

MEMORANDUM OF AGREEMENT

THE ROUGH GUIDE TO KENYA (11TH EDITION) – contract with Hilary Heuler

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MEMORANDUM OF AGREEMENT

Dated

Between **HILARY HEULER**
Living Goods, c/o Sylvain Romieu
PO Box 30261
Nairobi 00100
Kenya

(hereafter called '**the Proprietor**')
of the one part and
ROUGH GUIDES LTD
whose registered office is at
80 Strand, London, WC2R 0RL
(hereafter called '**the Publishers**')
of the other part

This Agreement concerns a contribution for a work entitled **THE ROUGH GUIDE TO KENYA (11th Edition)** ('the Guide').

Such contribution shall comprise an update of Chapter 1: Nairobi and around; Chapter 2: The Central Highlands; Chapter 4: Western Kenya; and Chapter 6: The coast of the Guide ('the Contribution').

1. Delivery of Material

- (a) The Proprietor undertakes to produce and deliver the Contribution as described in the synopsis attached ('the Synopsis'), including all relevant illustrations, third party quotations together with copyright licences and the wording for any necessary acknowledgements to reproduce such material in the Contribution, maps and plans, in email in an agreed format to the satisfaction of the Publishers having regard to the provisions of clause 2 below in the stages set out in the schedule for production of the Contribution ('the Delivery Schedule'). In this regard, time is of the essence.
- (b) The Proprietor shall be responsible for providing her own equipment and materials for her part in the Guide and shall prepare her part in the Guide on her premises except when required to attend meetings at the Publishers' premises in relation to the preparation of the Guide.

2. Failure to Deliver / Approvals

- (a) If the Proprietor fails to deliver any part of the Contribution by the date(s) specified in the Delivery Schedule or any revised date that may be agreed in writing, the Publishers shall be entitled to terminate this Agreement forthwith and to recover the fees paid to the Proprietor.
- (b) In the event that any part of the Contribution is not, in the absolute discretion of the Publishers, of the extent, character and/or standard which has been agreed and in accordance with the Synopsis or which might reasonably be expected by the Publishers, the Publishers shall have the right, within sixty (60) days of receipt to terminate this Agreement and to recover the fees paid to the Proprietor or to require the Proprietor to make such alterations specified by the Publishers within a period specified by the Publishers in order to bring the Contribution up to the proper standard. Upon re-submission of the Contribution, the Publishers shall

have the further right for a period of sixty (60) days to decline to publish the Contribution and to terminate this Agreement during such sixty (60) day period and recover the fees paid to the Proprietor.

- (c) Notwithstanding acceptance of the Contribution by the Publishers, the Publishers reserve the right to edit, abridge, amend or re-write the Contribution in such manner as they shall in their absolute discretion think fit. In connection with such alterations, the Proprietor shall co-operate with the Publishers to the best of the Proprietor's ability and shall supply such additional information as the Publishers deem necessary.

3. **Assignment of Copyright**

In return for the payments set out below, the Proprietor hereby assigns to the Publishers, by way of assignment of present or future copyright, the entire copyright and all other rights of whatsoever nature in and to the Contribution (other than those parts of the Contribution in respect of which copyright vests in third parties including but not limited to any material contained in previous edition(s) of the Guide) for the full period of copyright and all renewals and extensions thereto. The Proprietor also hereby acknowledges that copyright in the layout, format and 'get-up' of the Guide is and shall remain vested in the Publishers.

4. **Moral Rights Waiver**

The Proprietor hereby waives her moral rights, including but not limited to the right to object to derogatory treatment of the Contribution as provided for in Section 80 of the Copyright, Designs and Patents Act 1988 or similar moral rights legislation in other jurisdictions.

5. **Correction of Proofs**

The Proprietor undertakes to check and approve the proofs of the Contribution where required by the Publishers and to insert page references where relevant.

