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[Creator/Inventor]
[Address]
[Telephone]
[Email]

Non-Disclosure Agreement

THIS AGREEMENT made as of _____ between
[Creator/Inventor] of [Address] ("the Discloser") and
_____ of
_____ ("the Recipient").

WHEREAS Discloser owns, possesses or controls certain trade secrets and proprietary and confidential information acquired through the expenditure of time, effort and money, of a creative and business nature relating to Intellectual Property, Entertainment, Written Works, Merchandising, Promotional Items, Audio and Multimedia.

WHEREAS Discloser is willing to supply Recipient with the Information to enter into a relationship related to reading the manuscript according to the terms and conditions set out herein. Additional relationships or services (e.g., editorial commenting, promotional activities, etc.) may be mutually agreed upon and expressed as an addendum to this Non-Disclosure Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants and agreements herein contained the parties hereto agree as follows:

1. Disclosure shall at its discretion provide such of the Information to Recipient as is required for the Purpose, verbally and/or in multimedia. Nothing in this Agreement obligates Discloser to make any particular disclosure of Information.
2. All right, title and interest in and to the Information shall remain the exclusive property of Discloser and the Information shall be held in trust and confidence by Recipient for Discloser. No interest, license or any right respecting the Information, other than expressly set out herein, is granted to Recipient under this Agreement by implication or otherwise.

3. Recipient shall use all reasonable efforts to protect Discloser's interest in the Information and keep it confidential, using a standard of care no less than the degree of care that Recipient would be reasonably expected to employ for his own similar confidential information. In particular Recipient shall not directly or indirectly disclose, allow access to, transmit or transfer the Information to a third party without the Discloser's prior written consent. Recipient shall disclose the Information only to persons who have a need to know the Information for the Purpose and who have been approved by the Discloser to receive the Information. Recipient shall, prior to disclosing the Information to such employees and consultants, issue appropriate instructions to them to satisfy its obligations herein and obtain their written agreements to receive and use the Information on a confidential basis on the same conditions as contained in this Agreement.
4. The Information shall not be copied, reproduced in any form or stored in a retrieval system or data base by Recipient without the prior written consent of Discloser, except for such copies and storage as may reasonably required internally by Recipient for the Purpose.
5. Recipient shall, upon request of Discloser, immediately return the Information and all copies thereof in any form whatsoever under the power or control of Recipient to Discloser, and delete the Information from all retrieval systems and databases or destroy same as directed by Discloser and furnish to Discloser a certificate by an officer of Recipient of such deletion or destruction.
6. When requested by Discloser, Recipient will promptly provide a list containing the full name and addresses, cell phones and company name of any person having access to or copies of the Information and the reason such access is necessary.
7. Due to the valuable and proprietary nature of the Information to Discloser the obligations assumed by Recipient hereunder shall (a) be unlimited in time or territory or (b) if it is held by a court of competent jurisdiction that this provision is illegal, invalid or unenforceable, shall apply only within those territories within which Discloser then carries on business and only up to 10 years after disclosure of such Information (c) Statute of Limitations in the Commonwealth of Virginia. If any provision of this Agreement is held to be

invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and remaining part of such provision and all other provisions hereof shall continue in full force and effect.

8. The Recipient shall indemnify and save harmless the Discloser from all damages, losses, expenses and costs, attorney's fees and any other costs associated with recovering the Information whatsoever resulting from the breach of this Agreement by the Recipient.
9. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than an expressly set forth in this Agreement.
10. This Agreement may not be assigned by either party without the prior written consent of the other party.
11. This Agreement shall endure to the benefit of and be binding upon the respective heirs upon Discloser's death, executors, administrators, successors and permitted assigns of the parties hereto.
12. [This clause is very important for arbitration to be supported]. We agree that any claim, dispute or controversy between us or claim by either of use against the other or the employees, agents or assigns of the other and any claim arising from or relating to this agreement or the relationships which result from this agreement, no matter against whom made, including the applicability of this arbitration clause and the validity of the entire agreement¹, shall be resolved by neutral binding arbitration by the National Arbitration Forum², under the Code of Procedure then

¹ Describes the broad scope of disputes that could arise between the parties or related to the agreement. The phrase "arising from or relating to this agreement...including the validity of this arbitration clause or the entire agreement" ensures that the arbitrator, not the court, will decide whether the arbitration clause is legally binding. See *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995) (providing court will decide issue of arbitrability unless parties give clear and unmistakable evidence that they agree that the arbitrator will decide that issue).

² Arbitration rules and fees vary between ADR administrators. For parties utilizing ADR, this impacts issues such as cost, qualifications of arbitrators, and whether arbitrators will apply the substantive law or some lesser standard. NAF's arbitration fees have been recognized by courts as "model" of fair costs. *Greentree v. Randolph*, 531 U.S. 79 (2000). Another area where rules vary between ADR

in effect. Any arbitration hearing at which you appear will take place at a location near your residence. Information may be obtained, and claims may be filed at any National Arbitration Forum office, www.arbitration-forum.com, or at P.O. Box 50191, Minneapolis, Minnesota 55405.

This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by and interpreted under the Federal Arbitration Act (FAA), 9 U.S.C. Sections 1-16.³ Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction.⁴ In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective.⁵ Nothing in this agreement shall be construed to prevent either party's use of bankruptcy, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security or property interests for contractual debts now or hereafter owed by either party to the other under this agreement.⁶]

The parties understand that they would have had a right or opportunity to litigate disputes through a court and to have a judge or jury decide their case, but they choose to have any disputes decided through arbitration.⁷

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

Signature of Discloser

Name of Discloser

organizations is with regard to the arbitrator's legal standard for decision making. NAF rules and procedures require that the arbitrator follow the law. *See e.g.*, the National Arbitration Forum *Code of Procedure*, Rule 20 (providing "An arbitrator shall follow the applicable substantive law and may grant any remedy or relief provided by law in deciding a claim, response, or request properly submitted by a party under this code). In contrast, many arbitrations in the United States have been conducted under rules that reject the law as the standard for decision making, allowing arbitrators to base decisions on whatever is "just and equitable." *See e.g.*, American Arbitration Association (AAA) *Rules for Commercial Arbitration*, Rule 43(a).

³ This language identifies that the parties consider the transaction to be one involving interstate commerce so that the FAA, and not state law should apply. *See Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265 (1995); *Phelps v. Dan Tucker Auto Sales, Inc.*, 672 So.2d 790 (Ala. 1995).

⁴ This phrase is necessary under the FAA. 9 U.S.C. § 9.

⁵ *Saika v. Gold*, 56 Cal. Rptr. 2d 922 (Cal. Ct. App. 1996).

⁶ Allows parties to use pre-judgment self-help remedies without waiving right to use arbitration. *See e.g. Wilson v. Par Builders II, Inc.*, 879 F. Supp. 1187, 1190 (M.D. Fla. 1995); *Meyer v. Univest Home Loan, Inc.*, 1993 WL 307747 (N.D. Cal. 1993).

⁷ Illustrates the parties' understanding that they are foregoing their right to a jury trial in order to have any dispute connected with the agreement resolved by binding arbitration.

Signature of Recipient

Name of Recipient