

GUIDELINES TO CONTRACTS: LITERARY WORKS

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GUIDELINES TO COPYRIGHT CONTRACTS

The African Regional Intellectual Property Organization (ARIPO) has taken the prerogative duty to assist the Member States in developing guidelines for different copyright genres to support and help in capacity building of right holders by reinforcing and educating them to have basic knowledge and understanding on the essence of the utilization of written contracts in commercializing their works.

Building the aptitude and capacity of creative sector in the negotiation and entrance into written contracts will guide the right holders to have good understanding of the elements involved in the contracts while commercializing their works to have consensus and satisfaction by all parties to a win-win contract.

The previous publication addressed the music sector whilst this current publication will offer suggestive guidelines for the literary works in the creative industry. The aim for the future is to have suggestive guidelines for the audiovisual sector as well.

We hope the guidelines to literary works contracts will be a tool that will enhance positive development on the right holders as it will capacitate them to be in-line with what they are expected to do and they do it well for their benefit, development of the creative industries and the country's economy at large. The guidelines are not to be taken strictly, one has to comply with the laws in their jurisdiction.

In most cases behind every successful business relationship there is a contract with mutually acceptable and agreed terms.

Yours Sincerely

Fernando dos Santos **DIRECTOR GENERAL**

1. INTRODUCTION

Intellectual Property (IP) affects our daily life ranging from all creativity and innovation that we see. Being a private right; there is need to manage it in a systematic way that benefits the creators and all those who played a role in coming up with the creative, innovative work. Therefore written contracts are very important in building a good business relationship for successful commercialization of one's creativity.

A contract is an agreement between two or more persons where there is meeting of the minds (consensus ad idem). There must be an offer and intention between the parties to create binding legal relationship, consideration, capacity to contract and legal subject matter of the contract. Consideration is important as it separates gifts from bargains; a gift is where one party gives value and gets nothing in return. Gifts and contracts have different legal rules in the respective jurisdictions.

A contractual relationship is a good thing in any business; it clearly shows what each party is expected to do and the benefits to be accrued by each. Written contracts are the best in exploiting one's work though some parties end up having implied contracts in their business relationships which is more casual at times. ARIPO would like to sensitize and emphasize on the importance of written contracts by the right holders in the Member States and Africa. Furthermore the right holders will have a guiding document to refer to in coming up with written contracts in the course of commercializing their works in their respective jurisdictions. The guidelines will also raise awareness and make the right holders good managers of their works.

Some of the advantages of a written contract include setting standards for an efficient, effective process for both parties, reduces risks as it minimizes liabilities, there is clarity, on privy to contract benefits, and one gets what you had agreed on. In the event of a dispute the parties can refer to the contracts to settle any ambiguity.

2. REASONS FOR THE NEED TO DEVELOP GUIDELINES TO CONTRACTS

Most of the right holders in ARIPO Member States face difficulties in coming up with legal instruments when they want to commercialize their works and end up doing business in a friendlier way than a serious business relationship. This kind of approach has cost many of the right holders as they end up doing business in a friendlier way than a formal business relationship and they end up crying at the end of the day that they are not benefiting from their creativity. If the right holders living in the urban areas succumb to such circumstances what more the ones in the rural areas? Amongst the challenges that most right holders face they tend to see contracts as a disadvantage because it costs them to stay in a contract, takes time and money to draw up written contract, it brings litigious atmosphere as to what should be adhered to within it and only those privy to contract can benefit.

3. OBJECTIVES FOR DEVELOPING GUIDELINES TO CONTRACTS

The main objective for developing these guidelines is to emphasize that, 'Creativity has Value'. When you value something you will do all that is in your hands to protect it. Therefore, we need written contracts to explicitly show that creativity is valued in all transactions.

A contract is two-fold and it has value; all parties have to carry out their agreed obligations and to manage it in order for it to be successful. A contract helps right holders to exploit intellectual property rights as economic assets, and to avoid infringing the rights of others. The creators will have written and signed contracts with all those who make contributions in theirs works so as to avoid disputes as to ownership of the works. It will safeguard all parties against misappropriation

4. CLAUSES OF A CONTRACT

During negotiations, parties should consider incorporating important basic clauses. These include: Parties to the agreement with their full contact details, definition of terms which enable the parties to have a consensus of what they are contracting on, representations which are statement of existing facts that are the underlying reason for entering into contract; and warranties in which a party guarantees to reciprocate in a certain way, terms of payment, the duration, consideration of the contract, terms and conditions for both parties, the governing law, termination of the contract, territory, confidentiality, indemnification, intellectual property, amendments and addendums ethics, signatures of both parties and their witnesses attested by the commissioner for oaths.

5. LITERARY WORKS CONTRACTS

In the Literary Industry there are different players who take part to ensure that the book meets the market expectations. Literary works compromise of the author's right and the publishers rights. In this regard this publication shall address some of the important parties within the literary works.

In commercializing one's work it has to be noted that the owner has a right to prohibit or authorize particular acts which then calls for the option of monetizing the works to the benefit of the right holder. Licensing can be in an exclusive or non-exclusive form and depending on the market strength and what the right holder seeks to achieve a number of options are available. It is essential to note the nature of the contracting parties that is, whether they are legal or natural. In a case where a natural person is contracting with a legal entity then the legal entity should ensure the proper signatories are present to sign the contract and not just any employee in the legal entity. Authors and publishers are encouraged to seek more information from the ones with whom they want to enter into contracts to avoid the contract in the long run being rendered nullity from the beginning (void ab initio). It is also important to seek information and guidance from the legal practitioners in the respective jurisdictions to ensure the necessary laws and procedures are adhered to.

In literary works the assumption is that, the author persuades a publisher to make an offer to publish their book. But how do they know they are getting a fair deal and what exactly should the author be expecting out of the contract. An author or illustrator has the discretion to either engage an agent who will ensure that the contract provides a chance of maximizing income from the work or handle the contractual issues. Alternatively, the author can decide to engage the Collective Management Organizations (Reproduction Rights Organization) and/or Copyright Offices to assist in checking the publishing agreements. Moreover, there are legal practitioners specializing in publishing contracts whilst, for those who prefer to do it on their own, there are some books and links which are useful on this subject.

For instance: The International Authors Forum came up with 10 guiding principles for authors to consider;

| | Principle | Fair Contract Terms – what we want | Unfair Contract Terms – what we don't want |
|---|---|---|---|
| 1 | Contracts should not be forever | Defined time limits and clear termination triggers. This is especially important for eBooks | Unlimited time periods or automatic renewals. 'Out of print' is no longer relevant in the digital age |
| 2 | Authors should share in the success of their creation | Guaranteed advance paid in full before publication and fair royalty rates to be paid in regular instalments | Buy out or lump sum (flat fee) contracts that do not recognize success, or expectation of unpaid work |
| 3 | Authors' copyright should be respected | Clear contract terms detailing the rights being granted and specifying their intended use. Copyright in the author's name and the author to be credited within or in direct contact with images | Assignment of copyright or other IP licenses wider than necessary for all contemplated uses of the work |

