

PUBLISHING & COPYRIGHT LICENCE AGREEMENT FOR LITERARY WORKS

This AGREEMENT is made between:

(RSA ID:)

(hereafter called the AUTHOR)

and

GROENHEIDE BOEKE (Pty) Ltd

(2019/109904/07)

(hereafter called the PUBLISHER)

in relation to the WORK provisionally titled and attached as ANNEXURE A.

DEFINITIONS

[1] WORK means the literary work that is the objective of this AGREEMENT and includes any and all artistic works which, separately or inseparately, form part of it.

[2] For the purpose of this agreement, the terms 'purchase' and 'sale' shall be construed to include copies of the WORK distributed free of charge, unless specifically excluded.

[3] For the purpose of this agreement, the term AFFILIATES means owners, shareholders, officers, directors, employees, parents, subsidiaries, affiliated companies, licensees, distributors, advertisers, Internet service providers, attorneys, accountants, and any other person or entity to whom the PUBLISHER extends its representations and warranties to in connection with the production, dissemination, transmission, promotion, publication, distribution or sale of the WORK or any part thereof, or the exercise of any right therein or derived therefrom.

[4] Where a term has not been defined in this AGREEMENT or there exists ambiguity as to its meaning, the definition as per the Copyright Act 98 of 1978 (as amended) and, failing that, any standard English dictionary shall be the correct definition.

ACKNOWLEDGEMENT

[5] The AUTHOR herewith represents and warrants to the PUBLISHER that:

[5.1] the AUTHOR is the author and / or the owner of the copyright in the WORK;

[5.2] the AUTHOR either is the owner of the copyright in any associated cover or interior graphics supplied by the AUTHOR for the WORK, or has secured written permission (which the AUTHOR will furnish to the PUBLISHER, together with any required third party credits) to use the same in the WORK;

[5.3] the AUTHOR has full power, authority and right to enter into this AGREEMENT and to grant the rights herein granted;

[5.4] this AGREEMENT does not conflict with any arrangements, undertakings or agreements between the AUTHOR and any other person or entity;

[5.5] the WORK is not in the public domain and is entirely original, except for portions thereof for which legally effective written licences or permissions have been secured, unless such portions are in the public domain;

[5.6] the WORK as submitted, and its publication by the PUBLISHER, does not and will not violate or infringe upon any personal or proprietary rights, including, but not limited to, copyrights, trademark rights, trade secret rights, contract rights, privacy rights, moral rights, or publicity rights of any other persons;

[5.7] the WORK is not defamatory or obscene, or in any other way illegal, and any recipes, formulae, instructions, or recommendations contained in the WORK are not and will not be injurious to any reader, user, or any third person.

[6] The AUTHOR herewith authorises the PUBLISHER to make enquiries, either directly or through third parties, that the PUBLISHER considers appropriate to verify the rights, warranties and the accuracy of the information or documentation the AUTHOR provides to the PUBLISHER with respect to those rights and warranties mentioned above.

LICENCE AGREEMENT

[7] The AUTHOR herewith grants to the PUBLISHER and its successors in title an EXCLUSIVE AND WORLDWIDE LICENCE to publish and distribute the WORK, as well as an adaptation thereof, in printed ('paper') and digital ('e-book') format, for a period equal to that defined under sub-clause [17.3]; whereafter the licence becomes non-exclusive for a period similar to the duration of copyright in the WORK.

[8] Notwithstanding the previous, should the PUBLISHER make available a procedure for indicating that the AUTHOR does not have worldwide distribution rights to the WORK, then the territory for the sale of the WORK will be those territories for which the AUTHOR indicate, through the procedure that the PUBLISHER provides, that the AUTHOR has distribution rights. The AUTHOR acknowledges that the PUBLISHER is, however, under no obligation to provide such a procedure.

[9] The LICENCE granted in this AGREEMENT includes, without limitation, the right to:

[9.1] reproduce, index and store the WORK on one or more data-storage facilities, and reformat, convert and encode the WORK;

[9.2] display, market, transmit, distribute, sell and otherwise digitally make available all or any portion of the WORK for customers and prospective customers to download, access, copy and paste, print, annotate and / or view online and offline, including on portable devices;

[9.3] permit customers to 'store' copies of the WORK that they have purchased from the PUBLISHER on their own storage devices, and to access and re-download from time to time such copies of the WORK from the facilities provided by the PUBLISHER, both during and after the term of this AGREEMENT;

[9.4] display and distribute the trademarks and logos of the AUTHOR in the form provided to the PUBLISHER or within published copies of the WORK (with such modifications as are necessary to optimise their viewing);

[9.5] use, reproduce, adapt, modify, and distribute, as the PUBLISHER determines appropriate and at the sole discretion of the PUBLISHER, any metadata that the AUTHOR provides in connection with the WORK; and

[9.6] transmit, reproduce and otherwise use (or cause the reformatting, transmission, reproduction, and/or other use of) the WORK as mere technological incidents to and for the limited purpose of technically enabling the foregoing.

