

CONTRACT PUBLISHING AGREEMENT

2019

DATED THE DAY OF 2019

CONTRACT PUBLISHING AGREEMENT

between

LawAfrica Publishing Limited
(as the “**Publisher**”)

and

Author’s Name
(as the “**Author**”)

PUBLISHING AGREEMENT

THIS AGREEMENT is made the.....day of.....2019

BETWEEN

LAWAFRICA PUBLISHING LIMITED, a limited liability company incorporated in Kenya under registration number C. 88653 and of Post Office Box Number 4260-00100, Nairobi(hereinafter referred to as the “**Publisher**” which expression shall where the context so requires include its successors in title and assigns) of the one part

AND

_____of Post Office Box Number_____ (hereinafter referred to as the “**Author**” which expression shall where the context so requires include his/her personal representatives heirs and assigns) of the other part.

WHEREAS

- (A) The Author has written the Work (as hereinafter defined) and wishes to have it published
- (B) At the request of the Author, the Publisher agrees to print, publish, market, offer for sale and sell the Work on the terms and conditions set forth in this Agreement

NOW IT IS AGREED as follows:-

1. INTERPRETATIONS AND DEFINITIONS

1.1. In this Agreement including the Recitals and the Schedules (unless the context otherwise requires) the following words and expressions have the following meanings:

1.1.1. “**Artwork**” means such photographs, maps, charts, tables, diagrams or other illustrations as will be included in the Work;

1.1.2. “**Collective Work**” means a work in which the Work in its entirety in unmodified form along with a number of other contributions, constituting separate and independent works in themselves, are assembled to a collective whole;

1.1.3. “**Copyrightable Material**” means any material capable of being protected by way of copyright and “copyrighted material” shall be construed accordingly;

1.1.4. “**Effective Date**” means the date of signing of this Agreement by the last party signing ;

- 1.1.5. **“Final Approval”** means the authors last sign-off and irrevocable authority to proceed to print; given after the author has perused the entire text from cover to cover including but not limited to the cover design, Art Work, blurb, introduction, preface, acknowledgements, all the tables, graphs, extracts etc and all the book chapters, and is satisfied that the final manuscript meets the Authors requirements on all fronts.
- 1.1.6. **“Front Matter”** means the initial/ preliminary pages of the Work
- 1.1.7. **“Manuscript”** means the manuscript of the Work as prepared by the Author and submitted to the Publisher for publication;
- 1.1.8. **“Manuscript Date”** means [The date set out in the schedule] being the date when the Manuscript shall be delivered to the Publisher in accordance with clause 2.1 below;
- 1.1.9. **“Parties”** means the Publisher and the Author and reference to “Party” shall be construed accordingly;
- 1.1.10. **“Publication”** means the Work as published by the Publisher pursuant to this Agreement;
- 1.1.11. **“Rear Matter”** means the pages after the end of the last chapter;
- 1.1.12. **“Remainder Price”** means the price of the Work at or below manufacturing cost and “Remainder Sale” shall be construed accordingly;
- 1.1.13. **“Taxation” or “Tax”** means any form of taxation duty levy impost charge national social security or other similar contribution or rates whether created or imposed by any governmental state federal local municipal or other body in Kenya and also including any related penalty interest fine or surcharge;
- 1.1.14. **“Term”** means the term of this Agreement, being until all material has been delivered to client from the Effective Date until the termination of the Agreement in accordance with clause 20 hereof;
- 1.1.15. **“Warranties”** means the warranties set out in Clause 7 below and reference to “Warranty” as a noun or verb shall be construed accordingly;
- 1.1.16. **“Work”** means the copyrightable work of authorship named provisionally in the schedule being the original work prepared by the Author

for publication by the Publisher pursuant to the terms of this Agreement;