| 4 | The person being granted any right must use it or lose it | The author can reclaim their rights (rights reversion) on demand when they aren't exploited after a defined period, or sales reach defined minimal levels. This should be written into the contract | The "lock in effect": whereby third parties (such as publisher or producer) retain rights they're not exploiting, or refuse to revert rights when sales are minimal |
|----|--|---|---|
| 5 | Authors' work should reach its broadest possible audience | Commitment from the publisher/producer to exploit the author's work so it is as widely available and accessible as reasonably possible and to recognize and reward authors for all forms of access. Agreement to preserve metadata in visual data files | Failure to exploit work. Limitation of potential distribution channels due to, for example, not meeting accessibility standards or the traceability of the work to the author being lost through loss of metadata |
| 6 | Contractual commitment to payment and regular payment reports for all uses of authors' works | Regular, detailed and transparent royalty statements with an audit clause allowing unlimited lookback in the contract. Regular payment dates with interest paid on late payments | Non-existent, infrequent or non- transparent reporting, or irregular payment to authors |
| 7 | Authorship and the integrity of the work should be respected | Moral rights to be protected by statute, unswayable and respected including attribution of all creative contributors to the work. Author to be consulted when the work may be amended, translated, adapted or its integrity otherwise potentially affected. The author to be credited prominently on the work and in all publicity and metadata. Illustrator's credits to be in direct contact with images | Moral rights waivers, unlimited rights for the publisher or producer to produce derivative or otherwise adapted copies. Statutory moral rights being overridden by contractual rights |
| 8 | Authors' future availability and choice in the marketplace should be safeguarded | Limited competition and option clauses should be avoided. If they are absolutely necessary to protect the publisher's investment they should be narrowly and clearly defined | Excessive non-compete clauses and options binding authors to the publisher or producer |
| 9 | Clear contracts with defined terms for all parties | Clearly defined contract terms and responsibilities with an agreed definition of what is 'reasonable' and 'not to be unreasonably withheld' | Vague and imbalanced allocation of decisions and responsibilities |
| 10 | A fair balance between risk and profit | Clearly defined and limited indemnity clauses, with a fair balance of risk. Publishers to include authors on any applicable liability insurance | Authors being liable for matters in publishers' control or matters of which publisher has been not |

In some case the authors are subject to pay to the publisher in order for their works to be published and hereafter they receive royalties on the sales. They are also cases where the author does not pay anything to the publisher but the proceeds of the sales will pay the publisher and the author to get his or her royalties. The offer from the publisher should be in written form clearly setting out the rights the author is giving and what the publisher is willing to license and the consideration thereto to with regard to payment. Since a contract is a business agreement for the supply of goods or performance of work at a specified price, normally, that payment comes as an advance against royalties. In certain occasions, flat fee payment is appropriated but a royalty allows the author to share the income from a book throughout its life and it is therefore preferable. Most important point of all is the identification and understanding of which rights are being licensed under the contract without merely worrying about the advance and royalty (as tempting as they may be).

5.1. Literary works

Literary works comprise of person or persons behind it and this all goes back to the author. The author contributes greatly to the content incorporated in a literary work for example a book or manuscript. Before the signing of a publisher's agreement, it should be thoroughly checked. Key points of this very important contract could be summarized as follows;

(Publishers' agreements often have useful headings for each clause these are not limited to the following:)

License

The initial thing to be clear about is what is being licensed to the publisher. For a new book one expects to grant to the publisher, for the legal term of copyright, the exclusive right to publish and sell the work in certain forms. The standard grant is of 'volume form', which means all book forms (hardback, paperback, other formats). However, the offer or contract may also state other forms, for example serial (newspaper and magazine rights) or audio rights. Some publishers' contracts include all-encompassing wording such as 'all media forms currently in existence and hereinafter invented'. This in effect hands control to the publisher of a wide range of rights, including electronic, dramatic (film, television, radio), merchandising and so on. In such a case, it's likely that the author's share of income from such rights will be less than it would be were the author to reserve those rights and have them handled separately.

Territory

Territory states where the publisher has the right to sell or sub-license the book. Even for picture books of all kinds, fiction and non-fiction. Fiction refers to literature created from the imagination. Mysteries, science fiction, romance, fantasy, chick lit, crime thrillers are all fiction genres. Whilst "Nonfiction" refers to literature based in fact. It is the broadest category of literature. In most cases African publishers require world rights which may not be a good deal to the author depending on the subject matter of the contract. For fiction a judgement needs to be made about which territories should be granted to the publisher.

When an author thinks of granting a wide range of territories to a publisher, it is worth undertaking a due diligence exercises check of how proactive and successful the CMO department is. It may be possible to speak to the foreign rights manager and find out for yourself if they have a good track record on promoting and protecting copyrighted works. An agent who could also be a middleman will have an informed view on a publisher's expertise in this area and furthermore, they will probably either be experienced themselves in selling foreign and local rights, or will work with associate agencies in all the different language territories. Some publishers will usually take 15–30% share on state and foreign sales and, if you have an agent too, their commission will also be deducted before you receive your percentage. Agents will generally charge 15–20% on states and foreign sales.

Advances

We've all read the newspaper headlines about huge advances and for books that will be published in the trade (i.e. by a mainstream publishing house and where the book will appear in bookshops) most offers are framed as an advance against royalties. Advances may be paid in one go, on signature, but it will not be a surprise if the publisher proposes paying half on signature and half on publication, or in thirds (signature, delivery and publication), or even in quarters (signature, delivery, hardback publication, paperback publication), though the latter is more common when the advance offered is substantial.

Royalties

As a very basic rule of thumb, hardbacks attract approximately 10% base royalty and paperbacks 7.5%. Bear in mind that on picture books these percentages will be shared between author and illustrator. Sometimes, children's black and white illustrated fiction titles also bear a small royalty for the illustrator, which will come out of the total royalty. Most novelty books, including board books, work on a smaller royalty, for example 5% or even less because of the high production costs and relatively low retail price.

Ideally, the royalty will escalate to a higher level when a certain number of sales have been achieved and this can prove to be very important if a book becomes a long-running success.

For a trade book the royalties should ideally be based on the recommended retail price for home sales. Export sales and sales to book clubs or book fairs are usually calculated on the publisher's price received (or net receipts). The contract should set out each type of sale and list the appropriate royalty rate. Nowadays particular attention needs to be paid to 'high discount' clauses in contracts. However good the main home sales royalty is, a disadvantageous high discount clause can mean that disappointingly few of the sales attract the full royalty and consequently revenues will be much reduced. This is especially important now because retailers are pushing publishers hard on discounts. An agent will be used to negotiating carefully on precisely this kind of area to secure the best possible terms.

Co-edition Royalties

Picture books are usually very dependent upon publishers selling local and foreign language co-editions. Therefore, it is important to note on the contract what the author's share of any such co-edition deals will be. These generally fall under two categories in the contract:

If the publisher prints for the foreign publisher, the books are usually sold for a fixed price per copy as 'royalty inclusive' and the author's and illustrator's share will be expressed as a percentage of the publisher's price received. These deals help to get the book published by bringing the unit cost down and they begin the process of earning out the advance.

Subsidiary Rights

Other subsidiary rights include reprint rights (large print, book club, paperback reprint, etc), serial rights (the right to publish in newspapers and magazines), anthology and quotation rights, educational rights, audio rights and so on. There will usually be a percentage listed against each right and that is the author's share of any deal. Generally the author receives at least 50% on these deals and more in the case of serial, national and translation rights. The rights listed in the sub-rights clause should be checked against the opening grant of rights clause to see that they conform.

For instance country or foreign language sales also fall under the heading of subsidiary rights. In that case, the publisher may or may not print the books, but the foreign publisher will have agreed to pay an advance and royalty for the right to sell the book in their territory (a 'royalty exclusive' deal). The author's and artist's share in this instance shouldn't be less than 50% and it could be much more. If a book is particularly sought after by foreign publishers, such a royalty exclusive deal could mean that the original advance is earned out immediately

Delivery and Publication

There should be clauses in the contract that state the agreed delivery date of the book and give some indication of what is expected, for example 'a work for children to be written and illustrated by the said author to a length of not more than 25,000 words plus approximately 50 black and white line illustrations'. There should also be an undertaking by the publisher to publish the work within a stated time period, for example 'within 12 months from delivery of the complete typescript and artwork'. There might also be an indication of what the published price will be.

Copyright and Moral Rights

As the author is licensing their work, they should retain copyright unless stated otherwise and there should be a clause that obliges the publisher to include a copyright statement in every edition of the work published or sub-licensed by them. The author's moral rights are also often asserted within the contract.

