



Penguin  
Random House  
Australia

## Publishing Agreement

BRITTANY HIGGINS MEMOIR

Dated 25 March 2021

### The Publisher

Penguin Random House Australia Pty Ltd (ABN 28 004 815 703) of 707 Collins Street, Docklands, Victoria 3008, Australia (post to L3, 100 Pacific Highway, North Sydney NSW 2060)

(Publisher, we, us or our)

### The Author

|                         |  |               |            |
|-------------------------|--|---------------|------------|
| Name                    | Brittany Higgins (Author, you or your) | ABN           |            |
| Address                 | [REDACTED]                             | Email address | [REDACTED] |
| Payee details           | N/A                                    | Agent         | N/A        |
| GST registration status |  | Citizenship   |            |

### Company

|                         |   |               |                |
|-------------------------|---|---------------|----------------|
| Name                    | Brittany Higgins Pty Ltd (Your company) | ABN           | 19 648 825 290 |
| Address                 | [REDACTED]                              | Email address | [REDACTED]     |
| Payee details           | To be confirmed                         | Agent         | N/A            |
| GST registration status | Not registered                          |               |                |

### The Work

|                                   |   |
|-----------------------------------|---|
| Title                             | BRITTANY HIGGINS MEMOIR   |
| Delivery Date                     | 1 January 2022  |
| Word length                       | 90,000  |
| Genre                             | Non fiction   |
| Content (Description of the Work) | A memoir that covers both Brittany's courageous personal story as well as the movement towards finally achieving real reform for all women in and out of the workplace, off and on the streets. |
| Delivery Specification            | Text of the Work in typescript and in digital form as reasonably directed by us.  |

|                               |  |
|-------------------------------|--|
| Illustrations                 | Picture section to be provided by you.   |
| Third Party material          | Any text, illustrations, photography or other third party material included in the Work.   |
| Minimum Publicity Commitments | A minimum of two (2) weeks for a publicity tour at the time of publication of the Work and you also agree to attend such bookseller dinners, sales conferences and bookseller events before and after publication of the Work. We will meaningfully consult with you regarding any publicity to ensure that you are comfortable with it however you agree that you will not unreasonably refuse to participate in any publicity. |

## Licence

|                           |               |
|---------------------------|---------------|
| Language                  | All languages |
| Exclusive Territories     | The World     |
| Non-exclusive Territories | N/A           |

## Advance (against Royalties and Subsidiary Rights Income)

|   |           |
|---|-----------|
| Advance on execution of Agreement and receipt of bank details | \$108,333 |
| Advance on Acceptance of the Work                             | \$108,333 |
| Advance on First Publication                                  | \$108,334 |
| Total   | \$325,000 |

## Royalties

| Sale type   | Royalty basis   | Hardcover   | Trade paperback/<br>Paperback                       | Subsequent<br>Paperback |
|---|-----------------|---|---|-------------------------|
| Discounts up to and including 50%                         | Published Price | 10% up to 15,000<br>copies sold<br>12.5% thereafter | 10% up to 15,000<br>copies sold<br>12.5% thereafter | 10%                     |
| Discounts greater than 50% and<br>up to and including 55% | Published Price | 8% up to 15,000<br>copies sold<br>10% thereafter    | 8% up to 15,000<br>copies sold<br>10% thereafter    | 8%                      |
| Discounts greater than 55% and<br>up to and including 74% | Published Price | 5% up to 15,000<br>copies sold<br>6.25% thereafter  | 5% up to 15,000<br>copies sold<br>6.25% thereafter  | 5%                      |
| Discounts greater than 74%                                | Price Received  | 10%   | 10%   | 10%                     |
| New Zealand   | Price Received  | 10%   | 10%   | 10%                     |
| Export  | Price Received  | 7.5%  | 7.5%  | 7.5%                    |
| Omnibus and boxed sets<br>(pro rata)                      | Price Received  | 10%   | 10%   | 10%                     |
| Book club   | Price Received  | 10%   | 10%   | 10%                     |
| Special sales (ie, customised<br>editions of the Work)    | Price Received  | 10%   | 10%   | 10%                     |

|  |                |     |     |     |
|--|----------------|-----|-----|-----|
| Overstocks (above cost)                                      | Price Received | 10% | 10% | 10% |
| Overstocks (at or below cost)                                | Price Received | 0%  | 0%  | 0%  |
| Physical Audio Book<br>(CD, tape, etc)                       | Price Received | 10% |     |     |
| Digital Audio Book (digitally<br>accessible or downloadable) | Price Received | 25% |     |     |
| Ebook (including Extracts)                                   | Price Received | 25% |     |     |

Once the Advance has been earned out in full, we agree to pay 50% of all Royalties and Subsidiary Rights Income that become due to your Company under this Agreement to the Canberra Rape Crisis Centre and into the account details below. For the avoidance of doubt, no Royalties, Subsidiary Rights Income or any other payments will be due to your Company or the Canberra Rape Crisis Centre until the full Advance has earned out.