1.2. Unless the context or express provisions of this Agreement otherwise require:-

- 1.2.1. expressions in the singular shall include the plural and vice versa and words importing a gender shall include every gender;
- 1.2.2. references to any statute or statutory provision or to any other rules or regulations of any competent authority shall be construed as references to such statute or statutory provision or rules or regulations as respectively amended or re-enacted or as their operation is modified by any other statute or statutory provision rules or regulations (whether before or after the date of this Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and shall include subordinate legislation, made under the relevant statute;
- 1.2.3. references to recitals clauses and schedules are references to recitals and clauses of and schedules to this Agreement;
- 1.2.4. the headings used in this Agreement are inserted for convenience only and shall not affect its construction or interpretation;
- 1.2.5. reference to persons shall include any firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing and any other legal entity; and
- 1.2.6. the expression “hereof”, “herein” and similar expressions shall be construed as references to this Agreement as a whole and not be limited to the particular clause or provisions in which the relevant expression appears.

2. PRE-PUBLICATION OBLIGATIONS OF THE AUTHOR

2.1. The Author undertakes-

- 2.1.1. to deliver to the Publisher on or before the Manuscript Date, 1 copy of the complete and final Manuscript together with a soft copy of the work stored in a computer disk or other external storage from which it is readily retrievable containing the Work;
- 2.1.2. to retain at least one exact copy of the Manuscript and a back-up copy of the computer disk containing the Work;
- 2.1.3. to provide the Publisher, together with the Manuscript, with all Art Work, title pages, preface, forewords, acknowledgements, table of contents and index in final form both in print and in Machine Readable form.
- 2.1.4. to ensure that save for short quotations from prose which constitute fair use if the Work contains any Copyrighted Material, the Author shall either procure the

assignment of the copyright from the owner of the Copyrighted Material in favour of the Publisher or request a written licence in favour of the Publisher (whether or not requested by the Publisher) to publish the material, such licence to include permission to use the material in all future editions of the Work; and

2.1.5. to procure that copies of any assignments or requests for licences under clause 2.1.4 above will be delivered to the Publisher at the same time as delivery of the Manuscript and computer disk contemplated in clause 2.1.1 above.

2.1.6. to read the proofs of the complete Work diligently when delivered by the Publisher, to correct them, and to return them to the Publisher not later than Twenty One (21) days after receipt and to make such editorial alterations to the Work both in Print and on his disk/s as may be required;

2.1.7. to issue Final Approval once the Author has complied with clause 2.1.6 above.

2.2. In the event that the Author is unable for whatever reason to deliver the Manuscript to the Publisher within the time frames provided in clause 2.1 above the Publisher may at its discretion terminate this Agreement and recover from the Author any sums incurred. Upon such termination the Author undertakes not to have the Work published elsewhere until repayment in full of any such sums advanced.

3. FUNDING OF THE WORK

Unless otherwise specifically provided for in this Agreement, the Author shall fund the publication of the Work.

4. COPYRIGHT

4.1. The Parties agree:-

4.1.1. That copyright in the work and in any new matter added in any subsequent edition of the work shall vest in and be the sole property of the author;

5. WARRANTIES AND INDEMNITIES

5.1. The Author warrants that:-

5.1.1. he is the sole creator of the Work;

5.1.2. he is entitled to enter into and perform his obligations under this Agreement;

5.1.3. he has the absolute and unencumbered right to assign the copyright in the Work;

