

BUSINESS LAW: LICENCES

MEMORANDUM OF AGREEMENT

made this day of 20.....

Between of (hereinafter termed the Publishers) of one part and of

5 (hereinafter termed the Proprietors) of the other part

WHEREAS the Proprietors are the proprietors of a work entitled: (hereinafter termed the Work),

NOW IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

- 10 1. Subject to the terms detailed in this Agreement, the Proprietors hereby grant to the Publishers the exclusive licence to produce and publish a single printing of 10,000 copies only of the Work in paperback form in the English language under the Publishers' own imprint¹ (hereinafter termed the Licensed Edition) for sale throughout only. This restricted circulation is to be clearly indicated on the outside of the cover and on the reverse of the title page² of the Licensed Edition
- 15 2. This agreement shall not come into effect until the Proprietors have received the (advance) payment detailed in Clause 9 hereof.
3. The Publishers shall produce the Licensed Edition at their own expense. They shall cause it to be reproduced faithfully and accurately and shall not abridge,
- 20 expand or otherwise alter the Work, including illustrations where applicable, without the prior written consent of the Proprietors.
4. Should the Publishers fail to issue the Licensed Edition within 12 months from the date of this Agreement all rights granted under this Agreement shall revert to the Proprietors without prejudice to any monies paid or due to the Proprietors.
- 25 5. The Proprietors hereby warrant to the Publishers that they have the right and power to make this Agreement and that according to English law the Work will in no way whatever give rise to a violation of any existing copyright, or a breach of any existing agreement and that nothing in the Work is liable to give rise to a civil prosecution or to a civil action for damages or any other remedy and the Proprietors
- 30 will indemnify the Publishers against any loss, injury or expense arising out of any breach of this warranty.
6. The Licence hereby granted to the Publishers shall not be transferred in whole or in part or extended to include any other party nor shall the Licensed Edition appear under any imprint other than that of the Publishers, except with the prior written
- 35 consent of the Proprietors.
7. The Licence herein granted shall continue for a period of five years from the date of first publication by the Publishers of the Licensed Edition and thereafter may be subject to renewal by mutual agreement between the parties hereto.
- 40 8. If any difference shall arise between the Proprietors and the Publishers touching the meaning of this Agreement or the rights and liabilities of the parties hereto, the same shall be referred to the arbitration of two persons (one to be named by each party) or their umpire, in accordance with the provisions of the Arbitration Act 1996 or any subsisting statutory modification or re-enactment thereof, provided that any dispute between the parties hereto not resolved by arbitration or agreement shall be submitted to the jurisdiction of the English courts.

1 a publisher's trademark

2 usually the first page in the book

Reading tasks

A Understanding main points

Read the extract on the opposite page from a licence agreement between two publishers and answer these questions.

- 1 What kind of publication does this licence agreement permit the Publishers to produce?
- 2 When does the agreement come into effect?
- 3 Can the Publishers make any changes to the original version?
- 4 What assurances do the Proprietors give that there will be no legal problems with copyright?
- 5 If the licence is to be extended to other parties, what must be done?
- 6 Can the licence be renewed by only one party?
- 7 What action must be taken if there is a dispute about the agreement?
- 8 In the worst case, what will happen if the parties cannot agree?

B Understanding details

Answer these questions.

- 1 Is there any reference to payment in the agreement? If so, which clause is it in?
- 2 What do *they* and *it* refer to in lines 18–19?
- 3 What is meant by *this warranty* in line 31?
- 4 What are *the rights and liabilities* of the parties in line 40?
- 5 What does *the same* refer to in line 40?
- 6 What is an *umpire*, as referred to in line 42?
- 7 Is there any difference in the text in clause 8 between *difference* and *dispute*?
- 8 What two phrases are used to show that the 1996 Act may be changed in the future?

Legal brief

Copyright is a legal term used to show the rights of ownership of creative ideas, originally for published literary works but later extended to include such things as music and motion pictures. New legislation is now needed to deal with the increasing use of the Internet and issues arising from abuses of intellectual property rights. In the EU, copyright protection lasts for 70 years after the death of the copyright holder. There are criminal penalties for infringement of copyright.

Vocabulary tasks

A Definitions

Match these legal terms from the licence agreement with their definitions.

- | | |
|---|---|
| 1 memorandum | a) give |
| 2 hereinafter termed | b) change |
| 3 subject to | c) written record |
| 4 grant | d) limited to |
| 5 exclusive | e) so-called in the agreement after this definition |
| 6 come into effect | f) depending on |
| 7 abridge, expand, alter | g) return to |
| 8 prior written consent | h) concerning the interpretation |
| 9 revert to | i) breaking the law of authors' rights |
| 10 without prejudice to any monies paid | j) legal authority |
| 11 hereby warrant | k) guarantee |
| 12 right and power | l) will be sent |
| 13 violation of copyright | m) regardless of any payments made |
| 14 touching the meaning | n) will be applied |
| 15 shall be submitted | o) previous written permission |

B Complete the sentence

Use an appropriate word or phrase from Exercise A to complete each sentence.

- 1 The agreement specified that the Proprietors were legally entitled to the ownership of all rights in the book. They had the right and power to make the agreement.
- 2 Bookbinders Inc (..... the Publishers) and Jones and Company (..... the Proprietors) hereby mutually agree the following.
- 3 This agreement is for five years and shall after the agreed payment has been made.
- 4 The rights granted in this agreement are to the licence holder.
- 5 No changes shall be made to this agreement without the of the Proprietors.
- 6 If any difference shall arise between the Proprietors and the Publishers of this Agreement, the same shall be referred to arbitration.
- 7 the satisfactory performance of the licence holder, this agreement may be renewed.
- 8 Should the licence holder fail to fulfil all the requirements of the agreement, all rights shall the Proprietors.

C Word search

Replace the underlined items with words and phrases from the text that have a similar meaning.

- 1 This agreement is issued by the owners of the rights. *Proprietors*
- 2 The terms are described in this agreement.
- 3 Publishing this book will certainly not cause any legal difficulties for either party.
- 4 The Proprietors will protect the licence holder against any expense.
- 5 The agreement may not be altered to involve any other person.