

UNIVERSITY OF TECHNOLOGY, JAMAICA PRESS

PUBLISHING AGREEMENT

THIS AGREEMENT (hereinafter called the Agreement) is made this ____ day of _____, 20 , between ----- (hereinafter called the “Publisher”) and ----- (hereinafter called the “Author,” which term shall be deemed to include the Author’s executor, devisees, heirs, and literary assigns).

WHEREAS, the Author desires the Publisher to publish the Author’s work titled -----, (hereinafter called the “Work”), and the Publisher desires to publish the Work;

NOW THEREFORE, the parties agree as follows:

1. Grant of Publishing Rights

1. The Author hereby grants and assigns to the Publisher, its successors, representatives, and assigns, the sole and exclusive right to publish (i.e., print, publish, and sell) the Work in any language in all forms in Jamaica and elsewhere during the full term of copyright and any renewals and extensions thereof, except as provided herein.

2. The Publisher shall have the sole and exclusive right to publish or to license the Work for publication in the English language or in any language. This exclusive right shall include but shall not be limited to the following:

- (a) printing, publishing and sell the Work as a soft-cover and hard-cover paperback book; and
- (b) Licensing and publishing reprint editions
- (c) first serial rights(i.e. publication of condensations, excerpts, digests, serializations, and extracts in newspapers and periodicals before first publication in book form);
- (d) second serial rights (i.e., publication of condensations, excerpts, digests, serializations, and extracts in newspapers and periodicals after first publication in book form);
- (e) selection rights, (such as a catalogue that produces its own edition of the work);
- (f) abridgment/condensation rights;
- (g) large print rights;
- (h) mass-market paperback rights;
- (i) trade (quality) paperback rights;
- (j) foreign language rights;
- (k) merchandising and commercial rights

(l) audio rights (i.e., the right to use or adapt the Work or any portion thereof as a basis for audio through any method of recording or transmission now known or hereafter devised or which may be devised in the future);

(n) online database (via time-sharing access equipment or direct downloading);

(o) Optical discs in all forms now or to be utilized;

(p) all other forms, formats, platforms, and standards now in use or which may in the future be in use during the term of this agreement and its option terms; and

(q) picture, dramatic, television, radio, and allied rights.

(r) exclusive rights to license in all foreign languages and all countries, the rights granted in subparagraphs above.

(s) The right of first refusal as to any sequel, revision, or republication of the work. During the period of this agreement, and for five (5) years thereafter, except in the case of termination in accordance with paragraph 15, which refers to termination and reversion of rights herein, the Author shall not submit any sequel, revision, or republication of the Work to other publishers, nor seek offers from nor negotiate with others, with respect thereto until first offering said work to the Publisher. After submission of said proposed sequel, revision, or republication, the Publisher shall have thirty (30) days to determine whether to publish the said next work; if so, the parties shall negotiate in good faith the terms of the publishing agreement.

(t) To use or license others to use the approved name, likeness, and biography of the Author, the work and the title of the work, in whole or in part for the promotion of the Work.

2. Execution and Delivery

The Author shall execute and deliver to the Publisher any and all documents which the Publisher reasonably deems necessary or appropriate to evidence or effectuate the rights granted in this Agreement.

3. Claims for infringement

(a) If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in his, her or its name. Notwithstanding the

foregoing, the Publisher has no obligation to initiate litigation on such claims, and shall not be liable for any failure to do so.

(b) Nothing contained in this Clause shall be construed as limiting, modifying or otherwise affecting any of the rights granted to the Publisher under this Agreement.

4. Author's Warranties and Indemnity

A. The Author warrants to the Publisher and its licensees that they are the sole Author and proprietor of the Work; that the Work has not heretofore been published in book form; that they are the owner of all the rights granted to the Publisher, and has full power to enter into this agreement, and that said rights are not subject to any proper agreement, lien, or other claim or rights which may interfere with the rights herein granted; that the Work is original and not in the public domain; that it does not violate the right of privacy of any person; that it contains no libelous, obscene, or other unlawful matter; and that it does not infringe upon the copyright or violate any other right of any person or party.

