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Electronic Clearinghouse for Multiple Format Production

Memorandum Of Agreement

This memorandum of agreement (“agreement”) is intended to facilitate the making of copies of literary works in formats specially designed for persons with perceptual disabilities as defined by section 32.(1) of the Copyright Act.

The parties to this agreement are:

- publishers (“publisher” or “publishers”) of literary works (“materials”)
- non-profit organizations (“producer” or “producers”) that make copies of materials in such formats on behalf of persons with such perceptual disabilities
- Library and Archives Canada (“LAC”) both as administrator of certain aspects of the agreement and as a producer

Nothing in this agreement:

- affects any rights that exist or may exist in the future by virtue of the Copyright Act, any other legislation or at common law
- creates a legal relationship between participating publishers and producers except to the extent that producers are bound by all provisions relating to their handling of files made available under the agreement

The agreement is in six parts:

1. definitions
2. LAC functions and obligations
3. producer obligations
4. publisher performance standards
5. term and termination
6. other provisions

1. Definitions

Producer

For the purposes of this agreement, a producer must be one of the following:

- A Ministry of Education of a Canadian province or territory
- A division, department or agency of such a Ministry of Education
- A Canadian provincial or territorial school board, district or like entity
- Any educational institution operated or licensed by a Ministry of Education, school board, district or like entity as defined above
- Any educational institution operating, licensed or accredited by the Government of Canada
- Any educational institution that is or is eligible to become a regular member of the Association of Canadian Community Colleges or an institutional member of the Association of Universities & Colleges of Canada
- CNIB
- Library and Archives Canada (LAC)
- The Montreal Association for the Blind

and must make copies under this agreement only for eligible users as defined below.

If LAC establishes a central repository for files supplied by publishers, all of the obligations binding on a producer will be equally binding on that repository.

User

For the purposes of this agreement, a user is a person lawfully resident in Canada and with a perceptual disability as defined below.

Perceptual disability

A perceptual disability includes one or more of the following range of difficulties:

- a visual acuity of 20/70 or less in the better eye after correction;
- a visual field of 20 degrees or less
- any progressive eye disease with a prognosis of becoming one of the above within five years
- a visual problem or related visual stamina that is not correctable and that results in the user functioning as if his or her visual acuity is limited to 20/70 or less
- for educational purposes, a student whose visual acuity is not sufficient for the student to participate in everyday educational activities without the accommodation of instructional and related materials in multiple formats
- an inability to hold or manipulate printed materials
- any other impairment (including but not limited to dyslexia and brain injury) such that user cannot use print publications other than in formats not available from publisher

2. Library and Archives Canada (LAC)

2.1 LAC is a party to this agreement:

- as an administrator of resources and services referred to below, including participation in and withdrawal from this agreement by publishers and producers
- as an eligible producer

2.2 LAC will operate a website that producers must use to submit to publishers all requests made under this agreement. The form that will be used for these requests will require password access to verify eligibility.

2.3 LAC will ensure that producers have access to the National Union Catalogue (AMICUS) for the purposes set out at 3.16 and 3.17 below.

2.4 For each publisher that participates in the agreement, LAC will maintain records of files requested and copies made from those files. These records will be sent to each publisher by the end of February each year, showing activity in the prior calendar year.

2.5 LAC will use best efforts to ensure that the list of contacts for publishers referred to at 4.7 below is kept current.

2.6 LAC must deliver to producers as soon as practicable any notices of termination received under 5.6 below.

3. Producers

3.1 The producer will submit requests to the publisher by completing the request form on the LAC website, using password access to verify eligibility, and submitting the form to the addressee(s) indicated by the publisher.

3.2 Requests submitted in any other manner may need to be verified, and the publisher does not commit to the delivery times set out below.

3.3 The producer undertakes to make copies using files supplied by the publisher only for users as defined in this agreement.

3.4 The producer must be satisfied that perceptual disability as defined in this agreement has been established through diagnosis by a professional qualified to diagnose visual impairment or other perceptual disability, and that written documentation to that effect has been supplied.

