

## MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into between:

(hereinafter termed the Author)

on behalf of himself/herself, his/her executors, legal personal representatives, and assigns of the One Part, and **SPOTLIGHT PUBLISHERS (EA) LIMITED, P.O. Box 13433-00800, Chiromo Road, Westlands, Nairobi, Kenya** (hereinafter termed the Publishers) on behalf of themselves, their successors in business and assigns of the Other Part, whereby it is mutually agreed as follows:

1. The Publishers shall publish at their own expense and risk a work by the Author at present entitled:

(hereinafter termed the Work).

The Author undertakes to deliver to the Publishers two copies of the complete typescript of the Work ready for setting by the printer together with any artwork or roughs for illustrations in the form detailed in the current edition of the Publishers' "Guide to Authors" or in any other form acceptable to the Publishers. All references in this Agreement to "the Work" shall also be deemed to refer to any New Editions thereof.

2. In consideration of the payments hereinafter mentioned, the Author, being the owner of the copyright of the work, hereby grants to the Publishers the sole and exclusive right and licence to produce and publish and themselves further to license the Work or any abridgement of the Work or any substantial part of the Work in volume form in all languages during the legal term of copyright throughout the world.
3. The Publishers shall make the following payments to the Author, namely:
- (a) A Royalty of Ten per cent based on the Kenyan published price of the Work on all copies sold by the Publishers excluding such copies as may by subsequent clauses of this Agreement, or as otherwise mutually agreed, be sold subject to a different Royalty,

Provided that:

- (i) Should it be desirable in the opinion of the Publishers to sell copies of the Work at a discount of Forty per cent or more of the Kenyan published price, the current Royalties on such sales shall be calculated on the sum received by the Publishers from such sales, instead of on the Kenyan published price of the Work.
- (ii) Should it be desirable in the opinion of the Publishers to sell of copies of the Work as a remainder at a reduced price, which is left to the judgement and sole discretion of the Publishers, the current Royalties on such sales shall be calculated on the sum received by the Publishers from such sales, instead of on the Kenyan published price of the Work, except that where copies are sold at cost price or less than cost price no Royalty shall be payable.

The term "sum received by the Publishers" in this Agreement shall mean the amount received and any amounts receivable by the Publishers, after deducting any discounts or commissions granted by the Publishers and any sales or other similar taxes, duties or costs incurred by the Publishers in respect of sales of copies of the Work and subject to any reserve provided for in Clause 5(b) hereof.

- (iii) No Royalties shall be payable on any copies of the Work distributed as specimen, inspection or presentation copies, the number and destination of such copies being left to the judgement and sole discretion of the Publishers.
  - (b) One-half of any monies that may be received by the Publishers from the sale of the Rights of Translation and Reproduction or any other Rights (other than non-print media Rights in the Work), which are or may become vested in the Publishers under this Agreement. Any monies that may be received by the Publishers from the sale of the said non-print media Rights in the Work shall be divided in proportions to be agreed between the Parties hereto. The Right to reproduce the typography and design of the work is reserved by the Publishers.
4. Should the Publishers publish the Work or any part thereof in any form, (other than as provided for herein), including film-based, mechanical or electronic means or by means of any contrivance whether by sight or sound or a combination of both whether now in existence or hereinafter invented the payments due to the Author shall be mutually agreed between the Parties hereto.
  5. (a) Accounts shall be made up annually for the period January 1 to December 31 and the account rendered and the balance due shall be despatched by the Publishers not later than the following March 15. No account need be submitted unless specifically demanded nor payment made in respect of any period in which the sum due is less than Shs. 500 (Five hundred Kenyan Shillings) in which case the amount will be carried forward to the next accounting date. The Publishers may at their sole discretion revise the figures in this Clause from time to time to take account of inflation.  
  
