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COEDITION SAME LANGUAGE CONTRACT

MEMORANDUM OF AGREEMENT made this ___ day of _____ 20 ___

Between:

Name and address of Licensors: _____
_____ (hereinafter termed the
Licensors) of the one part, and

Name and address of Licensees: _____
_____ (hereinafter termed the
Licensees) of the other part

WHEREAS the Licensors are the proprietors of a work by

Name of author: _____ (hereinafter termed the
Author) entitled:

Title of book: _____
_____ (number), Edition; (hereinafter termed the
Work)

NOW IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. GRANT OF RIGHTS

Subject to the terms of this Agreement, the Licensors hereby grant to the Licensees the exclusive licence to publish the Work in hardback/paperback volume form in the _____ language under the Licensees' imprint (hereinafter termed the Licensed Edition) for sale in _____ (country of Licensees) only/throughout the world. This Agreement does not grant any rights in respect of subsequent editions of the Work.

2. PROVISION OF FILM OF IMPRINT CHANGES

If so required by the Licensors, the Licensees shall supply the Licensors with a set of (specification e.g. positive, right reading, emulsion side down) film of the Licensees' required imprint changes for the cover/jacket and prelim pages of the Licensed Edition.

3. SUPPLY OF PRINTED COPIES

The Licensors undertake to supply the Licensees with ___ (quantity) jacketed hardbound/paperback copies of the Licensed Edition with the Licensees' imprint at a price of ___ per copy (terms of supply - e.g. CIF (destination) inclusive of royalty and export packing). The production specifications for the Licensed Edition shall be as listed on the attached Schedule.

4. DELIVERY AND SHIPMENT

The Licensors undertake to deliver the said copies of the Licensed Edition to their chosen shipping agent on or around _____ (date) provided that the Licensees supply film of their imprint changes together with full instructions for packing and shipping no later than _____ (date).

5. PAYMENT TERMS

Payment for the said copies amounting to _____ is payable to the Licensors (example - in two equal parts; the first half on signature of this Agreement and the second half sixty days from the date of the Licensors' shipment invoice for the aforesaid copies)

6. FAULTY OR DAMAGED COPIES

Should the Licensees have any complaints regarding the quality of the said copies of the Licensed Edition, such complaints must be made in writing and received by the Licensors within one month of receipt of the said shipment. In the absence of any notification within this period the Licensors have the right to assume that the Licensees have accepted full delivery of the shipment to their satisfaction.

7. REORDERS

Should the Licensees require further copies of the Licensed Edition the Licensors agree to supply such copies at a price and time to be mutually agreed between the parties. Such reorders shall be for not less than ___ copies.

[POSSIBLE ADDITIONAL WORDING:

If the parties hereto are unable to agree on price and/or delivery date for further copies of the Licensed Edition, the Licensors agree to supply the Licensees with a quotation for a set of duplicate film of the Licensed Edition to enable the Licensees to print the Licensed Edition on royalty terms to be agreed between the parties.]

8. VALIDITY OF AGREEMENT

This Agreement shall not come into effect until the Licensors have received the first payment detailed in Clause 5 hereof.

9. INTEGRITY OF TEXT

Abbreviations, alterations and/or additions shall only be made with the prior written consent of the Licensors.

10. QUOTED COPYRIGHT MATERIALS

The Licensees shall be responsible for obtaining, wherever necessary, permission for the use in the Licensed Edition of copyright material from the Work controlled by third parties. The Licensees shall also be responsible for paying any fees required for such permissions and for ensuring that appropriate acknowledgement is made in the Licensed Edition. The Licensors reserve the right not to supply the Licensees with printed copies of the Licensed Edition until the Licensors have received written confirmation from the Licensees that such permissions have been obtained.

[ALTERNATIVE WORDING: (Note – the parties could also opt for the following clause by deleting the above provision)

The Licensors shall be responsible for obtaining, wherever necessary, permission for the use in the Licensed Edition of copyright material from the Work controlled by third parties. The cost of any fees required for such permissions will be recharged to the Licensees with an additional administration charge and details of this arrangement will be agreed separately between the parties. The Licensors reserve the right not to supply the Licensees with printed copies of the Licensed Edition until such permission has been obtained.]

11. ACKNOWLEDGEMENTS

The name of the Author shall appear with due prominence on the cover, jacket (if any) and title page of every copy of the Licensed Edition issued and of the reverse of the title page shall appear the following copyright notice: “ c (copyright details from original edition” together with the following acknowledgement: “This edition of (title) is published by arrangement with (name of Licensors)”.

12. NOTICE OF PUBLICATION

The Licensees shall inform the Licensors of the actual date of publication and the retail/wholesale price of the Licensed Edition.