3.5 The producer undertakes not to make any textual changes to materials manufactured using files supplied by the publisher without the prior written consent of publisher. However, this prohibition does not apply to changes in

format, pagination, layout, structure or to the inclusion or exclusion of non-textual material that may be needed for reasons of technology or to meet the specific perceptual or instructional needs of the user.

- 3.6 The producer must ensure that any third party contracted to manufacture or assist in the manufacturing of materials under this agreement is under the same obligations as the producer, and that any agreement between the producer and the third party states specifically that the third party acquires no intellectual property rights in any materials manufactured using files supplied by the publisher and can make no use of any materials supplied by the publisher except as requested by the producer for the purposes set out in this agreement.
- 3.7 For all copies made under this agreement, the producer must attach a notice stating that further copying of the work may infringe copyright.
- 3.8 In addition to the requirement of 3.7 above, if a copy made under this agreement is in a format not designed specifically and exclusively for a user with a perceptual disability, the producer must either attach as part of that notice or else ensure that the user signs an agreement stating that he/she:
- will only use the materials to accommodate his/her disability
 - that user may not and will not revise, convert, disassemble or otherwise modify any text files supplied
 - will not sell, license, rent, loan or otherwise distribute or network any text files supplied
- 3.9 The producer must take all reasonable steps to protect the copyright and all other rights of publisher.
- 3.10 If the producer makes copies available to users through a website, then access to the website must:
- require acceptance of terms of use that include prohibitions on unlawful copying and distribution
 - be controlled by unique passwords assigned to each user
 - be withdrawn if the user is in breach of said prohibitions
- 3.11 The producer must use reasonable efforts to ensure that:
- each user has purchased a copy of the print edition of the work; or
 - in the case of a work for use by a student at an institution for which publications are purchased in bulk by the institution or by a school board or district or Ministry of Education on behalf of said school, that the work was adopted for use by the institution for the period for which the multiple format copy is required.

However, the requirement to purchase a print edition does not apply if the work is held in the library of the institution attended by the student and is not a required text for the student.

3.12 Notwithstanding 3.11 above, the CNIB:

- may make multiple copies or copies for multiple use, and the number of copies required to be purchased will be determined by the production requirement of the CNIB and not by the number of copies made or the number of users of copies; and
- may on a cost-recovery basis supply copies (but not files) to non-profit libraries for patrons with perceptual disabilities as defined in this agreement.

3.13 The producer must on request supply to other producers:

- any files supplied by publisher, within five working days, and without charge; or
- as soon as practicable, any masters or copies made from files supplied by publisher.

Producers receiving these files, masters or copies are bound by the same terms as the producer that supplied them.

3.14 Except with the prior permission of the publisher, a producer cannot supply any file supplied by a publisher to a producer that is not a party to this agreement unless that producer agrees in writing to be bound by all of the terms and conditions of this agreement as they apply to the file in question.

3.15 No file or material produced from a file supplied under this agreement can be supplied to any person or entity outside Canada without the prior permission of the publisher that supplied the file.

3.16 Upon receiving a request for a copy in a format specially designed for a person with a perceptual disability within the meaning of this agreement, the producer will search the National Union Catalogue (AMICUS) maintained by LAC to determine if the publisher has supplied a file of the materials requested in that format to another producer, and will not make a request of the publisher if the file in that format has been supplied.

3.17 The producer will report promptly all relevant activity to AMICUS, in the prescribed format, including receipt of files, and copies made from same. However, if the producer has a licensing agreement with Access Copyright, and that agreement includes the right to make copies in large print format, then if a file supplied by a publisher is used to create materials in that format, then the relevant provisions of the agreement with Access Copyright will apply.