Production

Though the publishers will generally insist on having the final decision regarding details of production, publication and advertising, they should agree to consult meaningfully with the author over the blurb, catalogue copy, and jacket and cover design. There should also be an undertaking to supply the author with proofs for checking and enough time for the author to check those proofs and respond to the publisher in writing.

Accounts

Publishers usually account to authors twice a year for royalties earned. Even if the advance has not earned out, the publishers should still send a royalty statement. Royalty statements are notoriously enigmatic and vary from publisher to publisher. Mistakes on royalty statements are more common than one might like to think and an agent will be used to checking royalty statements carefully and taking up any anomalies with the publisher.

In addition to the twice-yearly accounting, once the initial advance has been earned out, a middle-man will be able to ensure that any substantial income from sub-rights deals will be paid immediately.

Electronic or eBook Rights

The electronic or ebook market is growing quickly, with a proliferation of devices and formats for accessing ebooks on the market. Publishers are rushing books into ebook format and establishing policies with online retailers. Ebook development currently encompasses several different forms: straightforward verbatim text; 'enhanced' ebook, i.e. with added material such as author interviews; 'apps' for smart phones; and some children's novels are even available in a 'game' format for reading on one of the popular handheld devices. Authors should take care to retain the right of approval over every aspect of these enhanced electronic editions.

At the time of writing, standard eBook royalties are hovering around 25% of the publisher's price received, but this is often subject to review after a fixed period to enable both sides to take account of changing practice. As this part of the market is fluid and expanding, it's wise to keep your options open if you can.

Reversion

It's important to ensure that the author can get back the rights to their book if the publisher either fails to stick to the terms of the contract or lets the book go out of print. Historically, if the publisher left a book out of print for 6–9 months after receiving a written request to reprint it, rights would revert. However, ebook and print-on-demand formats mean that standard 'stock level' reversion clauses no longer provide adequate protection and new triggers for reversion need to be agreed. This might be a rate of sale or revenue threshold. It is well worth reclaiming rights to out-of-print books as it may well be possible to re-license them later on.

Assignment

A small but important clause that may need to be added states that the publishers shall not assign the rights granted to them without the author's express written consent. This gives the author at least a degree of control over the book's destiny if the publishing company runs into trouble or is sold.

Educational Publishers' Contracts

Many children's authors begin as writers for educational publishers and quite a number continue to work in this field alongside producing books for the trade market. Educational publishers usually commission tightly briefed work. Advances are generally modest and the royalties are based on the publishers' price received. However, substantial sums can eventually be earned. Educational publishers usually expect to be granted a very wide range of rights and while it makes sense to grant audio or electronic rights where the publisher has the capacity to produce or license such formats for their market, it may be possible and desirable to reserve, for example, dramatic and merchandising rights. However, discretion is needed here. If, for example, the publisher is commissioning writers to create stories about a given set of characters created by the publisher, then the publisher will rightly expect to control such rights.

That really is a scratching of the surface of publishing agreements. Do take advice if you don't feel confident that the contract presented to you is fair. It seems a very obvious thing to say but always read a publishing agreement carefully before signing it and if anything in it isn't clear, ask for an explanation. Remember, too, that it's a negotiation and that despite publishers' talk of 'standard terms' and 'standard agreements', it is always possible to make amendments to contracts.

Public Lending Rights

Public Lending Right (PLR) is the right for authors to receive payment for the loans of their books by public libraries.

Under the PLR system, payment is made from government funds to authors, illustrators and other contributors whose books are borrowed from public libraries. Payments may be made annually on the basis of loans data collected from a sample of public libraries in the specific country. Usually in order to qualify for payment, applicants must apply to register their books therefore one could air their options in the clause.

Illustrators, photographers, translators and editors who have contributed to books in the digital era lent out by public libraries in the UK receive PLR payments each year. The Regional Office could also provide registration for the PLR scheme on behalf of the Copyright Office.

In that case, if one has contributed to a book which is lent out by public libraries in a particular country and wish to apply to register for the PLR schemes, applying for PLR will the provide them with further information and guidance.

Visually Impaired Clause

A reproduction contract could be flexible enough to include a visually impaired clause for the visually impaired readers. The preferred option is Braille option. Braille is a system of reading and writing in one's language without use of sight and enables people with blindness and visual impairments to read and write. Braille can be transcribed in many different languages.

Partly because of the size that braille pages occupy, and partly to improve the speed of writing and reading, the literary braille codes for English and many other languages employ "contractions" that substitute shorter sequences for the full spelling of commonly-occurring letter groups.

Braille produced should come as close to meet the reader's needs as possible. If the reader is a Braille reader, there has to be a braille code to match his/her facility.

As an alternative to Braille production, there are companies which specialize in making accessible PDFs. These can be found online and produce excellent work, as well.

Collective Management of Rights

The contract signed between an author and a publisher is a direct agreement between them and is governed by contract law. Once the work has been placed on the market, a number of situations will arise where neither the author, nor the publisher, can effectively control the usage of the work. Parts of a literary work can be reproduced multiple times in schools, copy shops, businesses; they can be quoted in a thesis, in a newspaper article; they can be scanned, downloaded or emailed. These many acts of reproduction, called *secondary uses* of works, cause an obvious economic, and sometimes moral, damage to the authors and publishers.

To remedy this situation, authors and publishers have established so-called Reproduction Rights Organisations (RROs) which act as an intermediary between the users of copyright-protected content and the creators and publishers of the content. RROs are mandated by rightholders to administer their rights on their behalf, typically by granting licensing agreements to the institutions where copying is taking place. The licensing revenues collected by the RRO are then distributed among authors and publishers. There is usually one RRO per country – a list of existing RROs can be found here: http://www.ifrro.org/RRO

Authors and publishers, while negotiating a publishing contract and after the work has been published, should be mindful of the exclusive rights that belong to them and the importance of authorising a RRO to manage the secondary uses of the work. By joining a RRO they will become entitled to a share of the revenues distributed and through the agreements signed with foreign RROs they will have a guarantee that their works are being lawfully used domestically and abroad.

While a large part of the above-mentioned secondary uses of works are legal or can be made legal through the signing of a licensing agreement, it should also be clear that some acts, such as the reproduction of a whole book, are against the basic principles of copyright and will always be unlawful. In these cases it is a matter for the Government and enforcement authorities to make sure that piracy and illegal uses of works are properly addressed and punished.

5.2. Annexures

Sample contracts are annexed hereto fir guidance, one should also seek legal assistance from the legal practitioners to have a proper contract drafted as per the subject matter at hand and according to their jurisdiction.

PUBLISHING AGREEMENT

(ARIPO GENERATED)

| THIS PUBLISHING AND COPYRIGHT A day of | | eement") is entered into this |
|---|---|--|
| | BETWEEN: | |
| | of | |
| | | |
| | | (the "Author") |
| | - and - | OF THE FIRST PART |
| | of | |
| | | |
| | | (the "Publisher") |
| | | OF THE SECOND PART |
| 1. BACKGROUND | | |
| Whereas is a lawfully established for the purpose of this Agreement is | d business specializing in; and | and existing inaddress |
| Whereas owns the copyright to a to grant permission to reproduce | work of tir and use the Work in accordar | tled "" (the 'Work'), and wishes are with the terms stated herein; |
| The Publisher and the Author further warrant that the have conflicting agreements with any other party. | | |
| IN CONSIDERATION OF the mutual covenants at follows: | nd promises set forth in this A | agreement, the Author and the Publisher agree as |
| 2. NATURE OF RIGHTS | | |
| The Author grants the Publisher the (non-exclusive the formats agreed upon herein. This right includes use the Work in future compilations. | | |

The Author retains all rights to the Work, and is free to submit the Work elsewhere for publication at any time.

