

1. DEFINITIONS

In this Licence Agreement, the following terms have the meanings set out below:

“Annual Rate” means the Annual Rate as indicated in clause 3.2.

“Authorised Persons” means the teaching and general staff and duly authorised agents of the Licensee.

“Authorised Purpose” means the educational purposes of the Licensee, including study, research and use in the course of educational instruction of Enrolled Students.

“Bibliographic detail” means information on a work that can be used to correctly identify the work being used. This detail identifies the author, title(s), publisher, place and date of publication and/or ISBN/ISSN or other such identifying number.

“CLNZ” means Copyright Licensing New Zealand. This is the brand name for Copyright Licensing Limited, a duly incorporated company having its registered office in Auckland. The company has been formed to act on behalf of copyright owners and is authorised to enter into licences for the collection of licence fees in relation to the reprographic reproduction of extracts from published copyright material;

“Commencement Date” means the date specified in clause 2.2.1.

“Copy and Copying” mean:

- (a) the reproduction in material form of extracts from copyright material by reprographic or electronic means; and
- (b) the electronic or digital storage of such extracts; and
- (c) the distribution of such extracts either in hard copy or electronic form by means of a secure system.

“Copyright Material” means all copyright works in hard copy formats including extracts copied from these Works under licence but does not include the Excluded Works specified in Schedule 2.

“Copyright Owners” means authors, licensees and publishers or other persons deriving title from authors or licensees of Copyright Material

“Data Collection” means the collection of data in accordance with clause 5 to enable distribution of licensing revenue to rightsholders whose works are copied under licence.

“Enrolled Students” means the number of students enrolled with the Licensee as per the 1 March school roll return as lodged with the Ministry of Education each year.

“Excluded Works” means the works specified in Schedule 2.

“Guidelines” means guidelines published by CLNZ and to be followed by Authorised Persons in complying with the provisions of this Licence;

“GST” means Goods and Services Tax chargeable under the Goods and Services Tax Act 1985.

“Licence” means the Copyright Licence granted by CLNZ to the Licensee upon these terms and conditions.

“Licence Certificate” means the Copyright Licence Certificate issued by CLNZ to the Licensee to certify the currency of the Licence during the initial term of this agreement and each year that the Licence is renewed.

“Licence Fee” means the Licence Fee calculated in accordance with clause 3.1.

“Licensed use” includes the faithful and accurate reproduction of copyright material contained in original published works owned by the Licensee by the following means:

- (a) retyping onto a computer; and
- (b) reprographic means in material form (photocopying); and
- (c) electronic means including electronic or digital storage; and includes
- (d) distribution in material form or transmission in electronic form by means of a secure system.

“Licensee” means the school specified on the Licence Certificate together with its successors and permitted assigns.

“NZSTA” means the New Zealand School Trustees Association, acting as agent for CLNZ under the One Stop Shop Copyright Licensing Solution for Schools

“Secure system” means a system accessible only by authorised persons and students of the Licensee whose conduct is subject to regulation by the Licensee. Information distributed by means of a password protected Licensee intranet or learning management system (LMS) will be deemed to be distributed via a secure system.

“The Act” means the Copyright Act 1994;

“Works” mean published editions of literary or dramatic works (including any artistic work published as part of or incidental to that work), in which copyright subsists other than the Excluded Works specified in Schedule 2.

2. GRANT OF LICENCE

2.1 Licence

In consideration of the Licensee's payment of the annual Licence Fee to CLNZ (or to NZSTA as its agent) CLNZ, by the issue of a duly signed Licence Certificate, grants to the Licensee a Licence to use Copyright Material subject to the terms and conditions contained herein. CLNZ warrants that it is authorised to act as the agent of copyright owners in granting this licence to make copies from all printed material in which copyright subsists other than the Excluded Works.

2.2 Term

2.2.1 The Licence will commence on 1 July or the date specified on the Licence Certificate and unless previously terminated or suspended in accordance with these terms and conditions will endure until 30 June next following and may thereafter be renewed for consecutive terms of one year each.

2.2.2 Unless the Licensee notifies CLNZ in writing within two months of expiry of the current term of the Licence that it does not intend to renew the Licence, the Licence will be deemed automatically to be renewed for a further term of one year and an annual Licence Fee calculated on the basis set out in clause 3.1 will be payable by the Licensee in respect of that renewed term.

2.3 Limits

2.3.1 The Licence is limited to the licensed use of Copyright Material for Authorised Purposes by Authorised Persons.

2.3.2 Nothing in the Licence will license use of Copyright Material beyond the extent set out in Schedule 1.

2.3.3 Clauses 2.3.1 and 2.3.2 do not affect the right of Authorised Persons to make copies of Copyright Material for criticism or review, research and private study pursuant to sections 42 and 43 of the Copyright Act 1994.

2.4 Seeking Permission to Exceed Limits

If the Licensee proposes to use any item of Copyright Material beyond the extent set out in Schedule 1 for Authorised Purposes it may make application to CLNZ for permission to do so. CLNZ will take reasonable steps to respond to any such application promptly and effectively. Permission may also be sought from CLNZ to copy from works that are out-of-print.

