



COPY SHOP BASIC LICENCE TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS:

The following definitions apply throughout this Agreement:

Agreement means the Copy Shop Basic Licence Form and these Copy Shop Basic Licence Terms and Conditions including the Exclusions List attached hereto as a schedule (the "**Schedule**").

Claim means a written statement or demand, including any document commencing legal proceedings, in which it is alleged that the Licensee has infringed copyright in a Published Work, with the exception of any claim based on an alleged infringement of moral rights or any claim by JAMCOPY.

Copying means the creation of a Hard Copy by reprographic process, including photocopying, xerography and analogous means; or by reproduction by a Copying machine that digitizes and temporarily stores document in memory and prints; or by facsimile transmission incidentally requiring a transitory digital copy. **Copied** means reproduced by Copying. **Copying** shall not include:

- (a) inputting or storing all or part of a Published Work in electronic/digital form, with the potential for later retrieval or reproduction, except for a transitory electronic/digital copy that may be required to produce a Hard Copy;
- (b) Accessing all or part of a Published Work by displaying it on a video screen or monitor;
- (c) Altering the content or manipulating the format of all or part of a Published Work in any way; or
- (d) Reproducing any Published Work in another electronic or digital medium for purposes of storage or redistribution, except incidentally in connection with facsimile transmissions.

Copyright Act means the Jamaica Copyright Act of 1993, the Jamaica Copyright (Amendment) Act 1999 and future amendments.

Copyright Tribunal means the Copyright Tribunal established pursuant to Section 103 of the Copyright Act.

Course Pack means bound or otherwise packaged or assembled Hard Copies of Published Work from more than one publication.

Effective Date means the Licence Start Date identified on the Copy Shop Basic Licence Form.

Hard Copy means a visually perceivable facsimile reproduction, created by Copying, of all or part of a Published Work onto paper.

Licensee means the corporation or business organisation identified as a party to this Agreement on the Copy Shop Basic Licence Form, as well as any related companies including any franchisees (if authorized), as identified on the Copy Shop Basic Licence Form.

Licensed Work means a Published Work included in the Repertoire.

Payment means all amounts due to JAMCOPY from the Licensee as required by clause 4.

Photocopier means a machine or device that makes Hard Copies installed anywhere on the Licensee's business premises, retail or otherwise, used by employees, or customers, or both (as set out in Part A of the Copy Shop Basic Licence Form).

Published Work means a literary, dramatic, artistic or musical work in print form of which copies have been issued to the public with the consent of the copyright owner in a publication such as a book, folio, magazine, journal, newspaper or other periodical.

Repertoire means those Published Works published in Jamaica by Rightsholders affiliated with JAMCOPY or in or outside Jamaica in instances where there is an agreement between JAMCOPY and another reproduction rights organisation representing other Rightsholders with respect to the collective administration of copyright.

Rightsholders means copyright owners, including authors and publishers, and other persons entitled to control copyright in Published Works.

Term means either the Initial Term or a Renewal Term of this Agreement as the context may require. **Initial Term** is the period between the Effective Date and the first November 1 following the Effective Date and **Renewal Term** is each successive one (1) year period commencing at the end on the Initial Term.

In this Agreement, words in the singular include the plural and vice-versa. References to a clause refer to the applicable clause of this Agreement.

2. GRANT OF LICENCE

- (a) For payment specified in this Agreement, and subject to its terms and conditions (including its Schedule), JAMCOPY hereby licenses the Licensee on a non-exclusive basis to make Hard Copies of Published Works in their repertoire, solely on its Photocopiers, for the business purposes of the Licensee in Jamaica ("**Licence**").
- (b) The Copying permitted by the Licence is restricted to the normal activities of the Licensee in providing photocopying services to its customers and in the administration of its own business, and is further subject to the General Prohibitions as set out in clause 11.
- (c) Only employees and customers of the Licensee are permitted to make Hard Copies under this Licence.

