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SunCam Course Author Agreement

THIS AGREEMENT is made this ____ day of _____, 20__ (“Effective Date”) by and between SunCam, Inc, a Florida corporation headquartered at 1404 Creeks Edge Court, Orange Park, Florida 32003 (SUNCAM);

-AND-

_____ a _____ whose address is

(AUTHOR).

RECITALS

SUNCAM is a distributor of continuing education courses particularly for design and construction professionals and is the owner and operator of an e-commerce web page and an online facility for testing and certification of course attendees.

AUTHOR has developed one or more continuing education courses suitable for distribution through SUNCAM’s online testing and certification facility (“Courses”).

SUNCAM and AUTHOR mutually desire to enter into this agreement granting SUNCAM the exclusive distribution of AUTHOR’s courses listed in exhibit “A”, in exchange for a royalty payment equal to fifty percent (50%) of the net revenue from the distribution thereof. Net revenue shall mean the total invoiced price of any of AUTHOR’s courses sold, less sales tax, shipping, and credits for customer refunds if any. (“Royalty Payment”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SUNCAM Obligations:

1. On or before the 15th of every month, SUNCAM shall pay AUTHOR the Royalty Payment for net revenue received during the previous calendar month accompanied by a report listing of the amount of each individual sale and the name of the customer.
2. SUNCAM will advertise, promote, package, distribute and sell the course(s) that are the subject of this agreement at its own expense, with no financial contribution from AUTHOR.
3. SUNCAM will score all tests, issue certificates of completion, maintain records of test scores and report results as required by the licensing authorities that regulate the course attendees.
4. SUNCAM will handle the billing and collection and the payment of credit card merchant fees for customer transactions.

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5. SUNCAM will obtain and maintain all appropriate public agency approvals for providing continuing education.
6. SUNCAM will handle all customer service inquiries with respect to sales matters.
7. SUNCAM at its sole discretion shall determine which Courses it will sell, promote or distribute.

AUTHOR Represents and Warrants:

1. That AUTHOR is either a licensed professional engineer in one or more states within the United States of America or a university level engineering educator.
2. That AUTHOR is qualified by experience and education in the subjects covered in the Courses and has never received any disciplinary order from any professional regulatory board in any jurisdiction.
3. That the Courses under this Agreement have never previously been offered by AUTHOR as a continuing education course in any form, medium or location.
4. That he/she is the sole and rightful owner of all right, title and interest in and to the Courses and all related proprietary rights therein and has the unrestricted right to license and exploit the Courses and its Intellectual Property Rights as defined herein below.
5. That no claims have been made in respect of the Courses and Intellectual Property Rights and no demands of any third party have been made pertaining to them, and no proceedings have been instituted or are pending or threatened that challenge the rights of AUTHOR in respect thereof

AUTHOR AVAILABILITY

AUTHOR agrees that AUTHOR or, at AUTHOR's sole expense, a designee of equal competence will be available to answer questions from attendees within 24-hours and must provide either a telephone number or an email address, which will be published with the course materials.

INDEPENDENT BUSINESS

This Agreement does not in any way create a partnership, employer-employee or joint venture relationship between SUNCAM and AUTHOR, and neither party has any right to bind the other. AUTHOR is an independent contractor under this Agreement. The parties expressly intend and agree that AUTHOR is acting as an independent contractor and not as an employee of SUNCAM. SUNCAM retains sole and absolute discretion, control, and judgment in the manner and means of carrying out SUNCAM's distribution of continuing education courses. AUTHOR understands and agrees that it shall not be entitled to any of the rights and privileges established for SUNCAM's employees (if any), including, but not limited to, the following: retirement benefits, medical insurance coverage, life insurance coverage, disability insurance coverage, severance pay benefits, paid vacation, sick pay,

Do not sign this draft agreement. SunCam will issue the agreement in its final form. overtime pay, or any of them. AUTHOR understands and agrees that SUNCAM will not pay or withhold from the Royalty Payments paid to AUTHOR pursuant to this Agreement any sums customarily paid or withheld for or on behalf of employees for income tax, employment insurance, social security, worker's compensation or any other withholding tax, insurance, or payment pursuant to any law or governmental requirement, and all such payments as may be required by law are the sole responsibility of AUTHOR. AUTHOR agrees to hold SUNCAM harmless against and indemnify SUNCAM for any such payments or liabilities for which SUNCAM may become liable with respect to such matters.

