



KIPCHUMBA FOUNDATION

## PUBLISHING CONTRACT

This Publishing Contract (“Agreement”) is entered into as of \_\_\_\_\_ (“Effective Date”) between Kipchumba Foundation, Rehema House, 4th Floor, Standard/ Kaunda Street, P.O. Box 25380 – 00100, Nairobi, Kenya (“Publisher”), and \_\_\_\_\_, (“Author”) concerning the work presently titled \_\_\_\_\_ (“Work”).

### OBJECTIVE

#### 1. Motivation.

1.1 Kipchumba Foundation is a non-profit, non-political, non-partisan education-based organization that enhances appreciation of wider theoretical, philosophical and civilizational perspectives.

1.2 This objective is met by research, documentation and dissemination of knowledge and information to benefit humanity.

1.3 The publishing is done on quasi-self-publishing and self-publishing forms depending on the specific conditions of this agreement and availability of the necessary facilities and technology at the disposal of the Author; however, the Publisher is under no obligation to fulfil the expectations out of this clause.

#### 2. Proceeds.

2.1 The proceeds from published materials are solely intended to continue this cause and promote its sustainability.

2.2 The implicit understanding of this agreement is that the Author is making a contribution towards this cause and that any royalties advanced to the Author by the Publisher are meant for enabling the Author to continue the struggle for an information-conscious global society.

### GRANT OF RIGHTS

#### 3. Grant of Rights.

3.1 Author, on behalf of him/herself and his/her heirs, executors, representatives, administrators, successors, devisees, and assigns, exclusively grants, assigns, and otherwise transfers to Publisher and its licensees, successors, and assigns, the following specific rights in the Work for the full term of copyright in the Work and throughout the world in English and in any other language deemed commercially

viable by the Publisher.

3.2 All rights not expressly granted to Publisher are hereby reserved exclusively by Author.

3.3 The rights to print, publish, distribute, sell, and generally exploit the Work in any form, including hardcover, paperback/ softcover, eBook, video, and audio editions.

3.4 The right to use and generally exploit the Work in the form of an abridged and/or unabridged “electronic book”, without the use of any additional material of any kind and all electronic and/ or digital media, including, by way of example only, portable digital storage media such as disks and diskettes and online computer services on the Internet or other computer-based networks.

3.5 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. Subsidiary Rights.**

4.1 Reprint of the entire Work and of selections and shortened versions in anthologies and other volumes.

4.2 First and second serial rights and reprint of selections and shortened versions in any magazine or newspaper.

4.3 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.

4.4 Developing or licensing for use in all other mechanical or electronic visual and sound reproducing rights of the Work now known or later invented.

4.5 Reproduction of the text for the handicapped.

4.6 Online database (via time-sharing access equipment or direct downloading)

4.7 CD-ROM optical discs in all forms now or to be utilized.

4.8 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.

#### **5. 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 agreed period of time. 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.

#### **6. 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.

**7. Territory.**

The rights granted to Publisher in this Agreement may be exploited throughout the world.

**8. Term.**

The rights granted to Publisher in this Agreement may be exploited for the entire lifetime of the Author commencing from the date of this contract, and may be renewed posthumously by mutual agreement between Author's heirs, executors, representatives, administrators, successors, devisees, and assigns; and Publisher in line with the existing national and international copyright and publishing laws and regulations.

**AUTHOR COMPENSATION****9. Royalties on Publisher's Editions.**

For copies of the Work sold by the Publisher under this Agreement, Publisher shall credit Author's account with the following royalties on Net Copies Sold:

**9.1 Individual/ Corporate Author(s)**

- 9.1.1 30% of the price of any original Print Edition.
- 9.1.2 40% of the price of any original Electronic Edition.
- 9.1.3 20% of the price of any translation Print Edition.
- 9.1.4 30% of the price of any translation Electronic Edition.
- 9.1.5 40% of the price of any original Audio/ Video Edition.
- 9.1.6 30% of the price of any translation Audio/ Video Edition.

**9.2 Translator(s)**

- 9.2.1 10% of the price of the "particular translation" in Print Edition/ Electronic/ Audio/ Video Edition.
- 9.2.2 A translator is considered here as an Author.
- 9.2.3 One translator strictly translates into only one language.

**9.3 Open Sources Program Sources/ Authors**

- 9.3.1 10% of the price of any original or translation Print Edition/ Electronic/ Audio/ Video Edition paid to "Sources".
- 9.3.2 The Author of the materials of Open Sources Program is Kipchumba Foundation, herein referred to as "Publisher".
- 9.3.3 Royalties are paid to the sources as a group through their treasurer, as an incentive to advance the program in their respective cultures and trends.
- 9.4 "Electronic Edition," as used in this Agreement, shall refer to any Edition of the Work that is sold, distributed, or accessed in an electronic or digital format through the publisher's distribution network.
- 9.5 "Net Revenues," as used in this Agreement, shall refer to money actually received by the Publisher from the sale of copies of the work, net of returns, after deducting Distribution and Freight Fees.
- 9.6 "Net Copies Sold," as used in this Agreement, means the sale, less returns, of any

and all copies of the Work sold by Publisher through conventional channels of distribution in the book trade.

