the Schedule, which includes GST unless otherwise specified.

**“Subsidiary Rights”** mean those rights in the Work granted by the Author to the Publisher as specified at Item 13 of the Schedule.

**“Term”** has the meaning given in Item 4 of the Schedule.

**“Territory”** has the meaning given in Item 5 of the Schedule.

**“Work”** means the work created by the Author for publication under this Agreement, as more specifically described at Item 1 in the Schedule.

## 2. TERM

This Agreement continues for the Term unless terminated earlier under clause 26. The Term may be extended by mutual agreement of the parties in writing.

## 3. GRANT OF LICENCE

### 3.1. Licence to Publish

The Author grants to the Publisher an exclusive licence for the Term to copy, print, publish, sell and communicate to the public the Work as a [*Print Book*] [*eBook*] [*audiobook*] and in the Languages and in the Territory.

### 3.2. Licence of Subsidiary Rights

The Author grants to the Publisher an exclusive licence to exercise and sub-licence the Subsidiary Rights in the Territory. The Subsidiary Rights are granted to the Publisher exclusively for a term of **2 years** ("**Subsidiary Term**") and beyond this period on a "use it or lose it" basis. After the expiry of the Subsidiary Term, if the Publisher cannot show to the Author that it has exercised or sub-licensed the Subsidiary Rights, then the Author may give [*three/six*] months written notice to the Publisher of her/his intention to terminate the licence granted to the Publisher under this clause, with respect to specified Subsidiary Right(s) in specified territories ("**Notice of Intent to Revert**"). Unless the parties agree otherwise, the Author may, in writing, immediately terminate the licence granted to the Publisher with respect to the rights specified in the Notice of Intent to Revert which remain unexploited at the expiry of the Notice of Intent to Revert and those rights will revert to the Author.

## 4. INTELLECTUAL PROPERTY OF AUTHOR

4.1. Copyright and any other intellectual property rights in the Work will remain the property of the Author.

## 5. PUBLICATION

5.1. The Publisher will publish the Work as a [*Print Book*] and [*Ebook*] and [*Audio Book*] to a good professional standard and in a style which would be commonly considered in the industry as suitable for the intended market for the Work, [*within twelve months of the Delivery Date/ by insert publication date if one has been agreed*] unless prevented by circumstances beyond its control, but in no circumstances later than eighteen (18) months from the Delivery Date.

5.2. The Publisher will pay all expenses of editing, production and printing of the Work.

5.3. The Publisher will inform the Author of the anticipated RRP of the Work and the Anticipated Minimum Print Run for the Print Book.

5.4. [*Optional clause. Discuss with publisher and retain or delete.*] The Publisher will utilise reasonable technological protection measures to safeguard the EBook edition of the Work

against unauthorised copying.

## **6. DELIVERY**

- 6.1. The Author will deliver the Work to the Publisher in the Required Format not later than the Delivery Date.
- 6.2. Once the Author has delivered the Work under clause 6.1, the Publisher will:
- (a) accept the Work for publication and notify the Author, accordingly; or
  - (b) ask the Author to revise the Work if:
    - (i) in the Publisher's reasonable opinion, the Author has not complied with the Publisher's brief (where one was supplied) or the Required Format; or
    - (ii) the Publisher has received legal advice recommending alterations to the Work to reduce legal risks,and, in each of these instances, the Publisher will provide the Author with all necessary guidance as to what is needed to ensure the Work is acceptable for publication and will revise the Delivery Date to reasonably accommodate the required revision; or
  - (c) terminate this Agreement by written notice to the Author giving reasons, if, in the Publisher's reasonable opinion:
    - (i) there is too much work involved in revising the Work to make it suitable for publication or,
    - (ii) the Author fails to revise the Work pursuant to clause 6.2(b) by the revised Delivery Date or the Author's revisions pursuant to clause 6.2(b) are not acceptable to make the Work suitable for publication.
- 6.3. In no circumstances may the Publisher appoint a third party to revise the Work without the Author's prior permission in writing.

## **7. ALTERATIONS**

- 7.1. No alterations will be made to the title of the Work without the Author's consent.
- 7.2. The Publisher must consult the Author on editorial decisions and the Publisher must take into account the Author's reasonable views in making a decision about such matters. The Publisher will not publish the Work until any reasonable differences in editing have been resolved.

## **8. FORMAT AND PUBLISHING DECISIONS**

- 8.1. The Publisher must consult the Author about:
- (a) the design, format and layout of the Work;
  - (b) the cover or dust jacket;
  - (c) the manner of production including paper and binding, and
  - (d) the distribution, promotion and advertising, price and terms of sale of the Work, including the number and destination of promotional copies.

