

NON-DISCLOSURE AGREEMENT

between

MY EBOOK (PTY) LTD

Registration Number: 2015/290350/07

of Unit 603, 6th Floor, The Landing, 20 Lower Burg Street, Cape Town, 8001

("MYeBook")

and

(Your name) _____

Identity Number: _____

of (insert your physical address)

("Author/Agent")

("the Agreement")



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THE PARTIES HERETO HAVE AGREED WITH EACH OTHER AS FOLLOWS:

1. INTRODUCTION

- 1.1. MYeBook provides a host of services related to assisting authors to self-publish their works.
- 1.2. The Author/Agent seeks to meet and/or engage with MYeBook in relation to their work with the view of potentially engaging MYeBook to provide its services to the Author/Agent.
- 1.3. The parties have entered into this Agreement as a means of recording the terms of their relationship.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, unless otherwise indicated by context, the following words and expressions bear the following meanings:
- 2.1.1. **“Agreement”** means the Non-Disclosure Agreement contained in this document, together with any annexures hereto;
 - 2.1.2. **“Confidential Information”** means all disclosed information and materials, whether marked as confidential or not and of whatsoever nature or form, including without limitation, all information:
 - 2.1.2.1. relating to the written work or audiobook;
 - 2.1.2.2. relating to the operations and interests of the business of either the Author/Agent or MYeBook;
 - 2.1.2.3. relating to various commercial opportunities;
 - 2.1.2.4. relating to any idea, process, technique, trade secrets, formula, software, technology, know-how, designs, ideas, inventions, information, equipment, materials, intellectual property rights, research or any combination of the foregoing used, possessed, owned and/or being developed by MYeBook;
 - 2.1.2.5. relating to any statistics, systems, business methods, marketing, trading and merchandising methods, business plans and strategies, user or consumer data and profiles of MYeBook;
 - 2.1.2.6. of a financial nature including, without limitation all financial statements, results, plans and models and all tax returns and assessments and all communications with tax authorities, all accounting policies of MYeBook;
 - 2.1.2.7. relating to the relationships between MYeBook and all of their customers and suppliers;
 - 2.1.2.8. relating to any analysis, compilations and studies;
 - 2.1.2.9. relating to all agreements to which MYeBook are party and their rights, obligations and performance thereof;
 - 2.1.2.10. which is not readily available in the ordinary course of business to a competitor of MYeBook;
 - 2.1.2.11. relating to the fact of and content of any discussions and negotiations between the parties as well as the existence and content of any agreement or draft agreement which is or may be concluded between the parties as a result thereof;
 - 2.1.2.12. relating to any actual or threatened claims, litigation, inquiries, investigations or dispute resolution proceedings;
 - 2.1.2.13. marked confidential or relating to any matters of a confidential nature or generally, information which is disclosed in circumstances of confidence or would be understood by the parties, exercising reasonable business judgement, to be confidential or proprietary in nature; and

2.1.2.14. contained in any notes, analyses, compilations, studies, reports or other records generated by either MYeBook or the Author/Agent using or based on or including any of the disclosed information or materials,

but, subject to the disclosing party bearing the onus of proof, notifying the other party prior to disclosure and providing the other party with a reasonable opportunity to contest that the relevant information does not fall within this exception, the following closed list of information is excluded:

2.1.2.15. information that is, or hereafter becomes, both part of the public domain and readily available to competitors of the other party, otherwise than as a result of a breach or default of this Agreement or any other undertaking by the disclosing party;

2.1.2.16. information that can be shown to have been lawfully in the possession of the disclosing party prior to its disclosure and is not subject to an existing confidentiality agreement between the parties;

2.1.2.17. information that is acquired by the disclosing party independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the information directly or indirectly under a confidentiality obligation from the other party and provided that the disclosures contemplated in this Agreement did not lead or motivate the disclosing party to acquire such information; or

2.1.2.18. information that is acquired or developed by the disclosing party, independently of the other party and the disclosed information, and in circumstances which do not amount to a breach of the provisions of this Agreement.

2.1.3. “**engage**” means to offer ideas and projects for consideration, with a view to being appointed to provide products;

2.1.4. “**finished product**” means a project which the Author/Agent has appointed MYeBook to undertake on its behalf, which project has been finalised; and

2.1.5. “**project**” means proposals to undertake work on behalf of the Author/Agent;

2.1.6. “**written work**” means “[insert title of book _____]”, being work written by the Author/Agent and the work in respect of which MYeBook may provide the services.

2.2. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

2.3. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a Party to this Agreement.

