

JAC Publishing & Promotions

P.O. Box 88, Burlington, MA 01803 - (781) 272-2066; Fx (781) 229-2676

Publishing Agreement

AGREEMENT made this ____ day of _____, ____ between _____ ("Author"), whose mailing address is _____ and JAC Publishing & Promotions ("Publisher"), located at 4 Princeton Road, P.O. Box 88, Burlington, MA 01803.

RECITALS AND DEFINITIONS

- A. PUBLISHER** publishes select scripts written for live theatrical performance ("Plays"), promotes them for production, and distributes them via licensed rental or sale, through its web site and other channels of trade.
- B. AUTHOR** has written one or more original Plays and seeks to have such a Play published, promoted, offered and distributed by *PUBLISHER*.
- C. WORK** is the original Play, written by Author, entitled or the working title of which is "A Dance for a Manatee," and includes any abridgement or substantial part of the Play.

AGREEMENT

For and in consideration of the mutual terms and conditions set forth herein, and in consideration of the financial commitment PUBLISHER is making in regard to AUTHOR's WORK, the parties agree as follows:

1. DELIVERY AND HANDLING.

- a. AUTHOR will deliver to PUBLISHER within sixty (60) days of this Agreement, an electronic copy of the WORK in its entirety. The WORK must be acceptable to PUBLISHER in form, length and content.
- b. AUTHOR also will deliver such other written permissions, releases, promotional materials, illustrations, photographs, and other materials relevant to publication and promotion of the WORK as AUTHOR understands are necessary or as PUBLISHER may request, delivery to be made contemporaneously with the WORK or within a reasonable time of PUBLISHER's request.
- c. PUBLISHER will take reasonable care of all materials supplied by AUTHOR, but AUTHOR should retain copies and refrain from forwarding any irreplaceable item, as PUBLISHER will not be responsible for loss or damage of materials in transit, in PUBLISHER's possession.

2. LICENSES. AUTHOR hereby grants to PUBLISHER the sole right and exclusive license to produce, publish and license WORK for publication for the legal term of copyright, throughout the world.

3. AUTHOR WARRANTIES.

- a. AUTHOR warrants that the WORK is original and that the AUTHOR is free to grant all rights in this Agreement. AUTHOR further warrants that the WORK contains nothing libelous or obscene; that all statements presented as fact (and not as opinions) are true and verifiable.
- b. AUTHOR will indemnify and hold PUBLISHER harmless against any and all liability or loss, whether by judgment, authorized settlement, or defense of claim, and all costs and expenses, including attorney's fees, arising out of or in connection with any actual or alleged: (i) infringement or misappropriation by AUTHOR or the WORK of any copyright, trademark or other intellectual property or proprietary right of a third party; (ii) breach of any of the terms or warranties of this Section; or (iii) any claim by any third party that the content of the WORK caused damage.

4. PRE-PUBLICATION REVISIONS AND AUTHOR APPROVAL

- a. PUBLISHER will send the AUTHOR a galley proof of the WORK before publication. AUTHOR will correct and return the proof to the PUBLISHER within thirty (30) days of having received it.
- b. After incorporating such of the corrections as it accepts, PUBLISHER will send AUTHOR a PDF file of the WORK for final review, together with a statement certifying that AUTHOR has made all proofreading corrections necessary and approves the WORK for publication. AUTHOR will sign and return the statement to PUBLISHER within ten (10) days of receipt.
- c. PUBLISHER will be responsible for overall design of the published WORK, including artwork, layout, font and other design details. AUTHOR may supply original artwork for the published WORK, subject to the warranties of Section 3, above, which PUBLISHER may accept or reject at its sole discretion.
- d. PUBLISHER may utilize the inside cover, back cover, or additional pages of the published WORK to advertise or promote itself and other works of other authors, so long as such advertisement or promotion is not inconsistent with its obligations under this Agreement.
- e. Once AUTHOR has signed the Statement of Release, any changes made subsequently that result in an hour or more of revisions, PUBLISHER will invoice AUTHOR at a rate of Fifty Dollars (\$50.00) per hour.

5. AUTHOR'S COPIES OF PUBLISHED WORK. At its own expense, PUBLISHER will mail two free copies of the published WORK to AUTHOR. AUTHOR may request a reasonable number of additional copies to be furnished by PUBLISHER with AUTHOR paying PUBLISHER a discounted rate of 5% off retail price.