- 8.2. While the Publisher has the final say with respect to the matters outlined in clause 8.1, the Publisher must take into account the Author's reasonable views on the matters and act reasonably in making its decision about such matters.
- 8.3. The Publisher will prepare the biographical details and the jacket blurb in relation to the Author for the Author's review. The Publisher must incorporate the Author's requests and the Publisher must obtain the Author's approval of the biographical details, photo of the Author and jacket blurb before it proceeds to publication. The Author agrees to not unreasonably withhold or delay his/her approval.
- 8.4. The Publisher will bear all expenses for the matters set out in this clause 8.

## **9. PERMISSION FOR THIRD PARTY MATERIAL**

- 9.1. The Author must bring to the Publisher's attention any third party material such as illustrations, quotations, photographs or song lyrics that have been included in the Work. The [Author/Publisher] is responsible for obtaining all necessary rights and permissions to use any third party material in the Work. The [Publisher/Author] agrees to do all things necessary to reasonably assist the [Author/Publisher] obtain these permissions.
- 9.2. The cost of obtaining permissions for third party material referred to in clause 9.1 and any additional third party material requested by the Publisher will be borne by [*the Publisher*] OR [*jointly by the Author and Publisher, the Author's share being paid by the Publisher initially but recoverable from royalties due to the Author*] OR [*by the Publisher up to a capped amount of \$X, beyond which the Author will bear the costs*] OR [*by the Author up to a capped amount of \$X, beyond which the Publisher will bear the costs*]. [*Delete as applicable.*]
- 9.3. If the Publisher requires an index as part of the publication of the Work, an index of publishable quality will be provided by [*the Author at his/her sole cost and expense / the Publisher at its sole cost and expense / the Publisher, with both parties sharing equally the associated costs.*]

## **10. LEGAL REVIEW**

- 10.1. The Publisher, at its discretion, may require the Work to be vetted by its lawyers and will pay for any costs associated with this. The Author agrees to co-operate with the Publisher and the Publisher's lawyers to reduce potential legal risks to both the Author and Publisher.
- 10.2. The Author agrees to revise the Work as reasonably requested by the Publisher to minimise legal risks. If the Author declines to do so, the Publisher may terminate this Agreement under clause 6.2(c).

## **11. PROOFS**

The Publisher will provide proofs of the Work to the Author and the Author will correct, revise and return them by [*an agreed timeframe*]. The Author will bear the expense of all corrections (other than printer's errors or other mistakes for which the Author is not responsible) in excess of [*fifteen per cent*] of the original cost of preparing the proofs. The Publisher will inform the Author

of any excess proof correction charges within one month after receipt of the printer's bill.

## **12. MARKETING AND PROMOTION**

- 12.1. The Publisher will promote and sell the Work in a professional manner to maximise its market potential. The Publisher will give the Author the opportunity to comment on the proposed marketing plan, distribution list for review copies and to suggest publicity leads and ideas.
- 12.2. The Author will endeavour to be available, on reasonable notice, to assist with the promotion of the Work. The Publisher will pay the Author's agreed travel and other expenses associated with promotional activities.

## **13. ADVANCE**

- 13.1. The Publisher will pay the Author the Advance.
- 13.2. The Advance must be paid one-third on execution of this Agreement, one-third on the acceptance of the Work pursuant to clause 6.2 and one-third on publication of the Work.
- 13.3. The Advance is recoverable from royalties payable to the Author under this Agreement. The Advance is non-refundable except in the case of termination of this Agreement by the Publisher for:
  - (a) failure to deliver the manuscript by the Delivery Date under clause 26.1; or
  - (b) failure to revise the Work as reasonably requested by the Publisher to minimise legal risks as required by clause 10.2.

*[This is our preferred clause in relation the repayment of the advance, however, please note that publishers will often negotiate for a refund of the advance in the event of termination pursuant to clause 6.2(c) generally (manuscript unpublishable). This is a matter for negotiation.]*

## **14. ROYALTIES**

- 14.1. In consideration for the licences granted at clause 3, the Publisher will pay the Author the royalties set out at Item 11 of the Schedule.

## **15. REVENUE FROM SUBSIDIARY RIGHTS**

- 15.1. This Agreement does not grant or convey to the Publisher any rights or interests other than those specified.
- 15.2. The Publisher will use its best endeavours to sub-licence the Subsidiary Rights to generate revenue to be shared between the Author and Publisher. All proceeds of such sub-licences will

be shared, without deduction of any fees, commissions or expenses, according to the ratios set out in Item 13 of the Schedule.

15.3. The Publisher will not conclude any sub-licences without the prior approval of the Author, such approval not to be unreasonably withheld or delayed. The Author agrees to refer any inquiries as to Subsidiary Rights to the Publisher.