[10] The AUTHOR hereby grants the PUBLISHER the right to edit and / or make changes to the WORK

which the PUBLISHER deems necessary and appropriate, unless such change or changes infringe upon the moral rights of AUTHOR; however, in exercising this right, the PUBLISHER explicitly foregoes any claim to shared copyright in the edited and / or changed WORK once a period equal to that defined under sub-clause [17.3] has lapsed.

[11] The AUTHOR hereby grants the PUBLISHER and its AFFILIATES the right to make reasonable excerpts from the WORK in order to facilitate sales of the WORK.

[12] The AUTHOR hereby grants the PUBLISHER and its AFFILIATES the right to store, use, transmit and distribute copies of the WORK as required to facilitate the printing and / or distribution process of the WORK.

[13] The AUTHOR retains copyright and moral rights attached to the WORK, as well as any other rights which may not be detailed in this AGREEMENT.

[14] The AUTHOR may grant other parties a licence in the WORK and may transfer ownership of the WORK, but only to the extent that such license or transfer does not infringe on this LICENCE granted to the PUBLISHER in this AGREEMENT.

INDEMNIFICATION

[15] The AUTHOR agrees to indemnify and hold harmless the PUBLISHER and its AFFILIATES from and against any losses, lost profits, damages, liabilities, judgments, decrees, settlements, or expenses (including without limitation, reasonable attorney's fees and court costs) arising from, connected with, or by reason of any breach or alleged breach of any of the representations and warranties set forth above under 'ACKNOWLEDGEMENT'; but the AUTHOR shall not be liable for any matter inserted into the WORK by the PUBLISHER or its AFFILIATES that was done without the prior consent of the AUTHOR.

[16] All representations, warranties and indemnities by the AUTHOR herein shall survive termination of this AGREEMENT.

TERMINATION

[17] The AUTHOR and the PUBLISHER shall be entitled to terminate this AGREEMENT on written notice of ninety (90) days to the other party, with the proviso that the AUTHOR may only terminate this agreement after at least one of the following events has occurred:

[17.1] the PUBLISHER has printed 300 or more copies of the WORK;

[17.2] the total value of sales of the WORK by the PUBLISHER is equal to or exceeds R 25 000.00 (twenty-five thousand rand and zero cents); or

[17.3] a period of three years has elapsed since the conclusion of this AGREEMENT between the PUBLISHER and the AUTHOR.

[18] The PUBLISHER also reserves the right to discontinue publication of the WORK at any time, effective upon forwarding written notice to the AUTHOR, if, in the judgment of the PUBLISHER, the WORK may subject the PUBLISHER to the the risk of litigation or other adverse commercial consequences, or the AUTHOR acts in an unethical manner towards the PUBLISHER.

[19] If the PUBLISHER commences bankruptcy proceedings, this AGREEMENT shall immediately terminate and all rights to the WORK granted in this AGREEMENT to the PUBLISHER and its AFFILIATES shall immediately revert to the AUTHOR.

[20] Upon the effective date of any such termination, the PUBLISHER shall be required to remove any and all electronic copies of the WORK in the possession of its AFFILIATES. The PUBLISHER and its AFFILIATES, however, retain the right to store copies of the WORK, in whichever format, for archival or legal purposes.

[21] Termination of this agreement shall not affect the rights that the PUBLISHER has in any complementary works created by the PUBLISHER for the express purpose of publishing the WORK

and the AUTHOR shall not be entitled to such works.

[22] The PUBLISHER may fulfil any customer orders placed and paid for before the termination date of this AGREEMENT even though such fulfilment of the order by the PUBLISHER will take place after the termination date of this AGREEMENT.

[23] Termination of this AGREEMENT shall apply prospectively only and shall not affect the rights of the PUBLISHER to continue selling printed copies of the WORK already printed or continuing to make digital copies of the WORK available to customers who already bought such copies.

DIGITAL RIGHTS MANagements ('DRM')

[24] The AUTHOR herewith acknowledges that the PUBLISHER does not make use of DRM technology in the distribution of digital copies of the WORK in order to prevent unauthorised copying of the WORK (i.e. 'pirating'). The AUTHOR is thus estopped from basing any claim or action of whatsoever nature against the PUBLISHER on the lack of DRM technology in digital copies of the WORK.

