

Copyright Licensing Limited (TCA) Rights Agreement

This is a legal contract between the **Rightsholder** and Copyright Licensing Limited trading as Tāwhia Copyright Aotearoa (**TCA**). This **Agreement** details what the **Rightsholder** (who may be anyone who owns copyright in a **Work**) authorises **TCA** to do on your behalf and what **TCA** will do in return. **MyCopyright** will enable the **Rightsholder's Users** to access, update and manage **Works**. In return, **TCA** agrees to provide **Services**.

It is important that the person signing or accepting this Agreement reads and fully understands the contents before they sign or accept it. If signing on behalf of an organisation, the signatory must have the authority of the organisation to enter into contracts on its behalf.

By signing or accepting this **Agreement**, the person who signs or accepts, agrees on behalf of the **Rightsholder**:

1. They, as the person signing or accepting, have the authority to have the **Rightsholder** enter into and be bound by this **Agreement**;
2. This **Agreement** replaces any previous agreements between the **Rightsholder** and **TCA** relating to the **Rightsholder's Work/s** but any accrued rights, including any **Distributions** that remain outstanding under those previous agreements, remain unaffected.

Words and phrases shown in **bold italics** in this **Agreement** have defined meanings wherever they appear, as set out in the Terminology section below.

Terminology

Words and Phrases	Meanings
Access Privileges	A certain level of access to MyCopyright allocated to a User by the Rightsholder's Authorised Person .
Account	The Rightsholder's account listing on MyCopyright .
Act	The Copyright Act 1994 (as amended from time to time).
Agreement	This document and any Supplementary Schedules agreed to by the Rightsholder
Alternative Dispute Resolution Process	The TCA Alternative Dispute Resolution Process as amended from time to time in accordance with its terms (viewable at www.tawhia.nz).
Authorised Person	A person or persons named as an "Authorised Person" in the Account that the Rightsholder has appointed to have administrative rights over its Account and any replacement Authorised Person(s) .
TCA	Copyright Licensing Limited Company Number: 396745 Trading as: Tāwhia Copyright Aotearoa PO Box 331488, Takapuna Auckland 0740 Phone: (09) 486 6250 Email: kiaora@tawhia.nz
Collecting Agency	An overseas copyright collecting society/organisation or reproduction rights organisation with which TCA has a reciprocal arrangement.
Copyright Owner	The Rightsholder and any other person or organisation that owns copyright in a Work/s .

Words and Phrases	Meanings
Distribution	A payment made by TCA to a Payee (which may be a Rightsholder or someone else that the Rightsholder specifies in its Account) in respect of a Work , in accordance with the Work Listing and the Distribution Policy .
Distribution Policy	The TCA Distribution Policy as amended from time to time in accordance with its terms (viewable at www.tawhia.nz).
End User Terms	Terms which each User must accept before using MyCopyright , as amended and published by TCA from time to time.
Licence Fees	Fees paid by Licensees or Collecting Agencies in respect of a Work/s .
Licensee	A third party (other than a Collecting Agency) to which TCA grants rights in respect of a Work/s .
Licensing Scheme	Has the meaning in the Act .
MyCopyright	The web portal provided by TCA that provides access to the Account
Payee	An organisation or person specified in a Work Listing to receive all or part of a Distribution . A Payee may be a Rightsholder , another Copyright Owner or any other person or organisation specified by the Rightsholder .
Rights Confirmation	Confirmation by a User via MyCopyright that copyright in a Work is as listed in a Work Listing , that the details set out in the Work Listing are true and correct, and not misleading by omission, and that the Payee(s) listed in the Work Listing is or are entitled to Distributions for that Work .
Rightsholder	The person or organisation that enters into this Agreement and is named as the "Rightsholder" in the Account , together with its permitted successors and assigns.
Services	The services set out in clause 3 and any additional services taken up by the Rightsholder from time to time by signing or accepting a Supplementary Schedule for those Services, all of which are provided by TCA under this Agreement .
Supplementary Schedule	A set of terms outlined in a Supplementary Schedule Template that is agreed or accepted by the Rightsholder and sets out the details for additions to this Agreement .
User	An employee or contractor of the Rightsholder who has Access Privileges (including each Authorised Person).
Work/s	A literary work (including an artistic work included in the literary work, and separately specified typographical arrangements of published editions of the literary work), or an artistic work, under the Act, for which there is a Work Listing , and each part of that Work . The Rightsholder lodges Rights Confirmations for Work/s via MyCopyright
Work Listing	The completed webform on MyCopyright which sets out the details of a Work , Payee(s) , and other details, for which a Rights Confirmation has been lodged by a User .