9.7 “Deep Discounts,” as used in this Agreement, shall refer to all sales in excess of Publisher’s normal wholesale discount. These sales may occur in high discount channels outside the normal book-purchasing channels.

9.8 “Open Sources Program”, as used in this Agreement, is one of the programs run by Publisher that entails documenting cultures and trends and makes use of knowledgeable elders/ members of the respective cultures and trends, herein referred to as “Sources”.

## **THE MANUSCRIPT**

### **10. Delivery of Manuscript.**

10.1 Author agrees to deliver the manuscript of the Work in the original language in its entirety (“the Manuscript”) to the Publisher in the form of a computer readable file compatible with Microsoft Word.

10.2 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.

10.3 The Author is free to interpret the regulations of this contract and publish their work directly through the self-publishing platform provided by the Publisher, pending some review by the Publisher within 24 hours of manuscript submission into the system. Failure to interpret the regulations and other formatting guidelines carefully might result in the Author being blacklisted.

### **11. Artwork, Permissions, Index, and Other Materials.**

Author shall deliver electronically to Publisher, or physically at Author’s sole expense to the nearest Publisher’s representation, not later than the date(s) as may be designated by Publisher, each of the following:

11.1. Original art, illustrations, maps, charts, photographs, or other artwork (collectively “Artwork”) as Author and Publisher may jointly agree upon and approve.

11.2. An index, bibliography, table of contents, foreword, introduction, preface, or similar matter (“Frontmatter” and “Backmatter”) if deemed applicable to the Work.

11.3. Written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to Artwork, Backmatter, and/or Frontmatter) owned by any third party which appear in the Works and written releases and consents by any person or entity described, quoted, or depicted in the Works (collectively “Permissions”).

11.4. If the Publisher, in its sole discretion deems the Manuscript, Artwork, Frontmatter and/or Backmatter, Permissions and/or any other materials delivered by Author under this Agreement to be unacceptable in form or substance, then Publisher shall so advise Author and Author shall have the opportunity to cure any defects and generally revise, correct and/or supplement the Manuscript, Artwork, Frontmatter and/or Backmatter, Permissions and/or other materials.

## **PUBLICATION**

### **12. Editing and Publication Format.**

12.1 Publisher shall have the right to edit and revise the Work for any and all uses contemplated under this Agreement, provided that the substantive meaning of the Work is not materially altered.

12.2 Publisher shall have the right to manufacture, distribute, advertise, promote, and including typesetting, paper, printing, binding, cover and/or jacket design, imprint, title, and price.

12.3 Publisher agrees that Author shall be reasonably consulted on the title and cover design of the Work in book form.

12.4 Notwithstanding any editorial changes or revisions by Publisher, Author's warranties and indemnities under this Agreement shall remain in full force and effect.

### **13. Proofs.**

Publisher shall furnish Author with an electronic proof of the Work after each editing phase. Author agrees to read, correct, and return the proof copy within the specified period indicated by the Publisher. If the Author fails to return the corrected proofs within the time set forth above, the Publisher may publish the Work without the Author's approval of the proofs.

### **14. Author's Copies.**

This is a purely self-publishing framework and the Publisher is under no obligation to send the Author any Printed materials.

### **15. Advertising and Promotion.**

Publisher shall have the right to advertise, promote, or otherwise exploit the Work, except as Author and Publisher may set forth in writing. Author acknowledges that publisher is the exclusive print, and distribution vehicle for the Work. Accordingly, the Author shall make a reasonable effort to engage in public expression to promote the sale of the Work whenever appropriate or in coordination with the Publisher's promotional efforts.

### **16. Use of Author's Name and Likeness.**

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

## **COPYRIGHT**

## **17. Copyright Notice and Registration.**

17.1 Publisher shall, in all versions of the Work published by Publisher under this Agreement, place a notice of copyright in the name of the Author in a form and place that Publisher reasonably believes to comply with the requirements of national and international copyright law.

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

## **18. Copyright Infringement.**

18.1 If, at any time during the term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights that are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims.

18.2 If the parties proceed jointly, the expenses (including attorneys' fees) and recovery, if any, shall be shared equally by the parties.

18.3 If the parties do not proceed jointly, either or both parties 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.

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

## **ACCOUNTING**

### **19. Accounting.**

19.1 Royalties are payable after they exceed 100 United States of America dollars.

19.2 Publisher shall render to Author a statement of Net Copies Sold and pay Author any amount(s) then owing. Books returned via the distribution channel will incur a negative royalty per copy.

19.3 An Excel or other electronic sales sheet is sent to the authors periodically or instantly on demand. A sales sheet showing the lifetime sales of the book shall be generated for the authors upon request.

19.4 The Publisher shall have the right to debit the account of the Author for any overpayment of royalties, or any other amounts owing the Publisher under any other agreement between the Publisher and the Author.

### **20. Audit Rights.**

20.1 The Author shall have the right, upon reasonable notice and during usual business hours, but not more than once each year, to engage a certified public accountant to examine the books and records of the Publisher relating to the Work at the place where such records are regularly maintained.

