

# **Model contract for memorandum of agreement between a translator and a publisher recommended by the Swedish Writers' Union and the Swedish Publishers' Association**

*With reference to the framework agreement convened between the Swedish Writers' Union and the Swedish Publishers' Association on 13 December 2011.*

This agreement applies to prose translations of fiction and non-fiction for children and adults.

between

\_\_\_\_\_  
(hereinafter referred to as the Translator)

and

\_\_\_\_\_  
(hereinafter referred to as the Publisher)

## **§1 The assignment**

The publisher hereby commissions the Translator to translate the work into Swedish, the original title of which is:

\_\_\_\_\_

by

\_\_\_\_\_

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## **§2 Terminology**

Digital audiobook

Translation in the form of the text as read onto a digital sound file (such as an MP3 file or other similar file format) to be downloaded or web streamed to the listener's computer, mobile telephone, MP3 player or other technical device.

Electronic book

Translation rendered as text in machine-readable form. Covers both duplication and, by transmission, making the translation available to the general public.

|                         |   |
|-------------------------|---|
| External subsidiary use | Use by any party other than the Publisher and implying that someone other than the Publisher is listed as the publisher of the translation.   |
| The Publisher           | The above-mentioned publishing house and divisions the main activity of which is book-related and that are members of the same publishing group as the Publisher.   |
| Internal subsidiary use | The Publisher's:<br>(i) publication of low-price editions<br>(ii) publication of and/or making available to the general public of audiobooks and digital audiobooks.<br>(iii) making electronic books available to the general public.<br>(iv) use of the translation in anthologies that are not covered by §18 of the Act on Copyright in Literary and Artistic Works /1960:729). |
| Audiobooks              | Translation read aloud (e.g. on cassette tape, CD, DVD, or MP3 discs).  |
| Low-price edition       | New edition of a previously published translation, the price of which, taking possible monetary value changes into account, corresponds to no more than 70% of the price of the standard edition – for example paperback or softbound editions.   |
| Minimum fee             | Such minimum remuneration as is determined on the basis of negotiations between the Swedish Publishers' Association and the Swedish Writers' Union and contained in a specific minimum fee agreement applicable for the time period stated in said agreement.   |
| Standard edition        | The edition considered to be the first publication of a translation or a later publication at a price which, taking possible monetary changes into account, corresponds to the price charged for the first publication.   |
| Primary use             | All publication in book form under the auspices of the Publisher that cannot be considered subsidiary use.  |
| Subsidiary use          | Internal and external subsidiary use.   |

|                 |  |
|-----------------|--|
| Edition         | The number of copies of a translation the Publisher has had prepared on one and the same occasion.   |
| The Work        | The work is defined as the original work to be translated – in the wording in which it is provided to the translator. The translator will be paid for making changes owing to later versions of the original according to a special agreement pursuant to §10 below. |
| The Translation | The work in translated form pursuant to this agreement.  |

**Note:** Editions published in conjunction with and because of a special sale are considered low-price editions, on the condition that the definition of low-price edition given above is otherwise fulfilled.

### §3 Granting of rights

**3.1.** Pursuant to this memorandum of agreement, the Translator grants to the Publisher the sole right to duplicate and publish the translation both in printed form and as an audiobook, a digital audiobook, and an electronic book in accordance with the terms and conditions given below

All other rights remain with the Translator.

**3.2.** The right of the Publisher pursuant to subsection 3.1 above, reverts to the Translator at the end of the eighth year after said right was most recently exercised through primary or subsidiary use in the form of reprinting or publication of a new edition. However, the right of the Publisher is retained for as long as the book remains in stock.

As regards digital audiobooks, the paragraph above is only applicable in cases when the Publisher has solely acquired the original rights to the digital audiobook. If the acquisition applies to both an audiobook and the digital audiobook, the stipulation in section 2.1 above is also to apply to the rights to the digital audiobook.

**3.3.** During the period in which this memorandum of agreement is in force, the Translator is entitled to request information from the Publisher concerning the number of copies in stock and the most recent utilization. Such a request for information is to be submitted in writing, and the Publisher is to be given reasonable time to respond to it.

