

## **PUBLISHING AGREEMENT**

**THIS PUBLISHING AGREEMENT** (the "Agreement") is made this \_\_\_th day of \_\_\_\_\_, 200\_\_ between \_\_\_\_\_, with an address at \_\_\_\_\_ (the "AUTHOR") and JimSam, Inc., a Tennessee corporation, with a mailing address of P.O. Box 265, Lobelville, TN 37097 (the "PUBLISHER").

### **1. Grant of Rights**

AUTHOR hereby grants to PUBLISHER exclusive worldwide English language rights to publish, distribute, and sell the work entitled \_\_\_\_\_, (the "WORK") in:

- Printed Hard Cover Edition;
- Printed Paperback Edition; and
- Electronic Edition (digital format provided in electronic download, disk, CD/CD-ROM, e-Book Reader or similar media of presentation, excluding motion picture/television/video/DVD rights).

PUBLISHER may not offer for license any portion of the WORK. AUTHOR agrees that AUTHOR will terminate any existing contracts for the WORK with any other publishing entity immediately upon acceptance of this Agreement.

### **2. International Standard Book Number**

PUBLISHER will obtain and assign as many ISBN (International Standard Book Number) for the WORK as are required. PUBLISHER will use the assigned ISBN as part of the formal identification of the WORK and will notify the appropriate parties of the ISBN.

### **3. Selling Price**

AUTHOR will set the retail price of the WORK. AUTHOR reserves the right to raise or reduce the price at any time prior to or after publication.

### **4. Net Sales**

For purposes of this Agreement, net sales ("Net Sales") shall be defined as the total dollar amount that is actually received by any seller of the WORK, minus the total dollar amount of any returns of the WORK. Consignment placements shall not be considered sales until PUBLISHER actually receives payment.

### **5. Publishing Fee**

In compensation for the services provided by PUBLISHER hereunder, AUTHOR will pay to the PUBLISHER a publishing fee of \$950.00 upon signing this Agreement. The PUBLISHER shall also retain 5% of Net Sales from the sale of any and all bound printed or electronic editions of the WORK as well as 25% from any paid speaking engagements that are arranged by the PUBLISHER.

## **6. Royalty Commissions**

In compensation for the rights granted by AUTHOR under this Agreement, the PUBLISHER hereby agrees to pay AUTHOR Royalty Commissions of 95% of Net Sales from the sale of all bound printed or electronic editions of the WORK. AUTHOR will receive no royalties on copies of WORK used for charitable, advertising, and editorial review purposes.

## **7. Royalty Payment and Statements**

Royalty statements will be produced and forwarded to AUTHOR monthly. Royalties earned for the month shall be paid along with issuance of the royalty statement. AUTHOR understands that royalties will be paid only for those books where the PUBLISHER has actually received payment. If consumers, distributors, wholesalers, or vendors delay payment to PUBLISHER, PUBLISHER is not obligated to pay the royalty until it has been paid by the consumers, distributors, wholesalers, or vendors. Once paid, royalties will be included with the then current month.

Monthly Royalty amounts that do not exceed \$50.00 will be accumulated until an amount of \$50.00 or greater in Royalties is met. At that time royalties will be paid with the next monthly statement.

The PUBLISHER will provide a 1099 statement of royalty earnings only if royalties are \$600.00 or more in any calendar year, or as may otherwise be required by the U.S. IRS. Payment of taxes on royalties is the AUTHOR's responsibility.

AUTHOR is responsible for notifying the PUBLISHER of any changes in AUTHOR's tax or mailing information that could affect the timely payment of royalties by PUBLISHER.

## **8. Production Costs**

AUTHOR is solely responsible for the entire cost of producing the WORK.

## **9. PUBLISHER'S Services**

PUBLISHER will provide to AUTHOR a listing of recommended resources ("Vendors") available to assist AUTHOR in the creation and packaging of the WORK, including, but not limited to: writers, editors, proof readers, cover artists, printers, formatters and book binders. AUTHOR will be solely responsible for selection of Vendors used in the production of the WORK, for the results of any work produced or services performed by such Vendors, and for payment to such Vendors for any work produced or services performed. AUTHOR acknowledges and agrees that the PUBLISHER shall in no event be liable, either directly or indirectly, for any work produced or services performed by Vendors selected by AUTHOR.