5. Hold Harmless

(a) The Author agrees to hold the Publisher harmless against any damages, including attorney's fees, finally sustained in any suit involving the Publisher or its licensees by reason of a violation of any of these warranties.

(b) If any such suit is instituted, the Publisher shall promptly notify the Author and may withhold payments due to the Author under this Agreement, until such suit has been settled or withdrawn. If a final adverse judgment is rendered and is not discharged by the Author, the Publisher may apply the payments so withheld to the satisfaction of such judgment.

(c) The Author undertakes for their successors and assigns, to execute at any time, on request of the Publisher, any document or documents to confirm or continue any of the rights defined herein, and to take all proceedings necessary to enforce copyright in Jamaica and elsewhere.

(d) If the Author unreasonably disapproves of any out-of-court settlement recommended by the Publisher and the claim or suit proceeds to trial, the Author shall be liable for all the Publisher's fees, costs, damages, and expenses connected with such trial regardless of outcome. The Publisher shall have the right to reasonably extend the benefit of the indemnities to any person, firm, or corporation at any time, and the Author shall be liable thereon as if Author's warranties were originally made to such person, firm, or corporation.

(e) The provisions of this Section 3 shall survive the termination of this Agreement.

6. Delivery of New Work Manuscript

(a) Upon signing of the Agreement the Author agrees to deliver to the Publisher two hard copies and one electronic copy of the final manuscript. (b) The Author agrees that the electronic copy shall be delivered either by way of email and on a USB Drive. (c) Failure to deliver in all respects as defined herein shall be just cause for the Publisher to terminate this agreement.

b) The Author shall deliver to the Publisher, at the Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art and illustrations) owned by any third party which appear in the Work and written releases or consents by any person or entity described, quoted or depicted in the Work (hereinafter collectively called the "Permissions").

(f) If the Author does not deliver the Permissions, the Publisher shall have the right, but not the obligation, to obtain such Permissions on its own initiative. The Press will pay for copyright use up to a maximum of the amount of US\$1,000 for a single Work.

(g) The Author acknowledges and confirms that the Publisher shall have no liability of any kind for the loss or destruction of the Manuscript or any other documents or materials provided by the Author to the Publisher, and agrees to make and maintain copies of all such documents and materials for use in the event of such loss or destruction.

(h) If the Publisher, in its sole discretion, reasonably deems the Manuscript, and/or any other materials delivered by the Author to be unacceptable in form and substance, then the Publisher shall promptly advise the Author by written notice, and the Author shall cure any defects and generally revise and correct the Manuscript and/or other materials to the reasonable satisfaction of the Publisher, and deliver fully revised and corrected Manuscript and/or other materials promptly after receipt of the Publisher's notice.

7. Termination of the Publishing Agreement

(a) If the Author fails to deliver any revisions and corrections thereof as requested by the Publisher, on the dates reasonably designated by the Publisher, or if the Author fails to do so in a form and substance reasonably satisfactory to the Publisher, then the Publisher shall have the right to terminate this Agreement by so informing the Author by letter sent by certified mail, return receipt requested, courier, email, and/or personal delivery to the address of the Author set forth herein.

8. Author Changes to the Work

The Publisher agrees to allow the Author to make changes in the Work other than for corrections of compositor's errors. The Author agrees to correct and return, no later than ten (10) days after the receipt thereof, proofs provided by the Publisher. The Author agrees to deliver to the Publisher final revised copy satisfactory to the Publisher in content and form.

9. Style, Price, Promotion, Distribution

(a) After consultation with the Author, the Publisher shall have the right, but not the obligation, to publish and re-publish the Work at its own expense in such format and style, cover or covers, manner, and advertisement.

(b) If the Publisher wishes to make editorial changes or deletions in the Work manuscript, it shall consult with the Author prior to publication about these changes, and if the Author and Publisher cannot agree on the changes or deletions, the issues at question shall be decided upon by a mutually chosen third party.

(c) The Publisher reserves the right to reject the Work for any reason, with written notice to the Author.