- 5.1.4. he has obtained all permissions necessary in relation to the Work and Publication AND shall deposit with the Publisher prior to the Manuscript Date copies of all such documents in his possession pertaining to the said permissions and licences (if any);
 - 5.1.5. the material contributed by the Author does not infringe any copyright, violate the rights of any other person, or contain any defamatory or unlawful matter;
 - 5.1.6. neither the Work nor any substantial portion thereof is in the public domain;
 - 5.1.7. no portion of the Work has heretofore been published anywhere in the world; and
 - 5.1.8. the Work is an original work of the Author except for portions for which the Author has obtained or will obtain permission under clause 7.1.4 above.
- 5.2. The Warranties shall remain in full force and effect notwithstanding the Publication expiry and/or termination of this Agreement and so far as such Warranties relate in whole or in part to present or past matters of fact they shall also be deemed to constitute fundamental representations upon the faith of which this Agreement has been entered into by the Publisher.
- 5.3. Each Warranty shall be separate and independent and save as expressly provided shall not be limited by reference to any other clause or anything in this Agreement.
- 5.4. The Warranties shall be deemed to be given as at the date of this Agreement and to be repeated immediately before Publication and shall be deemed to be true and accurate for the entire period between these dates.
- 5.5. The Author undertakes to immediately disclose in writing to the Publisher any event or circumstance which may arise or become known to the Author after the date of this Agreement and prior to Publication which is inconsistent with any of the Warranties or which had it occurred on or before the date of this Agreement would have constituted a breach of the Warranties or which is material to be known by the Publisher.
- 5.6. The Publisher shall have the right to rescind this Agreement by notice to the Author if prior to Publication:-
- 5.6.1. the Author is in material breach of any of the Warranties or any other provision of this Agreement; or
 - 5.6.2. any of the Warranties is or has become inaccurate or misleading in any material respect
- PROVIDED that any such rescission or the failure of the Publisher upon the occurrence of any such act or event or discovery of such circumstance to rescind this Agreement shall not extinguish any right to damages or other compensation to which the Publisher may be entitled in respect of such breach or the occurrence of such event.

5.7. If a claim, action or proceeding is brought against the Publisher, its licencees or any seller of the Work based on facts, which if true, would violate any of the Warranties or representations in this Agreement, the Publisher may defend the same as it chooses and settle the same in its sole discretion.

5.8. The Author hereby undertakes to hold harmless and indemnify and to continue to hold harmless and indemnify the Publisher from and against all actions, proceedings, claims, liabilities, costs, demands and expenses including experts' and advocates' fees which may be brought against, suffered or incurred by the Publisher (whether before or after Publication) by reason of the Publication, or by reason of any breach of any Warranty given by the Author or the breach of any other terms of this Agreement.

6. RIGHTS AND OBLIGATIONS OF THE PUBLISHER

6.1. The Publisher undertakes:-

- 6.1.1. to publish the Work in printed form within 12 months after receipt of the final Manuscript signed off by the author reserving the right, however, to publish the Work or any part thereof in any material form, including Machine Readable; provided that the Author at the Author's expense and in such manner complies with the pre-publication obligations as set out in clause 2 above, under such imprint, cover design, typeface and in such numbers as the Publisher in its sole discretion may decide;
- 6.1.2. if copyright in the Work is infringed, to immediately notify the Author in writing of the actions and events constituting such infringement and permit the Author to join with the Publisher in any infringement proceedings, or if the Publisher does not itself wish to take any action in infringement proceedings, to allow the Author to do so in the Author's own name, but entirely at all times at the Author's risk and expense; and
- 6.1.3. to keep full, proper and up-to-date books of account and records showing clearly all enquiries, transactions and proceedings relating to the distributorship as recorded in this Agreement and allow any person authorised by the Author to have access to the said books and records and take such copies thereof as the Author may require.
- 6.1.4. with the written consent of the Author licence publication of the Work in Braille or by any other method primarily designed for the physically handicapped persons.

6.2. The Publisher may decline to publish the Work in any of the following situations:-

- 6.2.1. where the Publisher in its reasonable opinion finds the Manuscript to be unacceptable in either form content or both;
- 6.2.2. where the Author fails to remedy a breach of performance of a term of this Agreement within Fourteen (14) days of the Publisher giving the Author notice to remedy such breach; or
- 6.2.3. where the Publisher in its reasonable opinion determines that the market for the Work has so drastically changed as to render the sale of the Work unprofitable.

PROVIDED ALWAYS that upon the occurrence of any of the events set out in this clause 9.2, the Parties shall negotiate a suitable settlement therefor failing which the matter shall be referred to arbitration in accordance with clause 19 below.