15.4. **E-book and Digital Rights:**

**Library Bundling:** Where the Publisher licences digital lending rights of this book to library digital platforms and providers, individually or as a licensed bundle, the Publisher will reimburse the Author 30% of the licence fees received. If the library provider automatically renews the licence after a set number of loans, as per its contract with the platform/publisher, the Author will receive 30% of the renewal licence fee.

15.5 **Audiobook Rights.**

If Publisher has not published an audiobook of the Work or executed a license for or commenced production of the Work in audiobook Format within [two/three] years following the initial publication of the Work, Publisher shall, upon written notice from Author, revert such rights in the Work.

15.6 **AI Licensing Revenue:**

If the publisher licences this book individually or as part of a AI training dataset after permission is sought from the author, the publisher will share the licence fee received with the author. For training-only licenses, which are not addressed in past publishing agreements, if the publisher is involved and provides the final text file, we recommend a split of 80/20 or 75/25 (with the higher amount going to the author)— similar to translation and foreign rights splits.

## 16. SALES REPORTS AND ROYALTY ACCOUNTS

16.1. Sales reports and royalty accounts will be made up half-yearly and sent to the Author and settled within [x] month(s) of the end of the accounting period covered by the account. Such accounts will show in detail the number of copies printed, pulped, given away, and sold by territory and all income received from any sub-licence. If the amount owing to the Author in any half yearly period is less than [\$100], the Publisher may carry forward that sum for one accounting period only, but then must pay the amount to the Author, regardless of whether or not the total owing to the Author is greater than \$100.

16.2. Goods and Services Tax (GST)

i) All advances and royalties payable under this Contract are exclusive of any Goods and



Services Tax (GST).

- ii) The Publisher must issue its own Recipient Created Tax Invoice (RCTI) to the Author for royalties payable.
- iii) If the Author does not provide their New Zealand Business Number (ABN) to the Publisher, the Author acknowledges that the Publisher will be obliged to withhold a proportion of the advances and royalties in accordance with the GST laws.

## **17. INSPECTION OF ACCOUNTS**

During the Term, but not more than once in any 12 month period, the Author or the Author's authorised representative will have the right, upon 30 days written request, to examine the books of account of the Publisher which relate to the sales of the Work or any sub-licences relating to the Work. This examination will be at the cost of the Author unless errors of accounting are found to the Author's disadvantage in the amount of 5% or more of the total amount earned in any one accounting period, in which case the cost will be borne by the Publisher.

## **18. CHEAP EDITIONS AND REMAINDERS**

- 18.1. The Publisher agrees not to offer any Remainder sales within two years from the date of publication without the Author's written consent. Thereafter:
- (a) if copies are to be sold as a Remainder, the Author will have the right of first refusal of buying the Remainder stock;
  - (b) if surplus bound copies are to be destroyed, the Author will be notified and given the right

## **19. COPYRIGHT INFRINGEMENT**

- 19.1. Each party will inform the other in writing if it considers that copyright in the Work has been, or will be, infringed by a third party.
- 19.2. In the event of infringement or threatened infringement of copyright in the Work, both the Author and the Publisher may commence proceedings jointly and the costs of such proceedings, as well as any settlement monies or damages or an account of profits awarded, will be divided equally between the Author and Publisher.
- 19.3. If the Author requests the Publisher to bear all the costs of proceedings, the Publisher may agree to do so, provided that the Publisher then has the right and discretion to control and settle any proceedings as it sees fit. The Author agrees to cooperate wholly and promptly with the Publisher, including by being joined as a plaintiff if necessary to enable the Publisher to sue as the exclusive licensee. Any monies recovered in respect of any such proceedings, including settlement monies or damages or an account of profits will, after deduction of all costs and expenses, be divided equally between the Author and the Publisher.

## **20. AUTHOR'S WARRANTY (update to include AI)**

The Author warrants to the Publisher that:

- 20.1. the Work is an original work, was written solely by the Author and does not include any AI generated content (ie text, images and/or translations created by an AI tool);
- 20.2. the Author shall not use AI to create the Work (save for minimal or trivial uses such as AI applications that check spelling and grammar),
- 20.3. the Author is the sole proprietor of the Work;
- 20.4. the Work does not infringe any existing copyright and has not been published in book form in the Territory;
- 20.5. to the best of his/her knowledge, the Work contains nothing defamatory, and
- 20.6. the Author has power to enter into this Agreement and is entitled to grant the rights set out in this Agreement.
- 20.7. The Author shall disclose to Publisher if the Author has used generative AI when creating the Work or has included AI-generated text in the Work. In any event, the Author shall ensure the Work as a whole does not include any more than [5%] AI-generated text. For the purposes of clarity, Publisher confirms that any use any minimal or trivial uses of AI, such as AI applications that check spelling and grammar or for brainstorming or research do not need to be disclosed.
- 20.8. This Agreement does not confer upon the Publisher any rights or interests other than those specified. Despite anything in this Agreement to the contrary, the Publisher is prohibited, without the Author's prior written consent, from reproducing, publishing, communicating, or otherwise using the Work or any part of the Work to develop, train or direct, Generative Artificial Intelligence technology or models ("Generative AI"), including but not limited to the mining or scraping of text, images or data from the Work, whether undertaken by the Publisher or by third parties authorised, licensed or directed by the Publisher.
- 20.9. **No substantial generative AI use without consent**