Canberra Rape Crisis Centre  
BSB: 062-912  
Acct: 10278644

### Subsidiary Rights Royalties

| Subsidiary Right  | Your share (%) | Our share (%) |
|---|----------------|---------------|
| 1 <sup>st</sup> serial  | 75             | 25            |
| 2 <sup>nd</sup> serial  | 60             | 40            |
| Abridgement/digest/condensation   | 50             | 50            |
| Anthology & quotation   | 50             | 50            |
| Audio Book  | 50             | 50            |
| Book club   | 50             | 50            |
| Dramatisation, performance, film, documentary or other adaptation rights in any medium  | 75             | 25            |
| Ebook   | 50             | 50            |
| Educational and simplified reprint rights (ie, the right to publish an educational edition of the Work which may include notes and/or educational apparatus, or be in simplified language)  | 50             | 50            |
| English language editions (all territories)   | 50             | 50            |
| Gaming rights (ie, the right to exploit any characters, movements, representations, names, logos, stories, incidents, events and/or any other aspects of the Work and/or derive content from, or create content based on, the same for the purposes of gaming (whether online or offline) | 50             | 50            |
| Large print   | 50             | 50            |
| Merchandising   | 50             | 50            |
| One-shot/single-issue (ie, the right to publish the complete Work in a single issue of a journal, periodical or newspaper)  | 50             | 50            |
| Online rights (ie, the right to Publish the Work or part of the Work, including via apps or websites, but excluding Ebooks or digitally accessible or downloadable Audio Books)   | 50             | 50            |
| Picturisation/strip cartoon   | 50             | 50            |
| Print Disabled Edition – special editions for the print disabled (including Braille, DAISY, talking books, cassette and microfilm) on a commercial basis  | 50             | 50            |
| Print Disabled Edition – special editions for the print disabled (including Braille, DAISY, talking books, cassette and microfilm) on a non-commercial basis  | 0              | 0             |
| Straight reading (ie, undramatised readings in any medium)  | 50             | 50            |
| Syndication (ie, the right to integrate the Work or part of the Work with other content for publication via eg, print newspapers or online news portals) or partwork (ie, the right to publish the Work in parts as a series of planned issues)   | 50             | 50            |

|   |    |    |
|---|----|----|
| Translation   | 75 | 25 |
| Xerographic & Microphotographic (except where copying is authorised under the collective licensing scheme administered by the Copyright Agency Limited) | 50 | 50 |

**Additional amounts**

|  |         |
|--|---------|
| Maximum contribution to picture permissions* | \$1,000 |
|--|---------|

\* Where such amounts are payable to you, you must first provide a valid tax invoice together with receipts for the expenses incurred.

**Royalty periods and statement dates**

|                       |                    |
|-----------------------|--------------------|
| First Royalty Period  | January - 30 June  |
| First Statement Date  | 30 September       |
| Second Royalty Period | July - 31 December |
| Second Statement Date | 31 March           |

**Execution (as an agreement)**

**EXECUTED** by and on behalf of **Penguin Random House Australia Pty Ltd**

*Julie Burland*

Julie Burland (Mar 25, 2021 19:12 GMT+11)

Director

**Julie Burland**

Name of Director (print)

*Justin Ractliffe*

Justin Ractliffe (Mar 25, 2021 15:26 GMT+11)

Publishing Director

**Justin Ractliffe**

Name of Publishing Director (print)

**EXECUTED** by **Brittany Higgins**

*Brittany Higgins*

Brittany Higgins (Mar 25, 2021 13:43 GMT+10)

in the presence of:

Witness

Name of Witness (print)

**EXECUTED** by and on behalf of **Brittany Higgins Pty Ltd**

*Brittany Higgins*

Brittany Higgins (Mar 25, 2021 13:43 GMT+10)

Sole Director

**Brittany Higgins**

Name of Sole Director (print)



## Standard Terms

### 1 Introduction

- 1.1 This Agreement (including the Agreement Details) is entered between you, your company and us, and applies for the Term.
- 1.2 You and your company agree that you, on behalf of your company, will write for us an original Work according to the Agreement Details and the terms of this Agreement.
- 1.3 You have assigned your copyright in the Work to your company. Your company grants us the rights to Publish the Work (as set out in clause 3).
- 1.4 In return for you and your company fulfilling the relevant obligations in this Agreement, we will pay your company Royalties, a share of Subsidiary Rights Income and the Advance (against Royalties and Subsidiary Rights Income) as set out in clause 5 and the Agreement Details.
- 1.5 If you and/or your company appoint an Agent to represent you or your company regarding this Agreement, you and your company confirm that we may rely on any approval, consent or other representation by the relevant Agent on your or your company's behalf.
- 1.6 If your company, for any reason, fails or ceases to perform or does not have the rights that it grants under this Agreement, you agree that your company will assign the rights in the Work to you and you agree to fulfil your company's obligations under this Agreement.

### 2 Preparation and delivery of the Work

#### *Content and delivery*

- 2.1 You and your company agree that you will provide us:
- 2.1.1 the text of the complete Work according to the Delivery Specification (and as we reasonably direct you) on or before the Delivery Date; and
- 2.1.2 all Illustrations and other incidental materials appropriate for publication (including permissions for Illustrations and Third Party material under clause 2.11) no later than four (4) weeks after the Delivery Date.
- 2.2 You agree to let us know as soon as possible if you believe you will not fulfil your obligations in clause 2.1.
- 2.3 If you do not provide us the complete Work on time or fail to honour any other time obligation in this Agreement, we may terminate this Agreement or (at our discretion) extend any deadline in writing. If we extend a deadline, you and your company acknowledge that any delay may impact on planned publication and other broadcast or scheduled events.
- 2.4 You and your company warrant to us and our Licensees that no part of the Work you provide us will on Publication:
- 2.4.1 be defamatory;