3. CREDIT TO AUTHOR

The Publisher agrees to credit the name of the Author as provided in the submission of the Work to the Publisher. The Author agrees not to sue, claim or take other actions against the Publisher or its operators for any errors or inaccuracies in this name.

4. USE OF AUTHOR'S INFORMATION

The Publisher agrees not to voluntarily disclose any private, confidential or personal information the Author has provided thereto, without Author's prior consent.

5. DURATION OF AGREEMENT

This Agreement shall remain in effect for ______ years.

6. PERMITTED FORMATS

This Agreement shall extend to all present formats. As for future media formats there should be written consensus.

The above rights include the right to make technical modifications to the Work in order to display it in the agreed upon media and formats.

7. MODIFICATIONS TO THE WORK

The Author agrees to allow the Publisher to modify or edit the Work. Such changes include:

- 1. Grammar, syntax, spelling and/or punctuation corrections;
- 2. Removal of any material that encourages or advocates violence or terrorism, racial or religious hatred, or criminal activity; and
- 3. Modification for the purpose of improving the overall quality of the Work.

8. ROYALTY PAYMENTS

| The Author will recei | ve royalty paym | ents from the Publis | sher according to the | ne following scheme: |
|-----------------------|-----------------|----------------------|-----------------------|----------------------|
|-----------------------|-----------------|----------------------|-----------------------|----------------------|

There will be an initial lump sum payment of ____.

In addition, there will be a per sale royalty calculated for each type of media, as follows:

- 1. Hard cover book royalties of ____% of list price.
- 2. Soft cover book royalties of ___% of list price.
- 3. Downloadable (electronic) book royalties of ____% of list price.
- 4. CD and DVD royalties of ____% of list price.
- 5. Other royalties of of list price.

The Author will receive royalty statements, based on real-time online sales tracking. The royalty statements will be provided online unless agreed otherwise. Actual payment will be each month and will be paid in (check, cash, online, mobile money).

9. WARRANTY AND INDEMNIFICATION

The Author affirms that the Work is original and the Author is the sole author and owner of the copyright. Furthermore, the Author understands that he or she will be fully liable should any copyright infringement be claimed or discovered.

The Author hereby agrees to indemnify the Publisher and any of its operators of any loss, damage, penalties, legal actions, or claims incurred as a result of breaching this Agreement.

10. TERMINATION

| a. | The Author reserves the right to terminate this Agreement if the Publisher fails to begin distributing the Work within year(s) of the execution of this document, by providing at least days written notice to the Publisher following the completion of theyear period. the Publisher defaults on a term or condition of this Agreement, if the situation remains uncorrected following days written notice to the Publisher alerting it of the default. |
|------|---|
| | The Publisher may terminate this Agreement if the Author defaults on a term or condition of this Agreement, if the situation remains uncorrected followingdays written notice to the Author alerting him or her of the default. |
| iii. | Either party may terminate this Agreement by providing the other party with at least day(s) written notice, or the minimum required by law. |
| iv. | Upon the termination or expiration of this Agreement, as the case may be, the Publisher shall cease publication, use, and distribution of the Work as soon as is commercially feasible. Notwithstanding the foregoing, the Publisher may complete pending orders and sell off current stock of the Work, so long as the sell-off period ends, at most, months after termination or expiration. |
| V. | Termination or expiration of this Agreement shall not extinguish obligations herein which, by their nature, are intended to survive this Agreement. This includes, but it not limited to, the payment of royalties. |
| 11. | BINDING EFFECT |
| | s Agreement is binding upon signing by the parties and shall benefit the parties and of the respective successors and/or assigns ne parties hereto. |
| 12. | AMENDMENT |
| | |

Any amendments to this Agreement must be evidenced in writing and signed by both parties.

13. GOVERNING JURISDICTION

This Agreement is governed, construed, enforced, and interpreted by, through, and under, the laws of (country).

14. FULL AND FINAL AGREEMENT

This Agreement comprises the entirety of the terms and conditions of the agreement between the Author and the Publisher. Both parties state that they have not made any representations regarding the subject matter of this Agreement except the representations specifically set forth in this Agreement; there are no further items or provisions, either written or oral. Both the Author and the Publisher acknowledge that they have relied upon their own inspection, investigation and judgment in entering into this Agreement.

| Signed this | _ day of | <i>,</i> | |
|--|---------------------|-------------------------|---|
| | | (The Author) | _ |
| | | (The Publisher) | - |
| Printed Name: (Witness) | | Printed Name: (Witness) | |
| CERTIFICATE OF ACKNOWN Sworn to (or affirmed) and su | | RY PUBLIC day of | , |
| A NOTARY PUBLIC in and | for the Province of | | |
| Address: Telephone: | | | |

PUBLISHING AGREEMENT

(MALAWI GENERATED)

| | BETWEEN |
|---|--|
| | PUBLISHER |
| | AND |
| | AUTHOR |
| | |
| | FOR THE FOLLOWING PUBLICATIONS |
| | TITLES OF THE BOOKS |
| | |
| | |
| | PUBLISHING AGREEMENT |
| | BETWEEN |
| | (author) |
| (Hereinafter terme assigns, of the Par | d "AUTHOR") on behalf of themselves, their heirs, executors, administrators, legal representatives and t |
| AND(Publishing house | ·) |
| (Hereinafter terme | d "PUBLISHER") |

1. RECITALS

- 1.1 The author means the person who creates the work.
- An author of any work shall, by mere fact of its creation, enjoy an exclusive property right in the work. 1.2
- 1.3 A work shall be eligible for copyright protection irrespective of its form of expression, its quality or purpose for which it was created as far as it original in character or it's a derivative work.
- 1.4 A publisher means an organization which is able to publish copyright works.
- Published works means, works which, with the consent of authors, have been made available to the public in tangible 1.5 copies or digital format in a quantity sufficient to satisfy a reasonable demand for the work.
- 1.6 Any right under Copyright, except moral rights, may be transferable and may be transferred by assignment, testamentary disposition or by operational of the law.
- 1.7 A publisher may also be able to acquire copyright in a work through commissioning of a work

Therefore, it is hereby agreed as follows:

2. AUTHOR'S RIGHTS

An author of any work eligible for copyright shall have the exclusive right, in respective of such work, to do, or authorise any other person to do the following acts in relation to the whole work or any part thereof –

a. Reproduction of the work;

- b. Distribution by way of sale, commercial rental or lending of work to the public
- c. Public display of the work
- d. Public performance of the work;
- e. Communication of the work to the public;
- f. Translation, adaptation, arrangement or any other transformation of the work in relation to translation, adaptation, arrangement of other transformation of the work.
- g. Any of the actions in paragraph (a), (b), (c), (d) and (h) in relation to a translation, adaptation, arrangement or other transformation of the work.

3. RIGHTS GRANTED TO THE PUBLISHER

- 3.1 The exclusive rights granted to authors in section 2 above shall be transferrable to publishers and may be so transferred by assignment or license.
- 3.2 Such transfer of economic rights to the publisher shall be limited in scope to the use provided for in the contract.
- 3.3 Such an assignment of the copyright by the author to the publisher shall be in writing and signed by both parties.
- 3.4 In case of a work of joint authorship, transfer of copyright in respect of a work shall be subject to the authorization of joint authors.
- 3.5 An assignment or a license of rights may be made or granted to publisher in respect of a future (new editions) or existing work but it must be in writing.
- 3.6 The territory and number of copies to be published and period of publication must be clearly spelt out in the agreement.
- 3.7 In the event that the publisher wishes to transfer the rights for the publication, as granted by the author, to another publisher or sub-publisher, the author shall be contacted for new consent, if not yet granted in the present agreement.
- 3.8 In the event that the publisher wishes to discontinue to publish the publication or have gone into dissolution the author will be given the first option of buying the rights of the publication in totality.