Neither party will, without the other party's prior written consent, use or authorise others such as sub-licensees to use, Generative AI to wholly or substantially fulfil that party's material obligations pursuant to this Agreement or any sub-license authorised by this Agreement.

In particular, the Publisher must seek the Author's prior written consent to the use of Generative AI in relation to their Work for:

  - a) audiobook narrations
  - b) translations

- c) illustrations or artwork
- d) cover design
- e) animation
- f) substantial visual elements
- g) revisions and new editions
- h) substantive editing

## **21. AUTHOR'S AGENT** [*Delete this clause if the Author doesn't have an agent.*]

- 21.1. If the Author advises the Publisher that s/he has an agent, the Author agrees that the Publisher may, until it is advised otherwise:
- (a) rely on the Agent as representing the Author and having authority to act on the Author's behalf;
  - (b) make all payments due under this Agreement to that Agent; and
  - (c) account to that Agent in relation to any payments due under this Agreement (including by delivering to the Agent all statements relating to payments due under this Agreement).

## **22. AUTHOR'S COPIES**

The Publisher will give the Author free copies of the Work on publication, free copies of any subsequent edition in a new format, and free copies of any reprints, in the amounts specified at Item 14 of the Schedule. The Publisher will sell to the Author further copies at the Author's Discount.

## **23. SAFE KEEPING OF MANUSCRIPT**

- 23.1. The Author agrees to keep an original copy of the Work. The Publisher agrees to use its best endeavours to safe guard and protect the Work, including any drawings and photographs in the Publisher's possession, but is not otherwise responsible for any loss or damage to the Work.

## **24. TERMINATION**

- 24.1. Unless the Author and Publisher have previously agreed to an extension of the Delivery Date, the Publisher may terminate this Agreement immediately, by written notice to the Author, if the Author does not comply with the Delivery Date. If the Publisher terminates this Agreement under this clause, the Author must repay to the Publisher the Advance.
- 24.2. Either party may by [two] month's notice in writing to the other party terminate this Agreement, without prejudice to any claims outstanding or any sub-licences properly granted,

in the event of any breach or non-observance by the other party of any of the terms or conditions in the Agreement that has not been corrected before the end of the notice period.

- 24.3. If fewer than [x] copies of the Work across all editions are shown to have been sold across two royalty accounting periods and the Publisher fails to revive sales to these levels within **6 months** of having received written notice from the Author or their representative to do so, the Author may terminate this Agreement immediately by written notice. *[The sales threshold which will trigger the Author's right of termination depends on the size and circumstances of your publication. For a very low print run, it might be reasonable to allow an Author to terminate if sales drop below 25 copies across two royalty accounting periods. For a substantial publication, with a large print run, it might be reasonable to allow an Author to terminate if sales drop below 100 copies across two royalty accounting periods. Alternatively, an Author may negotiate for the right to terminate if her/his revenue falls below a certain dollar value. For example, the Author may terminate by notice in writing if, in the prior 12 months, the Author's earnings from royalties were \$200 or less.]*
- 24.4. This Contract will automatically terminate without prejudice to any claims outstanding or any sub-licences properly granted in the event of the Publisher going into liquidation (except a voluntary liquidation for the purpose of reconstruction) or becoming Insolvent.

## 25. CONSEQUENCES OF TERMINATION

- 25.1. Upon the termination of this Agreement for any cause whatsoever, but subject to any sub-licences properly granted and the repayment of the advance by the Author if required by clause 13.3, all rights granted to the Publisher will immediately revert to the Author, and the Publisher will return to the Author all property originally furnished by the Author.
- 25.2. Upon termination of this contract pursuant to clause 26.3 or 26.4, the Publisher may sell remaining stock (if any) for *[three/six]* months after the effective termination date and then all remaining copies will be returned to the Author or destroyed with the Author's permission at the Publisher's cost. The Publisher will continue to account to the Author for all sales within the sell-off period.
- 25.3. Upon termination of this Agreement for a breach by the Publisher or Insolvency on the part of the Publisher or for low sales pursuant to clause 26.3, the Author will be given the option to purchase at a fair price any available production files of the Work (as passed for publication), including the Ebook file.