- 2.4.2 contain any statement, representation or assertion that is false, misleading or deceptive (or likely to mislead or deceive);
  - 2.4.3 infringe any Intellectual Property Right or other legal right of any Third Party (including contractual, privacy or confidential obligation);
  - 2.4.4 cause any injury, illness or damage to a person who has correctly followed any recipe, formula or instruction contained in the Work; or
  - 2.4.5 in any other way be contrary to law.
- 2.5 You and your company warrant to us and our Licensees that, as at the date of this Agreement and when you provide us the Work:
- 2.5.1 you are the sole author of the Work (except for any Third Party material of which you have notified us in advance);
  - 2.5.2 the Work is an original literary work (except for any Third Party material of which you have notified us in advance);
  - 2.5.3 you or your company own all the rights that you grant under this Agreement;
  - 2.5.4 you and your company have not granted, transferred or assigned any of the rights or interests in the rights in the Work to a Third Party;
  - 2.5.5 the Work has not previously been published in the Exclusive Territories or the Non-exclusive Territories;
  - 2.5.6 you and your company are able to enter into this Agreement and perform the obligations under it;
  - 2.5.7 there is no legal restriction on you and your company's ability to promote the Work or participate in any publicity that we arrange for you; and
  - 2.5.8 all representations by you and your company as to the Work being fact or fiction are true and correct.
- 2.6 You and your company agree to ensure that the Work is not published or licensed for publication in the English language any earlier than the date we first publish the Work (**First Publication**).

#### *Acceptance and changes*

- 2.7 Without limiting our rights under this Agreement, we will accept for publication the complete Work you provide us if we reasonably determine that:
- 2.7.1 you have fulfilled your time obligations in clause 2.1;
  - 2.7.2 the Work is of a standard and quality suitable for publication; and
  - 2.7.3 the Work is consistent with the style, content and quality of any material submitted with your proposal.
- 2.8 If we accept the complete Work that you provide us:

- 2.8.1 you and your company agree to promptly make any changes or additions to the Work that we reasonably request. Our requests may include matters of style, content and quality, as well as removing risk to a potential legal claim from a Third Party relating to the Work;
  - 2.8.2 we will prepare the typescript of the Work, and will involve you in reviewing and approving all editorial suggestions before proofs of the Work are prepared;
  - 2.8.3 we will prepare any index that is necessary at our expense;
  - 2.8.4 we will send you proofs of the Work;
  - 2.8.5 you agree to review the proofs of the Work within ten (10) Business Days of the date we send you the proofs;
  - 2.8.6 the parties agree to work together to address concerns raised by the other party regarding defamatory material and to mitigate risks. We agree to have the Work reviewed by an external lawyer and we have in-house legal resources to discuss any defamation concerns.
  - 2.8.7 we may proceed with printing if you approve the proofs of the Work or we do not hear from you within ten (10) Business Days of the date we send you the proofs; and
  - 2.8.8 you and your company acknowledge that any alterations to the proofs should be minimal (due to the cost and delay of alterations) and you and your company agree to pay the cost of any material changes (excluding typesetting or printing errors).
- 2.9 If we do not accept the Work that you provide us:
- 2.9.1 we will notify you of our decision within forty (40) Business Days of you providing the Work;
  - 2.9.2 we will specify how (if we reasonably determine it is possible) you may be able to suitably revise the Work;
- and if the Work can be revised:
- 2.9.3 you and your company agree to revise and provide us with the revised Work within twenty (20) Business Days from the date of our notice;
  - 2.9.4 we may alter the Work (or arrange for a Third Party to alter the Work) as we think fit to make the Work suitable for publication; and
  - 2.9.5 if we accept the revised Work, the review process in clause 2.8 applies.
- 2.10 You and your company acknowledge that we may terminate this Agreement if:
- 2.10.1 we do not accept the Work (or revisions);
  - 2.10.2 you or your company do not approve the proofs within the time specified in clause 2.8.5 or the revised Work within the time specified in clause 2.9.3;
  - 2.10.3 our insurers refuse coverage or indicate that they may refuse coverage; and/or

- 2.10.4 we consider that the publication or continued publication of the Work may result in a legal claim against us from a Third Party.

*Permissions for Illustrations and Third Party material*

- 2.11 If the Work includes Illustrations or Third Party material as described in the Agreement Details:
- 2.11.1 you and your company agree to provide us a list of the Illustrations and/or materials (in a form suitable for reproduction, and with any captions and acknowledgements as we may reasonably request);
- 2.11.2 you and your company agree to be responsible for all associated costs and research fees for copy prints and any maps or diagrams redrawn for publication (unless otherwise agreed in the Agreement Details), except we will bear the cost of obtaining Enrichments that we request;
- 2.11.3 you and your company agree to obtain and provide us with copies of written permission from copyright owners (to reproduce any Third Party copyright material in the Work) and according to terms acceptable to us. These permissions must cover publication in all forms and editions permissible under this Agreement throughout the Exclusive Territories and Non-exclusive Territories;
- 2.11.4 you and your company agree to be responsible for all permissions fees (unless otherwise agreed in the Agreement Details) except we will pay permission fees for use of any additional material we elect to include in Ebooks or as Enrichments; and
- 2.11.5 you and your company agree to be responsible for (and will notify us in adequate time before the scheduled First Publication) any clearances required for the use of your approved Author photo.

*Protection of material*

- 2.12 We will seek to take reasonable care of the Work (including any Illustrations), but will not be liable for any loss of or damage to it (or consequential loss arising from loss or damage) while we hold it or during production or transit. We recommend that you and your company make appropriate personal arrangements for insurance, retain additional copies of any material and back up your computer files.
- 2.13 We will take reasonable steps to protect the security of the Work held or transmitted by us in digital form in the Exclusive Territories in line with Australian consumer book industry standards applicable to digital rights management from time to time. If your company has not granted us exclusive worldwide rights, you and your company agree to ensure that any publishers of the Work (outside the Exclusive Territories) are under equivalent obligations.

