

DRAFT MODEL AGREEMENT FOR TRANSLATION OF A BOOK PUBLICATION
May 2015

This model agreement is to be a form of an agreement for translators and publishers. It demonstrates optimal solutions to provide a translator with the guarantee of control over his/her translation rights, securing at the same time sufficient options of exploitation of a work to a publisher. This model agreement is not of the compulsory nature – it is a set of best practices recommended by the Polish Literary Translators Association. In specific cases, agreements between a publisher and a translator can vary from the regulations below. Yet it is important for a translator to take care of securing his/her rights. The offered contractual provisions comply with both the Act on Copyright and Neighboring Rights of 4 February 1994 and the Civil Code.

Agreement for the translation and giving the permission for use of the translation
(license agreement)

made on in by and between:

.... *[publishing house]* with its registered seat in, address:, registered in the register of entrepreneurs with the National Court Register conducted by the District Court in, Commercial Department of the National Court Register, under No. KRS, share capital of paid up in full, represented by:, hereinafter the "Publisher"

and

Mr/Ms, residing at, holder of personal identity card series, No., PESEL, NIP, hereinafter the "Translator"

[If the Translator is running business activity, this part of the introduction to the agreement should be as follows:

Mr/Ms, residing at, running the business activity under the name, entered into the register of business activity conducted by under No., , holder of personal identity card series, No., PESEL, NIP, hereinafter the "Translator"]

The parties jointly provide for as follows:

[Definitions]

§ 1

1. For the needs of this Agreement, the following definitions are introduced:
 - a) Agreement** – this agreement with schedules and/or annexes to be an integral part hereof;
 - b) Carrier** – a multiplied copy with the Translation or the Translation derivative work, manufactured in any technique;
 - c) Original Work** – the original work being the basis of the derivative work in the form of translation which is the subject matter hereof.
 - d) Parties** – the parties to this Agreement;
 - d) Translation** – the manifestation of Translator's creative activity of the individual nature, drawn up both in accordance with this Agreement and the requirements of the art of translation, being both the subject matter of this Agreement and a derivative work of the Original Work;
 - f) Translator's sheet** – a sequence of typographic characters of 40 (forty) thousand including spaces, that is 22 (twenty-two) typed pages (using a typewriter or a computer) on A4 sheets, where each page has 30 lines and each line has 60 characters (including spaces);
2. The definitions above shall apply to the terms used both in singular and in plural.

[Subject matter]

§ 2

1. The Translator agrees to:
 - a) create and deliver to the Publisher the translation from *[language]* into Polish of the following work: "... " (title of the Original Work) by

- [author]* under the working title "....." (the Translation) with the volume of Translator's sheets;
- b) grant the license for use of the Translation according to the terms and conditions provided for in the Agreement;
 - c) review and revise the Translation.
2. For the avoidance of doubt, the Parties agree together that any other Translation-related work not mentioned in Para. 1 to be carried out by the Translator shall be agreed separately between the Parties, including that the Translator shall receive extra remuneration for it.
 3. The Publisher shall be entitled to change the title of the Translation in consultation with the Translator.

[Warrants and Representations]

§ 3

1. The Translator warrants and represents that:
 - a) the Translation shall be the manifestation of his/her original creativity and that he/she shall be vested with exclusive and unlimited copyrights to the Translation;
 - b) there shall be no other circumstances to expose the Publisher to liability towards third parties due to the Translation distribution.
2. The Translator shall be fully liable that these warrants and representations are true. The Publisher shall be liable toward third parties for actions of the Translator in the situations provided for in the Act on Copyright and Neighboring Rights of 4 February 1994.

[License]

§ 4

1. The Translator agrees to grant to the Publisher and the Publisher agrees to acquire from the Translator the exclusive and territorial-unlimited license for the period of (in words: ..) years after the date of acceptance of the Translation for use of the Translation in the following fields of exploitation:
 - a) fixation and reproduction in any technique, including in printing, reprography, digitally and on magnetic, optical and electronic carriers, on any carrier and in any digital recording format, including but not

- limited to e-book, audiobook and multibook, in an unlimited number of copies, editions and reprints;
- b) placing on the market and distribution of copies or other carriers in any distribution channels, including but not limited to commercial chains, sales in kiosks, as inserts in newspapers, in book clubs, mail order sales (including online) and business to business sales (delivery as ordered by companies) and in distribution free of charge;
 - c) introducing into the computer memory and storage in it; making the Translation available to the public through IT and telecom networks, including Internet, Intranet, Extranet and cellular network, including but not limited to e-book, audiobook and multibook, so as anyone can have access to the Translation at a chosen place and moment.
2. For the avoidance of doubt, the Parties agree together that this Agreement shall not include the Translator's permission for exercising the Translation-related derivative rights. The Translator's permission in this respect shall be agreed upon separately between the Parties.
 3. The license mentioned above shall be granted by the Translator and acquired by the Publisher, once the Publisher pays the fee provided for in §5.1.a.
 4. The Publisher shall be entitled to sublicense the use of the Translation to the extent specified in Para. 1 to third parties in respect only to the exploitation of the Translation in the form of ebooks and audiobooks.
 5. Once the Agreement expires or is terminated, the Publisher shall have for the time of 1 (one) year the right to place on the market, including sales, the Carriers on which the Translation has been fixed, manufactured during the term of the Agreement.