10. Advertisement and Promotion

(a) The Publisher shall have the right to use, and to license others to use, the Author's name, image, likeness and biographical material for advertising, promotion, and other exploitation of the Work and the other rights granted under this Agreement.

(b) The Publisher shall have the right to determine the time, place, method and manner of advertising, promotion and other exploitation of the Work .

(c) The Publisher shall publish the work at its own expense in such style and manner and under such imprint and at such price as it deems suitable. The publisher shall not be responsible for delays caused by any circumstance beyond its control. In no event shall the Publisher be obligated to publish a work which in its opinion, violates the common-law or statutory copyright or right of privacy of any person or contains libelous or obscene matter. The Publisher shall consult with the Author on the design of the book and the cover. The Publisher shall have final approval.

11. Subsidiary Rights

Subsidiary Rights are additional rights which the Author grants to the Publisher in the languages and within the territories specified above are:

1. (a) Reprint of the entire Work and of selections and shortened versions in anthologies and other volumes; first serial rights and reprint of selections and shortened versions in any magazine or newspaper;

(b) second serial rights and reprint of selections and shortened versions in any magazine or newspaper (provided these rights have not been retained by the purchaser of the first serial rights);

(c) recording and photographic reproduction of all or part of the text; dramatic (stage, radio, television, motion picture) commercial visual and/or sound presentation, reproduction, recording;

(d) developing or licensing for use in all other mechanical or electronic visual and sound reproducing rights of the Work now known or later invented; and

(e) reproduction of the text for the physically handicapped.

All sums accruing from the sale of the above rights or materials produced under those rights shall be divided so that the Author receives fifty percent (50%) of balance after expenses. The Publisher shall have the sole right to negotiate and sign contracts, in regard to these rights, provided it has consulted with the Author.

12. Reserved Rights

The Publisher may publish or permit others to publish, free of charge, such brief selections as it thinks proper to benefit the sale of the Work. All rights in the Work now existing or which may hereafter come into existence, except those hereby specifically granted to the Publisher are reserved to and by the Author for Author's use.

13. Revision

If at any time while this Agreement continues in force the Publisher deems the publication of a new edition or revision of the Work desirable, it shall notify the Author, by letter. If the Author is able and wishes to undertake the preparation of such a new edition, or revision, he shall so inform the Publisher in writing within thirty (30) days of receipt of said notice. Such new edition or revision, if undertaken by the Author, shall contain such material as the Publisher and the Author agree to be appropriate thereto, and the date of delivery of the manuscript thereof shall also be established by mutual written agreement.

14. Competing Works

The Author agrees that during the existence of this Agreement, Author will not prepare or cause to be prepared or published in Author's name or otherwise, any work that shall interfere with or injure the sale or distribution of the Work herein specified.

15. Force Majeure

The failure of the Publisher to publish or republish any of the Work shall not be deemed to be a violation of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of government agencies, labor disputes, or inability to obtain the materials necessary for its manufacture, or occurs for any other reason beyond the Publisher's control; and in the event of delay from any such cause, the publication date or reissue may be postponed accordingly.

16. Royalties

Royalties shall be paid to the Author, by Author's decision, as follows:

A. A royalty of ten percent (10%) of the Publisher's gross sales for copies sold of the Work
or

Royalties shall be paid to the Author as follows: No payment will be made until the Publisher's costs are covered and thereafter 50% of the revenues for copies sold of the Work.

17. Statements & Payments

(a) The Publisher agrees to render semi-annual statements of account and to make payments to the Author.

(b) All other royalties or other sums accruing to the Author in accordance with the provisions of this agreement shall be reported as of the accounting periods in which the Publisher receives them.

(c) Whenever the Author has received an overpayment of monies under the terms of this agreement, the Publisher may deduct the amount of this overpayment from any sums that may accrue to the Author from any agreement with the Publisher.

(d) The Publisher agrees to give to the Author on publication ten (10) copies of the Work and to sell to Author further copies for Author's personal use, not for resale, at a discount of forty percent (40%) from the catalog retail price.