AUTHOR understands that distribution of the WORK may be made available through the printer of the WORK. AUTHOR must notify PUBLISHER in writing if AUTHOR does not desire WORK to be distributed whether to wholesalers or booksellers. AUTHOR must notify PUBLISHER in writing if AUTHOR does not desire the WORK to be promoted and sold on the PUBLISHER website.

PUBLISHER shall have final approval of the title of the WORK. Every attempt will be made to use the title provided by AUTHOR, but the PUBLISHER has the option to change the title if the AUTHOR's suggested title is too similar to books already in release by PUBLISHER or recent releases from any other PUBLISHER, or if PUBLISHER deems that a more appropriate title is necessary. In the event of a title change, AUTHOR will be given an opportunity to suggest alternative titles.

For the term of this Agreement, PUBLISHER will actively promote the WORK by displaying it on PUBLISHER's Website and including it in other marketing and promotional materials. PUBLISHER, however, will not be liable to AUTHOR for any downtime or interrupted service of PUBLISHER's Website.

AUTHOR shall provide and PUBLISHER will maintain a suitable inventory of the WORK for purposes of book sales. PUBLISHER will be responsible for accepting orders for the WORK, including orders paid for by MasterCard, Visa or other methods of payment normally accepted by PUBLISHER. PUBLISHER will ship the WORK upon receipt of payment. Notwithstanding the foregoing, PUBLISHER may request AUTHOR to provide an appropriate number of books for PUBLISHER to provide on consignment to various distribution outlets. AUTHOR understands that under such circumstances, no royalty payments may be made to AUTHOR until such time that a final consumer has actually purchased the book and payment has been made by the distribution outlet to the PUBLISHER.

PUBLISHER will further endeavor, but is under no obligation, to provide AUTHOR with national distribution channels, book signing opportunities and other advertising, marketing and promotional events exhibiting the WORK. AUTHOR, both individually and in conjunction with PUBLISHER, will be responsible for promoting and marketing the WORK.

#### **10. Promotional Materials**

AUTHOR shall provided to the PUBLISHER, as requested, exact text copies in digital or print formats of the WORK for the purpose of obtaining book reviews or other marketing activity. PUBLISHER and AUTHOR agree to supply each other with copies of any professional reviews.

#### **11. PUBLISHER's Marks**

AUTHOR shall have no rights to, or in, any trademark, service mark, trade name or logos used by PUBLISHER without PUBLISHER's prior written consent, and such consent shall not be unreasonably withheld in the case of AUTHOR's intended use of PUBLISHER's identifying marks in approved promotional material.

#### **12. AUTHOR Warranties**

AUTHOR warrants s/he is the author and sole owner of the WORK or has been assigned the rights delineated above; that it is original work of authorship and does not violate the rights of any third party; that all cited works of others referenced in the WORK will be properly acknowledged; and that the WORK is not in the public domain. AUTHOR further warrants that these rights are owned or controlled by AUTHOR and that AUTHOR has full power to grant the rights listed herein to

PUBLISHER. If the WORK has been previously published in any form, AUTHOR warrants that the rights granted herein have reverted to the AUTHOR. AUTHOR shall present some written memorandum documenting the reversion of the rights granted by any publishing company that may have held rights to the WORK.

### **13. Copyright Ownership, Registration and Claims**

The AUTHOR is the owner of the copyright of the WORK. As a condition of this Agreement, the PUBLISHER agrees to print in every copy of the WORK a Copyright Notice identifying the AUTHOR as the owner of the copyright. AUTHOR is responsible for registering his/her copyright with the US Copyright Office, including payment of any fees and the costs of preparing printed and/or electronic documentation of the work as required by the US Copyright office. PUBLISHER shall be listed as the publisher of the WORK. PUBLISHER will place a copyright notice on all versions of the WORK, using the year of first publication if no other information is available.

PUBLISHER is not obligated to initiate legal proceedings should a claim arise regarding a third party infringing the AUTHOR's or PUBLISHER's rights. If such a claim arises, AUTHOR and PUBLISHER may sue either jointly or severally. PUBLISHER shall not be held liable for failing to take action upon such a claim.