[Remuneration]

§ 5

1. The Translator shall be remunerated for performance of the Agreement, including the Translation and granting license in the fields of exploitation mentioned herein, as follows:
 - a) ... (in words: ...) PLN gross per each Translator's sheet (40,000 characters including spaces) / per standardized typed page (1,800 characters including spaces);

b)% (in words: ... per cent) of the net price (without the goods and services tax) of disposal of each sold carrier with the recorded Translation (in excess of sold copies);

c)% (in words: ... per cent) of the net price (without the goods and services tax) of disposal of each sold file with the Translation.

The price of disposal shall mean the retail price less margins or commissions: the wholesale and retail ones.

2. The fee mentioned in Para. 1.a) shall be paid to the Translator as follows:
 - a) prepayment of 25% of the fee, namely **(in words:) zł gross** – within 30 days after the Agreement is made;
 - b) the remaining part – after setting off the prepayment – within 30 days after the Translation is accepted.
3. The fee mentioned in Para. 1.b) – c) shall be paid to the Translator as follows: as the sales of carriers or files is carrying on, based on settlements of accounts made once per year – at the end of December each year – the settlements to be delivered to the Translator by 31 January next year.
4. In the case of the Publisher's late payment of the due fee to the Translator, the Publisher shall be obliged to pay the statutory interest on the due fee amounts.
5. The Publisher shall be entitled to manufacture within each edition of the Translation up to 150 Translation copies for promotion and popularization. These carriers shall not be included in the print run for which the Translator shall be remunerated.
6. The first settlement of accounts for each edition or re-printing shall take place for the first, even not completed, six months in which the distribution of a given edition or re-printing will begin.
7. The Publisher agrees to make it possible for the Translator to verify the correctness of the fee calculation; particularly, the Publisher agrees to provide any necessary information and documents regarding any ways of use, promotion of and advertising of the Translation.
8. If the Translator has justified doubts as to the correctness of the calculation provided to the Translator by the Publisher, a qualified expert accountant or another person named by the Translator may examine the Publisher's books to this extent. If the value of the challenged settlement

for a given period is lower than the value set in this manner by at least 10%, the books examination-related costs shall be borne by the Publisher.

9. The remuneration under this Agreement shall be gross. Once any amounts resulting from binding provisions of law are set off, it shall be transferred onto the bank account specified by the Translator, held in Polish złoty in Poland.

[Translation delivery]

§ 6

1. The Translator agrees to deliver the Translation to the Publisher by
[date].
2. The original Translation shall become the ownership of the Publisher once delivered to the Publisher. The Translator declares that he/she retains a duplicate of the Translation.
3. The Translator agrees to deliver the Translation drawn up in a formal and substantive aspect diligently and on the level required at distribution of works of this type.
4. The Translator shall deliver to the Publisher the Translation text recorded electronically in the system agreed by the Parties, by email at the address of the Publisher's representative mentioned in §15.1. The Publisher agrees to confirm in writing the fact of having received the Translation.
5. The Translator shall be obliged to notify the Publisher immediately if it turns out that he/she is not able to meet the deadline for the Translation delivery mentioned above. Then, the Publisher shall set the Translator an additional deadline for the Translation delivery.
6. If the Translator fails to deliver the Translation by the deadline specified above, the Publisher shall set the Translator an additional deadline with the warning of withdrawal from the Agreement, and after that deadline expires ineffectively, the Publisher may withdraw from the Agreement. Moreover, the Publisher may claim from the Translator the penalty of 0.25% of the fee mentioned in §5.1.a) per each day of delay.
7. If the Translator or the Publisher withdraws from the Agreement for the reasons mentioned in this Section, the Translator shall reimburse the received prepayment to the Publisher in the gross amount.

[Translation acceptance]

§ 7

1. The Publisher shall declare to the Translator in writing within 30 (thirty) days after the delivery of the entire Translation whether the Publisher accepts, rejects the Translation or makes the acceptance dependant on specified corrections to be introduced within the prescribed time-limit to be calculated as follows: two working days per one Translator's sheet.
2. If such declaration is not sent by the deadline, the Translation shall be deemed as accepted.
3. If the Translation is delivered after corrections, the deadline for the Publisher to make the declaration of acceptance shall be 15 days.
4. If the Translation is not accepted, the Translator shall be entitled to retain the paid prepayment.