6. **Copyright Material from Other Sources**

The Proprietor shall be responsible for clearing copyright in all textual or illustrative or other copyright material included in the Contribution from any source throughout the world and in any format envisaged by this Agreement. The cost of copyright licences shall be borne by the Publishers, but only where the Publishers have given their prior written agreement to incur such costs, failing which such costs shall be borne by the Proprietor.

7. **Warranties and Indemnities**

- (a) The Proprietor warrants to the Publishers and their licensees that:
- (i) she has full power to make this Agreement, that the Contribution is original, has not been published in any form anywhere in the world and is in no way whatever an infringement of any existing copyright or licence or is otherwise actionable at law;
 - (ii) the Contribution contains no defamatory or otherwise unlawful matter, or any material in breach of Official Secrets Acts or any matter which invades any individuals' rights of privacy and that all statements in the Contribution purporting to be facts are true;
 - (iii) any recipe, instruction or formula in the Contribution will not cause any injury, illness or damage to the user; and

- (iv) the Contribution contains no obscene material.
- (b) The Proprietor shall indemnify and keep the Publishers, and any party whom the Publishers indemnify in the ordinary course of their business, indemnified against any loss, injury or damage occasioned to the Publishers in consequence of any breach of these warranties or arising out of any claim alleging that the Contribution constitutes in any way a breach of these warranties. The indemnification shall include any legal costs or expenses and any compensation costs and disbursements paid by the Publishers on the advice of their legal advisers to compromise or settle any claim. The Publishers shall in the normal course of events consult with the Proprietor before settling any claims.
- (c) In the event of any claim being made, the Publishers may retain any sum due from the Publishers to the Proprietor under this or any other agreement between the parties until the final settlement of such claims and such sums retained by the Publishers shall be used by them to set off any liability of the Proprietor to the Publishers.
- (d) The above warranties and indemnities shall survive the termination of this Agreement.

8. **Fee**

In return for the provision of work in accordance with the provisions set out in this Agreement, the Publishers shall pay to the Proprietor an outright fee of **four thousand nine hundred pounds (£4,900)** payable in the following stages:

three thousand four hundred and thirty pounds (£3,430) within thirty (30) days of receipt of the invoice issued on or after the date of signature of this Agreement by both parties hereto; and

one thousand four hundred and seventy pounds (£1,470) on delivery to and approval by the Publishers of Stage Five as set out in the Delivery Schedule .

The Proprietor shall issue an invoice for each of the amounts specified above in accordance with the attached 'Instructions for Sending an Invoice', including the PO Number, the title of the Guide and the Guide's ISBN supplied by the Publishers, to be paid within thirty (30) days of receipt of invoice by the Publishers.

9. **Default**

Should the Publishers or anyone acting on their behalf fail to fulfil or comply with any of the provisions of this Agreement within three (3) months of receipt by the Publishers of written notification from the Proprietor of such failure, or should the Publishers go into insolvent liquidation other than for the purpose of amalgamation or reconstruction only, this Agreement shall terminate, without prejudice to any rights of the Publishers and any third party in respect of any agreements validly entered into by the Publishers prior to such termination and any claims either party may have against the other for damages or otherwise arising prior to the date of termination.

10. **Notices**

Any notice under this Agreement may be delivered or sent by first class recorded delivery post to the address of the party set out in this Agreement (or as otherwise notified from time to time) and such notice shall be deemed to have been received forty-eight (48) hours from the date of posting.

Initials

11. **Confidentiality**

- (a) The parties shall keep and procure to be kept secret and confidential all information disclosed or obtained as a result of the relationship of the parties under this Agreement and shall not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the other party.
- (b) The obligations of confidentiality shall not extend to any matter which the other party can show is in or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or was in its written records prior to the date of signature of this Agreement; was independently disclosed to it by a third party entitled to disclose the same; or is required to be disclosed under any applicable law, or by order of a court or governmental body or other competent authority.