7. PROMOTIONS

- 7.1. The Publisher shall use its best endeavours to promote and extend sales of the Work throughout the Territory and work diligently to obtain orders therefor and to this end may prepare such promotional and marketing material relating to the Work it may decide.
- 7.2. The Publisher may publish or permit others to publish or broadcast without charge and without royalty such selections from the Work for publicity purposes as may in its opinion benefit the sale of the Work.

8. DISTRIBUTION OF THE WORK

The Publisher is hereby appointed with effect from the Effective Date and subject to the provisions of clause 12 below as the sole and exclusive distributor of the Work, and the Publisher agrees to act as such and to promote and extend the sale of the Work in the Territory at such recommended retail selling prices as may be agreed between the Parties in writing from time to time.

9. COST

Subject to any provision of this Agreement specifically providing for payment, the Publisher undertakes to bear all costs incurred in performing its obligations under this Agreement.

10. DISCLAIMER

- 11.1 The publisher shall not in any way be liable for the loss, damage or destruction of any Manuscript or supporting materials.
- 11.2 The Publisher shall use its best efforts to carry out its obligations under clause 3 above but nevertheless does not in any way warrant that the activities undertaken by it under the said clause will have the desired results of causing or increasing sales and

shall not be held liable in the event of sales not increasing or meeting any designated or agreed target.

11. ARBITRATION

Should any dispute arise between the Parties with regard to the interpretation, rights, obligations and/or implementation of any one or more of the provisions of this Agreement, the Parties shall in the first instance attempt to resolve such dispute by amicable negotiation. However, should such negotiations fail to achieve a resolution within fourteen (14) days, either Party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:-

- 11.1.the dispute shall be resolved under the provisions of the Kenyan Arbitration Act (as amended from time to time);
- 11.2.the arbitration tribunal shall consist of one arbitrator to be agreed upon by the parties in writing failing which the arbitrator shall be appointed by the Chairman for the time being of the Kenya Chapter of the Chartered Institute of Arbitrators upon the application of either Party;
- 11.3.the place and seat of arbitration shall be Nairobi and the language of arbitration shall be English;
- 11.4.the award of the arbitration tribunal shall be final and binding upon the Parties to the extent permitted by law and either Party may apply to a court of competent jurisdiction for enforcement of such award. The award of the arbitration tribunal may take the form of an order to pay an amount or to perform or to prohibit certain activities; and
- 11.5.notwithstanding the above provisions of this clause, a Party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

12. INTENTION TO BE BOUND

Each of the Parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) that it/he has executed this Agreement with the intention to bind itself/himself to the contents hereof.

13. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in all respects in accordance with Kenyan law and irrespective of their domiciles, the Parties submit to the exclusive jurisdiction of Kenyan courts.

14. NOTICES

14.1. Any notice or other communication under or in connection with this Agreement is to be in writing in the English language and signed by or on behalf of the Party giving it. The notice or communication may be served by being delivered personally or sending it by facsimile transmission or by registered post to the Party due to receive the notice or communication at the address set out in Clause 22.3 or such other address as that Party may (for the purposes of this Clause) specify from time to time in writing to the other Party.

14.2. In the absence of evidence of earlier receipt any notice or communication so served is deemed to have been received:

14.2.1. in the case of personal service, on delivery;

14.2.2. in the case of facsimile transmission, on completion of such transmission except where the time of transmission is not during the addressee's normal business hours in which case it shall be 9.30 a.m. on the next Business Day and provided electronic confirmation of such transmission is obtained; and

14.2.3. in the case of registered post, 7 days from the date of posting.

14.3. The addresses are: -

14.3.1. In the case of the Publisher: -

Name:	LAWAFRICA PUBLISHING LIMITED
Physical Address:	Top Plaza, 3 rd Floor, Kindaruma Road, (Off Ngong Road)
Postal Address:	P.O. Box 4260-00100, Nairobi
Fax Number:	254-20-2495067/80
Marked attention of:	Publishing Director

14.3.2. In the case of the Author: -

Name:	
Physical Address:	
Postal Address:	
Fax Number:	
Marked attention of:	

14.4. Address for service of legal documents;-The address for service of legal documents shall be the same address set out as the publisher's address.