*Public statements and conduct*

- 2.14 You and your company agree not to make any public statement (or act or behave in a manner) that we consider may impair your reputation, our reputation or goodwill or the likely market value of the Work. If you or your company does, we may (before or after First Publication, without limiting our other rights under this Agreement):
- 2.14.1 delay Publication of the Work (if applicable) for up to sixty (60) Business Days and suspend our obligations during this period (including making further Advance payments to you);
- 2.14.2 request to renegotiate the Advance, and terminate this Agreement immediately if we are not able to agree a reduced Advance with you and your company within twenty (20) Business Days of our request; and/or

- 2.14.3 terminate this Agreement if we consider that the Work is no longer suitable for Publication or your or your company's actions have materially reduced the prospects for sales of the Work.

### 3 Publication

- 3.1 Your company grants us the exclusive rights (for the legal term of copyright in the Work and throughout the Exclusive Territories):
- 3.1.1 to Publish the Work and any abridgement, adaptation or Extract in Approved Forms in the Language (with or without any Enrichments), including to Publish the Work as an Audio Book in Approved Forms in the Language excluding any dramatised versions.
- 3.1.2 to license a Third Party to Publish the Work and any abridgement, adaptation or Extract in the forms set out in the Subsidiary Rights Royalties section of the Agreement Details (**Subsidiary Rights**);
- 3.1.3 to store (and permit Third Parties to store) the Work in any digital form;
- 3.1.4 to use and permit any Third Party to use the Work, an Extract, the title of the Work and your name and approved Author photo for Promotional Purposes in any medium.
- 3.2 Your company grants us the non-exclusive right (for the legal term of copyright in the Work and throughout the Non-exclusive Territories) to do any of the acts described in clause 3.1.
- 3.3 You and your company reserve all rights not expressly granted to us in this Agreement.

#### *Publication*

- 3.4 Subject to you and your company fulfilling the obligations in this Agreement, we will use reasonable commercial endeavours to Publish the Work in Australia within eighteen (18) months of Acceptance.
- 3.5 We will decide and be responsible for the production, Publication, advertising, promotion, sale and distribution of the Work.
- 3.6 We will decide and be responsible for the cover including the design, cover copy and Author biography and will at all times ensure the use of professional designers. We will consult with you on all elements of the cover.
- 3.7 We may advertise any works that you have written (which we have Published) at the back of the paperback edition of the Work, but will not insert or print any other advertisements in the Work without your or your company's prior consent.
- 3.8 To protect your interests, we will:
- 3.8.1 consult reasonably with your company beforehand on any proposed licensing of Subsidiary Rights and/or abridgement or adaptation of the Work; and
- 3.8.2 obtain your or your company's prior written consent to any proposed Enrichments. You and your company agree not to unreasonably withhold or delay providing consent except you and your company may take into account its potential effect on any rights excluded from this Agreement.

*Author attribution*

- 3.9 We will include, on each copy of the Work we publish:
- 3.9.1 your name, set out with appropriate prominence on the title page, the binding, the cover and the jacket (if any); and
  - 3.9.2 a complete and correct copyright attribution on the imprint page as follows: © [Company name(s)] [year of first publication]
- 3.10 We will require any Licensee of the Work to publish the same copyright attribution in their edition of the Work.
- 3.11 We will ensure that each copy of the Work we publish includes the notification that you have asserted your right to be identified as the author of the Work. We will require any Licensee of the Work to publish a similar notification in each copy of the Work published by them.
- 3.12 You consent, in our favour and each Licensee, to any act or omission by us or any Licensee that would otherwise infringe your moral right of integrity in respect of any alteration or addition to, deletion from, or editing or adaptation of the Work under this Agreement.

*Personal promotion*

- 3.13 To ensure effective promotion of the Work, you agree to personally promote the Work on and around First Publication as we reasonably request, including the Minimum Publicity Commitments set out in the Agreement Details. We will pay your pre-approved and reasonable travel, accommodation and meal expenses incurred in promotions we specifically request.
- 3.14 You and your company agree to notify us as soon as possible if you create any promotional or other material regarding the Work (such as websites, social networking pages, book trailers, etc) or participate in any media events that we have not organised.

*Complimentary and additional copies*

- 3.15 We will send to you six (6) free copies of any hardcover Printed Edition, twelve (12) free copies of any paperback Printed Edition on First Publication, and two (2) free copies of any sub-licensed Printed Edition (if available).
- 3.16 We will offer you and your company the firm sale purchase, at a discount of 50% off the Published Price, of further copies of the Printed Edition for your personal use, for re-sale into non-trade outlets only or for Promotional Purposes where there is no bookseller in attendance (such price to be paid by you in advance before despatch of the copies). No royalty will be payable on such copies.

**4 Post-Publication***Competing works*

- 4.1 To protect the market value of the Work, you and your company agree not to write, prepare or make a substantial contribution to any work for publication in any Approved Form for five (5) years following First Publication if that work is substantially the same in size, scope and content as the Work.



*First option*

- 4.2 You and your company grant us the first option of publishing your next full-length work on fair and reasonable market terms to be agreed between us in good faith.

*Updates*

- 4.3 If we ask you or your company to update the Work at any time, you and your company agree to give fair consideration to our request. If you or your company wishes to update the Work at any time, we will give fair consideration to the request. If there is no Unrecouped Advance, we may pay your company a refresher advance at fair market rates for any substantial revisions you or your company make to the Work. You and your company agree to ensure that any update is not published or licensed for publication in the English language any earlier than the date we first reissue the Work.
- 4.4 If we request an update to the Work but you and your company are unable or unwilling to complete the update, we may commission someone else to update the Work and reduce your company's Royalties on the revised edition to cover the cost of commissioning the other person. We will seek your or your company's prior consent to any person appointed and you and your company agree not to unreasonably withhold or delay consent.