3. TERM AND TERMINATION

- (a) This Agreement is for the Initial Term. Subsequently, subject to its other provisions, this Agreement shall automatically renew for one (1) year Renewal Terms unless one party gives notice to the other, at least two (2) months prior to the end of the Initial Term or any Renewal Term, that it wishes to terminate.
- (b) JAMCOPY may, at its sole discretion, terminate this Agreement immediately by notice delivered to the Licensee if the Licensee commits any material breach of its obligations under this Agreement. Without limiting the generality of the foregoing, any failure on the part of the Licensee to provide accurate information concerning its photocopiers, or to make Payment in accordance with clause 4, or to permit any Copying exceeding the Limits on Permitted Copying as set out in clause 9 or in contravention of clause 11, constitutes a material breach of this Agreement.
- (c) Other than as specifically permitted under this Agreement, any copying, use, distribution, publication, republication, sale, communication to the public, or licensing of the Published Work, whether in electronic/digital, Hard Copy, or any other form, will result in the Licence being automatically revoked and will be deemed to be an infringement of copyright, rendering the Licensee liable to JAMCOPY and the Rightsholder (s) for all remedies arising from such infringement.
- (d) JAMCOPY may terminate this Agreement immediately if the Licensee is insolvent or bankrupt, or seeks protection from its creditors, or if any assignment of its property is made for the benefit of creditors or otherwise, or if a trustee in bankruptcy or similar officer or a receiver is appointed for the Licensee.
- (e) Any termination of this Agreement shall not affect the rights and remedies of JAMCOPY, including its right to retain or receive any Payment already received or due.

4. PAYMENT AND INSPECTON

- (a) The Licensee shall make Payment to JAMCOPY of the tariff and administrative fee calculated in accordance with Part B of the Copy Shop Basic Licence Form. The Licensee shall pay to JAMCOPY all applicable General Consumption Tax (G.C.T), or any other applicable tax levied on the Licensee by government with respect to all Payments due under this Agreement.
- (b) The parties acknowledge and agree that the method of calculation of Payment under this Agreement may change, subject to notice being given as provided for herein. The Licensee represents and warrants to JAMCOPY the accuracy of the information, and where applicable, the reasonable estimates, provided to JAMCOPY in the Copy Shop Basic Licence Form.
- (c) Payment for the Initial Term is due within Fourteen (14) days of signing of this Agreement by the Licensee, and thereafter for Renewal Terms, in accordance with sub-section (e) of this clause 4. Such initial Payment shall be prorated to reflect the period between the Effective date and the first November 1 following the Effective Date.
- (d) Beginning on the Effective Date of the Initial Term, and then in each subsequent Renewal Term, the Licensee shall keep count, by electronic or mechanical device located in each of the Licensee's Photocopiers, of the actual total number of all Hard Copies made and shall provide such number to JAMCOPY.
- (e) Prior to June 15 of each Term, Licensee shall provide to JAMCOPY in writing the total number of Hard Copies made during the then current Initial Term or Renewal Term (as applicable) as verified and supported by the meter readings of all of its Photocopiers as at May 30 of the then current Term.
- (f) The Licensee, if it has franchisees, represents and warrants that it has authority to bind all of its franchisees, and further the Licensee represents and warrants that its franchisees are accurately set out in the Copy Shop Basic Licence Form.
- (g) The Licensee shall provide a written statement representing and warranting to JAMCOPY the accuracy of the information it shall provide in accordance with the sub-sections (e) and (f) of this clause 4.
- (h) Any overdue Payment shall be subject to interest charges from the due date, calculated at a rate equal to the official policy rate of interest set by the First Caribbean International Bank (FCIB) at the date the Payment is due plus 5 per cent (5%) per annum and compounded monthly.