20.2 Any such examination shall be at the sole cost of the Author, and may not be made by any person acting on a contingent fee basis.

## **WARRANTIES, REPRESENTATIONS, AND INDEMNITIES**

### **21. Author's Representations and Warranties.**

Author represents and warrants to Publisher that:

- (i) the Work is not in the public domain.
- (ii) Author is the sole proprietor of the Work and has full power and authority, free of any rights of any nature whatsoever by any other person, to enter into this Agreement and to grant the rights which are granted to Publisher in this Agreement.
- (iii) the Work has not heretofore been published, in whole or in part, in any form.
- (iv) the Work does not, and if published will not, infringe upon any copyright, trademark, or any other intellectual property rights or other proprietary rights of any third party.
- (v) the Work contains no matter whatsoever that is obscene, libelous, or violate any third party's right of privacy or publicity, or otherwise in contravention of law or the right of any third party.
- (vi) all statements of fact in the Work are true and are based on diligent research.
- (vii) all advice and instruction in the Work are safe and sound, and are not negligent or defective in any manner.
- (viii) the Work, if biographical or "as told to" Author, are authentic and accurate.
- (ix) Author will not hereafter enter into any agreement or understanding with any person or entity which might conflict with the rights granted to Publisher under this Agreement.

### **22. Author's Indemnity of Publisher.**

Author shall indemnify, defend, and hold harmless Publisher, its subsidiaries and affiliates, and their respective directors, officers, employees, partners, associates, affiliates, agents, and representatives, from any and all claims, debts, demands, suits, actions, proceedings, and/or prosecutions ("Claims") based on allegations which, if true, would constitute a breach of any of the foregoing warranties and representations or any other obligation of Author under this Agreement, and any and all liabilities, losses, expenses (including attorney's fees and costs) and damages in consequence thereof.

## **CESSATION OF PUBLICATION**

### **23. Reversion of Rights to Author.**

23.1 In the event of bankruptcy or liquidation of the Publisher for any cause whatsoever, the rights of publication shall revert to the Author upon payment of fair

market value to be determined by agreement or arbitration. Thereafter, this agreement shall thereupon terminate without notice.

23.2 Upon the death of the author, all rights in the Work granted to the Publisher in this Agreement, except the rights to dispose of existing stock, will revert back to the Author's heirs, executors, administrators, representatives, successors, devisees, and assigns, who shall have the right, within 30 days of the notice of termination, to purchase cover and interior files (if any) used to produce the Work, and shall not republish the Work using the Publisher's name, logo, ISBN, or classification numbers.

#### **24. Entire Agreement.**

Author acknowledges and agrees that this Agreement supersedes and replaces all other communications between Author and Publisher, and represents the complete and entire agreement of Author and Publisher regarding the Work.

#### **25. No Employment or Other Relationship.**

The parties acknowledge and agree that this Agreement is an arm's length transaction between independently contracting parties, and no partnership, joint venture, trust, employer-employee relationship, or other legal relationship is created between them.

#### **26. Multiple Authors.**

Whenever the term "Author" refers to more than one person, such persons will be jointly and severally responsible for all duties, obligations, and covenants under this Agreement, and shall share equally the total benefits, royalties, and other amounts described under this Agreement, unless otherwise specified in writing signed by all parties.

#### **27. Force Majeure.**

Publisher's obligations under this Agreement shall be extended by a period equal to any period of force majeure that prevents Publisher from performing such obligations.

#### **28. Binding on Successors.**

This Agreement shall be binding on the heirs, executors, representatives, administrators, successors, devisees, and assigns of Author, and the successors, assigns, and licensees of Publisher.

#### **29. Amendments.**

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

#### **30. 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.

**31. Arbitration.**

31.1 Any dispute, controversy, or claim arising under, out of, in connection with, or in relation to this Agreement will be subject to final and binding arbitration before a three arbitrator panel (one arbitrator selected by each party, which arbitrators select the third) conducted applying applicable national or international laws to the extent that the Rules are consistent with this Agreement.

31.2 Any request for arbitration will be delivered to the other party and will contain a summary of the controversy or claim, the causes of action and theories of liability that the requesting party believes it has against the other party, and a statement of relief which the requesting party believes to be appropriate.

31.3 The arbitration will be completed in no more than sixty (60) days from the date the arbitrators are selected, unless the arbitrators require an extension.

31.4 Any arbitration hearings will be held in a mutually agreed place, and judgement upon any award rendered in arbitration may be entered in any court having jurisdiction thereof.

**32. Applicable Law.**

This agreement shall be interpreted, construed, and governed in all respects by the applicable national and international laws.

**Signature Block.**

IN WITNESS THEREOF, Author and Publisher have executed this Agreement as of the Effective Date \_\_\_\_\_.

“AUTHOR”

“PUBLISHER”

\_\_\_\_\_

Kipchumba Foundation

\_\_\_\_\_

(Managing Editor)

\_\_\_\_\_

Commissioner for Oaths