GRANT OF RIGHTS

The Rights that the *Rightsholder* Gives to TCA

1. Subject to clause 3.5, the **Rightsholder** grants to **TCA** the following non-exclusive, world-wide rights in respect of **Work/s**:
 - 1.1 The right to licence **Licensees** to make available to their respective users, rights in the **Work** and otherwise do any of the restricted acts set out in [section 16](#) of the Act (or any section replacing section 16) in respect of the **Work**, on such terms as **TCA** considers advisable, from time to time;
 - 1.2 The right to enter into agreements with **Collecting Agencies** to make available to their respective licensees, and those licensees' respective users, rights in the **Work** and otherwise do any of the restricted acts set out in [section 16](#) of the Act (or any section replacing section 16) in respect of the **Work**, on such terms as **TCA** considers advisable, from time to time;
 - 1.3 The right to licence the **Work** pursuant to any **Licensing Scheme** and to amend, terminate or replace that **Licensing Scheme**, as **TCA** considers advisable, from time to time;
 - 1.4 Such rights as shall be necessary for **TCA** to negotiate and grant to **Licensees** and **Collecting Agencies** the rights and licenses set out in clauses 1.1, 1.2 and 1.3;
 - 1.5 The right to publicly promote the **Work** and the availability of the rights set out in clauses 1.1 to 1.4 above in any jurisdiction, as **TCA** considers advisable;
 - 1.6 The right to collect **Licence Fees** and to make **Distributions** in accordance with the TCA **Distribution Policy**;
 - 1.7 The right, at **TCA's** cost, to take, progress, defend, appeal and settle any proceeding in the New Zealand Copyright Tribunal in relation to a **TCA Licensing Scheme**, as **TCA** considers advisable;
 - 1.8 The right, having first consulted and agreed in writing with the **Rightsholder**, to take, progress, negotiate, defend, appeal and settle any proceeding, mediation, arbitration or other action, in a court, tribunal or other forum having competent authority, in any jurisdiction, in the **Rightsholder's** name, as **TCA** considers advisable and at **TCA's** cost in respect of a **Work** or **Works** (and any other **Rightsholder's** works). Where a financial award is made as a result of any action, **TCA** shall be entitled to recover its costs and expenses (including its full legal, expert and other costs) and shall then pay to the **Rightsholder** and/or any **Payee(s)** specified by the **Rightsholder** from that award a sum that **TCA** reasonably considers to be proportionate to the value of the **Rightsholder's Works** included in the action; and
 - 1.9 The rights specifically granted in any **Supplementary Schedule**, in addition to the rights listed above.

Rightsholder's General Responsibilities

2. The **Rightsholder**:
 - 2.1 Warrants and represents that it has the full power and authority to grant to **TCA** the rights set out in clause 1 of this **Agreement** (including any **Supplementary Schedules** entered into from time to time) in respect of each **Work**;
 - 2.2 Warrants and represents that the information contributed to **MyCopyright** by each **Authorised Person** and **User**, including in particular all **Rights Confirmations**, details of all **Works**, **Payees**, and all **Account** details, are true, accurate, complete and correct, and not misleading by omission;
 - 2.3 Indemnifies fully **TCA**, and any **Licensee** and **Collecting Agency** to which rights are granted in respect of a **Work**, for any losses, damages, costs (including legal costs on a solicitor and own client

basis) or other liability suffered or incurred and arising directly or indirectly out of a breach of any of the warranties and representations set out in clauses 2.1 and 1.1, any other breach of this **Agreement**, and any resulting claim made by any third party;