*Intellectual Property infringement*

- 4.5 If we reasonably believe that a Third Party has published or distributed (or is likely to publish or distribute) an unauthorised edition of the Work (and/or infringes Intellectual Property subsisting in the Work), and we plan legal or similar action to stop or prevent this within the Exclusive Territories, you and your company agree to permit your name to be joined in any such proceedings that we take (at our cost) and provided that we indemnify you and your Company against any Losses and Costs relating to such claim (and we provide suitable security for such Losses and Costs if requested). We will, however, not be obliged to take any such action.

*Overstocks*

- 4.6 We may pulp Overstocks at any time to reduce stock to an acceptable level.
- 4.7 We may sell Overstocks at any time after six (6) months from First Publication (or reissue of any update). We will notify you or your company if we do and give four (4) weeks from our notice to purchase copies at the Discounted Price.

*Out-of-print*

- 4.8 Three (3) years following First Publication, you or your company may request a reversion of the rights granted to us in the Work if:
- 4.8.1 the Work is out of print and unavailable for sale in any form or edition by us or any Licensee anywhere in the Exclusive Territories and the Non-exclusive Territories; or
- 4.8.2 fewer than fifty (50) copies of the Work were sold in any form or edition by us or any Licensee anywhere in the Exclusive Territories and the Non-exclusive Territories over the aggregate of two (2) previous consecutive accounting periods.
- 4.9 Your or your company's request must disclose any relevant information of which you and your company are aware that might generate improved sales of the Work in the near future (eg, film or TV interest).

- 4.10 If we do not make the Work available for sale or generate sales of the Work in excess of fifty (50) copies within twelve (12) months of your or your company's request, any party may terminate this Agreement by notifying the other parties.

## 5 Payment and reporting

- 5.1 In return for you and your company fulfilling the obligations in this Agreement, we will pay your company:

- 5.1.1 the Advance (as applicable) against Royalties and Subsidiary Rights Income;
- 5.1.2 Royalties and your company's share of Subsidiary Rights Income (as set out in the Agreement Details) when and to the extent that Royalties and Subsidiary Rights Income due to your company exceed the total Advance (whether paid or payable); and
- 5.1.3 any other amounts specified in the Agreement Details,
- except any adjustments described in clauses 5.2 and 5.3.

- 5.2 In calculating Royalties or the share of Subsidiary Rights Income payable to your company, we may deduct from your company's Royalties or your company's share of Subsidiary Rights Income:

- 5.2.1 any amounts you or your company already owe us under this Agreement or any other agreement we have with you and/or your company;
- 5.2.2 a reserve against Returns at the rate of 25% (twenty-five per cent) of Royalties earned (on any edition as shown on our first Royalty statement after First Publication or when we first publish any new edition) for a period up to and including the next three (3) complete Royalty accounting periods following First Publication or reissue. All sums due will be credited to your company in the subsequent Royalty statement; and
- 5.2.3 any amounts we claim under the indemnity set out in clause 7.

- 5.3 No Royalties are payable for:

- 5.3.1 copies of the Work sold at or below cost;
- 5.3.2 returned copies of the Work;
- 5.3.3 copies of the Work given to you or your company or given away for Promotional Purposes;
- 5.3.4 copies lost by theft or destroyed by fire, water, enemy action, in transit or otherwise;
- 5.3.5 Unsaleable Copies; and
- 5.3.6 copies sold to you or your company at a discount under clause 3.16 and clause 4.7.

- 5.4 We will pay any amounts under this Agreement by bank transfer into your company's nominated bank account(s). Where your company is represented by an Agent, your company authorises and instructs us to pay to the Agent all sums due to your company under this Agreement until your company will notify us in writing otherwise.

- 5.5 You acknowledge that no payment from us will be due to you for fulfilling your obligations under this Agreement. You agree to look solely to your Company for any and all moneys, royalties or other consideration payable to you.

*Accounting*

- 5.6 We will account to your company for Royalties and your company's share of Subsidiary Rights Income as follows:
- 5.6.1 as specified in the Agreement Details, we will prepare accounts half-yearly for the end of the First Royalty Period and the end of the Second Royalty Period in each year, and will send your company a statement of sales and balances due by the First Statement Date and the Second Statement Date respectively;
  - 5.6.2 no settlement will be made for payments made into overseas bank accounts (unless your company specifically requests in writing) for any period when there is less than \$40 due. Any amounts less than \$40 will be carried forward until the next accounting period when \$40 or more is due to your company; and
  - 5.6.3 if your company requests it, we will send your company copies of all Subsidiary Rights statements we have received relating to the Work.

*Tax*

- 5.7 All amounts referred to in this Agreement are exclusive of GST. Before payment is made, your company must tell us if your company is registered for GST (and, if so, with all relevant details). Where and to the extent that GST is or becomes payable, it will be added to the amounts payable.
- 5.8 If we are required by law to add any tax to the Published Price of the Work, all Royalties will be calculated on the Published Price exclusive of any such tax.
- 5.9 If your company is registered for GST, we will issue a Recipient Created Tax Invoice (RCTI) at the same time that we make payments to your company, and your company agrees not to issue a tax invoice in respect of any payments due to your company.
- 5.10 Your company agrees to notify us of any change to your Australian Business Number (ABN) and GST registration status.
- 5.11 If your company does not have an ABN, we will deduct tax and account to the taxation authorities for tax deducted as required by law. Your company may complete a Statement by Supplier form (as found on the ATO website) if your company is eligible to do so.
- 5.12 If your company is not based in Australia, we will deduct tax and account to the taxation authorities for tax deducted as required by law.

