

DATED _____

(1) << >>

(2) << >>

ILLUSTRATION LICENCE AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Illustrator>> of <<Address>> (“the Illustrator”) and
- (2) <<Name of Publisher>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<Address>> (“the Publisher”)

WHEREAS:

The Publisher wishes to commission the Illustrator to prepare and deliver to the Publisher the Artwork and to licence the Rights in the Artwork to the Publisher subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Artwork”	means the illustrative material described in Schedule 1 which the Illustrator shall prepare and deliver to the Publisher for the Work;
“Completion Date”	means <<insert date>>;
“Confidential Information”	means information relating to this Agreement, any business information relating to either Party, and any other information which either Party may describe as confidential;
“Fee”	means the sum of £<< >> to be paid in accordance with Clause 4;
“Rights”	means all vested contingent and future rights of copyright and all rights in the nature of copyright and all accrued rights of action and all other rights of whatever nature in and to the Artwork whether now known or in the future created to which the Illustrator is now or may at any time after the date of this Agreement be entitled by virtue of or pursuant to any of the laws in force in each and every part of the Territory;
“Term”	means <<insert duration of the licence>>;
“Territory”	means <<insert territory>>; and
“Work”	means the literary work [to be] OR [being] written by <<insert name of author>> and at present provisionally entitled ‘<<insert title>>’.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any communication, includes a reference to any electronic or facsimile transmission or similar means of communication;
- 1.2.2 a statute or regulation includes a reference to that statute or regulation as in force at the relevant time;
- 1.2.3 “this Agreement” includes this Agreement and each of the Schedules attached hereto at the relevant time;
- 1.2.4 a Schedule includes a Schedule to this Agreement;
- 1.2.5 a Clause or Paragraph includes a reference to a Clause of this Agreement or a Paragraph of the relevant Schedule;
- 1.2.6 a “Party” or “Parties” includes the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular include the plural and vice versa.
- 1.5 References to any gender include the other gender.
- 2. Illustrator’s Obligations**
- 2.1 The Illustrator shall deliver to the Publisher the Artwork as detailed in Schedule 1 (the “Artwork”) for reproduction and subject to the Publisher’s approval (which shall not be unreasonably withheld or delayed).
- 2.2 The Illustrator shall deliver the Artwork to the Publisher no later than <<insert date>> for roughs of the Artwork not later than <<insert date>> by the Completion Date.
- 2.3 In the event that the Illustrator fails to complete and deliver the Artwork to the Publisher by the date specified in the preceding paragraph, the Publisher may by summary notice to the Illustrator terminate this Agreement and any money previously paid by the Publisher to the Illustrator shall immediately be repayable to the Publisher.
- 3. Copyright Licence**
- In consideration of the Fee payable to the Publisher, the Illustrator grants to the Publisher the Rights to the Publisher on [an exclusive] OR [a non-exclusive] basis for the Territory for the Term.
- 4. Fee and Payment**
- The Publisher shall pay to the Illustrator the Fee in the following instalments:
- 4.1 £<< >> on the completion of the Artwork (receipt of which the Illustrator shall acknowledge);
- 4.2 £<< >> on delivery of the Artwork to the Publisher; and
- 4.3 £<< >> on delivery of the final, corrected Artwork.

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5. Warranties and Indemnity

The Illustrator warrants to the Publisher:

- 5.1 the Illustrator is the author of the Artwork and has entered into this Agreement and the License Agreement in full knowledge and understanding of the terms and conditions and indemnities contained in this Clause 5;
- 5.2 the Illustrator will, in connection with the creation of the Artwork, be a 'qualifying person' within the meaning of section 154 of the Copyright, Designs and Patents Act 1988 and the Artwork will be original and has not previously been published in any form anywhere in the Territory;
- 5.3 the Artwork will not be defamatory, obscene, blasphemous libellous or otherwise unlawful and the exercise of the Publisher's rights will not infringe the copyright or any other intellectual property rights of any third party;
- 5.4 the Illustrator will keep the Publisher indemnified against all losses and all actions claims proceedings damages (including any damages or compensation paid or payable by or for the Publisher) and after approval by the Illustrator] and all legal costs or other expenses incurred by the Publisher in connection with the warranties.