13. PUBLICATION DEADLINE/OUT OF PRINT

(a) In the event of the Licensees failing to issue the Licensed Edition on to the market within ___ months from the date of this Agreement all rights granted under this Agreement shall revert to the Licensors without prejudice to any monies paid or due to the Licensors

(b) In the event of the Licensed Edition going out of print or off the market at any time during the period of this licence the Licensors shall be at liberty to terminate this Agreement on giving the Licensees six months' notice in writing to reorder copies of the Licensed Edition [ADDITIONAL WORDING: or purchase a set of duplicate film as provided for in Clause 7 hereof]. If on the expiration of such period of six months no such arrangements have been made all rights granted under this Agreement shall revert to the Licensors without prejudice to any monies paid or due to the Licensors.

14. SUBSIDIARY RIGHTS

The Licensees shall not dispose of any subsidiary rights in the Licensed Edition without obtaining the prior written consent of the Licensors.

15. SALES STATEMENTS

A sales statement for the Licensed Edition shall be made up annually/twice annually to _____ (date/s) and will show:

- (a) The number of copies in stock if any at the beginning of the sales period/s
- (b) The number of copies sold during the sales period/s
- (c) The number of copies presented free of charge during the sales period/s
- (d) The number of copies remaining in stock at the end of the sales period/s

Should any of the payments detailed in this Agreement be three months overdue the licence herein granted shall forthwith lapse and all rights conveyed by it shall without further notice revert to the Licensors.

16. WARRANTY AND INDEMNITY

The Licensors hereby warrant that they have the right and power to make this Agreement and that according to the law of _____ (country of Licensors) the Work will in no way whatever give rise to a violation of any existing copyright or a breach of any existing agreement and that nothing in the Work is likely to give rise to a criminal prosecution or to a civil action for damages or any other remedy and the

Licensors will indemnify the Licensees against any loss, injury or expense arising out of any breach or alleged breach of this warranty.

17. RESTRICTIONS ON TRANSFER

The licence hereby granted to the Licensees shall not be transferred to or extended to include any other party, nor shall the Licensed Edition appear under any imprint other than that of the Licensees, except with the prior written consent of the Licensors.

18. LIMITATION OF RIGHTS GRANTED

All rights in the Work other than those specifically granted to the Licensees under this Agreement are reserved by the Licensors.

19. TERMINATION OF CONTRACT

In the event of the Licensees going bankrupt or should they fail to comply with any of the provisions of this Agreement and not rectify such failure within one month of having received notice from the Licensors to do so by a registered letter sent to the Licensees at their address given at the commencement of this Agreement, then in either event this Agreement automatically becomes null and void and the licence granted to the Licensees shall revert to the Licensors without prejudice to any monies paid or due to the Licensors.

20. DISPUTES

Unless otherwise agreed, any disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules .

21. TRANSFER OF PAYMENT

All sums which may become due to the Licensors under this Agreement shall be paid by the Licensees in _____ (agreed currency) at the official exchange rate in force on the day of transfer without any deductions in respect of tax, exchange or commission. Payment may be made either by cheque or bank draft sent to by post to:

Name and address of accounts department of Licensors: _____
_____ or by direct bank
transfer to the Licensors' bank account Number: _____ at

Name and address of Licensors' bank: _____

22. APPLICABLE LAW

This Agreement shall be governed by and interpreted and construed in accordance with the laws of _____.

23. PROTECTION OF RIGHTS

The Licensees agree to take any necessary steps to register the title of the Work in the name of the Author/Licensors under local copyright laws at the sole expense of the Licensees. The Licensees also agree to protect such copyright and to prosecute at their own expense any person who infringes such copyright in the territory granted to the Licensees under the terms of Clause 1 hereof.

Signed
For and on behalf of the Licensees

Date

Signed
For and on behalf of the Licensors

Date

SCHEDULE (sample)

Name of author:	David Warwick
Title of book:	An Illustrated History of Zimbabwe
Quantity to be supplied:	2000 copies
Number of pages:	332 pages plus xii pages of prelims
Format:	234mm x 156mm
Paper:	60gsm wood-free machine finished (sample attached)
Binding:	Section sewn, cased, artificial cloth, blocked on spine with loose jacket
Packing specifications:	Binder's parcels with 10 copies per parcel, stacked on pallets and crated.

USER'S GUIDE for the COEDITION SAME LANGUAGE CONTRACT

This contract covers the licence of same language rights in a work by the original publisher to a publisher in another country, with manufacture to be undertaken by the Licensors who will then ship printed books to the Licensees. This type of arrangement is most beneficial in the case of books heavily illustrated in colour where there will be an economy of scale in undertaking a large combined print run on behalf of several customers at the same time, but can also be viable for other types of book since usually only an imprint change will be required. The Licensees will need to supply the Licensors with film or instructions for their required imprint changes.