3. **ENGAGEMENT PHASE**

- 3.1. The parties understand that in order to successfully assess whether to appoint MYeBook to provide services to the Author/Agent, the Author/Agent is going to need to provide MYeBook with access to the written work, as well as certain Confidential Information for the project. MYeBook agrees that the written work and Confidential Information related thereto are the intellectual property of the Author/Agent and that it will have **no right whatsoever** to use any of the written work and any related Confidential Information without the express permission of the Author/Agent.
- 3.2. The parties further understand that in order to successfully engage with the Author/Agent in relation to its services, MYeBook is going to need to provide the Author/Agent with certain ideas and Confidential Information for the project. The Author/Agent understands that these ideas and the Confidential Information related thereto are the intellectual property of MYeBook and that it will have no right whatsoever to use any of these ideas or the related Confidential Information without the express permission of MYeBook.
- 3.3. Each party understands and agrees that by breaching this provision, it will cause direct financial damages and/or losses to the other party. The party against whom the breach was committed shall have the right to claim damages, amongst other remedies, should the breaching party fail to adhere to this provision.

4. USE AND OWNERSHIP

- 4.1. The Author/Agent retains the sole and exclusive ownership of all intellectual property rights in and to the written work, as well as all intellectual property rights to its Confidential Information, and no license or any other interest in such written work or its Confidential Information shall pass to, or be granted to, MYeBook in terms hereof or by reason of the disclosure of information contemplated in clause 3.1 above.
- 4.2. MYeBook retains the sole and exclusive ownership of all intellectual property rights produced by it during the engagement phase or in the course of rendering any goods or services to the Author/Agent, as well as all intellectual property rights to its Confidential Information, and no license or any other interest in such Confidential Information shall pass to, or be granted to, the Author/Agent in terms hereof or by reason of the disclosure of information contemplated in clause 3.2 above.
- 4.3. Any Confidential Information disclosed by the Author/Agent shall be received and used by MYeBook only for a specific authorised purpose, which authorisation may only be granted by the Author/Agent with its prior written consent (the “**Author/Agent’s Authorised Purpose**”), and may not be used for any other purpose, nor may MYeBook disclose any Confidential Information to any third party without the prior written consent of the Author/Agent.
- 4.4. Any Confidential Information disclosed by MYeBook shall be received and used by the Author/Agent only for a specific authorised purpose, which authorisation may only be granted by MYeBook with its prior written consent (the “**MYeBook Authorised Purpose**”), and may not be used for any other purpose, nor may the Author/Agent disclose any Confidential Information to any third party without the prior written consent of MYeBook.
- 4.5. The parties may only make such copies, reproductions or electronic records of the Confidential Information as are reasonably required for the respective Authorised Purposes (as set out in clauses 4.3 and 4.4 above) and any such copies, reproductions or electronic records shall be the property of the party disclosing same. The parties shall clearly mark all such copies as “confidential”.
- 4.6. Each party shall keep an accurate and up to date record of the Confidential Information furnished to it and of the location of such Confidential Information.
- 4.7. All ownership and copyright in all projects offered to the Author/Agent by MYeBook during the engagement phase or while providing any Services to the Author/Agent, including all ideas, strategies and other works remain the property of MYeBook until date of final payment for any project for which MYeBook is appointed to undertake for the Author/Agent. MYeBook reserves the right to revoke any permission given to the Author/Agent to use any idea or project, if payment is not made in full.

- 4.8. The Author/Agent will only own the materials, ideas and/or project which it has accepted as part of the finished product. As a result:
- 4.8.1. the Author/Agent will have no ownership or claim of any rights of any nature over any material, ideas or projects presented to the Author/Agent, but not accepted as part of the final finished product; and
 - 4.8.2. MYeBook shall retain all ownership rights of the source files in respect of the material, project or ideas unless otherwise agreed between the parties and subject to an agreed fee. The Author/Agent may utilise the services of companies which are similar to MYeBook, but MYeBook shall not be obliged to hand over any of the source files for the material.
 - 4.8.3. For clarity, MYeBook will retain ownership of all material, projects or ideas presented but not accepted by the Author/Agent as well as all source files for the finished product.