**3.4.** If, once the rights of the Publisher have expired pursuant to subsection 3.2 above, the Translator wishes to issue a new edition of the translation or make it available to the general public, (s)he is required to offer the Publisher the opportunity to conclude an agreement concerning the right of first refusal. The Publisher must then make a decision concerning this right within two months of receipt. If the Publisher has not accepted said right of first refusal within this time, it is no longer incumbent upon the Translator to observe the obligation to offer it. If a new

agreement is convened in relation to the right of first refusal, the provisions of said agreement apply.

**Note:** A translation is to be considered in stock as long as the number of remaining copies exceeds 100.

## **§4 Granting and transfer of rights**

**4.1.** The Publisher may grant the right of subsidiary use without consulting with the Translator.

**4.2.** The Publisher does not have the right to transfer the rights and obligations of the Translator without the written consent of the Translator, with the exception of turnover of the entire publishing operation or some specific part thereof. If a transfer takes place, responsibility for the fulfillment of this memorandum of agreement remains with the Publisher.

**4.3.** If the Publisher should declare bankruptcy, this agreement becomes null and void with immediate effect. If the Publisher suspends payments, offers to come to a composition with creditors or – if the Publisher is a joint stock company – enters into liquidation proceedings, the Translator is entitled to give notice on this agreement with immediate effect. However, the Publisher is entitled to fulfill sales on the agreed terms concerning copies of the translation that are in stock at the point in time when payments are suspended, an offer is made to come to a composition with creditors, or liquidation proceedings entered into.

## **§5 The Manuscript**

**5.1.** A complete manuscript is to be delivered by \_\_\_\_\_ .

Unless otherwise agreed, delivery is to take the form of  
a text file in the word processing program \_\_\_\_\_, version  
\_\_\_\_\_  
as a printout on paper.

**5.2.** At the time of delivery, the manuscript is to be ready for press, i.e. completely worked through and finished, and ready for editing in accordance with generally accepted publishing practice.

The Publisher undertakes to edit the manuscript in accordance with generally accepted publishing practice.

Unless otherwise agreed, the Publisher shall return a copy of the manuscript or a text file to the Translator, in which corrections and changes are marked. The publisher shall keep the Translator informed concerning the planned time for returning of the edited manuscript to the Translator.

The Translator is to be given reasonable time to insert the corrections and changes the Translator considers necessary, with no extra remuneration.

**5.3.** If the manuscript has not been submitted within the time period designated above, and in the condition specified in subsection 5.2 above, and if this is attributable to neglect on the part of the Translator, the Publisher reserves the right to revoke the agreement. Should the Publisher wish to exercise said right, notification thereof must be sent to the Translator at least two weeks in advance.

If the Translator has not fulfilled his or her contractual obligations within the period of notification and if the Publisher does not wish to exercise the right to revoke the agreement, the Publisher is entitled to demand that the Translator pay remuneration to the Publisher for any attested costs incurred by the Publisher and attributable to delivery delay or shortcomings in the manuscript pursuant to subsections 5.2 and 5.3 above, but not in excess of 20% of the agreed fee for primary use.

**5.4.** It is incumbent upon the Translator to make an ongoing backup of the text file as he or she works, and to retain a backup until the translation has been published.

## **§6 The Content and quality of the translation**

The Translator is to carry out the translation accurately and completely and in agreement with established norms in the field.

Should the Publisher, upon examination of the manuscript, find the translation unsatisfactory in terms of style or content, the Publisher is to provide the Translator with the opportunity to make the necessary changes within a reasonable amount of time. If the assessment of the Publisher remains after the changes have been made, the Publisher is entitled to make proposed alterations in the text. The Translator is to be notified of this, and be given an opportunity to scrutinize the alterations made by the Publisher. If the Translator has not registered objections within two weeks, the alterations are to be considered approved. The Publisher does not have the right to publish the translation with the Publisher's alterations without the approval of the Translator. However, the Publisher always has the right, without the approval of the Translator, to correct spelling errors, factual errors and typesetting errors or the like.