[Translator's revision]

§ 8

1. The Translator shall be obliged to review, revise and send to the Publisher the revised text by the deadline set by the Publisher, calculated according to the rule: one day per one Translator's sheet, starting from the day of delivery of the Translation for revision to the Translator.
2. The Publisher shall deliver the Translation to the Translator for revision with clearly marked changes introduced to the Translation by the Publisher or individuals used by the Publisher.
3. In the event of refusal to perform a revision or failure to send the revised Translation on time, the Publisher shall be entitled to distribute the Translation in the form as sent for revision.
4. Once the revision is done by the Translator, the Publisher agrees not to introduce any changes to the Translation without the Translator's approval, unless they result from an obvious need and the Translator has no justified reason to oppose.
5. The Translator authorizes the Publisher to re-publish the Translation without the Translator's revision if the Translation text is not changed in any way.

[Publisher's rights]

§ 9

1. The following shall be the Publisher's decisions:
 - a) method of dissemination;
 - b) list price;
 - c) number of editions and the number of Carriers in individual editions;
 - d) cover type and graphic design in which the Translation is to be distributed.
2. The Publisher shall be entitled to disseminate the Translation under own brand and under other marks.
3. The Publisher shall be entitled to use passages from the Translation not exceeding characters only for promotion of the Translation and/or the Original Work.
4. The Publisher shall be entitled to make necessary changes in the Translation caused by editorial works, and the Translator permits such changes to be made.

[Copyright notice, authorship]

§ 10

1. The Translation-related copyright notice shall be located in each carrier with the Translation, read as follows:

**© Copyright for the Polish translation by
[TRANSLATOR'S FULL NAME], [FIRST PUBLICATION YEAR]**
2. The Translator's full name in the wording: shall appear on Carriers with the Translation in a customary manner, including book editions on the title page. Moreover, the Translator's name shall appear in any and all Translation-related advertising and promotion material.

[Translation publishing]

§ 11

1. The Publisher agrees to disseminate the Translation by publishing it in the form of books (a traditional book) within 5 years from the Translation acceptance.
2. If the Publisher fails to publish the Translation within the period mentioned above, the Translator may summon the Publisher in writing to do so,

prescribing at the same time the extra time-limit of at least six months for publication. Once that time-limit expires ineffectively, the Translator may withdraw from the Agreement by a appropriate statement in writing made to the Publisher. The remuneration paid hereunder before shall exhaust any and all financial claims of the Translator against the Publisher due to failure in publishing the Translation in compliance with the Agreement.

3. If the Publisher fails to reprint the Translation despite selling out copies of the Translation published before, the Translator may summon the Publisher in writing to publish the Translation, prescribing at the same time the extra time-limit of at least six months to resume publication. Once that time-limit expires ineffectively, the Translator may withdraw from the Agreement by a appropriate statement in writing made to the Publisher.

[Translator's copies]

§ 12

The Translator shall receive Translator's copies from the Publisher in the following number: 10 copies of the first edition, 3 copies of each next edition (re-printing). This clause shall concern editions in any form, including a traditional book and an audiobook.

[Termination of and withdrawal from the Agreement]

§ 13

1. Each of the Parties shall be entitled to terminate the Agreement with immediate effect in the event of gross violation by the other Party of the provisions hereof, unless the summoned Party ceases the violation within 1 month from either Party's notice to do so, or removes violation effects, if it is possible to cease the violation or to remove its effects.
2. For the avoidance of doubt, the Parties agree that the following, among other events, shall be the events of gross violation of this Agreement: payment of the fee delayed with at least 30 days, failure to deliver the settlements of accounts of the Translation sales.

[Final]

§ 14

1. Mr/Ms phone, email, shall be appointed by the Publisher to contact the Translator.
2. Each of the Parties agrees to treat the terms and conditions hereof as confidential.
3. Transfer of rights and obligations hereunder by any of the Parties to a third party shall require the other Party's consent in writing.
4. If any of the provisions hereof is invalid, this shall not cause invalidity of the entire Agreement and shall not have any effect on the effectiveness of the remaining provisions hereof. If any the provisions hereof is held invalid, the Parties oblige themselves to aim in good faith to agree the wording of a new provision reflecting the content of the provision held invalid.
5. The Parties shall be obliged to notify each other in writing of any facts meaningful for the performance of this Agreement.
6. Any disputes hereunder shall be settled by courts with jurisdiction over the defendant's registered seat (general jurisdiction).
7. Any amendments and supplements hereto as well as termination, dissolution of and withdrawal from this Agreement shall be in writing, otherwise null and void.
8. Each of the Parties shall bear at their own any costs incurred due to drawing up and entering into this Agreement.
9. This Agreement together with schedules and annexes, which are the integral part hereof and should be construed together with it, shall repeal any previous oral or written arrangements between the Parties inconsistent or in conflict with the provisions of this Agreement.
10. The titles of Sections of this Agreement are for reference only; they shall have no effect on the interpretation hereof.
11. This Agreement has been drawn up in two counterparts, one for each of the Parties.
12. This Agreement shall come into force once signed by both Parties.

PUBLISHER

TRANSLATOR

.....

.....

/date, signature/

/date, signature/