- 2.4 Acknowledges that **TCA** is relying on the warranties and representations in clauses 2.1 and 2.2 the indemnity in clause 2.3, in providing the **Services**;
- 2.5 Agrees that **TCA** may retain any **Distribution** in trust where **TCA** considers there is cause to make a claim on the indemnity in clause 2.3. **TCA** shall notify the **Rightsholder** in writing of such retention. The retention shall be held pending agreement between **TCA** and the **Rightsholder**, resolution under clause 13, or order of a court or tribunal having competent jurisdiction;
- 2.6 Prior to making any **Distribution**, **TCA** will require an appropriate GST invoice or invoices in respect of the payment(s) to be made, or, where GST is not applicable, an invoice or invoices otherwise acceptable to **TCA**. **TCA** shall be entitled to generate New Zealand GST invoices itself, for GST registered **Payees**, in accordance with applicable law.

TCA's General Responsibilities

3. **TCA** shall, with due diligence, manage the exploitation of the rights granted under clause 1 and:
 - 3.1 Negotiate and enter into agreements with **Licensees** and **Collecting Agencies** with the aim of maximising returns distributed to **Rightsholders**;
 - 3.2 Operate as a non-profit company and not make any deductions from **License Fees** other than the proper and reasonable sums provided for in this **Agreement**, in the **Distribution Policy** or in **TCA's** Constitution (as amended from time to time);
 - 3.3 Subject to clause 2.5, and to the resolution of any dispute under the **Distribution Policy**, pay **Distributions to Payees** in accordance with the **Distribution Policy**;
 - 3.4 Inform the **Rightsholder** as soon as reasonably practicable after it becomes aware of any infringement of the intellectual property rights in a **Work**;
 - 3.5 Allow the **Rightsholder** to exclude a **Work** from any or all licences under clause 1 of this **Agreement**, in which case, **TCA** shall use its reasonable commercial efforts to bring that exclusion to **Collecting Agencies'** and **Licensees'** attention as soon as reasonably practicable, by way of notification via **MyCopyright** or such other method that **TCA** considers advisable. **TCA** shall not be liable for any continued use of an excluded **Work** by a **Collecting Agency** or **Licensee** (or any of their respective licensees or users).

MyCopyright

Rightsholder's Responsibilities

4. The **Rightsholder**:
 - 4.1 Shall keep its **Account** and **Works Listings** up to date;
 - 4.2 Is responsible for all actions or omissions of its **Authorised Person** and its **Users**;
 - 4.3 May change an **Authorised Person** at any time by notice in writing to **TCA** in a format acceptable to **TCA** (which **TCA** may, if it wishes, accept via **MyCopyright**);
 - 4.4 Shall ensure that its **Authorised Person(s)** and **User(s)** comply with the **MyCopyright End User Terms**

TCA's Responsibilities

5. **TCA** shall provide **MyCopyright**, including functionality, at least to enable the **Rightsholder**, its **Authorised Person(s)** and/or **User(s)** to:
 - 5.1 Create, amend and delete **Work Listings** and record, amend, and remove details of, **Works** in **Work Listings**;
 - 5.2 Lodge **Rights Confirmations** for **Works**;
 - 5.3 Add **Works** to **MyCopyright** (and, in the process, lodge **Rights Confirmations** for them);
 - 5.4 Add, remove, and amend details of, **Payees**, and amend the proportion of any **Distribution** payable to a **Payee** for a **Work**;
 - 5.5 Exclude **Works**;
 - 5.6 Notify **TCA** of the change of any copyright ownership of **Works**;
 - 5.7 Enable any **Authorised Person** to add, remove and update the details of, **Users**;
 - 5.8 Enable any **Authorised Person**, and any **Users** having the requisite **Access Privileges**, to create and amend the details of the **Rightsholder's Account**;
6. **TCA** shall:
 - 6.1 Use its reasonable commercial endeavours to make **MyCopyright** available 24/7, 365 days per year, other than for scheduled maintenance notified to the **Rightsholder** in advance, or emergency maintenance that **TCA** considers reasonably necessary;
 - 6.2 Adopt and maintain appropriate security measures for **MyCopyright**;
 - 6.3 Provide **MyCopyright** training and support to **Authorised Persons** and **Users** as **TCA** considers necessary from time to time.
7. **TCA** may suspend or terminate access to **MyCopyright** in respect of any **Rightsholder** or any **User**, by written notice at any time, where it considers that advisable.