6. PRE-LICENSING DUTIES

a. Of PUBLISHER. In addition to making the WORK available for licensing or purchase, PUBLISHER will, at no cost to the AUTHOR unless otherwise noted, print one initial set of the WORK, a set being a sufficient number of printed scripts to provide one for each character of the Play, plus the Play's director, production manager, and stage manager;

b. Of AUTHOR. Before PUBLISHER makes the WORK available for licensing or purchase, AUTHOR will do the following at no cost to the PUBLISHER, unless otherwise noted:

1) Provide:

- an up-to-date biography and photograph for press, publicity and promotion of the WORK;
- previous press clippings about WORK, or AUTHOR's other works for press, publicity and promotion;
- such historical and production support information as may exist and reasonably can be provided or obtained by AUTHOR regarding the development of the WORK, such as dates and locations of pre-publication workshops, productions, casts, set design, stage directions and production notes.;
- a plot summary, list and description of characters, properties list, and costume plot for the WORK.

7. PUBLICATION AND POST-PUBLICATION.

a. PUBLISHER shall make the WORK available for distribution after editing is complete and PUBLISHER deems it ready. PUBLISHER shall endeavor to effect the availability of the WORK for distribution within 60 days after AUTHOR's final edits, but it is agreed and understood that delays may occur.

b. AUTHOR hereby grants to PUBLISHER the non-exclusive right to use, publish and distribute the publicity materials AUTHOR has supplied, and will cooperate with PUBLISHER in creating or obtaining other publicity materials. AUTHOR will assist PUBLISHER in the promotion of the WORK, including but not limited to the dedication of reasonable placement of banner ads, pop-up windows, or other marketing related advertisements promoting the PUBLISHER's website(s) or other related websites on the AUTHOR's own website(s) (if applicable). AUTHOR and PUBLISHER will cooperate in establishing consistent standards of quality for promotion and publicity of the WORK, but PUBLISHER reserves the right of final review of such materials.

c. AUTHOR will not publish, nor allow anyone to publish, any part of the WORK except its title for any reason whatsoever without PUBLISHER's prior written agreement.

d. Though PUBLISHER will assign individual identifier from the International Standard Book Number Agency (ISBN), AUTHOR is responsible for copyright registration with the Library of Congress. Such action is expected after the publication process is completed by PUBLISHER, unless previously obtained by AUTHOR. In such an instance, AUTHOR must provide a copy of the copyright certificate to Publisher upon Agreement to publish.

8. LICENSING FEES AND ROYALTIES.

a. PUBLISHER will set the licensing fees, individual copy sales price, and performance royalty schedule of fees of the WORK in accordance with industry standard rates.

b. Fees will be evaluated regularly for potential adjustment in keeping with the popularity of the WORK or other relevant factors.

c. AUTHOR will receive 25% of the sale price or rental fee received by PUBLISHER for every version of the WORK sold or rented.

d. AUTHOR will receive 50% of licensing fees and performance royalties received by PUBLISHER for licensing or performance of the WORK or any part thereof for which such fees are charged and collected.

e. PUBLISHER will endeavor to communicate all third-party transactions to AUTHOR contemporaneously with each transaction.

f. PUBLISHER will remit all monies due the AUTHORs on a semi-annual basis, January and July.

g. AUTHOR will maintain his/her own records of reported transactions and fees due, and will advise PUBLISHER of any discrepancies promptly upon receipt of each quarterly payment, and in no event later than thirty (30) days thereafter.

h. PUBLISHER will submit to AUTHOR at least annually a detailed accounting of all WORK-related transactions, monies received and payments to AUTHOR.

9. NO JOINT VENTURE, EMPLOYMENT RELATIONSHIP OR TAX ACCOUNTABILITY. AUTHOR is a freelance writer and independent contractor, and represents and warrants that there is no legal requirement or other obligation requiring PUBLISHER to withhold or deduct from payments to AUTHOR any sums for tax or other reasons. This Agreement is not to be construed as creating a partnership, joint venture, employment or agency relationship between the parties for any purpose whatsoever.

10. TERMINATION

a. By AUTHOR,

1. For cause: AUTHOR may terminate this Agreement without notice, whereupon all rights will revert to AUTHOR immediately upon such termination, if:

- (i) PUBLISHER fails to make the WORK available for distribution in timely fashion as set forth in Paragraph 7a. above, and has continued to fail to do so 30 days following AUTHOR's written notice in accordance with that paragraph;
- (ii) PUBLISHER fails to compute, and to account, and to pay all royalties and all other payments due to AUTHOR as set forth in Paragraph 9c. above, and has continued to fail to do so 30 days following AUTHOR's written notice and demand for same.

2. Without cause, pre-publication: In addition to the termination right granted by the provisions of Section 7a. above, AUTHOR may terminate this Agreement before the printing of the WORK upon 30 days' written notice to PUBLISHER, whereupon PUBLISHER will render a bill for any set-up, pre-publication advertising, or other costs PUBLISHER may have incurred. Termination will be effective upon AUTHOR's payment of such invoice, whereupon all rights will revert to AUTHOR.