*Auditing*

- 5.13 On giving us reasonable prior written notice, you or your company may examine our accounts in relation to the Work at the place our accounts are held and during normal business hours. Such examination must take place within two (2) years from the end of any Royalty accounting period and not more than once a year. The audit must be carried out by a suitably qualified independent auditor and we may refuse inspection by any person who, in our reasonable opinion, is not suitably qualified or impartial. You and your company must pay the reasonable costs for this examination unless an error is found to your company's disadvantage in excess of 5% of the total sums payable for all periods being examined, in which case we will correct the error and pay your reasonable costs of the examination.

*Deceased estate*

- 5.14 If this Agreement becomes administered as a deceased estate and the estate administrators fail to claim any unclaimed Royalties for a period of two (2) years following notice of any unclaimed monies, we may donate all unclaimed Royalty amounts to a charity chosen at our discretion. If we do, we will have no liability or further obligations to the estate or the administrators of the estate regarding those donated monies.

*Collection agency*

- 5.15 If Copyright Agency Limited (or equivalent government agency) collects payments for any statutory or voluntary licence of the Work (during or after the Term):
- 5.15.1 the payments will be shared equally between your company and us;
  - 5.15.2 where the Work is eligible for payment, we may register the Work with the agency and the agency may send payment directly to your company and us. If the Work is not part of a direct distribution scheme, we will collect all payments made by the agency and distribute your company's share on our usual accounting dates and against any Unrecouped Advance;
  - 5.15.3 we may give your personal details to the agency to make any direct payments to your company; and
  - 5.15.4 you and your company agree to be solely responsible for conforming with the agency's requirements for payment (if any).

**6 Termination**

- 6.1 In addition to our other termination rights under this Agreement, we may terminate this Agreement immediately with notice if:
- 6.1.1 we notify you or your company of a material breach by you or your company of any term of this Agreement and you or your company have failed to remedy the breach fully within fifteen (15) Business Days of our notice; or
  - 6.1.2 your company is subject to an Insolvency Event.
- 6.2 You or your company may terminate this Agreement immediately with notice if:
- 6.2.1 you or your company notify us of a material breach by us of any term of this Agreement and we have failed to remedy the breach fully within fifteen (15) Business Days of your or your company's notice;
  - 6.2.2 we are subject to an Insolvency Event.
- 6.3 If we lawfully terminate this Agreement:
- 6.3.1 no further Advance payments will be made to your company (whether or not due and payable as at the date of termination);
  - 6.3.2 you and your company will immediately repay us any Unrecouped Advance; and
  - 6.3.3 rights in the Work will not revert to your company until the full Unrecouped Advance has been repaid to us.

- 6.4 Termination will not affect:
- 6.4.1 any claim that either you, your company or we may have against the other under the terms of this Agreement relating to any act or any period before Termination;
  - 6.4.2 any right we, any Licensee or other Third Party may have under any agreement relating to the Work lawfully entered into before Termination or any rights lawfully granted under any such agreement; and
  - 6.4.3 any warranties or indemnities or any other provisions of this Agreement expressed or intended to remain in force after Termination.
- 6.5 We may sell off any copies of the Work that we hold for eighteen (18) months from the date of Termination, subject to the Payment of Royalties as set out in this Agreement.

## 7 Indemnity

- 7.1 You and your company agree that each of the warranties given by you and your company under this Agreement is true as at the date of execution of this Agreement, will be true as at First Publication and will continue to be true including following the termination or expiration of this Agreement.
- 7.2 At our request, you and your company agree to provide to us with tangible evidence to substantiate the warranties given by you and your company under this Agreement, within the timeframe that we specify.
- 7.3 You and your company indemnify us against Losses and Costs that we incur as a result of any claim that the Work is in breach of any of the warranties contained in this Agreement.
- 7.4 If you, your company or we receive a claim from a Third Party that the Work is in breach of any of the warranties contained in this Agreement:
- 7.4.1 the party receiving the claim agrees to promptly notify the other party;
  - 7.4.2 you and your company will co-operate fully in relation to the handling of the claim (and will not take any action prejudicial to its defence) and we will have control of the defence of the claim, including the appointment of legal advisers and counsel;
  - 7.4.3 we will consult with you and your company before settling any claim and have the right to settle any claim against you and/or your company in our sole discretion; and
  - 7.4.4 you or your company may elect to take over the conduct of any claim against you at your or your company's sole expense provided (a) you and your company indemnify us against any Losses and Costs relating to such claim (and provide suitable security for such Losses and Costs if requested); and (b) you and your company obtain our approval before settling any claim which affects our reputation or ability to defend any claim against us.
- 7.5 If the claim (referred to in clause 7.4) has no legal merit, and you and your company comply with the obligations under clause 7, we will deal with and not seek to recover our Losses and Costs from you and your company. A claim will have legal merit only if it is made with sufficient detail and discloses sufficiently stated grounds for legal action.

## 8 General

### *Interpretation*

- 8.1 In this Agreement:
- 8.1.1 references to Author (you or your), your company and Publisher (we, us or our) include your and our respective successors in title and permitted assigns and, as appropriate, your personal representatives and, in our case, any subsidiary of ours or other company in which we hold an interest that entitles us to control the shares, business or affairs of that company;
  - 8.1.2 references to a person includes a natural person, firm, company or organisation;
  - 8.1.3 references to 'includes', 'including' or 'for example' or similar expressions do not limit what else may be included; and
  - 8.1.4 references in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

### *You and your company's joint responsibility*

- 8.2 You and your company's obligations under this Agreement are joint and several.

### *Multiple authors and works*

- 8.3 If the Author comprises two or more persons, the obligations of those persons are joint and several.
- 8.4 If the Work comprises two or more literary works, the terms of this Agreement (with the exception of the Advance) will apply to each Work as though the rights granted were covered by separate agreements for each Work.