2.5 Charge for copies

The Licensee may make a reasonable charge to recover costs incurred by the Licensee in providing copies of Copyright Material for Authorised Purposes.

2.6 Excluded Works

Nothing in the Licence will license use of the Excluded Works.

3. LICENCE FEE

3.1 Calculation of Licence Fee

3.1.1 In consideration for the Licence, the Licensee will pay to CLNZ in each year of the term of the Licence an annual Licence Fee calculated by multiplying the number of Enrolled Students of the Licensee by the Annual Rate.

3.1.2 For newly established schools, where the initial term of the Licence commences on a date after 1 July, the Licence Fee payable in respect of that initial term will be calculated on a monthly pro rata basis for the period from the date of the Licensee's application until expiry of that term on 30 June next following.

3.2 Annual Rate

The Annual Rate for the licence is notified on CLNZ's website each year at www.copyright.co.nz. The Annual Rate is charged per primary school student (plus GST) and per secondary school student (plus GST). The Annual Rate may be adjusted each year by CPI and any other factors that CLNZ deems appropriate in the circumstances.

3.3 Payment of Licence Fees

3.3.1 Each annual Licence Fee will be payable in one instalment.

3.3.2 Where a pro rata Licence Fee is payable in accordance with clause 3.1.2 such fee will be payable within 30 days from date of invoice.

4. PROCEDURES AND COMPLIANCE

- 4.1 CLNZ will provide the Licensee with Guidelines to be followed by Authorised Persons in complying with the provisions of the Licence.
- 4.2 CLNZ will bear the cost of preparing and distributing the Guidelines.
- 4.3 The Licensee will implement appropriate copyright compliance procedures and require its Authorised Persons to comply with them.
- 4.4 The Licensee will allow duly authorised representatives of CLNZ to be present on its premises on reasonable notice and at reasonable times to monitor compliance procedures.
- 4.5 CLNZ acknowledges that observance of the Guidelines will be evidence of compliance with the provisions of clause 2 of these terms and conditions in the absence of proof to the contrary.

5. DATA COLLECTION

- 5.1 On reasonable notice being given by CLNZ, the Licensee agrees to maintain full and accurate bibliographic records of Copyright Material used under licence by Authorised Persons on the premises for a period of up to eight weeks in a particular year.
- 5.2 The Licensee will not be required to provide such data more than once in any five year period.
- 5.3 CLNZ will provide appropriate guidance for the collection of such data for distribution by the Licensee to staff involved in the data collection process.
- 5.4 The Licensee will allow an authorised representative of CLNZ to visit its premises during the data collection period to assist staff with the process of data collection and to collect the bibliographic records that have been collated.
- 5.5 The purpose of collecting such data is to enable distribution of licensing revenue received by CLNZ to copyright owners whose works are identified as being used under licence.
- 5.6 Unless ordered by due legal authority, CLNZ will not disclose any information supplied to it by the Licensee under this clause in such a way that the Licensee may be able to be identified. CLNZ may, however, disclose information in an aggregate format.

6. TERMINATION

- 6.1 Should either party commit any material breach of any of its obligations hereunder and remain in breach 14 days after receiving notice from the other party to remedy the same then the second said party may, by notice to that effect delivered to the first said party, at the sole discretion of the second said party elect forthwith either to:
 - 6.1.1 terminate the Licence; or
 - 6.1.2 suspend the operation of the Licence until the said breach is remedied provided that any such suspension will be without prejudice to the right of the second said party to terminate the Licence on the grounds of such breach where the first said party fails to demonstrate to the reasonable satisfaction of the second said party that the said breach will not be repeated.
- 6.2 Any termination or suspension of the operation of the Licence will be without prejudice both to any annual Licence Fee already paid or then due or payable under the terms and conditions of the Licence and to any other rights of either party accrued hereunder.

7. APPLICABLE LAW AND ARBITRATION

- 7.1 The Licence will be governed by and construed in accordance with the laws of New Zealand.
- 7.2 In the event that any difference or dispute will arise between the parties in any way related to the Licence, or any arrangement or understanding relating to the Licence or the Annual Licence Fee, then the parties agree to use their best endeavours to resolve such dispute in a spirit of goodwill to preserve a harmonious relationship between them.
- 7.3 In the event of any dispute arising between the parties which cannot be resolved in the manner described in clause 7.2, such dispute may be referred by either party to arbitration of a single arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand or its nominee and the decision of the arbitrator or mediator will be binding on the Licensee and CLNZ.
- 7.4 The foregoing provision does not preclude CLNZ or the Licensee from referring to the Copyright Tribunal any dispute over which that Tribunal may have jurisdiction.