## 26. COPYRIGHT AGENCY PAYMENTS

- 26.1. The parties agree to share the income resulting from the use of the Work under a statutory licence or as a result of a licence granted by a collecting society (such as CLNZ) in the proportions agreed at Item 13 of the Schedule. The Author will complete and sign the letter set out at Annexure A to this Agreement and provide it to the Publisher for signing and lodging

with CLNZ.

## 28.2 Educational Copyright Collective Management Reimbursement

If the publisher received fees from Copyright Licensing NZ or any international collective management agency operating in different jurisdictions, for the use of this book or any part of this book in an educational or other settings, the publisher will share the revenue received with the author 50/50.

28.3.1 A party's entitlement to a share of income resulting from the use of the Work under a statutory licence or as a result of a licence granted by a collecting society (such as CLNZ) will survive termination or expiration of this Agreement (including a reversion of rights) save that:

- (a) following such termination or expiration, the Publisher will only be entitled to its share of such income if it is attributable to the use of an edition of the Work published by the Publisher or under sub-licence from the Publisher; and
- (b) the Publisher's entitlement to its share of such income expires [x] years after the date of termination of this Agreement.

## 27. ASSIGNMENT

Both parties agree that this Agreement is personal and agree not to transfer, assign or otherwise dispose of any of their respective benefits or obligations under this Agreement without the written consent of the other.

## 28. CONFIDENTIALITY

Neither party may use or divulge the other's Confidential Information except to the extent necessary for the purposes of performing this Agreement or seeking professional, legal or accounting or industry advice or as otherwise required by law. The parties must otherwise keep the other parties' Confidential Information confidential.

## 29. DISPUTE RESOLUTION

29.1. Except by leave of a court, no party may commence legal proceedings against the other party in relation to any matter arising under this agreement until this clause has been complied with.

29.2. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this agreement:

- (a) Any party may issue a written notice of dispute (**Dispute Notice**) which must be served on each other party following which the parties must endeavour to resolve the Dispute in good faith.
- (b) If the parties cannot agree on a dispute resolution process within 10 days of receiving that outline, the parties must participate in mediation.
- (c) In the event that the parties are unable to agree on an expert or a mediator to conduct a dispute resolution process for the Dispute, the parties agree to the appointment of an

expert or mediator.

(d) The parties agree that the dispute resolution process adopted under clause (c) above will be conducted in accordance with Dispute Resolution Guidelines (**Guidelines**), as amended from time to time and as in force at the time of the service of the Dispute Notice or, if such Guidelines are no longer in force, in accordance with the procedure chosen by the relevant expert or mediator appointed to conduct the dispute resolution process.

29.3. The parties must continue to perform their respective obligations under this Agreement despite the existence of a Dispute.

29.4. Nothing in this clause 31 will impact on either party's rights to terminate under clause 26 of this Agreement.

### 30. ENTIRE CONTRACT

This Contract constitutes the complete understanding of the parties and no waiver or modification of any provisions will be valid unless in writing and signed by the Author and the Publisher.

## 31. GOVERNING LAW

This Agreement will be governed by and will be construed according to the laws of New Zealand.

## EXECUTION

Executed as an Agreement

**SIGNED** for and on behalf of  
[*Publisher*]:

[illegible]

Signature of Director

Signature of Director

Name of Director (block letters)

Name of Director (block letters)

Signature of Director

Signature of Director

Name of Director(block letters)

Name of Director(block letters)

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**SIGNED** by [*Author*]: )

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..... )

Signature of witness )

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..... )

Name of witness (block letters) )

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.....  
Signature of [*Author*]

## SCHEDULE

Item	To be completed by the parties to the agreement	This column contains explanatory notes which are to be deleted in final form of agreement
Item 1	<p>1. The Work</p> <p>Provisional Title of the Work:</p> <p>Description of the Work:</p>	<p><i>For example, literary work in named genre intended for publication, comprising number of words etc. Do not include ancilliary material created by others, eg illustrations.</i></p>
Item 2	Delivery Date:	<p><i>Include a Delivery Date which you are comfortable with as failure to deliver your manuscript allows the Publisher to terminate the contract and require repayment of the Advance.</i></p>
Item 3	Required Format:	<p><i>The Publisher may here specify the form required, for example in electronic form/ as a double spaced manuscript / in an email attachment etc.</i></p>
Item 4	The Term:	<p><i>Specify the term of the licence you are granting to the Publisher. Many publishers will ask for the legal term of copyright which might be acceptable to you if you have complete confidence in the Publisher and the option to terminate if sales are low. For publishers without a proven track record, you might consider a shorter term of 3-5 years. You may grant different terms for different rights, eg:</i></p>