(b) Should the Author receive Royalties on copies of the Work sold by the Publishers, but subsequently returned or not paid for, the Publishers may deduct the amount of such Royalties from any sums which may become due to the Author under this Agreement or any other agreement for the time being in force between the parties hereto. If, in the opinion of the Publishers, there is a risk that a substantial quantity of copies will be returned or will not be paid for, the Publishers may temporarily withhold a reasonable reserve against Royalties attributed to such copies.
  6. The Publishers may deduct from any amount due to the Author under this Agreement, or any other agreement between the parties hereto, any sum that the Publishers are or may be under an obligation to deduct or withhold in respect of any tax, duty or other similar levy.
  7. If, after a period of two years from the date of first publication, the Work shall, in the opinion of the Publishers, have ceased to have a remunerative sale, the publishers shall be at liberty to dispose of any copies remaining on hand as a remainder after informing the author and offering him/her copies at the best price offered by a remainder merchant. The Author shall within one month of such an offer inform the Publishers whether he/she wishes to acquire part or all of the stock. If the Author fails to inform the Publishers, they may remainder all or part of the stock of the Work forthwith. The Royalty on all copies remaindered above cost shall be ten per cent of the net amounts received by the Publishers. No Royalty shall be payable on any copies sold at cost price or less.
  8. If this Agreement is signed before the receipt by the Publishers of the typescript as prescribed in Clause 1 hereof, the Publishers shall reserve the right not to publish the Work if, in the opinion of themselves or their advisers, it is not of the extent, character or standard which has been agreed or might reasonably be expected. In this event the Publishers shall, immediately the decision not to publish is made, so notify the Author and cancel the Agreement whereupon any amounts paid to the Author under this Agreement shall be immediately repayable and the typescript and all rights therein shall automatically become the property of the Author, but the Publishers shall be at liberty to commission some other person to write a similar work.
  9. The general management of the Production, Publication, Promotion, Pricing, Reprinting and Sale of the Work shall be left to the judgement and sole discretion of the Publishers, including the power of making such terms as they may think advisable, or of declining arrangements with reference to the Sale of the Rights of Reproduction and Translation, whether complete or in part.

10. The Author hereby warrants to the Publishers that the Author has the right and power to make this Agreement and that the Work is the Author's own original work and will in no way whatever give rise to a violation of any existing Copyright, or a breach of any existing agreement, and that it contains nothing defamatory or libellous and that all statements contained therein purporting to be facts are true and that nothing in the Work is liable to give rise to a criminal prosecution or to civil action for damages or any other remedy and the Author will indemnify the Publishers against any loss, injury or expense arising out of any breach or alleged breach of this warranty. The Publishers reserve the right to alter or to insist that the Author alter the text of the Work in such a way as may appear to them appropriate for the purpose of removing or amending any passage which on the advice of the Publishers' legal advisers may be considered objectionable or likely to be actionable at law without affecting the Author's liability under this Clause in respect of any passage not so removed or amended. The foregoing warranties and indemnities shall survive the termination of this Agreement.
11. The Author agrees to supply any extra matter such as a glossary, word-list, questions, exercises and an index for inclusion in the Work if required to do so by the Publishers. Should the Author neglect or be unable for any reason to supply the said extra matter, the Publishers may employ some other person to supply such extra matter and may deduct the expense thereof from any sum which may become payable to the Author under this Agreement.
12. The Author undertakes to read and check the proofs of the Work and to return them to the Publishers within a reasonable time of their receipt. Costs of all corrections and alterations made by the Author in the finished artwork and the proofs (artists' and printers' errors excepted) in excess of ten per cent of the cost of composition of the Work shall be borne by the Author. Should any charge arise under this Clause the amount may be deducted from any sum which may become due to the Author under this Agreement.
13. The Author shall be entitled to receive on publication six free copies of the first and any subsequent editions of the Work and shall have the right to purchase on normal domestic trade terms further copies for personal use but not for resale.
14. The Author agrees as occasion may arise to edit any New Edition of the Work and to supply any new matter that may be desirable or necessary to keep the Work up to date. Should the Author neglect or be unable by reason of death or otherwise to fulfil the Author's obligations under this Clause, the Publishers may employ some other person to supply the said new matter or revise or edit the Work and may deduct the expense thereof from any sum which may become payable to the Author or the Author's representatives under this Agreement.
15. It is agreed that if the Publishers consider that any of their rights in the Work have been infringed they shall be at liberty to take such steps as they may consider necessary at their sole discretion to defend their rights and if they desire to take legal proceedings they shall, on giving the Author an undertaking to pay all costs and expenses and to indemnify the Author against all liability for costs, be entitled to use the Author's name as a party to such proceedings but at the same time to control, settle or compromise as they think fit. The Author agrees to execute any documents and do any acts reasonably appropriate to give effect to the rights of the Publishers granted by this Clause. Any profits or damages which may be recovered in respect of any infringement of the copyright shall after deduction of all costs and expenses be divided between the Parties hereto in proportions to be mutually agreed.
16. Should the Publishers fail to fulfil or comply with any of the provisions of this Agreement within three months after written notification from the Author of such failure, or if the Work be allowed to go out of print and not be available in any edition, format, or medium, and the Publishers shall fail to put in hand a reissue or a New Edition within nine months of having received a written request from the Author, then and in any of these events, this Agreement shall terminate after receipt by the Publishers of notice in writing from the Author but without prejudice to all rights of the Publishers and third parties in respect of any agreements or negotiations properly entered into by the Publishers with any third party prior to the date of such termination and without prejudice to any claim which the Author may have for monies due and/or damages and/or otherwise.