4. OBLIGATIONS OF THE PARTIES

4.1 AUTHOR'S OBLIGATIONS

- 4.1.1 The author has to produce a manuscript according to the publisher's brief.
- 4.1.2 The author has to submit the manuscript at agreed time and in agreed format
- 4.1.3 The author has the obligation to be involved in any activity during the production of the work that the publisher may deem appropriate e.g editing, proof reading, cover ideas generation e.t.c.

4.2 PUBLISHER'S OBLIGATIONS

- 4.2.1 The publisher must ensure that the work is published within a reasonable agreed period of time and distributed in the usual manner.
- 4.2.2 The publisher must seek authors' opinion on matters of mutual interest as follows:
 - Appointing an editor, typesetter, proof-reader, translator (when required)
 - Identifying and commissioning illustrators, photographers,
 - Providing a design specification for the cover and content of the work
 - Determining the style and appearance of the published work, type of paper to be used, the format, the typeface and the general finish
 - Planning publication dates
 - Deciding printing quantities

5. DELIVERY OF MANUSCRIPT

- 5.1 The Author undertake to deliver to the Publisher, by a date and in format mutually agreed between the parties in writing, the following:
 - 5.1.1 one copy of the complete manuscript of the Work, inclusive of any extra matter as may be deemed necessary such as teachers' guides, notes, appendices, artwork or roughs for illustration.
 - 5.1.2 Should the Author neglect to deliver the manuscript by the agreed delivery date, the Publisher may decline to publish the Work by giving written notice to such effect to the author.
 - 5.1.3 Where the parties have agreed that the manuscript is to be delivered in a typed or electronic format and the manuscript is not delivered in such agreed format, the Publisher may arrange with another party for the typing or data capture of the Manuscript into an acceptable format.

6. PUBLICATION

| 6.1 | The publisher shall publish at its own expense and risk a work(s), in accordance with the provision of this agreement, the |
|-----|--|
| | following titles which shall be included in the publishers publishing schedule as follows: |
| a) | Titles of the books: |

The author hereby grants to the Publisher the right to use author's name on the jacket, cover, binding and the title page of 6.2 the Work and on all promotional materials related to the publication.

7. REVISIONS AND NEW EDITIONS

7.1 The author, if so requested by the Publisher during the existence of this Agreement, shall revise and edit any new editions of the Work and shall supply any new matter that may be desirable or necessary to keep the Work up to date. Should Authors neglect or be unable to fulfil their respective obligations under this clause, the Publisher may make appropriate arrangements for the supply of the new matter or the revision or editing of the Work and may deduct the expense thereof from any sum which may become payable to the Authors.

8. LICENSING AND ADAPTATION AGREEMENTS

- 8.1 The Publisher shall have the first option to enter into a licensing agreement with the author of the publication to publish adaptations, translations in any language of the world or in any electronic format including CDs, DVDs, publication abstracts or references. Should the Publisher wish to exercise any of these rights, the Publisher shall, whenever possible consult the Authors. The royalty percentage in such new formats shall be negotiated and agreed in writing between both parties
- 8.2 The author, upon giving sufficient notice, may revoke the rights conferred to the Publisher, if the Publisher does not exercise them and is prejudicial to the authors' legitimate interest.
- 8.3 The right of revocation mentioned above may be exercised only after the period of delay stipulated in the contract for commencing the exercise of the exclusive right by the person to whom it is granted has expired but, in any case, not earlier than two years -
 - (a) From the grant of such right
 - (b) Where the work to be used was supplied subsequent to the grant of the right, from the date of its delivery

9. AUTHOR'S COMPLIMENTARY COPIES

The author shall be entitled to at least ten (10) free copies of the first and any new edition of the Work and shall have the right to purchase on normal selling market prices.

10. COMPETING WORKS

The Authors grant the Publisher the right of first refusal to publish any other work prepared by any of the Authors upon such terms and conditions as agreed in writing at the stage between the parties. The Publisher shall, within ninety (90) days after submission of such manuscript, indicate in writing to the Authors whether it wishes to publish such work or not.

11. INFRINGEMENT OF COPYRIGHT

- 11.1 In the event that the copyright subsisting in the Work is hereafter infringed relative to any of the acts of which the Publisher is the exclusive Licensee, the Publisher shall have the right to the exclusion of the Author (but shall not be obliged) to take such action, whether legal or otherwise, for the protection of the copyright as it in its absolute discretion deems advisable. The Author may take part in any action taken by the Publisher pursuant to this clause. The Publisher shall be entitled to use the Author's name as party to such proceedings but at the same time to control, settle or compromise as it thinks fit, on condition that the Publisher gives the Author an undertaking to pay all costs and expenses and to indemnify the Author against all liability for costs.
- 11.2 The Author agree to execute and declare any documents and sources of reference materials used and do any acts reasonably appropriate to give effect to the rights of the Publisher granted by this clause.

12. INDEMINITY AND LIMITATION OF LIABILITY

- 12.1 The Author hereby accepts liability for and indemnifies and holds the publisher harmless against all claims, demands, fines, penalties, damages, losses, costs, expenses, or other liabilities arising out of the author's failure to declare sources of matter, or submission of plagiarised works.
- 12.2 The publisher through this agreement believes that the works delivered by the author have been originated and developed by the author unless otherwise stated and acknowledged.

13. ROYALTY PAYMENTS TO THE AUTHOR

- 13.1 A royalty of not less than ten (10) percent based on the Selling Price on all copies of the Work sold, wherever sold, excluding such copies as may, by subsequent clauses of this agreement, be sold at a different price. The total amount received by the publisher for the sale of the publication shall be called "sum received by the Publisher".
 - The term "sum received by the Publisher" in this agreement shall mean the amount received and any amounts receivable by the Publisher, after deducting any discounts or commissions granted by the Publisher and any sales or other similar taxes, duties incurred by the Publisher in respect of sales of copies of the Work.
- 13.2 The Publisher shall render royalty payments at least once annually to the author on account of sales on a date agreed by both parties.
- 13.3 No royalties shall be payable on any copies of the Work destroyed in transit or otherwise or distributed as donation or sample copies of not more than 100 copies per impression, the number and destination of such copies so distributed being left to the judgment and discretion of the Publisher. The Publisher undertakes not to dispose of copies of the Work as a remainder within a period of twelve months from the date of the first Publication.
- 13.4 Copies shall be accounted for as sold only when payment has been received by the publisher.
- 13.5 Authors have a right to access audited financial accounts should they be not satisfied in any of the royalty transactions after a 14 working days' notice period to the Publisher.
- 13.6 Authors have a right to bring their own Auditor should they be not satisfied with any of the royalty audited transactions after a 14 working days' notice period to the Publisher. Any costs resulting from such an exercise will be the responsibility of the Authors. Should there be discrepancy discovered after the exercise of more than 20 percent, the audit cost shall be shared equally by both parties.

14. BREACH OF CONTRACT

This contract will be deemed under breach:

- 14.1 If the Publisher fails to fulfil its responsibilities and obligations as stipulated under this agreement.
- 14.2 If the authors fail to fulfil their responsibilities and obligations as stipulated under this agreement.

15. TERMINATION AND REVERTION OF RIGHTS

This agreement may be terminated:

- 15.1 If the publisher is under liquidation and in such a case the Author may withdraw from the agreement through a liquidator.
- 15.2 If both parties agree that the publication is no longer profitable or the publisher is no longer interested in publishing it.
- 15.3 If there is gross breach of contract.
- 15.4 In case of company closure the author has a right to collect back all their works and buy off all the remaining stocks at a cost price.

16. LAW OF THE CONTRACT / DISPUTES

- 16.1 This Agreement and the interpretation thereof shall be subject to the Laws of the Republic of Malawi.
- 16.2 Disputes over the interpretation or implementation of this agreement shall firstly be settled through negotiations and if negotiations fail, by way of arbitration by a single arbitrator.
- 16.3 The single arbitrator shall be appointed through mutually agreement to both parties and in accordance with the provisions of arbitration Act chapter 6.03 of the Laws of Malawi.