The Publisher reserves the right to reduce the agreed-upon fee in order to cover attested costs for rectification of obvious shortcomings in the translation.

If the translation deviates substantially from the original, from what the parties have agreed upon, or from established norms in terms of language, style or content, the Publisher reserves the right to revoke the agreement.

The Publisher is to notify the Translator of errors within a reasonable time from the submission of the ready-for-press manuscript.

## **§7 The proofs**

**7.1.** The Translator has the right and the obligation to read proofs. There is no separate remuneration for reading the proofs.

**7.2.** If, once the translation has been typed in/typeset (or the equivalent), the Translator

makes alterations to such an extent that that the cost for said alterations exceed 10% of the original cost of typing/typesetting (or the equivalent), the Publisher reserves the right to demand that the Translator pay the amount in excess. Any such demand is to be made within one month of the return of the proofs.

**7.3.** Should the Translator fail to return the proofs within two weeks of receipt, or in the time specifically agreed, (s)he will be considered to have approved them, such that the Publisher is entitled to print the translation, after having corrected typesetting errors (or the equivalent). The rights of the Publisher pursuant to the first sentence in this section only apply if the Translator has received notification as to when to expect the proofs.

## **§8 Marketing**

The Publisher is entitled to allow the publishing house or others to freely prepare and publish portions of the translation for marketing purposes of the translation and/or the work. Such marketing may include the text and or reading of the translation and may be done in traditional and digital environments, such as on the internet.

The stipulations in section 15 subsection 1 below also apply to marketing.

***Note:** Section 8 applies to marketing of the translation to consumers. The right of the Publisher to freely prepare and disseminate the translation, in forms covered by the granting of rights, to a retail seller or any other distributor for marketing purposes is part of the Publisher's primary use.*

## **§9 Financial terms**

**9.1.** The Publisher will pay, for the translation, a basic fee for primary use of SEK \_\_\_\_\_ per 1,000 characters, including spaces. For calculating the length of the translation, the software mentioned above (see §5) is to be given precedence.

**9.2.** Remuneration for *internal* secondary use is to be paid as follows:

- (i) for the right to publish low-price editions in book form the Translator shall receive a lump sum corresponding to 15% of the minimum fee.
- (ii) for the right to make the translation available as an electronic book, the Translator shall receive a lump sum of SEK 1000. When 300 electronic books have been sold, the Translator shall receive an additional SEK 2500.
- (iii) for the right to publish audiobooks and/or to make digital audiobooks available, the Translator shall receive a lump sum corresponding to 25% of the minimum fee.
- (iv) for the right to use the translation in anthologies that are not covered by §18 of the Act on Copyright in Literary and Artistic Works(1960:729), a separate agreement shall be convened between the Publisher and the Translator in each individual case.

**9.3.** Remuneration for *external* subsidiary use is to be paid as follows:

The Translator shall receive a lump sum corresponding to 20% of the minimum fee.

For the right to place the translation as an audiobook and/or digital audiobook, the Translator shall receive a lump sum equivalent of 25% of the minimum fee.

For the right to place the translation as an electronic book, the Translator shall receive a lump sum of SEK 1000. When 300 electronic books have been sold, the Translator shall receive an additional SEK 2500.

For the right to place a portion of the translation in a newspaper or periodical, the Translator shall receive the equivalent of 50% of the sum collected by the Publisher for licensing use of the translation.

The term “minimum fee” as used in this section refers to the minimum fee applicable at the time the agreement is convened.

If it should be the case, at the point in time when the utilization takes place, that no minimum fee agreement is in effect as stipulated in §2, the subsidiary remuneration shall, instead, be calculated on the basis of the factual fee paid to the Translator for primary use, adjusted upwards using the Swedish cost of labor index (AKI) at the point in time when the agreement was signed.

**9.4.** If 10 years have passed since the translation was first published by the Publisher, and if the Publisher still uses the translation, the Translator shall receive further remuneration as considered reasonable, on the condition that the use of the translation during that period has not occasioned the payment of remuneration for secondary use.