		<i>for the print edition, the ebook edition and for Subsidiary Rights.</i>
Item 5	The Territory:	<i>Specify the territory/territories in which the Publisher is authorised to publish the Work. Is it Australia and NZ? UK? Worldwide?</i>
Item 6	Languages:	<i>Specify the languages in which the Publisher is authorised to publish the Work. Is it all languages? Or English language only? Or specified languages in specified territories?</i>
Item 7	Agent:	<i>If you have a literary agent, please include their contact details here.</i>
Item 8	Advance:	<i>If the Publisher is paying an Advance, it should be specified here. The rule of thumb for advances is to be paid an amount equal to half the royalties anticipated on the first print run.</i>
Item 9	Recommended Retail Price:	<i>Although you might be consulted, your Publisher will set this.</i>
Item 10	Anticipated Minimum Print Run:	<i>It is helpful to know the Publisher's anticipated minimum print run as it gives you some indication of expected sales and can help you roughly forecast your royalties.</i>
Item 11	Royalties  Print Books:  Ebooks:  High Discount Sales:	<i>This Agreement allows you to negotiate royalties with your Publisher. As a guide, the NZSA recommends the following royalties:</i> <i>For <u>Print Books</u>: 10% of RRP for the first 3500 copies;</i>

	<p>Remainders:</p> <p>Overseas Co-editions:</p> <p>Audio Books: <i>[A royalty should be paid where the publisher is producing the audio book. A split of subsidiary income should be paid where the publisher is authorising the production of an audio book under sub-licence.]</i> If the Audio Book is packaged with the Print Book, royalties on the Print Book and Audio Book shall be calculated separately.</p> <p>E-book library revenues</p>			<p><i>12.5% of the RRP from 3500 – 5000 copies; and 15% of the RRP thereafter on copies sold other than as High Discounts.</i></p> <p><i>For <u>Audio Books</u> sold on cassette(s) or compact disk(s) and produced by the Publisher: 25% of Net Receipts or 10% of RRP.</i></p> <p><i>For <u>Audio Books</u> sold for digital download and produced by the Publisher: 25-50% of Net Receipts</i></p> <p><i>For <u>Ebooks</u>: At least 25% of Net Receipts.</i></p> <p><i>E-library lending platforms, individual bundle licence fees or renewal of licence fees to ebook library platforms to be Split 70/30</i></p> <p><i>For <u>High Discount Sales</u>: 15% of Net Receipts.</i></p> <p><i>For <u>Remainders</u>: 10% of Net Receipts.</i></p> <p><i>For <u>overseas co-editions</u>: 10% of Net Receipts.</i></p>
Item 12	High Discount Sales are defined as sales of the Work to retailers at a discount of [X]% or higher.			<i>The NZSA recommends that high discount sales are defined as 55% or higher.</i>
Item 13	Subsidiary Rights			<p><i>The NZSA recommends that subsidiary rights are granted on a “use it or lose it” basis as set out in clause 3.2.</i></p> <p><i>Otherwise, you might prefer a straightforward specified term, such as 2 – 5 years.</i></p>
	Right	Author Share	Publisher Share	<i>These are the splits recommended by the NZSA, subject to negotiation between Author and Publisher.</i>

	Anthology and quotation rights	[70-80%]	[30-20%]	
	Condensation: Magazines and ezines	75%	25%	
	Condensed Books	65%	35%	
	Paperback edition licensed to another publisher or book club	70%	30%	

	First Serial	70%	30%	
	Second serial rights (post publication)	[70-80%]	[30-20%]	
	Translation rights	75%	25%	
	Reprographic rights	75%	25%	
	Straight reading of the written text on radio or television	80%	20%	
	Reprint under sub-licence in English	80%	20%	
	Audio Books produced under sub-licence by a third party	75%	25%	
	Cartoon version of the Work	75%	25%	
	Rental rights; where the Work is made available for rent, including short term online access	75%	25%	

	Large print version of the Work specifically aimed at assisting people with a print disability	Commercial exploitation: 75%  Non-commercial exploitation (such as by an organisation assisting people with a print disability): 0%	Commercial exploitation: 25%  Non-commercial exploitation (such as by an organisation assisting people with a print disability): 0%	
	Payments made under statutory licence by a collecting society such as Copyright Agency Limited or for Educational Licensing	[50-75%]	[50-25%]	
	Screen rights, including film and TV	80%	20%	<i>The NZSA does not recommend granting upfront screen rights to Publishers, unless they have demonstrated expertise in</i>

				<i>exploiting this right.</i>
	Merchandise	80%	20%	<i>The NZSA does not recommend granting merchandise rights upfront to Publishers, unless they have demonstrated expertise in exploiting this right.</i>