- 17. The Author undertakes that he/she will not during the continuance of this Agreement without the consent of the Publishers prepare otherwise than for the Publishers any work of a nature which may reasonably be considered by the Publishers to be likely to affect prejudicially the sales of the Work.
- 18. The Author shall inform the Publishers of the quotation or inclusion in the Work of any textual or illustrative or other material from any source and the Publishers shall ensure, so far as is possible that, wherever necessary, permission for the use of such material is obtained either by themselves or by the Author, and that appropriate acknowledgement is made in the Work. The Author shall deliver to the Publishers for their safe-keeping any documents relating to the granting of the said permissions. The Author shall bear the cost of any necessary fees for textual permissions, but the Publishers agree to pay such fees on the Author's behalf up to an agreed maximum amount and may deduct the same from any sums that may become due to the Author under this Agreement. The Publishers shall bear the cost of any necessary fees for permission to include illustrative material in the Work up to an agreed maximum amount.
- 19. The Author acknowledges that the Publishers have not made any promises, guarantees, inducements of whatever nature, either in writing or by word of mouth, or in any other form except as may be contained in this Agreement. This Agreement constitutes the whole and complete understanding of the parties and no representations other than those expressly contained herein shall be binding. No alteration, modification, amendment, or waiver of any provision hereof shall be valid and enforceable unless it be in writing and signed by both parties.
- 20. The address of the Author shall be deemed to be that indicated in this Agreement. All letters, communications and notices of whatever kind, nature and description sent to the Author to the address so indicated shall be deemed good and sufficient, unless and until the Author shall notify the Publisher in writing, by registered or certified mail, of change of address.
- 21. This Agreement may not be assigned by either party without the consent of the other, in writing, but subject to the foregoing, the provisions of this agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators and assigns of the Author and of the successors and assigns of the Publishers.
- 22. If any difference shall arise between the Author and the Publishers touching the meaning of this Agreement or the rights and liabilities of the Parties hereto, the same shall be referred to the arbitration of two persons (one to be named by each party) and in the case of disagreement between the arbitrators, they shall appoint an umpire who shall have a casting vote.

IN WITNESS WHEREFORE, the Parties hereto have executed this agreement as of the date herein below indicated.

**Signed:**

**Author..... Date.....**

**For the Publishers ..... Date .....**

Authorised Signature