**Note:** *One payment corresponding to the amount stated in subsection 9.2 above gives the Publisher the right to publish one or more editions in the form or forms of use (low-price edition, audiobook, digital audiobook, electronic book and/or anthology) granted in this agreement. Hence, if, for example, the Publisher publishes more than one low-price edition, this only entitles the Translator to remuneration for the first such edition. All low-price editions subsequently published are considered covered by this sum, and consequently no further remuneration is paid. The same applies to remuneration for audiobooks.*

**Note:** *“Electronic books sold” as referred to in subsection 9.2 (ii) above does not include “library lending” of electronic books.*

**Note:** *The cost of labor index that may be invoked in the absence of a minimum fee is the AKI for salaried employees. Upward adjustment is made on an annual basis, using the preliminary July index. Should AKI cease to be applicable, Statistics Sweden shall be consulted concerning a suitable remuneration index. The parties shall follow the recommendations of Statistics Sweden.*

## **§10 Special assignments**

If the Translator accepts other assignments for the Publisher in addition to the translation assignment, (s)he is to receive separate remuneration for them. Such remuneration is to be made at a reasonable level.

The term “special assignments” includes all extra work caused by changes subsequently made to the work after the Translator has begun his or her translation.

## §11 Payment

The fee for primary use falls due two weeks after submission of the ready-for-press manuscript.

The fee for internal subsidiary use falls due 30 days after publication/other making available of the Translation.

Remuneration for external subsidiary use falls due 30 days after the Publisher receives remuneration for the granting of such use.

Irrespective of all the above, any further remuneration of electronic books pursuant to §9.2 (ii) and 9.3 above falls due 30 days after the Publisher receives notification that 300 electronic books have been sold.

## §12 Employer's contributions

12.1 Employer's contributions are to be paid in accordance with the relevant legislation in relation both to remuneration for primary and subsidiary use as follows:

If the Translator pays taxes as a wage earner

*The Publisher is to pay the employer's contributions and deduct withholding tax.*

If the Translator pays taxes as self-employed

*The Translator is obliged to pay his or her own employer's contributions and withholding tax.*

12.2 The Translator has, on \_\_\_\_\_ (date) transferred his or her financial rights concerning the translation to:

Company: \_\_\_\_\_

Company identity number: \_\_\_\_\_

and by payment of the agreed fee to the company listed above, the Publisher has thus fulfilled all economic obligations in relation to the Translator.

## §13 Cash payment for vacation

Cash payment for vacation is to be made at 12% of the fee for primary use and any special assignments as defined in § 10 above of this model contract if, in the calendar year, total remuneration is in excess of at least  $\frac{1}{4}$  of one "basic amount" for social security purposes.

## §14 Complimentary copies

For the first primary use, the Translator is entitled to receive \_\_\_\_\_ complimentary copies (no fewer than 15).



If the translation is subsequently published in a different edition, the Translator is entitled to receive 10 complimentary copies. For anthologies, the Translator is entitled to receive no fewer than 2 complimentary copies.

If the translation is used in any other way that makes the Translator eligible for remuneration, the translator is to receive at least 2 free rights of use.

## **§15 Translator's name**

**15.1.** When the Publisher duplicates the translation and makes it available to the general public a) in printed form and as an electronic book, the name of the Translator is to appear on the title page of the translation and if possible, also on the cover of the translation b) as an audiobook, the name of the Translator is to appear on all sleeves and c) as a digital audiobook, the name of the Translator is to be read in conjunction with the reading of the book.

When the Publisher markets the translated work in advertisements, catalogues and other advertising material, the name of the Translator is to appear *whenever practically possible*, except when the work is a collection in which more than three translators have participated.

If the Publisher enters into an agreement with a third party regarding such use of the translation as is stipulated in §9 subsection 3 above, the Publisher is to reserve the right of the Translator to have his or her name appear as pursuant to paragraph one of this section.

**15.2.** If the Publisher has made the translation available to the general public as a book or an audiobook without the name of the Translator appearing on the title page of the translation or on the sleeve, respectively, the Publisher is subject to a fine of SEK 10,000, to be paid to the Translator. Said fine is to be paid 30 days after the Translator has invoked the clause stipulating the fine in writing to the Publisher. It is incumbent upon the Publisher to ensure that the name of the Translator is stated correctly on any subsequent impressions/editions to the edition to which the payment of the fine was attributable.