	AI Licensing	80%	20%	<i>Any income from licencing (with authors permission) from this book being part of a dataset to train AI, where a legal licence is in place, the revenue will be split with the author similar to the split for translation rights.</i>
	Digital Version of the Work which includes additional features, services or material (such as video or music) than that provided in an eBook. For example: an app or multi-media product, whether or not including a computer game, based on or derived from, the Work.	70%	30%	<i>The NZSA does not recommend granting digital rights upfront to Publishers, unless they have demonstrated expertise in exploiting this right.</i>
Item 14	Author's copies:			<i>The NZSA recommends that authors be provided with eight to ten free copies of their Work on publication, eight to ten free copies of any subsequent edition in a new format; and two free copies of any reprints. An additional two copies of each edition should be provided to the Author's agent if you have one.</i>
Item 15	Author's Discount:			<i>The NZSA recommends 50% off the RRP.</i>

Item 16	Confidential Information:	<i>Insert any information which you want to keep confidential. This might include the Work before publication, marketing plans, financial information or any other information which by its nature is confidential. Alternatively, delete this clause if there is nothing confidential.</i>
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## Annexure A: Confirmation of Rights for CLNZ

**DATE:** .....

**TO:** CLNZ

**Author:** [Author's name] of [author's address] [NZBN]

**Work:** [title of the book]

**Publisher:** [name, Business number and address details]

**All CLNZ Income in respect of the Work (including any Ancillary and Illustrated Material) to the extent owned by the Author) is to be distributed as follows:**

Author: [X]%

Publisher: [X]%

As author, I, ....., authorise CLNZ to distribute any and all money due to me from copyright licence fees collected by it under all statutory and voluntary licence schemes in respect of the Work to the Publisher and me in the proportions set out above.

Signature of Author:

Signature of Authorised Officer of  
Publisher:

.....  
Full name of Author:

.....  
Full name of Publisher:

## GLOSSARY OF INDUSTRY TERMS

Definitions	
NZBN	New Zealand Business Number
ACCEPTANCE	The letter from the Publisher that formally accepts the Author's complete manuscript. Usually, the trigger for payment of the part of the advance that relates to delivery.
ADVANCE	This is a payment in ADVANCE of royalties, which means that the Publisher will estimate the number of copies they think they will sell and the price at which they will sell it. They will then pay a proportion of those earnings to you in advance of publication, but that money will be deducted from your royalties when the book starts to sell. Unless you have breached the agreement by failing to deliver the agreed Work, the ADVANCE is usually NON-REFUNDABLE.
AGENT	If you have a literary agent, they will be listed as one of the parties to the contract. An agent is an individual who represents you for the purposes of negotiating publishing deals and other commercial opportunities relating to your Work.
ANTHOLOGY	An ANTHOLOGY is a collection of literary works that includes all or some of your book and is sold as a single unit.
NZPA	New Zealand Publishers Association (peak body representing publishers)
AUDIO	This is a version of the book that is a sound



	recording <i>only</i> . (It is not an Ebook or a digital version of the book that might incorporate audio but also includes other content such as images or video.)
CO-EDITION	A CO-EDITION deal takes place when a Publisher sells your book to another Publisher, usually in another Territory. Unlike a rights deal, a CO-EDITION deal means that your Publisher prints copies for the other Publisher, under that Publisher's brand and supplies them with those finished books. Consequently, the Author receives a share of net receipts, rather than a % split of rights income.
COLLECTING SOCIETY	An organisation that manages statutory licences such as CLNZ Copyright Licensing New Zealand
DEFAMATION	Any published communication which damages a person's reputation without lawful excuse. For more information, we refer you to this excellent Australian Arts Law <a href="#">Defamation Information Sheet</a> .
DESTROYED COPIES	Copies of your book that are unsaleable because of damage, including in transit or after time spent on the shelves of a bookshop or due to fire or water. Destroyed copies do not attract a royalty.
DIGITAL DOWNLOAD	The process of downloading data from an external source onto your computer, tablet, or device. For audio files, this is usually in mp3 format.
DIGITAL VERSION	This is a digital version of your book, which includes all, or part of your Book, along with additional features, services, or material such as video or music. For example: an app or multimedia product, whether or not it includes a computer game, based on or derived from, the Work.

EBOOK	A publication of your Work for reading in a digital format such as a PDF or ePub.
FILM OPTION	The exclusive right to acquire the rights in a literary work for film production, usually for a period of 12 to 24 months, attracting a payment to the author.
FIRM SALE	When booksellers and distributors cannot return any unsold books to the publisher (cf. SALE OR RETURN).
FIRST SERIAL	Magazine or newspaper extracts published in one or several issues or serially delivered online before the book is published (cf. SECOND SERIAL).
GROSS SALES	Revenue received by the Publisher excluding any deductions other than GST.
GST	Goods and Services Tax (included in RRP in store).
HIGH DISCOUNT	This is a sale of your Book at a discount higher than the usual range.
LARGE PRINT	This is a version of your Book specifically aimed at helping people with a reading disability.
MATERIAL	This term is used by the Publisher to include all material that you as Author deliver under the Agreement, including ALL formats and editions of that material that are produced.
MECHANICAL REPRODUCTION	This includes records, cassettes, tapes, CDs, cable and pay television, and other methods of audio-visual reproduction by devices or systems known now or in the future but excluding electronic rights.