8. INDEMNITY

- 8.1 CLNZ indemnifies the Licensee from and against all claims, actions, proceedings and liabilities (including legal costs) arising out of the licensed use by Authorised Persons of Copyright Material in compliance with this Licence.
- 8.2 The Licensee will notify CLNZ of any claim which invokes this indemnity and authorises CLNZ to deal with that claim in such manner as CLNZ (acting in conformity with any requirements of the Education Act 1989 relating to schools) deems fit.
- 8.3 The Licensee will provide all reasonable assistance requested by CLNZ in any action taken by CLNZ to resist or defend any such claim but at the cost in all things of CLNZ.
- 8.4 The Licensee will not settle any claim or any proceedings without the written approval of CLNZ which approval will not be unreasonably withheld.
- 8.5 This indemnity remains enforceable by the Licensee notwithstanding the termination of the Licence by expiry or otherwise but only in respect of circumstances giving rise to this indemnity which have occurred during the term of the Licence.

9. ASSIGNMENT AND VARIATION

- 9.1 The Licence is not assignable by either party without the prior agreement in writing of the other party, such agreement not to be unreasonably withheld.
- 9.2 The Licence may not be varied except by agreement in writing by both parties.

10. ENQUIRIES TO CLNZ

- 10.1 Without prejudice to its obligations hereunder the Licensee undertakes that, in any position of uncertainty concerning the Licensee's rights hereunder, it will consult with CLNZ.
- 10.2 For the avoidance of doubt the Licensee acknowledges that it must obtain permission from the Copyright Owners to use Copyright Material outside the terms and conditions of the Licence, either via CLNZ or directly from the copyright owner.

11. NOTICES

- 11.1 Any notice given under the Licence will be in writing and sent by post, courier delivery, email, or by facsimile transmission to the last known address of the recipient.
- 11.2 Notices served by personal delivery, email or facsimile will be deemed to have been received on the day of sending if a business day, or if not a business day on the first business day after sending. Notices sent by post or courier delivery will be deemed to have been received on the third business day after sending.

SCHEDULE 1

1. Licensed use of Copyright Material under the Licence will be limited to the following:
 - 1.1 Reproduction of the whole or any part of an article from a periodical publication or more than one article from the same periodical publication only if the articles relate to the same subject matter;
 - 1.2 Reproduction of up to 10 per cent of a work (other than an article in a periodical publication) or one chapter of the work whichever is the greater;
 - 1.3 Reproduction of up to 15 pages of the whole or part of a single work contained in a collection of works notwithstanding that such works may be separately published;
 - 1.4 Reproduction of the whole of an artistic work included as part of or incidental to a work;
 - 1.5 Reprographic copying of up to and including the whole of an out of print work subject to prior permission from CLNZ. Electronic copying of a whole work under this clause is specifically excluded;
 - 1.6 Making a repeat copy from a work within 14 days provided that such copy is not made by the same staff member for the same class;
 - 1.7 Up to 5 articles per publication from New Zealand (as listed on <http://www.pmca.co.nz/Licence/Publications>) or international newspapers.
2. The Licensee will ensure that the number of pages made available do not exceed the limits set out above unless prior approval/clearance has been obtained from CLNZ or the copyright owner in writing.
3. The Licensee may make sufficient copies, or transmit any item of copyright material, to provide for distribution to each enrolled student intended to receive a copy.
4. Copyright material may be included in compilations or workbooks provided each extract does not exceed the limits set out above and is identified (referenced) with appropriate bibliographic detail.
5. When making digital copies the Licensee will:
 - 5.1 ensure that the material copied is an accurate copy of the original which preserves the structure, layout, authenticity and integrity of the original;
 - 5.2 ensure that all electronic or digital copies made are:
 - (i) suitably identified with bibliographic detail;

- (ii) distributed to students and Authorised Persons on a secure system;
- (iii) not systematically stored and indexed, with the intention of creating an electronic library or database of works; and
- (iv) not placed on any computer or computer network on the publicly accessible Internet in such a way as to be publicly accessible or accessible other than to students and authorised persons of the Licensee

6. Digital copies made under the licence must be deleted from the server:

6.1 when no longer used for the course of study for which the copy was made;

6.2 when the licence is terminated by either party;

6.3 upon notice from CLNZ that the copyright owner believes the copies to infringe copyright or may be otherwise unlawful.

SCHEDULE 2

Excluded Works

“Excluded Works” are works within the following categories:

- Works downloaded from the Internet
- Electronic works and databases of works
- ‘Copy Permitted’ Publications that can be freely copied for educational or other purposes
- Workbooks – publications designed to guide the work of a student, support classroom work, internal assessment and end-of-year revision
- Printed music (including the words)
- Loose maps and charts
- Unpublished religious orders of service (notwithstanding that these may be available to Authorised Persons);
- House journals and other free publications primarily for employees of commercial businesses, industrial undertakings or public services
- Separate illustrations and/or photographs that are not published in conjunction with works that can be copied under licence
- Any work on which the Owner has expressed and prominently stipulated that it may not be copied under a copyright reprography licence of this nature
- Privately owned documents issued for tuition purposes and limited to clientele who pay fees
- Theses, dissertations and student papers (notwithstanding that these may be available to Authorised Persons)

Specific Excluded Works

- All works published by Standards NZ