17. TAX

The Publisher may deduct from any amount due to the Authors under this agreement, as an obligation to pay or to withhold in respect of any tax or duty.

18. GENERAL

- 18.1 No amendment, alteration, addition or variation of this publishing agreement will be valid unless in writing and signed by both parties.
- 18.2 In the event that any of the provision of the publishing agreement are found to be invalid, and unlawful or unenforceable by a competent court of law, such terms shall be severable from the remaining terms which shall continue to be valid and enforceable.

IN WITNESS WHEREOF the parties hereto have or through their authorized representatives here unto set their hands on the day and the year first written below.

| SIGNED AND DELIVERED for and on behalf of AUTHOR |
|---|
| NAME: |
| SIGNATURE: |
| DATE: |
| WITNESS'S NAME:SIGNATURE |
| |
| SIGNED AND DELIVERED for and on behalf of PUBLISHER |
| NAME: |
| SIGNATURE: |
| DATE: |
| WITNESS'S NAME:SIGNATURE |
| Attd: SCHEDULE A WHICH FORMS PART OF THIS AGREEMENT |
| SCHEDULE "A" |
| TITLE OF WORKS: |
| ISBNS: |
| PUBLICATION YEAR: |
| TOTAL ROYALTY PERCENTAGE: |
| PUBLISHER DOMICILIUM CITANDI: |
| AUTHORS' DOMICILIUM CITANDI: |
| Village: |
| T/A: |
| DISTRICT: |
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| Relationship: |

PUBLISHING AGREEMENT

(GHANA GENERATED)

| THIS AGREEMENT is made the |
|---|
| AND |
| |
| WHEREAS; |
| Definitions and Interpretation In this Agreement unless where otherwise provided the following words shall have the following meanings: |
| a. "Confidential Information" shall mean all information, which is and may be confidential to or commercially sensitive of Publisher including (without limit) information relating to the Publisher's business methods, finances, costs, know-how and other matters connected with the products or services provided by Publisher from time to time. |
| b. "Electronic/Digital Rights" shall mean the right to exploit the Work commercially by electronic/digital means including the right to scan, copy, digitize, reproduce, adapt, promote, advertise, market, distribute and sell the Work for electronic dissemination by whatever means whether in existence now or created in the future worldwide, whether in part or in whole as a verbatim text or as an adapted or abridged electronic file in conjunction with or without other electronic files including audio files, sounds, music, text, data and visual images. |
| c. "Permissions" shall mean the necessary releases, licenses, and consents from Third Party Owners to use Third Party Materials. |
| d. "Rights" shall mean the sole and exclusive right including Electronic/Digital Rights, by way of license to print, publish, distribute, and exploit the Work and any abridgment or substantial part of the Work in all editions and in all methods of publication and reproduction including hardback, paperback, serialization, translations, anthologies, quotations, mechanical reproduction, radio, theatre, film and television merchandising in English Language worldwide during the Term. |
| e. "Subsequent Edition" shall mean any publication of the Work other than the first publication. |
| f. "Term" shall mean the full period of copyright in the Work including all renewals, reversions, revivals and extensions of such period. |
| g. "The Work" shall mean the manuscript of an original work titled |
| h. "Third Party Materials" shall mean any materials in the Work which are not created by |
| i. "Third Party Owners" shall mean those persons or entities that own or otherwise have the right to license and copyright and other intellectual property rights to any Third Party Materials proposed to be used in the Work, |
| j. "Worldwide" shall mean all countries, bases, ships, airplanes, oil rigs and any other locations throughout the universe. |
| NOW IT IS HEREBY AGREED AS FOLLOWS: |
| 1. RIGHTS In consideration of the payments and other terms and conditions hereinafter, |

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The copyright in the work shall remain the property of, but in consideration of the payments hereinafter mentioned, the sole and exclusive right to produce, publish, distribute and sell the first and any subsequent edition of the Work or any abridgment of the Work or any part of the Work for the duration of this agreement, together with the rights enumerated in royalty hereof is, subject to this agreement, vested in(Publisher) worldwide.

3. MANUSCRIPT

- a.undertakes to deliver two legible copies of the manuscript and a softcopy of the manuscript of the Work to(Publisher) on or before the expiration of 14 (fourteen) days after the signing of this agreement.
- b.undertakes to make all reasonable corrections to the manuscript as shall be requested by(Publisher).
- c. Ifis unable or unwilling or for any reason fails to carry out any of the amendments or corrections within 30 (thirty) days of the (Publisher) request, (Publisher) may arrange a competent person to make the amendments and the fees payable to such person shall be deducted from any sums which may become due tounder the terms of this agreement.

4. COPYRIGHT PERMISSIONS

......shall obtain Permissions in a form satisfactory to (Publisher) signed by the Third Party Owners and all relevant persons in relation to all quotations, illustrations, photographs, and other Third Party Materials used in the Work and shall that the benefit of all consents, releases, and licenses obtained byshall extend to (Publisher) throughout the Term for which the rights are granted to (Publisher) pursuant to this agreement

5. ACCEPTANCE/ REJECTION OF WORK

- a. (Publisher) shall in writing accept the Work for publication provided that the complete manuscript and any illustrative to the form and content of the Work as agreed between (Publisher) and
- b. If in the opinion of (Publisher), the Work is unacceptable or unsatisfactory to (Publisher), (Publisher) may reject it by a written notice towithin 30 (thirty) days of delivery of the Work to (Publisher).
- c. (Publisher) reserves the right to change the title/name of the Work to a more appropriate one if in the opinion of (Publisher) the Work title/name is unsatisfactory.

6. PUBLICATION

- a. Subject to the provisions of this agreement...... (Publisher) undertakes to publish the Work to the customary standard of (Publisher) at the cost and expense of (Publisher) not later than 90 (ninety) days after the date of delivery of the Work referred to in Clause 3a.
- b. Where the publishing of the Work may be delayed due to printing schedule or other incidental matters (Publisher) shall informin writing of the delay at least 30 (thirty) days to the initial date of the delivery of the Work and shall inform the Author of the new date of delivery.

7. REVISED EDITIONS AND REPRINTS OF THE WORK

I. Revised Editions:

- a. If(Publisher) shall during the Term agree that a revised edition of the Work is necessary in order to keep it up to date,shall edit and revise the Work and shall supply any new material that is required for that purpose and deliver the edited and revised Work to (Publisher) within a period agreed between them and at a fee payable to in an amount to be agreed between them.
- b. Ifis unwilling or unable or for any reason fails to edit and revise the Work or the amount of the fee cannot be agreed between them as mentioned in clause 6a, (Publisher) may arrange for a competent person to do so and any fees payable to such person shall be deducted from any money which may become due to under the terms of this agreement.

II. Reprints:

- a. Reprints of the Work would be made where the initial re-run has been sold out and more demands for the Work are received.
- b. Where the Work does not generate any proceed, (Publisher) will not be under any obligation to reprint the Work.

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- b. If (Publisher) does not exercise its right under (a),shall be free to negotiate with other publishers.

9. TERM OF AGREEMENT

This Agreement shall subsist for as long as the Work is in the market as a going concern. This clause shall be subject to clause 17 (b).

10. ROYALTY PAYMENTS

- a. (Publisher) shall, during the legal term of copyright in the Work on actual cash receipts, pay a 10% royalty on the sales of the Work as published (less returns and refunds).

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| (| Publisher) | agrees with | • |

a. Payment

b. Books and Records

To keep accurate and detailed books and records of all sales of copies of and exploitation of all the Rights in the Work granted under this agreement and revenue received from such sales and exploitation.

c. Inspection

- ii.shall be entitled to have access to the sales records at any point after publication of the work after giving (Publisher) at least 14 (fourteen) days' notice.

