

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the “**Agreement**”) dated as of _____, 2023 is made by and between Deborah J. Piazza, solely in her capacity as the Chapter 7 Trustee (the “**Trustee**”) of the debtor Donadio & Olson, Inc. (“**Donadio & Olson**” or the “**Debtor**”), and _____ (collectively, the “**Parties**”).

RECITALS

WHEREAS, Donadio & Olson, Inc., as the Debtor, filed a voluntary Chapter 7 petition (ECF No. 1) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) under Case No. 18-13915 (DSJ) on December 3, 2018; and

WHEREAS, on December 4, 2018, Deborah J. Piazza was appointed as interim Chapter 7 Trustee of the Debtor; she thereafter became permanent Trustee of the Debtor and has been serving and continues to serve through and including the present as said permanent Trustee; and

WHEREAS, the Trustee has filed and served in the Debtor’s bankruptcy case a motion authorizing her as Trustee, among other things, to sell the remaining assets (the “**Remaining Assets**”) of the Debtor’s bankruptcy estate, to conduct an auction sale (the “**Auction**”), and to solicit bids for the Remaining Assets pursuant to bidding procedures for which she seeks the Bankruptcy Court’s approval; and

WHEREAS, the Remaining Assets include commissions due and to become due from publishers, based upon royalties from sales of works earned by authors for whom the Debtor served as literary agent; and

WHEREAS, in order to permit potential bidders to review in advance of the Auction copies of agreements between publishers and authors for whom the Debtor served as literary agent (“**Publisher Agreements**”) which the Trustee may have in her possession, custody and/or control,¹ the Trustee requires that any such potential bidder who desires to review any of the Publisher Agreements in advance of the Auction agree to maintain the confidentiality of same and not distribute or disclose any of the Publisher Agreements or the content thereof to anyone else;

NOW THEREFORE, in consideration of the representations and promises set forth below, the receipt and sufficiency of which are hereby acknowledged, the undersigned Potential Bidder (as defined below) does hereby agree to the following:

1. **Certain Definitions**

- a) As used herein, “Potential Bidder” means the individual or entity executing this Agreement with the Trustee, and all of said individual’s or entity’s directors, officers, employees, consultants, financing sources, agents, attorneys and affiliates, and any other duly authorized persons or entities acting on behalf of the Potential Bidder.

¹ It is understood and agreed that the Trustee may not have possession, custody or control of all of such Publisher Agreements between publishers and authors for whom the Debtor served as literary agent.

- b) As used herein, “Confidential Information” means the Publisher Agreements, any of the content of the Publisher Agreements, and any information disclosed to the Potential Bidder by the Trustee and/or by the Trustee’s retained Counsel, the Trustee’s retained Accountant and/or by any other representative of the Trustee (collectively, the “**Trustee’s Representatives**”) regarding any of the Publisher Agreements and/or any of the content of the Publisher Agreements.
2. **Confidentiality** - In consideration of the Trustee providing the undersigned Potential Bidder with the Confidential Information and access thereto, the Potential Bidder agrees as follows:
- a) The Potential Bidder shall hold the Confidential Information in confidence, shall use it only for purposes of evaluating whether to submit a bid for the purchase of the Commissions, and shall not use the Confidential Information for any other purpose, including in connection with any contract, litigation, arbitration, mediation, alternative dispute resolution process or similar process, or any negotiation in connection therewith, and shall not disclose any of the Confidential Information, except as as may be required by legal process in the reasonable judgment of its counsel. In the event of any potential disclosure in connection with any contract, litigation, arbitration, mediation, alternative dispute resolution process or legal process or similar process, or any negotiation in connection therewith, the Potential Bidder shall promptly provide the Trustee with written notice of said potential disclosure so that the Trustee may seek a protective order or other appropriate remedy, and the Potential Bidder shall exercise reasonable efforts to assist the Trustee in obtaining such order or remedy.
- b) Notwithstanding the foregoing, the obligations of the undersigned Potential Bidder to protect the Confidential Information shall terminate as to Confidential Information which is or becomes:
- (i.) Public knowledge through no act of, omission by, or failure to act by either of the Parties;
 - (ii.) Publicly disclosed by the proprietor thereof or by a third party;
 - (iii.) Lawfully known by the Potential Bidder at the time of disclosure other than by reason of discussions with or disclosures by the Trustee , or;
 - (iv.) Received from a third party that is not otherwise bound by a condition of confidentiality with the Trustee.
3. **Ownership** - Recipient agrees and acknowledges that all Confidential Information shall be and remain the sole property of the Debtor’s estate being administered by the Trustee. Nothing contained in this Agreement shall be construed as granting to the undersigned Potential Bidder any right, title or interest of any kind, by license or otherwise, to the Confidential Information, any intellectual property therein or any part or copy thereto. The undersigned Potential Bidder further acknowledges and agrees that nothing contained herein shall be construed as granting the Potential Bidder any right to distribute or otherwise use any of the Confidential Information, or authorize or in any way assist others to do so. The Potential Bidder may not make, sell license or distribute copies of the Confidential Information or any originals or copies of any

notes, memoranda or other materials, pertaining to any of the Confidential Information, that have been generated by the Potential Bidder, and may not sublicense, transfer or assign in any manner whatsoever this Agreement or any of the Potential Bidder's rights or obligations under this Agreement.

4. **No Warranties or Representations** - The undersigned Potential Bidder acknowledges that the Trustee is not making any representation or warranty, express or implied (including any warranty of merchantability and/or fitness for a particular purpose), as to the accuracy or completeness of the Confidential Information. Neither the Trustee nor any of the Trustee's Representatives shall have any liability to the Potential Bidder resulting from the latter's use of the Confidential Information.
5. **Modification** – This Agreement may be modified only by a separate writing duly executed in writing by both Parties hereto, expressly so modifying this Agreement.
6. **Governing Laws and Jurisdiction** – This Agreement is to be governed by and construed in accordance with the laws of the State New York, without regard to the principles of conflict of laws. Any claim or dispute concerning this Agreement may be brought only in the Bankruptcy Court which has jurisdiction of the Debtor's bankruptcy case. In that regard, the undersigned Potential Bidder consents to the jurisdiction of the Bankruptcy Court.
7. **Remedies for Breach of Agreement** - The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement by the Potential Bidder, and that any such breach may result in immediate and irreparable harm/damage to the Debtor's bankruptcy estate. Accordingly, in the event of the Potential Bidder's breach of this Agreement, then in addition to any remedies available at law, the Trustee shall also be entitled to equitable relief, including an injunction and specific performance, in the event of any actual or threatened breach of this Agreement by the Potential Bidder, without the necessity of proof of damages.
8. **Entire Agreement**- This Agreement sets forth the entire understanding and agreement of the Parties with regard to the subject matter hereof and is intended as the Parties' final expression and complete and exclusive statement of the terms thereof, superseding all prior or contemporaneous agreements, representations, promises and understandings related hereto, whether written or oral. In the event of any inconsistency between this Agreement and any other agreement, this Agreement shall control. This Agreement may be amended, superseded, or cancelled only by an instrument in writing that specifically states that it amends, supersedes or cancels this Agreement and is duly executed and signed by an authorized officer of each of the Parties.
9. **Counterpart Execution** - This Agreement may be executed in counterparts, which, when taken together, shall constitute one and the same instrument, in its totality. Copies of original signatures sent by facsimile, portable document format (.pdf), or other electronic imaging means shall be deemed to be originals for all purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth above.

By: _____

Name:

Title:

Deborah J. Piazza, solely in her capacity
as Trustee of the Debtor Donadio & Olson, Inc.