12. **Headings**

The headings in this Agreement shall not affect its interpretation and are for convenience only.

13. **Definition of Parties and Assignment**

- (a) This Agreement shall be binding upon and shall inure to the benefit of the parties and each party's respective heirs, executors, administrators, successors and permitted assigns. Notwithstanding anything contained in this Agreement the Publishers may assign this Agreement in whole or in part to any parent, subsidiary or affiliated company or to an assignee expressly assuming all of the obligations of the Publishers who or which acquires all or a substantial portion of the Publishers' business.
- (b) The Proprietor's obligations under this Agreement are personal to the Proprietor and may not be assigned or subcontracted without the Publishers' prior written consent.

14. **Variation**

Any amendment or discharge to this Agreement must be in writing and signed by an authorised signatory of both the Proprietor and the Publishers.

15. **Data Protection**

The Publishers undertake to respect the privacy and rights of the Proprietor in accordance with the Data Protection Act 1998 ('the Act'). The Proprietor consents to the Publishers holding, processing and disclosing the Proprietor's personal information for the purpose of properly performing the Publishers' obligations hereunder including, but not limited to, disclosure to associated group companies, third parties, consultants and sub-contractors. Penguin Books Limited, the holding company of the Publishers, is registered as a data controller under the Act.

16. **Entire Agreement and Third Party Rights**

- (a) This Agreement (including the Delivery Schedule and Synopsis) contains the entire agreement between the parties relating to its subject matter.
- (b) Any person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

17. **Waiver**

The waiver by either party of a breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision. Any waiver of any breach of this Agreement shall be in writing.

18. **Governing Law and Jurisdiction**

This Agreement shall be governed by English law and the parties hereto submit to the jurisdiction of the English courts.

.....
Hilary Heuler

.....
for and on behalf of the **Publishers**
Keith Drew, Publisher

Initials

DELIVERY SCHEDULE AND SYNOPSIS

Title and edition	Rough Guide to Kenya/11
Editor/Managing editor	Edward Aves/Andy Turner

Author/contributor(s)	Chapter/s
Hilary Heuler	1, 2, 4 & 6

Editing period	August to October 2015
Total page extent	280pp
Total number of maps:	49

Delivery Schedule

<u>Stage</u>	<u>Material to be delivered to and approved by the Publishers</u>	<u>Delivery Date</u>
One	Completed <u>Chapter 1: Nairobi and around</u>	1 August 2015
Two	Completed <u>Chapter 2: The Central Highlands</u>	10 August 2015
Three	Completed <u>Chapter 4: Western Kenya</u>	24 August 2015
Four	Completed <u>Chapter 6: The coast</u>	11 Sept 2015
Five	All queries answered; all text finalised	15 Nov 2015

GENERAL COMMENTS

Title-specific points eg any length/restructuring issues, general remarks from last edition title report, changes observed in destination, spellings of place names, use of italics, accents etc.

From Richard:

Dear all: please read this in conjunction with emails and other snips to follow. This is just a top-of-mind summary after skimming through the current edition.

References

Expert Africa.com

theroughguidetokenya.blogspot.com

New edition of Lonely Planet Kenya – though it does seem to have taken a lot of inspiration from RG Kenya

- 10th edition was researched in 2012.
- No major comments. I was very happy with the overall feel of the book.

- Structure is fine as is. We've toyed over the years with splitting the major parks out of their own chapter (Ch5) but they really do work best together, especially as this structure makes the book more manageable for people at opposite ends of the budget spectrum.
- I've used **bit.ly** short urls quite often when the actual url is very long. Please continue to do that when necessary, and always customise the name (eg bit/ly.UmaniSprings) rather than leaving a string of random characters.

From Ed

A legacy of the old format (which was converted into the new, more granular format last edition), there remains "linking" text between discrete entries in running text in places, eg see p.107/City Square account. Account starts:

"Heading south down Koinage Street..."