If the Publisher has made the translation available to the general public in any other form than as a printed document without the name of the translator appearing as stipulated in subsection 15.1 above, the Publisher shall, within thirty days of receipt of written notification that the name has not appeared as stipulated, rectify the error. If said rectification is not made, the Publisher shall pay a fine of SEK 5,000 to the translator. This fine is to be paid within 45 days of the Publisher's receipt of said written notification as described in this paragraph.

**Note:** *In anthologies, the name of the Translator is normally given in conjunction with each contribution to the anthology, provided that no more than three translators are responsible for all the translations, in which case the rule as stated in paragraph one of this section is to apply.*

**Note:** *The cover is defined as the front and back of the translation as well as the jacket flaps. If the Publisher has given the name of the Translator on the cover as well, it*

is sufficient for the name to appear in **one** of the places on what is defined in this note as the cover.

**Note:** Having paid the fine, the Publisher is then held harmless for recalling the edition to which the payment of the fine was attributable.

**Note:** The responsibility of the Publisher for the appearance of the name of the Translator when the translation is marketed is restricted to such marketing as is arranged by, and thus in the control of, the Publisher. Hence the Publisher is held harmless for marketing carried out at the initiative of, for example, a retail seller or other distributor.

## **§16 Notification of use**

The Publisher undertakes to notify the Translator if the Publisher intends to grant use of the translation in any way that would imply subsidiary remuneration in accordance with §9 subsections 2 and 3 above.

If this applies to publication and/or making available to the general public of the translation more than 10 years after it was first published, the Publisher is to allow the Translator reasonable time to revise the translation.

If the Translator wishes to revise the translation on the grounds of publication by the Publisher pursuant to paragraph 2 above, (s)he is to notify the Publisher. If the translation is to be retyped, reprinted (or the equivalent), the Translator is unconditionally entitled to revise. If the translation is to be published in a new edition, the translator only has the right to revise if the associated technical costs of doing so do not exceed 10% of the cost of reprinting (or the equivalent). If the Translator wishes to revise the translation with reference to this stipulation, it is incumbent on the Translator to inform the Publisher thereof within two weeks of the date of receipt of the notification concerning revision.

The conditions applying to the revision are to be regulated through a special agreement between the Translator and the Publisher. However, remuneration is only to be paid for such revision as may be considered essential.

For publication and/or making available to the general public of audiobooks, the right of the Translator shall be entitled to make revisions as stipulated in the second and third paragraphs of this section only when the Publisher intends to make a new recording of the translation.

If the publisher intends to remainder or destroy remaining copies, the Translator has the right to redeem up to 25 copies of it free of charge.

## **§17 Information**

Information/notifications to the counterparty are to be delivered by messenger, registered mail or email to addresses of the parties as given in the introductory paragraphs to this Memorandum of Understanding or as later amended. It is incumbent upon the translator to inform the Publisher as to any changes of the relevant contact information.

All such information is to be considered as received by the counterparty three (3) working days after the registered letter has been posted and 24 hours after an email has been sent.

## **§18 Disputes**

Should the Publisher and the Translator, concerning *the application of this memorandum of agreement*, fail to agree as to its content or as to what may be considered reasonable in a given context, either party may request mediation from the Swedish Writers' Union and the Swedish Publishers' Association concerning the subject of dispute.

If the question of the *content and quality of the translation* arises in conjunction with any matter relating to a reduction of the agreed fee, either party may request the opinion of a committee appointed jointly by the Swedish Writers' Union and the Swedish Publishers' Association.

Opinions issued by such a committee or either association in relation to this provision *do not constitute* an impediment to traditional legal recourse.

## **§19 Duration of applicability of this memorandum of agreement**

This agreement becomes binding upon the signature of the parties, and remains in force until the rights of the Publisher are terminated pursuant to §3 above.

THE PUBLISHER

THE TRANSLATOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Place and date

\_\_\_\_\_  
Place and date