MEDIATION	A negotiated settlement facilitated by a third-party mediator.
MERCHANDISING	Licensing rights in goods (eg. T-shirts, toys, key rings, screen savers and so on) which exploit the popularity of your Book, or a character, name, image, or object from your book.
MORAL RIGHTS	Your personal right as author to have your work attributed to you and to insist that its integrity be retained. For more information, we refer you to this excellent Australian Arts Law Centre's <a href="#">Moral Rights Information Sheet</a> .
NET RECEIPTS	The Publisher's invoiced revenue from the sale of the Work (revenue less GST and retailer discount). Also known as Price Received.
OPTION	Right of first refusal of your next book.
OUT OF PRINT	Your Work is considered to be out of print, if after xxx years from first publication as a Book (Ebook/print book or both), fewer than xxxx units have sold over the last xxx months. The quantification of this formula should be negotiated and agreed in your commercial terms.
OVERSTOCK	When the number of Books remaining in the Publisher's warehouse exceeds the average sale of your book over a reasonable period of time eg 12 months. Overstocks are often sold off as Remainders.
PRICE RECEIVED	See Net Receipts
PRINT BOOK	Your Book in a printed form, either hardback or paperback.

PRINT ON DEMAND	The ability to print to order; your printer can print small numbers, or even single copies, of your book at a time.
PRINT RUN	The number of books printed at any one time, including short run printings but not print on demand.
QUOTATION	A QUOTATION is a short extract from your book.
RECOMMENDED RETAIL PRICE	The RRP includes GST and is set by the Publisher, but the retailer can choose to price the Book at any level.
REMAINDERS	Copies sold at or below manufacturing cost. See Overstocks.
RENTAL	Renting or lending out your Work including providing short term online access, such as via libraries or airlines for air travel.
REPROGRAPHIC RIGHTS	Rights in visibly perceivable facsimile copies. They include photocopies, microfilm, microfiche, and storage and retrieval systems made by devices or systems known now or in the future.
RESERVE AGAINST RETURNS	A % of Royalties withheld by the Publisher in the first accounting period against the possibility of books being returned.
REVERSION OF RIGHTS	The return of rights to the author. The end of the Publisher's licence.
SALE OR RETURN	Trading terms which allow retailers to return unsold stock to publishers within an agreed timeframe, typically 12 months from receipt of stock.

SECOND SERIAL	Publication in a magazine or newspaper or online after book publication.
SUB-LICENCES	Publication rights granted by your Publisher to another Publisher.
SUBSIDIARY RIGHTS	All rights of exploitation in a work enjoyed by the copyright owner, other than the first publication rights: the initial licence to publish in the primary territory.
TERMINATION	Clause setting out the circumstances under which the contract is terminated.
THIRD PARTY MATERIAL	Any Material used in your Book that is not owned by you.
TRANSLATION	An edition of your Book in a language other than English.
UNIT COST	The total cost per unit of producing your Book, including editorial, design, proof reading, layout, and print.

## CHECKLIST FOR AUTHORS

Before signing your contract, stop and consider whether you understand it. Have you been given time to read and consider it?

The NZSA offers a contract assessment service for its members if you would like advice on your proposed publishing contract.

Think VERY CAREFULLY and obtain advice before signing contracts which:

- take an assignment (transfer) of your copyright
- don't give you detailed sales reports, at least once but preferably twice a year;
- allow text alterations without your consent;
- hold reserves beyond the third accounting date;
- require you to waive your moral rights;
- require you to agree to a non-compete clause which restrains your ability to write further works in your genre or area of expertise for any length of time;
- require you to bear the costs of production or contribute to the costs of production, without first working out whether you will ever be able to recoup your investment/make a profit from the publication;
- require you to give an option to the Publisher over your next work, unless worded with a sufficient degree of flexibility such that you can seek an alternative publisher if you wish;
- do not include a reversion clause based on reasonable minimum sales of the Work.

Check that your publisher's contract:

- has a firm deadline for publication;
- gives approximate RRP and minimum print-run;
- binds the publisher to show you proofs;
- defines responsibility for the cost of illustrations, indexing, photographs etc;
- allows you to inspect the publisher's accounts;
- has an effective termination and reversion of rights clause.

Lastly, seek the advice of your accountant if necessary on registering for GST. You will need an NZBN.