(e). If the Author places an order with the Publisher for 100 or more copies of the Work in advance of the first printing of the Work for Author's personal use, then the Publisher will sell Author these copies at a non-returnable discount of fifty percent (50%) from the catalog retail price. The Author will be billed for these copies, payable upon Author's receipt of them.

18. Termination & Reversion of Rights

(a) If at any time after the expiration of two (2) years from the date of first publication the Publisher shall determine that there are not sufficient sales of the Work to enable it to reasonably continue its publication and sale, it shall be privileged to dispose of the copies remaining on hand as it deems best, subject to the provisions with regard to royalty set forth in Clause 13 of this agreement, provided that the Publisher first notifies the Author in writing addressed to Author's last known address and offers to Author an opportunity to purchase said copies at the Publisher's cost of paper, printing and binding of said copies.

(b) If the Work is out of print in Jamaica and if within ninety (90) days of written demand upon the Publisher by the Author, the Publisher does not agree to bring out a new printing within one (1) year, then upon repayment of any overpayment of royalties or other sums due the Publisher this agreement shall terminate without further notice. The Work shall be considered in print if it is on sale by the Publisher or under license granted by the Publisher as provided herein, or if any contract for its publication, granted by the Publisher, is outstanding. In case of delays from causes beyond the control of the Publisher, the period shall be extended to cover such delays.

(c) . In the event of termination of this agreement, the rights herein granted to the Publisher shall revert to the Author. For thirty (30) days after such termination the Author shall have the right to buy from the Publisher or its successors in interest all copies on hand at the cost of manufacture, or the plates and binder's dies, if any, at one-third (1/3) of their original cost of production, or both. Thereupon the Publisher or its successors in interest shall have the right to sell the remaining copies not purchased by the Author, at the best price it can obtain therefor. Termination of this agreement shall not deprive the Publisher of the right to receive its share of sums due from licenses or contracts granted by the Publisher prior to termination nor relieve Publisher of the obligation to pay to the Author royalties due on such sums.

19. Notices

Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the day of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if delivered courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; (v) by email (vi) by any other method agreed to by the parties ,in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a party may provide notice of in accordance with this section:

If to the Publisher:

University of Technology, Jamaica Press

237 Old Hope Road

Kingston 6

Jamaica W.I

Email: utechjapress@utech.edu.jm

If to the Author:

20. Successors and Assigns

This agreement shall be binding upon and inure to the benefit of the executors, administrators, and assigns of the Author and upon and to the successors and assigns of the Publisher.

21. Term of Agreement

Unless previously terminated as provided herein, this agreement shall continue in force, with respect to copyright obtained under the laws of any country covered by this agreement, for the term of the original copyright, renewal, or extension thereof which relates to the Work and which may accrue to the Author from any agreement with the Publisher.

22. Waivers

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, and no waiver by either party, whether written or oral, express or implied, of any rights under or arising from this Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed in writing.

23. Amendments

No amendment of, addition to or modification of this Agreement shall be effective unless reduced to writing and signed by the parties hereto.

24. Laws Applicable

This Agreement shall be interpreted according to the laws of Jamaica.

25. Severability

In the event one or more clauses of this Agreement are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of this Agreement.

26. Dispute Resolution

Any dispute between the parties to this AGREEMENT involving the non-performance or breach of this AGREEMENT or any of its terms, shall on the written request of either party served on the other, be submitted first to mediation at the Dispute Resolution Foundation in Kingston, Jamaica. If the parties are

unable to resolve their dispute through mediation, then the dispute shall be submitted to arbitration. Said arbitration shall comply with and be governed by the provisions of the Arbitration Act of Jamaica or any statutory modification for the time being in force. Where the decision is taken to pursue arbitration the parties shall appoint one person to hear and determine the dispute and, if they are unable to agree, then the Arbitrator shall be selected by the President of the Bar Association of Jamaica and the determination or award of said arbitrator shall be final, binding and conclusive upon the Parties.

27. Entire Agreement

This Agreement sets forth the entire agreement of the parties, and replaces and supersedes any previous agreement between the parties on the subject, whether oral or written, express or implied.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written

For Publisher

Author

Date

Date