### *Trusts*

- 8.5 If you and/or your company enter into this Agreement as trustee of a trust, you and your company represent, warrant, agree, covenant and undertake in favour of us that:
- 8.5.1 the trustee is liable under this Agreement in its personal capacity as well as in its capacity as trustee of the trust;
  - 8.5.2 the trust is duly constituted and validly existing;
  - 8.5.3 the trustee has the full legal capacity, power and authorisation under the trust deed to own, manage, administer, transfer, deal with and otherwise dispose of the trust property, and to enter into this Agreement both personally and on behalf of the trust;
  - 8.5.4 the entry into this Agreement by the trustee has been approved by the beneficiaries of the trust if necessary;
  - 8.5.5 the trustee has the right to be fully indemnified out of the trust property in relation to any debts or liabilities arising under or in connection with this Agreement;
  - 8.5.6 the rights of the beneficiaries to, and the interests of the beneficiaries in, the trust property are subject and subordinate to the creditors of the trust, including our claims against you and/or your company;



8.5.7 we are subrogated to the trustee's right of indemnification from and lien over trust assets and may proceed against the trust property to recover any amounts owing to us; and

8.5.8 you and your company indemnify and hold us harmless against any liabilities, losses, damages, costs, charges and expenses incurred or suffered by us in connection with any breach of this clause.

#### *Confidentiality*

8.6 The terms of this Agreement and discussions about the Work are confidential and may not be disclosed by any party to any Third Party except with the prior written consent of the other party or as required by law or to the parties and their duly appointed agents or professional representatives. No announcements will be made as to the signing or other material terms of this agreement without the prior consent of both parties.

#### *Penguin Random House Branding*

8.7 You must obtain our prior written approval before using any of our trade marks, logos or other Intellectual Property.

#### *No partnership*

8.8 This Agreement does not constitute a partnership or agency or evidence any relationship between the parties other than the relationship of author and publisher.

#### *Notices*

8.9 Any notice or other communication given under this Agreement must be in writing delivered personally, or sent by post, or sent by email, to the relevant party's address or email address specified in this Agreement or to such other address or email address as such party may have last notified to the other. Any notice or other communication is deemed to have been duly given on the day it is delivered personally, or on the second day following the date it was sent by post, or on the next working day following transmission by email unless the sender receives a return message which would cause a reasonable person to assume that the intended recipient has not received the email. Each notice to us must be to the attention of the General Counsel, with a copy to the Contracts Manager.

#### *Force majeure*

8.10 If we are (or anticipate being imminently) prevented or delayed in the performance of any of our obligations in this Agreement due to any circumstance beyond our reasonable control (**Force Majeure**):

8.10.1 we will immediately notify you and your company in writing about the nature and likely duration of the event of Force Majeure and its effects;

8.10.2 we will take all reasonable and lawful steps to mitigate the effects of the Force Majeure (but without being required to undertake major expenditure or legal proceedings); and

8.10.3 provided we act as set out in this clause, we will not be liable to you or your company by reason only of being prevented or delayed in the performance of any of our obligations in this Agreement due to the Force Majeure.

8.11 If we are (or are likely to be) prevented or delayed in the performance of any of our material obligations in this Agreement due to the Force Majeure for twelve (12) months or more, either party may by written notice to the other terminate this Agreement.

*Assignment*

- 8.12 Your and your company's obligations under this Agreement are personal to you and your company and you and your company may not assign, transfer or sub-license the rights or obligations under this Agreement without our prior written consent. We may at any time assign or transfer our rights or obligations to any company acquiring the whole or substantially the whole of our relevant imprint or division and assuming all of our obligations under this Agreement.

*Third party rights*

- 8.13 Unless expressed otherwise in this Agreement, this Agreement does not confer or intend to confer any benefit on and is not enforceable by any Third Party.

*Waiver*

- 8.14 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing.

*Entire agreement*

- 8.15 This Agreement (including any documents expressly referred to in it) contains all the terms agreed between the parties in relation to its subject matter to the exclusion of any other terms, statements or representations of or on behalf of either party, whether innocent or not, except a) written representations by you and/or your company relied on by us as to the nature or content of the Work; b) any inducement or similar letter signed contemporaneously by the parties (with or without any Third Party); or c) in the case of dishonesty or fraud.
- 8.16 This Agreement may not be varied except in writing signed by each of the parties.
- 8.17 This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.
- 8.18 The parties agree to the use of electronic signatures as a valid means of executing this Agreement and any related documents or notices.

*Law and jurisdiction*

- 8.19 The construction, validity and performance of this Agreement are governed by the laws of the State of Victoria, Australia and the parties agree to submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia.