14.5. Change of Address;-A Party may change its address for the purpose of this Clause, by notice in writing to the other Party, which change of address must include a physical address and must be acknowledged as received by the other Party in writing in order to be effective.

15. TERMINATION

15.1. This Agreement shall endure from the Effective Date for a period of six months or until printing.

15.2. Should the Publisher, at any time and in its sole and absolute discretion, decide to cease or discontinue publication of the Work, this Agreement shall terminate, in which event all the copyright in the Work shall revert to the Author subject to the Publisher's right to sell the remaining stock of the Work to recover, at a minimum, its production costs.

15.3. If the Publisher elects not to keep the Work in Print then this Agreement shall terminate forthwith and all the rights granted to the Publisher shall cease.

15.4. For purposes of this Agreement the plates, films, books or sheets used in publication are deemed to be the sole and exclusive property of the Publisher.

16. BREACH

Subject to any provision of this Agreement specifically providing for the remedy of any breach, should either Party (the "Defaulting Party") commit a breach of any of the terms and conditions of this Agreement or any of the warranties incorporated herein and fail to remedy such breach within Fourteen (14) days after receipt of written notice by the other Party calling upon the Defaulting Party to do so, the other Party shall be entitled, without prejudice to any of the Parties' rights in law, to cancel this Agreement or to claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages.

17. GENERAL

17.1. This Agreement shall continue in full force and effect after Publication.

17.2. This Agreement, together with the recitals, schedules and annexures hereto (if any) contain the whole agreement between the Parties relating to the transactions provided for in this Agreement and supersedes all previous agreements (if any) whether written or oral

- between the Parties in respect of such matters and no representations or warranties given or alleged to have been given before the date of this Agreement are of any effect if not included in this Agreement.
- 17.3. Time shall be of the essence in this Agreement both as regards the dates and periods specifically mentioned and as to any dates and periods which may by agreement in writing between or on behalf of the Author and the Publisher be substituted for them.
- 17.4. Any remedy conferred on the Parties for breach of this Agreement (including the breach of any warranty) shall be in addition and without prejudice to all other rights and remedies available to the Parties.
- 17.5. No failure or delay by the Parties in exercising any claim remedy right power or privilege under this Agreement shall operate as a waiver nor shall any single or partial exercise of any claim remedy right power or privilege preclude any further exercise thereof or exercise of any other claim right power or privilege.
- 17.6. If any provision of this Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the other provisions of this Agreement shall not be affected and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.
- 17.7. At any time after the date of this Agreement the Author shall, at the request of the Publisher, execute or use reasonable endeavours to procure the execution of such documents and do or use its best endeavours to procure the doing of such acts and things as the Publisher may reasonably require for the purpose of obtaining the necessary licences to copyrights on behalf of the Publisher or its nominees and giving effect to all the provisions of this Agreement.
- 17.8. This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts each of which shall be an original but all of which provided each Party has executed at least one counterpart shall together constitute one and the same instrument.
- 17.9. Neither Party may cede any of its rights or delegate any of its obligations under this Agreement or in any way assign this Agreement to another party without the consent in writing of the other Party first being obtained.
- 17.10. Each Party warrants that he/it is acting as a principal and not as an agent for an undisclosed principal.

- 17.11. Neither Party shall at any time divulge at any time any information in relation to the provisions of this Agreement or its operation which information is of a confidential nature except with the consent of the other Party or in accordance with the order of a court of competent jurisdiction provided that nothing in this clause shall prevent any party from disclosing any such information to the extent required in or in connection with any arbitral proceedings arising out of this agreement; and
- 17.12. This Agreement may only be amended by a written agreement between the Parties executed in the same manner as this Agreement.

IN WITNESS whereof the Parties have duly executed this Agreement the day and year first above written.

SIGNED by)
for and on behalf of the Publisher)

in the presence of:-)

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SIGNED by Author)

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in the presence of:-)

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