Accounts should work on their own without reference to the preceding section. Updaters should pay attention to how accounts start, ensuring that each account works discretely - you may need to slightly tweak opening lines of accounts. Road/street names and directions (if absolutely necessary – normally not when there's a map) should go in sight details.

Maps and listings: Drinking and nightlife venues (bars, clubs, live music venues) should be marked with orange markers on maps, and have separate map keys – currently they're often combined with Eating (restaurants and cafés) listings.

I suggest we also simplify listings map key heads on the maps to the following, to match LH1 heads:

Accommodation (purple)

Eating (green)

Drinking and nightlife (orange)

Shopping (red)

For towns and villages where there are only one or two bars/nightlife venues, it probably makes sense still to combine Eating and drinking to avoid small, bitty (and space-wasting) sections.

Wi-fi to be included at the end of each hotel and restaurant review when available (before price/opening hours), with the exception of Nairobi, where it's widespread – see notes in chapter 1.

Internet cafés to be included where available for towns/villages where those no other means of getting online.

CHAPTER 1: Nairobi and around

Consider chapter structure, places to add/drop, maps to add/drop/resize, boxes to add/drop/move, any text that should be converted to boxes or Listings.

DPS maps should be kept all together on 3 spreads – much easier for readers.

Some sections still read as though they are part of walking tour – see note on linking text in "General comments".

Westgate Mall attack should be mentioned, probably in Security in Nairobi box – plus east Nairobi grenade attacks. Eastleigh FCO advice fair?

p.107 Nairobi Gallery in former Provincial Commissioner's Office. Need more details.

p.110 Museums box – double check membership entitlement.

p.114 Airport – 2013 fire, 2014-15 rebuilding and extensions

Accommodation

Hogmead is closed

Miti Mingi Guest House is closed

Youth Hostel is closed

Add: Purdy Arms, Hemingways Nairobi

p.125 Box on Nairobi's drinking water – needed? The situation here isn't any different than elsewhere in East Africa.

Eating

Use LH2s for area divisions, not LH3s (no need for LH2/Restaurants and cafés). The City-wide chains section can be the first LH2.

p.135 – African Heritage House – needs a proper visit (place to stay too?)

p.136 – Gikomba market fire June 2015

Bars, Clubs and Venues

Change LH1 title to Drinking and nightlife.

Arts and entertainment

Perhaps change to Arts and culture, to match Mombasa (and avoid confusion)

Shopping

Can we convert Shopping malls, bookshops and music stores into proper listings format, with addresses, maps refs and opening times.

Directory

Airline info should be in with Arrival and departure/By plane (cf p.398)

Include mention of wi-fi's widespread availability in Directory and Accommodation section. Mention exceptions in reviews?

AUTHOR: Hilary Heuler

PAGE EXTENT: 60pp

DELIVERY DATE (chapter plus maps and map keys): **1 August 2015**

CHAPTER 2: The Central Highlands

Consider chapter structure, places to add/drop, maps to add/drop/resize, boxes to add/drop/move, any text that should be converted to boxes or Listings.

pp.178–181 Nanyuki: somewhere in the town intro and in the accommodation section, we need to nod to the fact that Nanyuki is the gateway to Laikipia (p.500) and much of northern Kenya.

p.186 Embu restaurants: basic places but could we expand to proper reviews?

pp.182–185 Meru: we need to acknowledge Meru town as the gateway to Meru National Park (p.379).

AUTHOR: Hilary Heuler

PAGE EXTENT: 44pp

DELIVERY DATE (chapter plus maps and map keys): **10 August 2015**

CHAPTER 4: Western Kenya

Consider chapter structure, places to add/drop, maps to add/drop/resize, boxes to add/drop/move, any text that should be converted to boxes or Listings.

Kisumu: there's no mention of the train service on p.256 even though we cover trains to Kisumu in Basics on p.54. This line has been very sporadic or cancelled for months on end in recent years.