- (i) Upon JAMCOPY providing the Licensee with two (2) days notice, JAMCOPY or its representative shall have reasonable access to the Licensee's business premises, i.e. all of its locations, retail or otherwise, where Hard Copies are made, to inspect the Licensee's Photocopiers and, without limiting the generality of the foregoing, any electronic or mechanical device in the Licensee's Photocopiers which counts the number of Hard Copies made on such Photocopiers. The parties acknowledge that the purposes of such inspection are to ascertain compliance with Terms and Conditions of Authorized Copying, the accuracy of information provided by the Licensee regarding its total number of Photocopiers and Hard Copies made, as well as accuracy of Payment.
- (j) In the event that an inspection carried out under sub-section (i) of this clause reveals a discrepancy between the amount paid by the Licensee and Payment actually due in respect of the period for which such inspection has been made, the Licensee shall pay JAMCOPY the amount of any underpayment and may correct any overpayment by reducing the amount due on the next date of Payment.

6. DATA COLLECTION & CONFIDENTIALITY

- (a) If requested by JAMCOPY the Licensee shall at its own expense cooperate with JAMCOPY in conducting a statistical survey of the Licensee's copying activities, at selected Licensee business locations which are mutually agreed upon by the parties to commence within a reasonable time after notice by JAMCOPY ("**Survey**"). Timely completion of a Survey is a material term of this Agreement. The parties agree that a Survey or any part of Survey may have to be redone if JAMCOPY determines that the conduct of such Survey did not comply with JAMCOPY's standard procedures for statistical surveying then in effect. The Licensee shall not be required to participate in more than one Survey every two consecutive calendar years during the Initial and Renewal Term(s) of this Agreement.
- (b) The parties acknowledge that the purposes of a Survey conducted in accordance with this Agreement are to determine whether the level of royalties payable for this class of license agreement should be revised in future and to assist JAMCOPY in distributing the Payments it collects to the appropriate Rightsholders.

7. MISCELLANEOUS

- (a) This Agreement shall be governed and construed in accordance with the laws of Jamaica applicable therein. In regard to any and all disputes arising under or in relation to this Agreement, JAMCOPY may, at its sole election, initiate court proceedings, or refer the dispute to the Copyright Tribunal for adjudication.
- (b) Subject to clause 10(c), all notices under this Agreement shall be in writing and given by personal delivery, commercial courier, registered

mail or facsimile transmission to the addressee of the parties set out in this Agreement or such other address as may be specified by a party in writing. If notice is given by registered mail it shall be effective on the fifth (5th) business day following mailing and if by facsimile transmission, on the first business day following transmission. Subject to clause 10(c), transmission by e-mail shall not constitute notice for the purpose of this Agreement.

- (c) The provisions of the Agreement are severable, and if any provision is held to be invalid or unenforceable, the parties agree to substitute a like provision to the extent permitted by law, and the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect.
- (d) This Agreement constitutes the entire agreement and understanding of the parties and the parties acknowledge that there are no other representations or other terms and conditions of any kind except as provided for in this Agreement. No variation to, or assignment of, this Agreement is effective unless it is in writing and signed by the parties.
- (e) A signature by facsimile shall be considered an original for the purposes of this Agreement.

TERMS AND CONDITIONS OF AUTHORIZED COPYING

8. INFORMATION REGARDING PERMITTED COPYING

- (a) The Licensee shall use reasonable efforts to inform all persons entitled to make or use Hard Copies under this Agreement (i.e. employees and customers) of the Terms and Conditions of Authorized Copying as set out in clauses 8 through 12 herein, including information regarding Published Works excluded from this Agreement under its Schedule, the Exclusions List.
- (b) Without limiting sub-section (a) of this Clause 8, the Licensee shall affix, either immediately above or very close to, each Photocopier, a JAMCOPY poster giving information about the terms and conditions of this Agreement including the Terms and Conditions of Authorized Copying as set out in clauses 8 through 12 herein ("**Poster**"). The Licensee shall affix such Poster(s) within the immediate vicinity of each Photocopier, in a place and manner that is readily visible and legible to all persons using such Photocopier. The content of the Poster is within JAMCOPY's sole discretion and control. JAMCOPY shall provide such Poster(s) to the Licensee, at JAMCOPY's sole discretion and expense.
- (c) Any material in addition to that referred to in clause 8(b) regarding the terms and conditions of this Agreement which the Licensee intends to publish, distribute, or circulate to its employees or customers shall first be submitted to JAMCOPY for its review and comment.