The Preamble sets out the date of the agreement, the name and address of the originating publishers (the Licensors), the name and address of the publishers to whom rights are being licensed (the Licensees) as well as the name of the author and the title of the book in question. For a non-fiction work which may be revised at a future date, it is advisable to designate the number of the edition which is being licensed (e.g. "First Edition") as any licence arrangements to reprint a revised edition should be the subject of separate negotiations and a separate licence contract.

For fiction works which will not be revised, no edition number need be designated .

1. GRANT OF RIGHTS

This clause should define as fully as possible the rights which are to be granted to the Licensees: to publish (but not manufacture) the work under their own imprint in the same language as that of the original Work for sale in an agreed geographical territory. This latter aspect should be the subject of negotiation and should be appropriate to the promotion and distribution capacities of the Licensees; the territory might consist of a single country, several countries or the world. Where the licence encompasses more than one country, all the countries concerned should be listed on a schedule appended to the contract and referred to in the clause as "the territories listed on the schedule hereto".

Manufacture of the coedition copies will be undertaken by the Licensors and supply is covered in Clause 3.

For fiction titles which will not be revised the sentence "This Agreement does not grant any rights in respect of subsequent editions of the Work" may be omitted.

This clause does not provide for the licence to run for a designated period of time as this will be defined by the lifespan of the quantity of printed copies supplied, with provision for reordering in Clause 7.

2. PROVISION OF FILM OF IMPRINT CHANGES

The Licensees may be asked to supply the Licensors with film of their required imprint changes for the cover/jacket as well as the prelim pages. Alternatively, the Licensees may be asked to mark up the cover/jacket and prelim pages to indicate their required imprint changes for the Licensors to typeset. If the book has a blocked cover (i.e. indented lettering on a cloth or artificial cloth cover), the Licensors may require either a brass or artwork for the imprint change to appear on the spine of the cover. Economy of scale normally dictates that the same cover design will be used for all coedition copies. although an alternative cover design may be used if the Licensee is prepared to pay for this.

3. SUPPLY OF PRINTED COPIES

The Licensors will supply the agreed number of copies of the Licensed Edition at an agreed price. It is vital that the contract clearly defines what is included in the price, in particular whether the royalty is included or will be paid separately, and what shipment terms apply.

Royalty inclusive deals are administratively convenient for both parties as the books are purchased outright with no further payments. However, the Licensees will then be paying the royalty element regardless or not of whether they successfully sell all the copies of the Translation. Royalties could be specified separately and paid as and when sales are achieved; in such a case, Clause 15 of this contract would have to be modelled on Clause 11 of the Translation agreement provided earlier in this handbook.

Shipment terms may vary according to circumstance and must be discussed and agreed between the parties before finalisation of the contract. The Licensors have a number of options:

- (a) to quote a price per copy ex works (in which case the Licensees will be liable to additional charges for packing and onward transport from the printing house to their own warehouse, including the cost of any road transport, sea freight and attendant charges including customs clearance (air freight is usually prohibitively expensive).
- (b) to quote a price FOB (free on board) a port in their own country; their responsibility will then end half way over the rail of the vessel. The Licensees will then be liable for the cost of freight, insurance, customs charges at the port of destination and onward transport to their own warehouse.
- (c) to quote a price CIF (cost, insurance and freight) an agreed destination in the country of the Licensees. The Licensees would then be liable for customs clearance charges and onward transport to their own warehouse. A common method in the case of sea shipment would be to quote a price CIF a port in the Licensees' country, or to a port in the nearest convenient country if the Licensees' country is landlocked.

4. DELIVERY AND SHIPMENT

This Clause provides an estimated date for shipment provided that the Licensees have provided the necessary instructions for shipping by an agreed date. The Licensors will need to have full details of any particular packing instructions, markings on the shipment and the necessary documentation required to facilitate delivery. The Licensees will normally be required to designate a handling agent at the point of entry into their own country.

5. PAYMENT TERMS

The exact arrangements for payment are open to negotiation between the parties in terms of the number of instalments to be made and the timing of those payments. Since the Licensors will be entering into expense of behalf of the Licensees in terms of purchasing paper and printing, it is common for a proportion of the total amount to be required on signature of the contract - further instalments may then fall due when printing commences, when shipment takes place or an agreed number of days after the date of the shipment invoice.

6. FAULTY OR DAMAGED COPIES

It is vital that the Licensors receive prompt notification of any printing faults or damage to the copies during transit, as they will need to take up such matters with their printers or shippers.

7. REORDERS

This Clause provides for the possibility of ordering further copies of the Licensed Edition; a minimum viable quantity may be specified. Since the timing of a reorder may depend on the Licensors' ability to coordinate it with a reprint of their own edition, the price may vary from that paid for the first printing. Some publishers may be prepared to offer film as an alternative to enable the Licensees to manufacture their own edition, but publishers specialising in the coproduction of illustrated books normally prefer to control the printing themselves to ensure economy of scale.