GENERAL TERMS

Supplementary Schedule

8. **TCA** may (but is not obliged to) introduce new services and may offer these to the **Rightsholder**, if appropriate. The **Rightsholder** may (but is not obliged to) take up those services by agreeing to a **Supplementary Schedule**. The **Supplementary Schedule** shall then form part of this Agreement.

Termination and Suspension

9. **TCA** may terminate the **Agreement**:
 - 9.1 at any time on 60 days' notice to the **Rightsholder**;
 - 9.2 immediately on notice to the **Rightsholder** where the **Rightsholder** has committed a material breach which is unable to be cured; or
 - 9.3 immediately on notice to the **Rightsholder** where the **Rightsholder** has been given notice of any breach and has failed to cure that breach within 14 days of such notice.
10. The **Rightsholder** may terminate the agreement:

- 10.1 at any time on 60 days' notice without cause;
 - 10.2 immediately on notice to **TCA** where the **TCA** has committed a material breach which is unable to be cured; or
 - 10.3 immediately on notice to **TCA** where the **TCA** has been given notice of any curable breach and has failed to cure that breach within 14 days of such notice.
- 11. Rights licensed by **TCA** to **Licensees** or **Collecting Agencies** prior to suspension or termination shall be unaffected, subject to the terms of those licenses. **TCA** shall use its reasonable commercial efforts to bring that suspension or termination to **Collecting Agencies'** and **Licensees'** attention as soon as reasonably practicable, by way of notification via **MyCopyright** or such other method that **TCA** considers advisable. **TCA** shall not be liable for any continued use of a **Work** affected by suspension or termination by a **Collecting Agency** or **Licensee** (or any of their respective licensees or users) following that suspension or termination.
 - 12. As part of its normal processing of **Distributions**, **TCA** shall calculate and pay to **Payee(s)** specified by the **Rightsholder** a final **Distribution** for all **Works** affected by a suspension or termination.

Miscellaneous

- 13. Other than a dispute under the **Distribution Policy**, all disputes arising out of or in connection with the **Agreement** (including under clause 2.5), or suspension or termination of the **Agreement**, shall be dealt with in accordance with **TCA's Alternative Dispute Resolution** process, prior to initiating any court action (except where urgent relief is required).
- 14. Subject to its obligations and indemnities provided under the Act, **TCA's** liability to the **Rightsholder** under the **Agreement** and otherwise is limited in respect of each **Work** to a sum equivalent to the total aggregate **Distributions** made in respect of that **Work** in the 12 months preceding the liability arising.
- 15. The **Rightsholder's** liability to **TCA**, other than under any of clauses 2.1, 2.2 and 2.3, is limited in respect of each **Work** to a sum equivalent to the total aggregate **Distributions** made in respect of that **Work** in the 12 months preceding the liability arising.
- 16. Other than in respect of payment of money, **TCA** shall not be liable for any failure or delay in providing the **Services**, where that failure or delay is caused in whole or in part by an event or circumstances beyond **TCA's** reasonable control.
- 17. Where there is any inconsistency between the other provisions of this **Agreement** and the provisions of a **Supplementary Schedule**, the **Supplementary Schedule** prevails. Where there is any inconsistency between the provisions of different **Supplementary Schedules**, the later in time prevails.
- 18. Notices under this **Agreement** shall be given in writing by post, courier or by email to **TCA** at its address listed in this **Agreement** or as notified to the **Rightsholder** from time to time and to the **Rightsholder** at its address shown in its **Account**. Emails shall be deemed to be received in accordance with the default rules set out in the NZ Contract and Commercial Law Act 2017. Any post, courier or email notice received, or deemed to be received, on a day which is not a working day in the recipient's location shall be deemed to be received at 9am on the next working day in that location.
- 19. Interpretation of this **Agreement** and all matters arising out of it or its suspension or termination shall be governed by New Zealand law and the parties submit the exclusive jurisdiction of the New Zealand courts, save that no objection shall be made to the enforcement of a judgement of a New Zealand court or arbitral award in any other jurisdiction.

SIGNED BY:

as the ***Rightsholder***

POSITION:

DATE:

ORGANISATION:

SIGNATURE:

SAMPLE