- (d) No advertising, promotion or informational material for the Licensee's employees or customers shall use JAMCOPY's names, logos and trademarks without the prior written consent of JAMCOPY.
- (e) The Licensee is permitted to make Hard Copies only on its business premises, i.e. its outlets or locations, retail or otherwise, as set out in the Copy Shop Basic License Form.
- (f) All Hard Copies shall be made by the Licensee onto paper only.

9. LIMITS ON PERMITTED COPYING UNDER THIS AGREEMENT

- (a) Licensee shall be permitted to Copy up to fifteen per cent (15%) of a Published Work. For the sole purposes of Copying the following portions of Published Works, Licensee may exceed such limit:
 - (i) an entire newspaper article or a page;
 - (ii) an entire article, essay, short story, play or poem from a book or periodical issue (including a set of conference proceedings) containing other Published Works;
 - (iii) An entire report of a legal case from a periodical issue or volume containing other reports; or
 - (iv) An entire chapter which is no more than twenty per cent (20%) of a book.
 - (v) An entire reproduction of an artistic work (including drawings, paintings, prints, photographs, and works of sculpture, architecture or artistic craftsmanship) from a book or periodical issue containing other works.
- (b) The Licensee shall not engage in systematic, cumulative Copying of the same Published Work beyond the limits set out in sub-section (a) of this clause but multiple copies may be made of any material copied within these limits.
- (c) This Agreement does not permit unrestricted Copying. Copying of Published Works outside the limit of this Agreement requires the specific permission of JAMCOPY.

10. EXCLUSIONS LIST

The Schedule to this Agreement, the Exclusions List, indicates certain categories of works and other Published Works not covered by this Agreement.

- (a) The Exclusions List lists the names of Rightsholders that have notified JAMCOPY in writing that they do not want their Published Works to be copied under a licence from JAMCOPY.

- (b) The Exclusions List lists the countries where Rightsholders are represented by a reproduction rights organisation with which JAMCOPY has an agreement. All Published Works published outside Jamaica and outside these countries are excluded from this Agreement.
- (c) JAMCOPY may add or delete Published Works to or from the Exclusions List by issuing a replacement Schedule either in writing or electronically including by e-mail, which shall take effect no later than five (5) days following its sending by JAMCOPY, or five (5) days following notice to the Licensee of it being made available electronically.

11. GENERAL PROHIBITIONS

No Hard Copies shall be made under this Agreement:

- (a) for use in, or sale as, **Course Pack(s)**, in any context whatsoever, including but not limited to primary, secondary or post-secondary schools;
- (b) for use in association with any partisan political activities or endorsement of a cause or institution without the prior written consent of the author of the material Copied, or in association with advertising or sale of a commercial product or service;
- (c) where the portion Copied is commercially available as a separate publication;
- (d) as a substitute for Published Works which would ordinarily be purchased; or
- (e) where the licensee has first sought permission to make such Copies directly from a Rightsholder who has the right to grant such permission, unless the Rightsholder subsequently advises the Licensee that the Rightsholder has authorized JAMCOPY to represent it in respect to the collective administration of copyright.

12. NOTICE ON HARD COPIES MADE

The Licensee shall use reasonable efforts to notify all persons entitled to Copy under this Agreement that if the copyright credit information, including the international copyright symbol © and a credit to the Rightsholder (including any identified artist or illustrator, author and publisher) is not apparent on the Hard Copy, such information shall be included on the first page of all Hard Copies made under this Agreement, and, where reasonable under the circumstances, the following notice: **"Copied under licence from JAMCOPY. Further reproduction prohibited."**