12. COMPLIMENTARY COPIES

......shall be entitled to receive 6 (six) presentation copies of the first edition and shall be entitled to purchase further copies at the (Publisher) 's wholesale price.

13. INFRINGEMENT

14. WARRANTIEShereby warrants that; a. The work is original and has not been published anywhere before; b. The work is in no way whatsoever a violation of any copyright; c. The work contains no objectionable, obscene or libelous material: d. All the statements contained in the work purporting to be facts are true; e.has full powers to make this agreement; f.undertakes that he is not bound by any other agreement with any third party such as to divest him of the right to enter into this agreement with (Publisher); g.shall not have the right to assign any rights under this agreement to any third party; h. There is no present or prospective claim or litigation in relation to the Work or its title or ownership. 15. LITERAMED PUBLICATIONS GHANA'S WARRANTIES (Publisher) hereby warrants that; a. (Publisher) shall publish 5000 copies of the Work within 90 (ninety) days after the date of delivery of the Work referred to in Clause 3a subject to clause 6 (b). b. Upon the publication of the Work, (Publisher) shall procure the copyright for the Work in the name of and for any revisions of the Work thereof. 16. INDEMNITY a.shall indemnify (Publisher) against any loss, injury or damage (including any legal costs or expenses and any compensation costs and disbursements paid by (Publisher) on the advice of their counsel to compromise or settle any claim) occasioned to (Publisher) in consequence of any breach of any warranty by b.shall not, during the continuance of this agreement, without the consent in writing of (Publisher), prepare or edit for any other publisher any work that is an expansion, abridgement or revision of the work or any part of it or publish or cause to be published any work on the same subject, the sale of which may possibly conflict with the sale of the work, the subject matter of this agreement. 17. NOTICE a. Any notice to be given by either party shall be in writing and sent either by post, prepaid certified or registered mail, email, facsimile, hand delivery to the address of the other party as set out at the head of this agreement, or by pasting (at the recipient's last known address in the event that the receiving party cannot be located) b. If hand delivered, the notice shall be deemed sufficiently served upon delivery and acknowledgment of the same given by the receiving party. If sent by registered mail, it will be deemed to have been given five (5) days after the same is properly addressed, pre-paid and deposited at the office of a courier company. If the notice is sent by facsimile or email transmission, it would be deemed to have been properly served upon transmission and due receipt of answerback confirmation. c. A party may change that party's address by prior notice in writing to the other party. 18. TERMINATION

- a. (Publisher) may terminate this agreement by giving 3 months written notice if fails to comply with the provisions of Clause 3.
- b. This agreement will terminate naturally and (Publisher) shall not be under any obligation to pay royalties towhere after five (5) years of releasing the Work into the market;
 - i. No sales are made and/or no proceeds generated; or
 - ii. The amount generated is less than N1, 000.00.

19. GOVERNING LAW/DISPUTE RESOLUTION

- a. This agreement shall be governed by the laws of the Republic of Ghana.
- b. Any dispute arising out of or relating to this agreement including any question regarding its existence, validity, or termination which cannot be amicably resolved by the parties shall only be determined by the alternative dispute resolution procedure under the laws of the Republic of Ghana. The decision of the mediator shall be final.

c. Provided that the parties shall have the right of appeal against the decision of the mediator to the appropriate Court. **20. FORCE MAJEURE** In the event that this agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control ofor(Publisher), including ill health of, war, industrial action, floods or Acts of God, then such non-performance or failure to fulfill its obligations shall be deemed not to be a breach of this agreement. In the event that this agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control of the defaulting party for a continuous period of 30 (thirty) days, then the other party may, at its discretion terminate this agreement by notice in writing at the end of that period, provided that both parties agree to negotiate, in good faith, an equitable settlement in respect of the work already performed to the date of the termination 21. CONFIDENTIAL INFORMATION a. The parties shall keep confidential the terms of this agreement. b.shall not at any time divulge to any person or otherwise make use of any Confidential Information coming to his knowledge during the course of or in contemplation of his involvement with (Publisher) . In the event of a c.shall treat the Confidential Information as being strictly private and confidential and shall take all steps necessary to prevent it from being disclosed or made public to any third party or coming by any means into the possession of any third party. d. Confidential Information shall not include: i. Information which is or becomes publicly known through no act or omission of ii. Information which is disclosed byto (a) satisfy an order of a court of competent jurisdiction, (b) comply with the provisions of any law or regulation in force from time to time or any request by a regulatory authority; provided that its interests in this regard. 22. MISCELLANEOUS a. Entire Agreement This agreement constitutes the whole agreement between the parties in relation to its subject matter and supersedes any other agreements or correspondence which may exist in relation to this matter. b. Name and Likeness (Publisher) reserves the right to use's name and/or his/her likeness (photograph, picture, painting or drawing) in promoting the Work. c. Amendments In order that there may be no misunderstanding between (Publisher) and, there will be no amendments/alterations to this agreement unless in writing signed by the authorized signatories of both parties. d. No Partnership Nothing shall be construed in this agreement to mean or indicate thatshall have the authority to bind (Publisher) and/or that the relationship between the parties is a Partnership. e. Assignmentshall not assign the rights in the Work to a third party without the express written consent of (Publisher). f. Headings The headings of the Clauses of this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement. g. Reservation of Rights

All rights not specifically and expressly granted to (Publisher) by this agreement are reserved to

| h. | | | er into this agreement and to do all things necessary to pro | ocure the fulfillment |
|--------|---|---|---|-------------------------------------|
| i. | II. Where the boo | Shall be paid to | ter the death of (Publisher) shal | ars after the death of |
| j. | Binding Effect This agreement sh successors in title. | | efit of the parties and their respective assigns, personal rep | resentatives and |
| k. | unenforceable in a agreement, and su | any respect, such invalid, illegated invalidity, illegality or uner shall be replaced, to the exten | ons of this agreement being held for any reason to be invalual or unenforceable provision or part of the same shall be inforceability shall not affect any other provision of this agost possible, with a legal, enforceable, and valid provision values. | stricken from this reement, and the |
| | | - - | set their hands and seals the day and year first above written. is hereunto affixed in the presence of: | en. |
| | UNTRY DIRECTO | | (EXECUTIVE DIRECTOR, GHANA) | |
| | ed by | | | |
| ••••• | (Signature) | | | |
| In the | e presence of: | | | |
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NEXT – OF – KIN DETAILS.

| 1. | NAME: | ••••• |
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| | OCCUPATION: | |
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| | | |
| | | |
| | E-MAIL ADDRESS: TELEPHONE NUMBER: | |
| 2. | NAME: | |
| | RELATIONSHIP: | |
| | OCCUPATION: | |
| | ADDRESS: | |
| | | |
| | | |
| | E-MAIL ADDRESS: TELEPHONE NUMBER: | |