6. Publisher's Obligations

The Publisher warrants, under the License Agreement, to the Illustrator:

- 6.1 that the Publisher will publish the Work or include the Artwork in the Work and shall provide the Illustrator with <<insert>> complimentary copies of the first edition of the Work and the right to purchase further copies at the cost price for persons other than the Publisher (<<insert>>);
- 6.2 that if the Artwork is published by the Publisher the author of the Artwork shall be the name of Illustrator>> on the front cover and on the back cover of the Work published by the Publisher and the Publisher shall use its reasonable endeavours to impose a contractual requirement on any third party to do the same;
- 6.3 to use its reasonable endeavours to ensure that the Illustrator will receive credit in a form specified in sub-Clause 6.2 on any other exploitation of the Artwork by the Publisher;
- 6.4 that the Publisher shall take reasonable care of the Artwork but shall not be responsible for loss of or damage to it while it is in the Publisher's possession or in the possession of any third party in transit;
- 6.5 that while the Artwork is in the possession of the Publisher it shall lend any original copies of the Artwork to the Illustrator for not more than <<insert>> period>> in any year and shall not include the Illustrator's work in a public exhibition of the Artwork or give the Publisher reasonable notice of his intention to do so;

7. Publisher's Rights

If the Artwork contains the likeness of any living person, the Publisher shall have the right to require the Illustrator to explain to such person the use to which the Artwork is to be put and to obtain and deliver to the person a written statement signed by the Illustrator in each such person in a form satisfactory to the Publisher.

- 7.1 The Publisher shall have the right to alter or delete from the Artwork any material which the Publisher or its legal advisers considers necessary or desirable. In the event that the Illustrator does not deliver a receipt of such notice within <<insert period>> working days of the date of receipt of such notice, the Publisher may nevertheless use the Artwork as it thinks fit. The Illustrator may now or at any time terminate this Agreement under Clause IV of the Copyright, Designs and Patents Act 1988 or any subsequent legislation in the Territory or by such termination shall, without delay, return to the Publisher any money paid to the Illustrator and shall not in any event be entitled to an indemnity given to the Illustrator in Clause 5.

8. Cancellation

- 8.1 Without prejudice to the provisions of sub-Clauses 2.3 and 2.4, the Publisher may cancel the commission for the finished Artwork at any time before delivery of the Artwork to the Illustrator provided that the Publisher shall pay a cancellation fee proportional to the degree of completion of the Artwork.
- 8.2 The cancellation fee shall be the following percentage of the Price:
- 8.2.1 <<insert percentage>> if cancellation takes place between signature of the Agreement and approval of roughs; or
- 8.2.2 <<insert percentage>> if cancellation takes place after approval of finished Artwork.
- 8.3 Any sums paid by the Publisher under Clause 4 shall be set off against any cancellation fee arising and a repayment by the Illustrator of the cancellation fee is less than the sums already paid under Clause 4.
- 8.4 The Publisher shall not be liable for the Artwork so cancelled.

9. Moral Rights

- 9.1 The Illustrator hereby agrees to be identified as the author of an artistic work (the Artwork) in accordance with the provisions of Chapter IV of the Copyright, Designs and Patents Act 1988.
- 9.2 The Publisher shall ensure that every copy of the Work incorporating the Artwork published by the Publisher shall bear the following notice

on the reverse of the
'The right of <<insert>>
illustrations [on page
with Chapter IV of the

to be identified as the author of the
has been asserted in accordance
and Patents Act 1988.'