Kogelo – since Obama won't be president for most of the lifetime of this book, I imagine there won't be much interest in Kogelo. Suggest we trim it or cut it altogether. Richard also notes that we should check if Obama's July 2015 visit to Kenya has left any mark here.)

pp.268–271 There shouldn't be a separate listings section for Tom Mboya's Mausoleum (p.270) appearing before the main listings section for Rusinga Island and Mbita. Either move the main listings to the start of the H3 (below intro) or condense mausoleum transport info and take into sight details.

AUTHOR: Hilary Heuler

PAGE EXTENT: 62pp

CHAPTER 6: The coast

Consider chapter structure, places to add/drop, maps to add/drop/resize, boxes to add/drop/move, any text that should be converted to boxes or Listings.

Should be "The coast", not "The Coast" (equally "south coast", "north coast" etc in the text).

From Richard: The three boxes of security advice on p.388, 472 and 473 need to take account of each other. We also need to mention the terrible massacres in the mainland part of Lamu county in June 2014, around Mpeketoni, attributed to Al Shabaab, and possibly the shooting dead of two female tourists in separate incidents in Mombasa old city in 2014 (not clear whether they were muggings gone wrong or some kind of DIY terrorist attack).

During the course of the 10th edition the FCO travel advice on the Kenya coast has moved up and down the coast. We should give our own view on the safety of each area we cover. My own view is that everywhere along the coast between Lungalunga and Malindi is fine to visit, as are the islands of the Lamu archipelago, including Kiwaiyu (though get advice before going to Kiwaiyu – and you would always want to call ahead anyway). I would certainly get local advice before travelling by land anywhere north of Che Shale (beach hotel north of Malindi). And I wouldn't venture north of Hindi at all.

-Could include a small box on the Mombasa Republican Council, a secessionist movement that's been quite active lately

-Either here or in Nairobi section, could include something about the Nairobi-Mombasa train (the only one still running) – why it's iconic, why it's a hassle and plans to refurbish the tracks. Lots of people take it, or try to

Tana Delta: the primate reserve and Mchelelo Research Camp should be okay in terms of security, but check local advice before taking the B8 road north to the Garissa junction. The rest of p.471 and most of p.472 (Kipini and around) is probably inadvisable to just wander around. I don't know the current status of the Kipini Conservancy. One place that is definitely operating as normal is Delta Dunes, but most people fly to this lodge by private charter, the plane landing on the beach.

Lamu Archipelago map – shift label to avoid obscuring subject matter.

From Ed:

p.388 Seasons on the coast: box this?

p.394 & 395 Combine the two dhow boxes.

p.404 Shopping: Convert Noor Ala Noor to listings style.

p.406 Move Safaris to before Accommodation, as per Nairobi

p.413 Convert LH1/Information to LH1/Directory, with listings bolds.

p.418 Rename LH1/Restaurants, bars and clubs Eating (and drinking – or separate)

p.436 LH2/Restaurants and cafes head unnecessary.

p.438 Move LH1/Activities to after LH1/Information and services.

p.441 Shimoni section should be H3 – ditto Wasini (p.443).

p.447 Takaungu: Combine Accommodation and eating

p.449 LH1/Services should be LH1/Directory and move to end of listings.

p.451 LHI/Exploring Arabuko Soko NP – some of this info should be in running text.
p.457 Move “Getting to...” section to Watamu Marine National Park sight details.
p.458 Services – move to Directory
p.460 Suggest boxing Diving and Fishing sections.
p.464 LH1/Arrival and departure By plane should go first, before By bus and matatu
p.465 Move Banks and internet access to Directory.
p.468 Give Crafts section a LH2 and convert to listings style.
p.469 Box activities section?
AUTHOR: Hilary Heuler
PAGE EXTENT: 114pp
DELIVERY DATE (chapter plus maps and map keys): 11 September 2015

Initials

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3. Please supply one invoice per purchase order.
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