3. Without cause, post-publication: AUTHOR may terminate this Agreement after the printing of the WORK but before it has been made available for licensing by payment of \$10,000 in good funds to PUBLISHER as liquidated damages representing reimbursement for printing and promotion costs and PUBLISHER's effort expended. Termination will be effective upon PUBLISHER'S receipt of AUTHOR's payment, whereupon all rights will revert to AUTHOR except that PUBLISHER may, at its option, continue to sell remaining printed versions of the WORK for a period of one year following termination under this sub-paragraph, setting any prices it wishes, without obligation to remit royalties to AUTHOR.

4. Without cause, post-licensing: If the WORK has been made available for licensing and performance rights have been granted by PUBLISHER, then AUTHOR must provide PUBLISHER with written notice of a desire to terminate the agreement, but termination will not be effective until the end of the month following the last performance under license granted by PUBLISHER prior to receipt of such written notice; whereupon the payment due PUBLISHER may be reduced by the amount of royalties due and unpaid to AUTHOR, and all rights will revert to AUTHOR. However, PUBLISHER may, at its option, continue to sell remaining printed versions of the WORK for a period of one year following termination under this sub-paragraph, setting any prices it wishes, without obligation to remit royalties to AUTHOR.

b. By PUBLISHER:

- 1. If AUTHOR fails to cure a default of obligations under this agreement within 30 days of the date of written notice of the default, PUBLISHER may terminate the agreement without further notice. PUBLISHER shall have such remedies as are outlined in paragraphs a. through d. of this section, depending on when termination occurs, in addition to any other remedies to which it may be entitled.
- 2. If PUBLISHER ceases operations, or undergoes a change of ownership or management, it may, at its option and upon reasonable notice to AUTHOR, assign or terminate this agreement. In the event of such termination all rights in the WORK shall revert to AUTHOR, and PUBLISHER shall have no further obligations under this agreement except for payment of any royalties that may be due to AUTHOR. Unless termination notice is given, AUTHOR's obligations will continue, and be due to PUBLISHER'S assignee or successor in interest.

11. MISCELLANEOUS.

a. Amendment and Integration Clause. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and, except for the aforementioned Publishing and Promotion Agreement, all agreements entered into prior hereto are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

b. Notices. Any notice, election or communication to be given to any party regarding the terms of this Agreement shall be in writing and delivered in person or sent via certified or registered mail, postage prepaid, addressed as set forth below or to such address as either party may hereafter designate by written notice hereunder. Such notices shall be addressed as follows:

If to AUTHOR: _____ (Address)

with a copy to (if applicable): _____

If to PUBLISHER: JulieAnn Charest, JAC Publishing & Promotions, P.O. Box 88, 4 Princeton Road, Burlington, MA 01803.

c. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

d. Dispute Resolution. Any and all disputes arising out of or relating to this Agreement, its inception or termination, or the relationship hereby created between the parties, shall be resolved as follows: (i) first, good faith efforts shall be made between the parties to resolve the dispute; (ii) if resolution is not achieved, the parties shall mediate the dispute in Massachusetts in accordance with applicable rules of the American Arbitration Association. (iii) If mediation is unsuccessful or unreasonably delayed, the dispute shall be submitted to arbitration before a single arbitrator in Massachusetts in accordance with applicable rules of the American Arbitration Association.

The arbitrator shall construe the agreement in accordance with the laws of the Commonwealth of Massachusetts, and may award reasonable attorneys' fees in addition to other relief, including equitable relief, at the discretion of the arbitrator, and shall allocate the costs of arbitration between the parties. No punitive or multiple damages may be awarded, nor may an award be granted for non-economic losses, including, but not limited to, "pain and suffering," "emotional distress," and the like.

Judgment upon the award rendered may be entered in any court of competent jurisdiction, but any petition to a court for interim relief in aid of the arbitration, or for an order modifying or vacating the award, shall be filed exclusively in a court of competent jurisdiction in Massachusetts, and each party hereby expressly and irrevocably consents to personal jurisdiction in this Commonwealth for such purpose.

e. Expenses. Except as expressly provided herein, each party to this Agreement shall pay his or its own costs and expenses related to the transaction contemplated, including, but not limited to, all attorneys' fees.

f. Waiver of Conditions. Any of the parties hereto may in writing waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other parties from the performance of any of its other obligations under this Agreement unless otherwise provided herein or in such written waiver. Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach of the same or any other covenant or condition of this Agreement.

g. Binding. This Agreement shall be binding on the executors, administrators and assigns/successors in business of the respective parties. IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement UNDER SEAL on the date indicated below:

AUTHOR:

Signature: _____

Printed Name: _____

Date: _____

PUBLISHER:

JAC Publishing & Promotions

Representative Signature: _____

Printed Name: _____

Date: _____