### **14. Indemnification**

Each party shall indemnify, defend and hold harmless the other party and its owners and shareholders, officers, directors, employees, agents and representatives from and against any and all claims, debts, demands, suits, actions, liens, proceedings and/or prosecutions ("Claims") based upon a breach of any of the warranties contained in this Agreement, and any and all liabilities, losses, damages and expenses including, but not limited to, attorney's fees and court costs. Each party to this Agreement shall give prompt notice to the other party of any Claims. No compromise or settlement of any Claim shall be made or entered into without the prior written approval of both parties.

In addition, if a judgment is obtained against PUBLISHER for usurping rights still controlled by another publisher or other entity, the AUTHOR agrees to hold PUBLISHER harmless and to indemnify PUBLISHER for reasonable damages and costs.

### **15. Insolvency, Suspension or Sale of PUBLISHER**

If the PUBLISHER files for Bankruptcy protection, or if the PUBLISHER suspends operations, other than a temporary suspension for technical difficulties, all rights delineated in Paragraph 1 shall immediately revert to the AUTHOR.

If the PUBLISHER sells its assets to another PUBLISHER, who does or plans to market and promote books, the successor PUBLISHER will be bound to the terms of this Agreement. If the successor PUBLISHER does not plan to market and promote books of this type, all rights delineated in Section 1 shall revert to the AUTHOR not more than sixty (60) days after the sale by PUBLISHER.

## **16. Term of Contract**

This Agreement shall remain in effect until terminated as provided in Paragraph 17.

## **17. Termination of Contract**

Either AUTHOR or PUBLISHER, at its discretion, may terminate this Agreement at any time, either prior to, during, or after publication of the WORK, upon 30 days prior written notice to the other party. Upon termination, all rights granted to PUBLISHER shall revert to the AUTHOR. PUBLISHER will remove the listing of the WORK from its Website and return to AUTHOR any remaining copies of the WORK stocked in PUBLISHER's inventory. PUBLISHER will ensure that no additional books will be distributed or sold. AUTHOR understands, however, that books that have already been purchased or that are stocked by bookstores may continue to be sold until such stock is depleted.

## **18. Notices**

Any notices required to be given under this Agreement must be in writing and sent to the address first set forth above by certified mail or other receipted or traceable delivery service, or may be given by email where return acknowledgement is received.

## **19. Royalty Payments to Assigns**

If the AUTHOR should die before all royalties have been paid, PUBLISHER will pay royalties to AUTHOR's heirs, assigns, or beneficiaries. This contract shall transfer in force to the AUTHOR's heirs, assigns, or beneficiaries.

## **20. Governing Law**

This Agreement shall be governed and construed in accordance with the statutory and decisional law of the State of Tennessee governing contracts to be performed in their entirety in Tennessee.

## **21. Dispute Resolution**

All controversies, claims, disputes, and matters in question arising out of, or related to, this Agreement or any breach of this Agreement, or the relations between the parties to this Agreement, shall be decided by arbitration in front of a single arbitrator to be selected by the party against whom arbitration is sought, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties agree that the arbitration shall take place exclusively in Perry County, Tennessee, and shall be governed by the law of the State of Tennessee. Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof, including a federal district court, pursuant to the Federal Arbitration Act. The arbitrator may grant injunctive relief, including mandatory injunctive relief, to protect any intellectual property, but shall not be limited to such relief. However, this arbitration provision shall not preclude a party

from seeking temporary or preliminary injunctive relief in a court of law to protect its rights, nor shall the filing of such an action constitute any waiver by such party of its right to arbitrate. In connection with the arbitration of any disputes between the parties to this Agreement, each party may utilize all methods of discovery authorized by the Federal and Tennessee Rules of Civil Procedure. All costs of arbitration, including reasonable attorneys' fees, shall be borne the party failing to prevail in such arbitration proceeding.

**22. Entire Agreement**

This Agreement contains the entire understanding of the parties with regard to the subject matter hereof and supersedes any previous agreement or understanding with respect to the WORK and cannot be modified except in writing by all the parties hereto. Upon execution, this Agreement shall be binding and fully enforceable and shall inure to the benefit of the parties hereto, their successor, personal representative, heirs and assigns. An electronic signature on this document, such as by fax, .pdf file format or email is as valid and will be considered of identical weight to that of a handwritten signature.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above.

**JimSam, Inc.**  
(PUBLISHER)

\_\_\_\_\_  
(AUTHOR)

By: \_\_\_\_\_  
Marcia S. Freespirit  
President & CEO

By: \_\_\_\_\_  
Printed: \_\_\_\_\_