8. VALIDITY OF AGREEMENT

The licence comes into force only when the Licensors have received the initial instalment of payment in Clause 5.

9. INTEGRITY OF TEXT

No changes may be made without permission in advance from the Licensors.

10. QUOTED COPYRIGHT MATERIALS

Many books contain material - text, graphs, photographs or illustrations - which originate elsewhere and which the Licensors will have had to seek permission to include in their edition; in some cases, the cover illustration may also come from an outside source. It is important to be clear when granting a licence to another publisher whether the permission granted by outside copyright holders is sufficiently broad for the material to be licensed on to another publisher for publication under another imprint even if publication takes place in the same language as that of the original Work. For this to be the case, the original permission cleared would have had to allow the Licensors to publish the material themselves in the context of this work and to license the work on to others; many copyright holders may restrict the permission granted to the imprint of the initial applicant (i.e. the Licensors). If the permission does not allow for onward licensing, it will be necessary for reclearance to be undertaken for the material to be included in the Licensed Edition in the designated market. It must be clearly agreed whether the Licensees will be responsible for doing this themselves (in which case the Licensors will need to supply them with a clear list of the names and addresses of each external copyright owner) or whether the Licensors will do this on behalf of the Licensees and recharge them the cost of any fees incurred. In either case the cost may be unpredictable and the time taken to obtain clearance from a range of copyright holders (perhaps including museums, commercial picture agencies and other publishers) can be lengthy.

11. ACKNOWLEDGEMENTS

The author must be clearly acknowledged; the copyright notice relating to the original edition must be reproduced together with an acknowledgement to the Licensors. The copyright notice is required to comply with the provisions of the Universal Copyright Convention.

12. NOTICE OF PUBLICATION

Although the Licensors will know when manufacture is completed, they still require confirmation of the publication date and final price.

13. PUBLICATION DEADLINE/OUT OF PRINT

The deadline can be predicted with reasonable accuracy in relation to the Licensees delivery schedule for finished copies; the Licensees will normally aim to publish very quickly after receipt of stock to recoup their outlay. Failure to publish could lead to cancellation of the contract and the Licensors would technically be free to make alternative arrangements with another publisher.

Clause 7 provides for the possibility of reordering copies and some licensors may agree to the supply of film as an alternative. Rights should revert to the Licensors if the Licensed Edition goes out of print and no arrangements have been made to reorder copies or purchase film for local manufacture.

14. SUBSIDIARY RIGHTS

This licence provides for a straightforward licence of volume rights with no provision for the Licensees to handle any subsidiary rights for the market granted to them. If such rights are required (e.g. anthology, quotation, photocopying, serial, pocket book rights) the Licensees must pass on an agreed share of any revenue generated to the Licensors (usually at least 50%)

15. SALES STATEMENTS

Although this model provides for the supply of copies on a royalty inclusive basis, the Licensors may still wish to receive regular statements to monitor sales of the Licensees' edition. The contract can be cancelled if any of the payments in Clause 5 are more than three months overdue. If the price in Clause 3 is quoted royalty exclusive, this Clause should be amended along the lines of Clause 11 of the Translation licence agreement provided earlier in this handbook.

16. WARRANTY AND INDEMNITY

In this clause the Licensors provide the Licensees with a warranty that under their own legislation the book will not violate any copyright agreement or give rise to legal action; the Licensors will indemnify the Licensees against any breach or alleged breach of that warranty. The Licensees would normally be in a position to issue such warranties only under the terms of legislation of their own country.

17. RESTRICTIONS ON TRANSFER

The licence cannot be transferred to another company without prior permission from the Licensors.

18. LIMITATIONS ON RIGHTS GRANTED

Rights granted are restricted to those outlined in Clause 1

19. TERMINATION OF CONTRACT

The contract can be terminated if the Licensees go bankrupt or if they breach the agreement and do not remedy such breach after having received notice from the Licensors.

20. DISPUTES

This covers procedures in case of a dispute between the parties. Some publishers may remain adamant that any subsequent legal action should take place in the state in which they are incorporated.

21. TRANSFER OF PAYMENT

This clause provides instructions for the transfer of payment to the Licensors; this may either be by mail or by direct bank transfer to the Licensors' account. No tax should be deducted from payments for physical goods.

22. APPLICABLE LAW

It is common for the country of the Licensors to be specified as governing the contract, but some Licensees may insist that the law of the state in which they are incorporated is applicable.

23. PROTECTION OF RIGHTS

This clause requires the Licensees to fulfil any requirements for formal procedures (e.g. registration) to protect the work in their territory, and also to take action against any infringements in that territory. Copyright registration should be in the name of the original copyright holder, who might be either the author or the Licensors.

24. SCHEDULE

This provides more detailed specifications of the work which is to be supplied.