

ILLUSTRATION COMMISSION AGREEMENT

Agreement made **Date** between

Illustrator : **Illustrator Name**
Address

- and -

Author : **Author Name**
Address

Concerning images commissioned by the Author and described below:

Up to X# illustrations (the "Artwork") for children's book, Book Title (the "Work")

1. Commission and Grant of Rights

The Illustrator acknowledges and agrees that the Artwork hereunder been specifically ordered and commissioned by the Author. The Illustrator hereby sells, assigns, and transfers, and the Author hereby purchases the sole and exclusive license to produce, publish, and/or sell in printed book format the Artwork for the legal term of copyright, and any and all extensions, renewals, and revivals thereof throughout the World. All original artwork will remain the property of the Illustrator. The Author agrees not to make any substantive changes to the Work without consulting the Illustrator.

2. Sale and Purchase of Artwork (Advance)

The Illustrator hereby sells, assigns, and transfers, and the Author hereby purchases the sole and exclusive license to produce, publish, sell, in printed book format the Artwork for the sum of **number of dollars (CAN\$X + X% tax)** payable as follows:

Deposit of CAN\$X + X% tax due before project commences.
If any, graphic design fees (CAN\$/hr) are due upon completion of project.
Royalties commence if/when picked up by a publisher (Section 3)

This advance fee is a non-refundable fee, even if the Work is not published by the Author. If the Author wishes to sell the Artwork through a medium other than a published book, the Author agrees to pay the Illustrator its standard royalties for those markets at the time of use, less returns. The Author shall have the right of refusal to purchase the physical artwork from the Illustrator.

3. Royalties

If and when the Work is licensed to a publisher, royalties for the sale of books would apply. Subject to the exceptions hereinafter mentioned and so long as copyright protection subsists in the Work, the Illustrator shall be entitled to the following royalties from the sale of the published Work, less returns:

- a) Hardcover and Paperback Editions : The Author shall pay the Illustrator, subject to the exceptions hereinafter mentioned, the following royalties from sales of the published work :
Regular Sales : **five per cent (5%)** of retail price when sold to the distributor at a discount of 65%;
Sales at High Discount : **five per cent (5%)** of the net amount received by the Author when sold to the distributor at a discount of more than 65%.
- b) Export : With respect to copies of hardcover or softcover editions of the Work sold by the Author for resale outside of North America, a royalty equal to **five per cent (5%)** of the list price.
- c) Non-Book Trade Sales : On bulk sales of a special edition bearing the imprint of a third party for promotional purposes, or for sale outside the traditional book trade, a royalty of **five per cent (5%)** of the net amount received by the Author.
- d) Free Copies / Copies at or below Cost : **No royalties** shall be payable for copies given away for promotion, or for any copies sold at cost price or below.

For editions printed in other languages, royalties will be the same as those applied to the English edition.

All royalties will be paid in Canadian dollars. When the Author receives monies from sales made in currencies other than Canadian dollars, the royalties shall be paid in Canadian funds and the amount paid will be calculated at the conversion rate on the day the funds.

Commencing on the Author's date of initial publication of the Work, the Author shall provide the Illustrator with annual statements of regular sales of the Work for each 12-month period ending December 31 of each year. Statements shall be mailed or emailed out no later than 30 days after the end of each 12-month period. A royalty cheque in the amount owed shall follow such statements no later than ninety-(90) days after the statement date. If the royalties due are less than \$25.00, the Author may defer the payment of royalties until such statement indicates the sum of \$25.00 or more to be due.

4. Project Schedule and Delivery Dates

Illustrator shall deliver the Artwork, in the form of digital files to Author not later than the following dates:

- **Sketches : September 2009;**
- **Revised Sketches : two weeks after revisions are requested (October 2009);**
- **Colour Roughs : one week after sketches are approved (November 2009);**
- **Final art Due : twelve weeks after colour roughs are approved (January 2010);**

5. Illustrator's Copies

The Author shall furnish the Illustrator with **ten (10) free copies** of the Work upon publication. The Author shall send the Illustrator two free copies of any sub-licensed or foreign edition of the Work.

6. Copyright

The copyright for the Artwork shall belong to the Illustrator. The copyright in the text shall belong to the Author. The Author agrees to print a copyright notice in each copy of the Work as required to obtain protection under the Universal Copyright Convention.

7. Credit

- a) The Illustrator's name shall be printed on the front cover, title page and with biography and optional photograph on the back cover. The Author shall use their best endeavors to ensure that the Illustrator is given full acknowledgement in any edition of the Work sublicensed by the Author to a third party.
- b) The Illustrator shall ensure that any exhibition of the Artwork shall make full acknowledgement to the Work, to the Author, and to the Publisher.

8. Promotion

The Illustrator shall permit the Author free of charge to use the Artwork to promote the Work in catalogues, advertisements and other promotional material. The Illustrator has the right to use the Artwork for self-promotional purposes.

9. Failure to Deliver

If the Illustrator fails to make delivery of the Artwork on the dates specified in Section 4, or if the Artwork delivered is not satisfactory to the Author, the Author may, at his/her option, at any time thereafter, without prejudice to his/her other rights and remedies, do one or more of the following:

- (a) Terminate this Agreement by giving written notice, in which event the Author agrees to pay the Illustrator a Cancellation fee (see Section 10);
- (b) Request the Illustrator to work cooperatively with the Author to make the Artwork satisfactory to the Author within a period to be fixed by the Author, in which event the Illustrator shall use his/her best efforts to do so.

If the Illustrator fails to deliver the Artwork satisfactory to the Author in accordance with subparagraph (b), the Author may terminate this Agreement as provided in subparagraph (a).

10. Cancellation

Should the Author for any reason cancel publication they shall pay to the Illustrator a cancellation fee to be agreed and proportional to the degree of completion. The Author shall have no rights in any Artwork so cancelled.

11. Warranty

The Illustrator represents and warrants that:

- (a) the Illustrator has full power to make this Agreement;
- (b) the Illustrator is the sole creator of the Artwork and is the owner of the rights herein granted;
- (c) the Artwork is original and has not been previously published;
- (d) the Artwork does not contain any obscene, libelous or defamatory matter; and
- (e) the Artwork is in no way a violation or an infringement of any existing copyright or license.

12. Competitive Works

The Illustrator shall not, without the written permission of the Author, publish or authorize the publication of any children's book based on material in the Work, or of a nature such that it is likely to compete with the Work.

13. Publication

The Author shall publish the Work at such time, and in such manner, as may be determined by the Author. The Author shall revert all rights to the Artwork to the Illustrator if, for any reason in the Author's sole discretion, the Work is not published.

14. Assignment

The Author may assign this Agreement with the prior written agreement of Illustrator to a successor by reason of merger, consolidation, or sale or exchange of assets or any other reorganization as the Author may determine. The Illustrator may assign any net sums due to the Illustrator under this Agreement, but may not assign or delegate the Illustrator's duties or obligations under this Agreement.

15. Entire Agreement

This Agreement constitutes the entire Agreement between the Illustrator and the Author concerning its subject matter and supersedes any and all prior agreements, arrangements or understandings (whether written or oral) relating hereto. No addition or modification of any provision of this Agreement shall be binding upon the parties unless it is in writing and signed on behalf of the Author and the Illustrator.

16. Applicable Law

This Agreement shall be governed and interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties have duly executed this agreement the day and year first written above.

Name, Author

Date :

Name, Illustrator

Date :