LIMITATION OF LIABILITY

[25] The PUBLISHER will in no event be liable for any loss of data, loss of profits, cost of cover or other special, incidental, consequential, indirect, exemplary or reliance damages arising from or in relation to this AGREEMENT, or for any equitable remedy of disgorgement or otherwise, however caused and regardless of theory of liability.

[26] In no event will the liability of the PUBLISHER under this AGREEMENT exceed the amount of royalties due and payable by the PUBLISHER to the AUTHOR under this AGREEMENT for the twelve-month period preceding the claim.

[27] The PUBLISHER specifically disclaims, with respect to all services, software, content or products provided by or on behalf of the PUBLISHER in connection with this AGREEMENT, all warranties, expressed or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

[28] The AUTHOR acknowledges and agrees that the PUBLISHER cannot ensure that the WORK will be protected from theft or misuse or that customers will comply with any content usage rules the PUBLISHER may make applicable in connection with the use of digital versions of the WORK, and the PUBLISHER will have no liability arising from a failure of any security system or procedure or of any customer to comply with any content usage rules.

[29] The PUBLISHER strives to make its systems and processes error-free and efficient, but the PUBLISHER cannot guarantee that they will be, and the PUBLISHER will have no liability arising from system or process failures, interruptions, inaccuracies, errors or latencies.

FORCE MAJEURE

[30] The PUBLISHER will not be liable to the AUTHOR for any failure or delay in the performance of its obligations under this AGREEMENT caused by any event or circumstance beyond its control, including, but not limited to, denial-of-service attacks, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, and labour conditions.

PUBLICATION

[31] The layout, format, cover design and printing method used in the publication of the WORK by the PUBLISHER is done at the sole discretion of the PUBLISHER, although the AUTHOR may object if such layout, format or cover design infringes upon the moral rights of the AUTHOR.

[32] The PUBLISHER reserves the right, at its sole discretion, by giving written notice to the AUTHOR, to no longer accept the WORK for publication in the event of irreconcilable differences regarding editing of and / or changes to the layout, format, cover design and / or printing method used in and / or time of publication of the WORK.

[33] The PUBLISHER, at its sole discretion, shall deem the WORK ready for publication and shall only commence publication thereof at such a time and in such a format as the PUBLISHER, at its sole discretion, determines most suitable.

[34] If the PUBLISHER publishes the WORK in printed format, the AUTHOR shall be entitled to three (3) free copies of the WORK in said printed format.

[35] The various publishing and distribution programs regarding the WORK are determined at the sole discretion of the PUBLISHER and any existing program may be terminated by the PUBLISHER without prior notification to the AUTHOR.

ROYALTIES

[36] The PUBLISHER shall, at its sole discretion, determine a 'recommended retail price' for each format in which the WORK will be made available in terms of this AGREEMENT. This recommended retail price shall be reviewed from time to time by the PUBLISHER and no notice in the change thereof need be given to the AUTHOR.

[37] The PUBLISHER, at its sole discretion, may offer a discount on the recommended retail price and no notice thereof need be given to the AUTHOR.

[38] On all sales of copies of the WORK, the PUBLISHER shall pay the AUTHOR a royalty calculated at being:

[38.1] for printed copies, five rand (R 5,00) per copy sold,

[38.2] for digital copies, thirty-five percent (35%) of the price at which said copy was sold by the PUBLISHER, and

[38.3] for digital copies sold through third-party services, fifty percent (50%) of the amount (in South African Rand) paid to the PUBLISHER by said third-party for said copy sold,

minus value-added or any other tax (if applicable).

[39] The PUBLISHER, at its sole discretion, may pay to the AUTHOR an advance on future royalties, which amount, determined by the PUBLISHER, at its sole discretion, shall upon payment be construed as an amount agreed between PUBLISHER and AUTHOR, and the PUBLISHER, at its sole discretion, may offset any accrued royalty income against this advance already paid to the AUTHOR.

[40] On all sales to the AUTHOR by the PUBLISHER, royalty will be deducted during invoicing and treated as if specifically paid to the AUTHOR.

[41] The PUBLISHER will make monthly royalty payments, if earned, to the AUTHOR within fourteen (14) days of the end of each calendar month and shall provide the AUTHOR with timely statements thereof.

[42] If the royalty payment due in a single calendar month is less than one-hundred rand (R 100,00), the balance will be applied to the next calendar month until the royalty payment due equals or exceeds one-hundred rand (R 100,00), at which time the PUBLISHER shall make the appropriate royalty payment to the AUTHOR.