5. NON-DISCLOSURE

- 5.1. Each party hereby agrees and undertakes in favour of the other party that:
- 5.1.1. it will, from the date of signature of this Agreement and notwithstanding termination of this Agreement, treat and keep the other party's Confidential Information as private and confidential and safeguard it by taking all such steps as may be reasonably necessary to prevent the other party's Confidential Information falling into the hands of unauthorised persons and in doing so shall, without limitation to the above objective standard, apply no lesser security measures and degree of care than those which it applies to its own Confidential Information;
 - 5.1.2. it will not use the other party's Confidential Information for any purpose other than the respective Authorised Purposes as set out in clauses 4.3 and 4.4 above, and without limitation to the generality thereof, it will not (and shall not attempt to) rewrite, reverse engineer, disassemble, access source codes, decompile, duplicate performance characteristics of, modify, improve, create a derivative work, reconstruct or copy any intellectual property contained in or relating to the Confidential Information; and
 - 5.1.3. it will not without the other party's specific prior written consent, disclose or transfer, whether directly or indirectly, the Confidential Information of the other party to any third party and it will not disclose to any third party the fact that the Confidential Information has been made available to it or that discussions or negotiations are taking place between the parties or any other facts with respect to the negotiations between the parties.
- 5.2. The parties may disclose Confidential Information to a third party in so far as it is required for the Authorised Purposes, provided that the parties shall, prior to disclosing the Confidential Information, inform such third party of the confidential nature of the information and shall ensure that any third party which receives or has access to the Confidential Information complies with the terms and conditions of this Agreement. Without limitation to this responsibility, the parties shall, prior to disclosing or granting access to the Confidential Information, procure that the receiving third party has agreed to be irrevocably bound by all the terms of this Agreement. The disclosing party hereby indemnifies and holds the other party harmless against any loss, harm, damage, prejudice or expense which it may suffer as a result of the third-party person breaching the undertakings contained in this Agreement. In addition and without limitation to the above indemnity, if such a third party that has received or had access to the Confidential Information breaches the terms of this Agreement, then the disclosing party shall, as soon as it becomes aware of any such breach inform the other party thereof, at its own cost take such action as is necessary or desirable to protect the other party's interests in the Confidential Information and at its own cost provide the other party with such assistance, as the other party may reasonably request, to protect or exercise the other party's interests or rights in relation to the Confidential Information.

5.3. The Author/Agent shall:

5.3.1. on request at any time; and/or

5.3.2. on termination of the engagement phase; and/or

5.3.3. if MYeBook is appointed to provide services to the Author/Agent, and such services are finally concluded;

return to MYeBook all of MYeBook's Confidential Information which is in physical form (including, without limitation, all copies and reproductions) and shall destroy any other records (including, without limitation, those in electronic or other machine-readable form) as far as they contain MYeBook's Confidential Information.

5.4. Subject to bearing the onus of proof that the relevant circumstances exist, a party may disclose such Confidential Information as is required to be disclosed or released by such party in order to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any, court order, law or regulation in force at the time or the requirements of any recognised stock exchange or governmental or regulatory authority, provided that, in these circumstances, the disclosing party shall:

5.4.1. inform the other party of the requirement to disclose prior to making the disclosure and provide the other party with a reasonable opportunity to agree to the disclosure or to contest the disclosure requirement and defend its interests in the Confidential Information;

5.4.2. disclose only that portion of the Confidential Information which it is legally required to disclose;

5.4.3. use reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances, and

5.4.4. co-operate with the other party, if the other party elects to contest any such disclosure and/or defend its interests in the Confidential Information and the other party undertakes to cover the reasonable costs of the disclosing party in such circumstances.

6. DISPUTE RESOLUTION

- 6.1. Should any dispute, disagreement or claim arise between the parties concerning the Services, the parties shall endeavour to resolve the dispute amicably, by negotiation, and with the best interests of both parties in mind.
- 6.2. Should the parties fail to resolve such dispute in the aforesaid manner or within such further period as the parties may agree to in their negotiation, the parties will approach an independent industry expert who shall mediate the discussion on their behalf.
- 6.3. Should mediation fail, then the matter will be referred to arbitration as set forth herein below.
- 6.4. Should the parties fail to resolve such dispute in the aforesaid manner or within such further period as the parties may agree to in their mediation, the parties will approach an independent arbitrator, and the dispute arising from or in connection with this agreement shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”) by an arbitrator appointed by the Foundation.
- 6.5. The parties both agree that in no circumstance will either party publicize the dispute on any social media platform. The parties understand that publicity of this nature can cause serious damage to the other party, which damage may result in a financial claim.

7. GENERAL

- 7.1. **Survival of Rights, Duties and Obligations:** Termination of this Agreement for any cause whatsoever shall not release either party from any liability which at the time of termination has already accrued to the other or which thereafter may accrue in respect of any act or omission prior to such termination.
- 7.2. **Variation of this Agreement:** No alteration, consensual cancellation, variation of, or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by both parties.
- 7.3. **Governing law:** This Agreement shall be governed by and interpreted in accordance with the law of the Republic of South Africa. All disputes, actions and other matters in connection with this Agreement shall be determined in accordance with such law.

SIGNED AT _____ THIS _____ DAY OF _____ 2021

AS WITNESSES

1. _____

MY EBOOK (PTY) LTD

2. _____

Name:

Signature:

Capacity:

who warrants that s/he is duly authorised thereto

SIGNED AT _____ THIS _____ DAY OF _____ 2021

AS WITNESSES

1. _____

[insert author/ agent's full name]

2. _____

Signature