10. Confidentiality

- 10.1 Both the Illustrator and the other Party undertake that, except as provided by sub-Clause 10.2 or otherwise agreed in writing by the other, it shall at all times during the continuance of this Agreement and [for <<insert period>>] after its termination:
- 10.1.1 keep confidential the Confidential Information;
 - 10.1.2 not disclose the Confidential Information to any other party;
 - 10.1.3 not use any Confidential Information for any purpose other than as contemplated in this Agreement;
 - 10.1.4 not make any Confidential Information available in any way or part with possession of the Confidential Information;
 - 10.1.5 ensure that its directors, officers, employees, agents or advisors do not disclose the Confidential Information, if done by that Party, would be in breach of the Confidential Information provisions 10.1.1 to 10.1.4.
- 10.2 Subject to sub-Clause 10.1, the other Party may disclose any Confidential Information to:
- 10.2.1 any of their suppliers;
 - 10.2.2 any governmental or regulatory body; or
 - 10.2.3 any of their advisors or those of any party described in sub-Clause 10.1.
- 10.3 Disclosure under sub-Clause 10.2 shall be made only to the extent that is necessary for the proper performance of this Agreement, or as required by law. In each case, the other Party shall first inform the recipient that the Confidential Information is being disclosed. Unless the recipient is a body described in sub-Clause 10.2.2, the other Party shall ensure that the recipient is an authorised employee or officer of such a body, the disclosure is necessary for the proper performance of the Agreement, and submit to the other Party a written undertaking to keep the Confidential Information confidential and to ensure that the recipient keeps the Confidential Information confidential for the purposes for which the disclosure is made.
- 10.4 Either Party may use the Confidential Information for any purpose, or disclose it to any other party, provided that the Confidential Information is or becomes public knowledge through no fault of the Party disclosing it.
- 10.5 When using or disclosing the Confidential Information under sub-Clause 10.4, the Party disclosing the Confidential Information shall not disclose any part of that Confidential Information to any other party without the knowledge of the other Party.
- 10.6 The provisions of this Clause 10 shall continue in force in accordance with the terms of this Agreement for any reason.

11. **Non-Assignment of Agreement**

11.1 The Illustrator may not assign, subcontract, or in any other manner make over to any third party all or part of its obligations under this Agreement without the prior written consent of the Publisher.

11.2 The Publisher may not assign, subcontract, or in any other manner make over to any third party all or part of its obligations under this Agreement without the prior written consent of the Illustrator, such consent not to be unreasonably withheld.

12. **Notices**

12.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by the Party to whom they are addressed or by a duly authorised officer thereof, as appropriate.

12.2 Notices shall be deemed to have been given:

12.2.1 when delivered in person to the recipient or registered messenger;

12.2.2 when sent, by post, fax, e-mail or other electronic transmission;

12.2.3 on the fifth business day after the date of the mailing, if mailed by national ordinary mail;

12.2.4 on the tenth business day after the date of the mailing, if mailed by airmail, postage prepaid.

12.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address or fax number notified to the other Party.

13. **Force Majeure**

Neither Party to this Agreement shall be liable for its failure to perform its obligations where such failure is caused by an event that is beyond the control of that Party, including, but not limited to: power failure, Internet Service Provider failure, storms, earthquakes, acts of God, war, governmental action or any other event that is beyond the control of the Party.

14. **No Waiver**

The Parties agree that no failure to enforce any provision in this Agreement shall constitute a continuing waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not constitute a continuing waiver of the right to subsequently enforce that provision or any other provision of this Agreement.

15. **Severance**

The Parties agree that, if any provision of this Agreement is found to be unenforceable, that / those

contract, or in any other manner make over to any third party all or part of its obligations under this Agreement without the prior written consent of the Publisher.

subcontract, or in any other manner make over to any third party all or part of its obligations under this Agreement without the prior written consent of the Illustrator, such consent not to be

writing and be deemed duly given if signed by the Party to whom they are addressed or by a duly authorised officer thereof,

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12.2.1 when delivered in person to the recipient or registered messenger;

12.2.2 when sent, by post, fax, e-mail or other electronic transmission;

12.2.3 on the fifth business day after the date of the mailing, if mailed by national

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to enforce the performance of any provision in this Agreement shall constitute a continuing waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not constitute a continuing waiver of the right to subsequently enforce that provision or any other provision of this Agreement.

or more of the provisions of this Agreement is found to be unenforceable, that / those

provisions shall be deemed to be the entire agreement between the Parties and the remainder of this Agreement shall be null and void.

remainder of this Agreement. The Agreement shall be enforceable.

16. Law and Jurisdiction

16.1 This Agreement (including any amendments thereto) shall be governed by, and construed in accordance with, the law of England and Wales.

all legal matters and obligations arising out of or in connection with the Agreement shall be governed by, and construed in accordance with, the law of England and Wales.

16.2 Any dispute, controversy or claim between the Parties relating to this Agreement (including any amendments thereto) shall be referred to and determined by the courts of England and Wales.

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IN WITNESS WHEREOF this Agreement has been executed and signed by the Parties as set out below in the presence of two witnesses.

executed the day and year first written above.

SIGNED by

<<Name and Title of person signing for and on behalf of <<Illustrator's name>>>

In the presence of

<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for and on behalf of <<Publisher's name>>>

In the presence of

<<Name & Address of Witness>>

The Artwork
<<Insert Details>>

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