OWNERSHIP

AUTHOR is and shall be the owner of the Courses and all course materials for the courses that are the subject of this Agreement. SUNCAM recognizes AUTHOR's right, title and interest in and to the Intellectual Property Rights (as hereinafter defined) relating to the Courses. The term "Intellectual Property Rights" as used in this Agreement shall mean copyrights, trademarks, and trade names, as well as photography rights. SUNCAM shall not use any Intellectual Property Right in any manner except as permitted in this Agreement or by prior written authorization of AUTHOR.

LICENSE

AUTHOR hereby grants to SUNCAM an exclusive, worldwide, transferable license, to publish, promote, advertise and distribute the Courses.

INDEMNIFICATION

AUTHOR agrees, at his/her expense, to defend and indemnify SUNCAM in any suit, claim or proceeding brought against SUNCAM alleging that any Courses distributed pursuant to this Agreement, under normal use, infringe a patent, copyright, or trademark obligation of AUTHOR, provided that AUTHOR is promptly notified of any such claim, given reasonable assistance from SUNCAM and permitted the exclusive control of the defense. Further, AUTHOR agrees to pay any damage and costs finally awarded against SUNCAM in any such suit by reason of any such infringement, but AUTHOR shall have no liability for settlements or costs incurred without its consent. The foregoing indemnity shall not apply if and to the extent that an alleged infringement arises from the alteration or modification of the Courses produced by AUTHOR.

TERM and TERMINATION

This Agreement shall begin on the Effective Date and shall run until terminated by either party as further described herein. Either party may terminate this Agreement without cause upon 30 days written notice to the other. SUNCAM, at its sole discretion, may terminate this Agreement immediately in the event that SUNCAM or AUTHOR are accused of having unauthorized materials or information from sources not drafted by AUTHOR in the Courses.

PRICE and PROMOTION

SUNCAM shall have the sole right to set the price of courses covered by this Agreement including the right to offer quantity discounts, "package deals" and special promotions for the purpose of increasing sales. SUNCAM will use its sole judgment to justly and fairly

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allocate the revenues derived from sales of “package deals” among the courses included in the package.

RIGHT OF OFFSET

SUNCAM shall have the right to off-set from future Royalty Payments any credits or refunds arising from the sale of any such Courses at its sole discretion.

PASSING SCORE and CREDITS

SUNCAM shall have the sole right to set the minimum passing score and the number of Professional Development Hours (PDHs) of credit to be awarded for successful completion of each course covered by this agreement.

RIGHT to REJECT COURSES

SUNCAM shall have the sole right to reject any course at any time, without notice, with or without cause, and to remove said course from its offerings.

NOTICES

All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient and sent via registered or certified mail as stipulated herein within three (3) business days, then on the next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt or rejection. All communications shall be sent:

- (a) to AUTHOR at the address first set forth above; or
- (b) to SUNCAM at the address first set forth above;

with a copy to (which will not constitute Notice):

Susan H. April, Esq.
Fowler White Burnett, P.A.
1395 Brickell Ave., 14th Floor
Miami, FL 33131

or to such other address as may have been furnished by the parties from time to time, as the case may be.

AMENDMENT

The parties may amend this Agreement at any time by mutual written consent including adding courses to Exhibit “A”.

COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

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This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

GOVERNING LAW AND CONSENT TO JURISDICTION

This Agreement shall be governed by and construed under the laws of the State of Florida, without reference to conflict of laws principles. The courts within Miami-Dade County, Florida shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. AUTHOR hereby expressly consents to (i) the personal jurisdiction of the courts within Florida and specifically Miami-Dade County, (ii) service of process being effected upon AUTHOR by registered mail sent to the address set forth herein above, and (iii) the uncontested enforcement of a final judgment from such court in any other jurisdiction where AUTHOR is present.

SEVERABILITY

The invalidity of or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

HEADINGS

The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

PREVAILING PARTY

In the event that either party hereto brings any legal action or other proceeding to enforce or interpret any of the rights, obligations or provisions of this Agreement, or because of a dispute, breach or default in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and all other costs in such action or proceeding in addition to any other relief to which such prevailing party may be entitled.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date written above.

AUTHOR

SUNCAM, INC.

By: _____

By:
William C. Dunn, President



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EXHIBIT "A"
to
SunCam Course Author Agreement
between
SunCam, Inc
-AND-

Course(s) included in this agreement:

1. ""
2. ""

DRAFT