CO-PRODUCTION AGREEMENT

(GHANA GENERATED)

| THIS AGREEMENT effective as of [DATE], [YEAR] |
|---|
| BETWEEN: |
| |
| WHEREAS "FIRST PARTY" and "SECOND PARTY" wish to collaborate to co-produce a |
| NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, mutual covenants and agreements herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows: |
| 1. CO-PRODUCTION OF "" |
| a. "FIRST PARTY" and "SECOND PARTY" (collectively the "CO-PRODUCERS" or the "PARTIES") agree that the "" will be produced, distributed and exploited in accordance with this Agreement. b. The "CO-PRODUCERS" shall collaborate and provide their respective services, assets, and materials to co-produce the "" to the terms of this Agreement and substantially in accordance with the approved production guidelines and schedules. c. The "CO-PRODUCERS" shall apply to any potential procurement announcement by the Ministry of Education and or its agencies as co-applicants and work together to secure any contract that will ensue. d. This co-production agreement is being offered on a non-exclusive basis and nothing herein shall be construed as prohibiting either of the Parties from providing its services to third parties during the term of this Agreement, provided however that neither shall do so in a manner that would impair its ability to perform the Services and deliver the Deliverables described hereunder. |
| 2. GRANT OF RIGHTS AND COPYRIGHT OWNERSHIP |
| a. "SECOND PARTY" acknowledges that the published works detailed in the schedule and all the intellectual property rights in and to the co-produced works shall remain, in so far as "SECOND PARTY" is concerned and subject to the grant of rights herein, entirely vested in the "FIRST PARTY". |
| b. "FIRST PARTY" hereby grants, for the use by Co-Producers in pursuance of the objectives set out in this Agreement, the non-exclusive license to produce a "" in accordance with the terms of this Agreement and subject to the rights of reversion on termination as set out in section 13 herein. c. "SECOND PARTY" acknowledges that "FIRST PARTY" shall own all right, title and Interest, including but not limited to |
| copyright, in and to all original and pre-existing Files and the final works produced as a "". |
| 3. CREDITS |
| a. Provided that the "" is produced, the parties agree as follows:i. The following shall appear on the copyright page of the "" and in all correspondence in respect of this co-production agreement. (see attached schedule B) |
| 4. NET PROFITS AND DISTRIBUTION |
| a. The Parties agree that if the "" is produced and provided the Parties mutually determine it is commercially advantageous to do so, the Parties agree to enter into a distribution agreement with a distribution company (if it becomes necessary and a requirement of the procurement) to provide its services to distribute the "" as |

- directed under the procurement arrangements of the Ministry of and or its agencies.
- b. The Parties agree that all Net Profits from the exploitation of the "....." shall be shared as follows: 50% to "FIRST PARTY" and 50% to "SECOND PARTY".
- c. "Net Profits" shall be defined as meaning all gross revenues actually received by or on behalf of the parties from the coproduced work following the deduction of all expenses.

Definition of Net Profits shall, in any event, be defined no less favorably for either party and shall apply to both parties equally.

5. RECORDS AND ACCOUNTS

- a. FIRST PARTY and SECOND PARTY shall keep or cause to be kept at a mutually agreed upon location all books of account and records, and all contracts for the business and operations of the ".....".
- b. Each of the parties shall have the right to inspect the books of account and records related to the business and operations of the "...." upon one week notice to the other.

6. REPRESENTATIONS AND WARRANTIES

- a. "FIRST PARTY" represents and warrants to "SECOND PARTY" that:
 - i. It has the right and capacity to enter into this Agreement and fully perform all its obligations hereunder;
 - ii. It is a registered company under the laws of the Republic of Ghana and shall at all material times continue to be resident in
 - iii. It has all moral rights and any rights that are in the published works as specified in the schedule of works.
 - iv. It shall not incur any cost, expense, liability or obligation in the name of the "SPECIAL EDITION" except in accordance with this Agreement and with the written approval of "SECOND PARTY";
- b. "SECOND PARTY" represents and warrants to "FIRST PARTY" that:
 - i. It has the right and capacity to enter into this Agreement and fully perform all its obligations hereunder;
 - ii. It is a registered company under the laws of the Republic of Ghana and shall at all material times continue to be resident in Ghana.
 - iii. It shall not incur any cost, expense, liability or obligation in the name of the "SPECIAL EDITION" except in accordance with this Agreement and with the written approval of "FIRST PARTY";

7. INDEMNIFICATIONS

a. Each party shall indemnify and save harmless the other party from and against all losses, damages and expenses, including reasonable legal fees, resulting from any claim, action or proceeding arising from a breach of any of the warranties made by the breaching party in section 6 (a) and (b) above.

8. SPECIAL DAMAGES AND LOSS OF PROFITS

a. Neither party shall be liable hereunder for any loss of profits or any special, indirect, incidental or consequential damages, whether arising in contract, tort or otherwise.

Each party's liability and any of its respective employees, agents, independent contractors or representatives, to the other for claims arising out of or relating to this Agreement will be restricted to actual damages only.

9. TERMINATION

- a. The parties shall be entitled to terminate this Agreement upon written notice given by the party initiating the termination and delivered to the other party, without further compensation or obligation to each other, if any of the following events occur:
 - i. In the event that, at the date of the first production of the "SPECIAL EDITION", the Co-Producers are unable to secure a co-production.
 - ii. If there is any material breach of this Agreement by either party not cured within 15 days of the other party delivering written notice thereof to the party in breach; and/or
 - iii. If either party becomes insolvent, or makes an assignment in bankruptcy, is liquidated or dissolved.

10. OWNERSHIP AND REVERSION OF RIGHTS ON TERMINATION

- a. Upon termination of this Agreement, without prejudice to any other rights at law, each party shall continue to own its respective right, title and interest in and to the elements and materials it contributed in respect of the "SPECIAL EDITION", and the copyright therein and thereto.
- b. The "SPECIAL EDITION" shall remain the sole and exclusive property of "FIRST PARTY", including but not limited to copyright, subject to the limitations of applicable third party licenses.
- c. All rights granted by "FIRST PARTY" including but not limited to all rights related to the content of the Published titles shall automatically revert to "FIRST PARTY" without further agreement or written instrument being required.

11. CONFIDENTIALITY

a. This Agreement and the business of the Parties with respect to the "SPECIAL EDITION" shall be treated by the Parties as strictly confidential.

12. NOTICE

- a. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given
 - i. when delivered personally to any officer of the party being notified; or
 - ii.on the third business day after being sent by registered or certified mail, postage prepaid, facsimile telecopy and email, addressed as follows:

| To "FIRST PARTY": [Contact Name] |
|-----------------------------------|
| PUBLICATIONS LTD |
| [Address] |
| [Phone & Fax Number] |
| To "SECOND PARTY": [Contact Name] |
| PUBLICATIONS LTD |
| [Address] |
| [Phone & Fax Number] |

13. INDEPENDENT CONTRACTORS

a. The parties hereto are independent Publishers and neither shall act as the others agent, except as expressly agreed to in writing and only in relation to the co-production and exploitation of the "SPECIAL EDITION", nor shall either party be deemed an employee of the other nor shall this Agreement be interpreted as creating an employment relationship, partnership or joint venture or otherwise. Neither party shall incur any obligation on the other's behalf, nor commit the other in any manner without the other's prior written consent.

14. FORCE MAJEURE

a. Neither party hereto shall be responsible for any losses or damages to the other occasioned by delays in the performance or nonperformance of any of said party's obligations when caused by Acts of God, strike, acts of war, inability of supplies or material or labor or any other cause beyond the reasonable control of the said party at any time for performance of any services or shall be extended by the period of such delay.

15. SEVERABILITY

a. In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

16. ASSIGNMENT

a. Neither party may assign or otherwise transfer this Agreement without the written consent of the other party. This Agreement shall inure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

17. GOVERNING LAW

- a. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ghana.
- b. Both parties agree to arbitration in the event of any dispute arising out of the implementation of this agreement and the results

of arbitration shall be binding on both parties.

18. ENTIRE AGREEMENT

a. This Agreement, including the recitals and Schedules, sets forth the entire agreement between the parties with respect to the subject matter hereof and shall be amended only by a writing signed by the parties.

19. COUNTER PARTS

a. This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed. Execution and delivery of this Agreement by fax transmission and or email shall constitute legal and binding execution and delivery of this Agreement.

| IN WITNESS WHEREOF the parties hereto have executed this Agreement effective this | day of | , 20 |
|--|----------------|-----------|
| Name of first party: | | |
| Authorized Signatory | | |
| Name of second party: | | |
| Authorized Signatory | | |
| Schedule A –C to the co-production Agreement dated theday of, 20 and("SECOND PARTY") | Between("FIRS? | Γ PARTY") |

ARIPO OFFICE | 2018



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