4. Publishers

- 4.1 On receiving a request in the prescribed format, the publisher will deliver or cause to be delivered to the producer a file of the requested materials:
- in not more than 15 working days
 - in Portable Document Format (PDF)
- 4.2 The publisher will also, if requested by the producer, use reasonable efforts to supply materials in any other format, including but not limited to:
- extensible mark-up language (XML)
 - hypertext mark-up language (HTML)
 - Microsoft Word (WORD)
 - American Standard Code for Information Interchange (ASCII)
- 4.3 Delivery will be by any appropriate mechanism, including but not limited to:
- mail
 - courier
 - e-mail
 - file transfer protocol (ftp)
- and the fifteenth working day is the last day on which the materials leave the physical control of the publisher or are uploaded for ftp delivery.
- 4.4 If delivery either at all or in the format requested will exceed 15 working days, the publisher will let the producer know as soon as practicable.
- 4.5 For materials supplied in accessible PDF, the publisher will not charge in excess of \$50 for requests made under this agreement. For other formats, charges if any will be negotiated between the publisher and the producer.
- 4.6 If the publisher is not authorized to supply materials requested by the producer, the publisher will use reasonable efforts to secure such authorization if the materials are published by an associated company. In all other cases the publisher will advise the producer of the entity that can assist.
- 4.7 The publisher will supply LAC with the name or names and e-mail addresses of all employees authorized to process requests received under this agreement, and will ensure that this information is kept current.
- 4.8 The publisher grants the producer a non-exclusive and non-assignable licence to make copies under this agreement.
- 4.9 If a publication is out-of-print, the publisher will attempt to obtain and supply the file but the provisions of 4.1 – 4.6 of this agreement will not apply.

- 4.10 The publisher makes no warranty or representation, express or implied, with respect to the materials, including their quality, accuracy, performance or fitness for any purpose.
- 4.11 The publisher will not be liable to the producer in any circumstances whatsoever, and the producer will hold the publisher harmless from all liability arising out of the producer's use of any file or copies made from any file supplied by the publisher.

5. Termination and related provisions

- 5.1 Subject to 5.2 - 5.4 below, publishers and producers enter into this agreement for a period not exceeding three (3) years from the date of signature.
- 5.2 Within 30 days of receiving the report referred to at 2.4 above, the publisher may notify LAC that it wishes to withdraw from the agreement on the business day that is 60 days following this notification.
- 5.3 In the event of changes to the Copyright Act applicable to this agreement, notice of termination can be given at any time and will become effective within thirty (30) days.
- 5.4 The publisher will be entitled to terminate this agreement immediately on written notice if the Producer is in material breach of this agreement and has failed to remedy such breach within thirty (30) days of written notice requiring it do so.
- 5.5 A material breach of this agreement is any breach of clauses; 3.4, 3.6, 3.10, 3.14, 3.15.
- 5.6 If this agreement is terminated by the publisher:
- LAC must deliver notice of termination to all producers as soon as practicable after being so notified by the publisher
 - The producer must, from the date of termination, ensure that no further copies are made from files supplied by the publisher and, if termination is because of a material breach as set out in 5.5 above, take the further actions specified in 5.7 below.
- 5.7 If this agreement is terminated by the producer, the producer will from the date of termination ensure that no copies are made from files supplied under this agreement by any publisher, and that all such files are destroyed, deleted or otherwise made permanently unusable.
- 5.8 Termination of this agreement by any party and for any reason will not affect any rights or obligations that have accrued up to the date of termination.

6. Other

- 6.1 The publisher may to refuse to supply files under this agreement if the provisions of section 32.(3) of the Copyright Act apply.
- 6.2 Assignment: Any successor entity to any signatory to this agreement must execute the agreement in its own right.
- 6.3 Governing law: This Agreement will be governed by the laws of the Province of [] and the laws of Canada.
- 6.4 Notices: All notices required to be given may be personally delivered, sent by registered mail or by fax, or by e-mail to LAC in respect of non-renewal and to any producer in respect of whom the Agreement is being terminated, at the address(es) listed on the LAC website.
- 6.5 Entire agreement: This agreement constitutes the entire agreement between the parties with respect to its subject matter.

Signed: _____

Print
Name Signed: _____

Title: _____

Date: _____

Name and Address of Publisher or Producer

Name: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Website: _____