## Glossary of terms used in the Agreement

|                               |   |
|-------------------------------|---|
| <b>Agreement Details</b>      | the details contained under the heading Agreement Details at the beginning of this agreement.   |
| <b>Acceptance</b>             | our acceptance of the Work according to clause 2.7.   |
| <b>Advance</b>                | the amount referred to, payable and milestone as set out in the Agreement Details (against Royalties and Subsidiary Rights Income).   |
| <b>Agent</b>                  | the person or organisation named in the Agreement Details (if applicable).  |
| <b>Approved Form</b>          | printed, digitally accessible and/or electronic form and/or any other form or medium now known or still to be discovered in which the Work is from time to time published in whole or in part including the forms set out in the Royalties and Subsidiary Rights Royalties section of the Agreement Details.  |
| <b>Audio Book</b>             | a straight-reading of the Work as an audible edition.   |
| <b>Business Day</b>           | a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the State of Victoria, Australia.  |
| <b>Costs</b>                  | legal and professional costs and expenses properly incurred in defending and, if appropriate, counterclaiming against any claim relating to the Work.   |
| <b>Delivery Date</b>          | the date(s) given in the Agreement Details.   |
| <b>Delivery Specification</b> | the form described in the Agreement Details.  |
| <b>Discounted Price</b>       | cost price plus a component for freight within Australia and handling charges.  |
| <b>Ebook</b>                  | the Work in whole or in part in digitally accessible and/or electronic form for the purposes of reading/viewing.  |
| <b>Enrichments</b>            | additions to an Ebook aimed at enriching the reading/viewing experience in the form of images and/or sound and/or graphics but excluding a film, TV programme, video, DVD or stand-alone game.  |
| <b>Exclusive Territories</b>  | the countries or regions specified in the Agreement Details.  |
| <b>Export</b>                 | sales, net of Returns and freight, made outside Australia and New Zealand.  |
| <b>Extract</b>                | part of the Work (including a story from a collection).   |
| <b>First Publication</b>      | the meaning given to it in clause 2.6.  |
| <b>GST</b>                    | goods and services tax or its equivalent (including its equivalent in any other country or tax system).   |
| <b>Illustrations</b>          | the photographs, illustrations, maps and/or diagrams necessary or integral to or otherwise forming part of the Work as described in the Agreement Details.  |
| <b>Insolvency Event</b>       | the happening of any of these events in relation to a party (Defaulting Party): <ul style="list-style-type: none"> <li>(a) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act 2001 (Cth) (Corporations Act) or equivalent legislation outside of Australia;</li> <li>(b) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken</li> </ul> |

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|   | consist of making an application to a court and the application is withdrawn or dismissed within 14 days);   |
|   | (c) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);  |
|   | (d) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or  |
|   | (e) an event happens analogous to an event specified above to which the law of the jurisdiction (in which the Defaulting Party is registered or operates) applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied.                 |
| <b>Intellectual Property Right or Intellectual Property</b> | any existing or future copyright, right to confidentiality (to the extent permissible by law), registered or unregistered trade mark or other similar legally enforceable intangible property right.   |
| <b>Language</b>   | the language specified in the Agreement Details.   |
| <b>Licensee</b>   | a Third Party granted a licence by us to Publish the Work or part of the Work under this Agreement.  |
| <b>Losses</b>   | any form of direct loss that we incur and/or other loss or liability to a Third Party incurred as the result or in consequence of any circumstance giving rise to a claim relating to the Work (but excluding any claim for indirect or pure economic loss).   |
| <b>Minimum Publicity Commitments</b>                        | the publicity commitments set out in the Agreement Details.  |
| <b>Non-exclusive Territories</b>                            | the countries or regions specified in the Agreement Details.   |
| <b>Overstocks</b>   | copies of the Printed Edition that are held as stock in our warehouse that are surplus to our forecasted demand.   |
| <b>Price Received</b>                                       | amounts actually received by Penguin Random House Australia Pty Ltd (net of GST, Returns and freight) from any Third Party for sales of the Work (other than Subsidiary Rights Income).  |
| <b>Printed Edition</b>                                      | the Work in traditional printed book form whether hardcover or paperback.  |
| <b>Promotional Purposes</b>                                 | promoting and/or marketing the Work or you (as the author of the Work).  |
| <b>Publish</b>  | edit and produce, market, sell and distribute and/or otherwise make available in hardcopy, online or electronically (and 'publication' will be interpreted in the same way).   |
| <b>Published Price</b>                                      | the published price of the relevant edition of the Work (also known as the Recommended Retail Price) as we specify from time to time.  |
| <b>Returns</b>  | returns from retailers of unsold copies of the Work according to terms of business or business practice.   |
| <b>Royalties</b>  | the royalty rate payable on sales, net of Returns, GST and freight, at the rates specified in the Agreement Details and our receipts from the licence to Publish the Work in Audio Book format in which we have produced and/or acquired the produced recording of the Audio Book and have supplied the recording to the |

licensee.

|                                 |   |
|---------------------------------|---|
| <b>Subsidiary Rights</b>        | the meaning given to it in clause 3.1.2.  |
| <b>Subsidiary Rights Income</b> | our receipts from the licence of Subsidiary Rights other than the licence to Publish the Work in Audio Book format where we have produced and/or acquired the produced recording of the Audio Book and have supplied the recording to the licensee.                       |
| <b>Term</b>                     | the period from the date of this Agreement until Termination.   |
| <b>Termination</b>              | the termination of this Agreement according to its terms.   |
| <b>Third Party</b>              | a person, company, organisation or any legal entity other than the Author, your company, or the Publisher or their respective duly appointed and current agents.  |
| <b>Unrecouped Advance</b>       | any amount of the Advance that has been paid to your company but does not exceed the amount of Royalties and/or company's your share of Subsidiary Rights Income.   |
| <b>Unsaleable Copies</b>        | copies of the Printed Edition which are destroyed. A copy may be Unsaleable because it has been returned from a bookseller in an unsuitable condition for resale or is overstocked relative to the level of sales.  |
| <b>Work</b>                     | the literary work capable of copyright protection as more fully described in the Agreement Details. If the Work comprises two or more literary works, the literary works will jointly be referred to as 'the Work' and individually as 'Work 1', 'Work 2' or 'each Work'. |

# Higgins\_Memoir

Final Audit Report

2021-03-25

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| Created:        | 2021-03-25                                   |
| By:             | [REDACTED]                                   |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAMUvShryg3Q1wyxi8blyGMwUr3rpPMJj1 |

## "Higgins\_Memoir" History

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