[43] Notwithstanding the previous, the PUBLISHER shall pay any accrued royalty income due within fourteen (14) days of the end of the calendar month during which this AGREEMENT is terminated, irrespective of the value thereof.

[44] Notwithstanding the previous, the AUTHOR shall not be entitled to any royalties on copies of the WORK distributed free of charge for the purpose of review, marketing or legal requirements. Distribution of such copies are at the sole discretion of the PUBLISHER and for its sole account only.

[45] Notwithstanding the previous, if a third party asserts that the AUTHOR does not have all the rights required to make the WORK available to the PUBLISHER, the PUBLISHER may withhold all royalties due to the AUTHOR until such time as the PUBLISHER can reasonably determine the validity of the third party claim. If the PUBLISHER determines that the AUTHOR did not have all of those rights or that

the AUTHOR has otherwise breached the representations and warranties set out under 'ACKNOWLEDGEMENT', the PUBLISHER will not owe the AUTHOR any royalties and the PUBLISHER may offset any of those royalties that were previously paid against future royalties, or require the AUTHOR to remit paid and / or advanced royalties to the PUBLISHER.

[46] The AUTHOR shall not be entitled to a share, either partial or in whole, of any income derived from the sale of advertising space by the PUBLISHER which is in any way whatsoever connected to the WORK or the AUTHOR, including, but not limited to, adverts on the website of the PUBLISHER or within the WORK itself; and vice versa.

TAXES

[47] The PUBLISHER is responsible for the collection and remittance of any and all taxes imposed on the sale of WORK to customers by the PUBLISHER.

[48] The AUTHOR is responsible for any income or other taxes due and payable resulting from royalty and other payments made to the AUTHOR by the PUBLISHER under this AGREEMENT.

[49] Accordingly, unless otherwise stated, the amounts due to the AUTHOR hereunder are inclusive of any taxes that may apply to such payments. The PUBLISHER maintains the right, however, to deduct or withhold any and all applicable taxes from amounts due by the PUBLISHER to the AUTHOR, and the amounts due, as reduced by those deductions or withholdings, will constitute full payment and settlement to the AUTHOR.

MARKETING

[50] The PUBLISHER shall have sole discretion in the marketing and / or promotions undertaken by the PUBLISHER in relation to the WORK and / or the AUTHOR.

[51] The PUBLISHER shall not be held liable for any expenses relating to any marketing or promotional efforts undertaken by the AUTHOR; and vice versa.

[52] The AUTHOR acknowledges that the PUBLISHER has no obligation to market, distribute or offer the WORK for sale; or, after having commenced doing so, to continue marketing, distributing or selling the WORK; and vice versa.

[53] The PUBLISHER may post pertinent information regarding the AUTHOR and / or the WORK on the website of the PUBLISHER or its AFFILIATES. The information may include a biographical sketch of the AUTHOR, a description of the WORK, and any other additional information that may help promote the AUTHOR or the WORK.

COPYRIGHT INFRINGEMENT

[54] If during the term of this AGREEMENT the copyright of the WORK is infringed, only the PUBLISHER may, at the sole discretion of the PUBLISHER, commence an action for copyright infringement. Notwithstanding the aforementioned, the AUTHOR may, at own cost, proceed with an action regarding losses suffered.

[55] However, the AUTHOR may not institute an action for or against the PUBLISHER in the event the PUBLISHER refuses to commence said action for copyright infringement.

LICENCE FEE

[56] The AUTHOR and the PUBLISHER herewith declare and agree that there are no fees attached to the granting or accepting of this LICENCE in the WORK.

JURISDICTION AND OTHER MATTERS

[57] This AGREEMENT shall be governed by the laws and statutes of the Republic of South Africa, and shall be binding upon the heirs, executors, administrators and assigns of the AUTHOR and upon the successors of the PUBLISHER.

[58] The PUBLISHER may not assign this AGREEMENT.

[59] If any term or provision of this AGREEMENT is illegal or unenforceable, then, nonetheless, this AGREEMENT shall remain in full force and effect and such term or provision shall be deemed deleted or curtailed only to the extent as is necessary to make it legal or enforceable.

[60] This AGREEMENT represents the complete understanding between the parties as to its subject matter and supercedes all prior understandings, if any, as to its subject matter.

[61] No modification, amendment, or waiver shall be valid or binding unless made in writing and signed by all parties hereto.

[62] The AUTHOR and the PUBLISHER consent to the use of registered mail and e-mail as the only valid means of providing any notices to the other party in relation to this AGREEMENT.

Signed by the AUTHOR on _____ (DATE) _____ at _____ (LOCATION) _____ :

Signed by the PUBLISHER on _____ (DATE) _____ at _____ (LOCATION) _____ :
