

Dated: \_\_\_\_\_

**Darby Pop Publishing, Inc.**  
**c/o Sloane, Offer, Weber and Dern, LLP**  
**9601 Wilshire Boulevard, Suite 500**  
**Beverly Hills, CA 90210**  
**Attn: Thomas B. Collier, Esq.**

Gentlepersons:

I desire to submit to Darby Pop Publishing, Inc. ("you" or "Company") for your review and consideration material written and/or drawn by me (the "Material") based upon one or more of your Properties (including but not limited to INDESTRUCTIBLE, CITY: THE MIND IN THE MACHINE, THE 7<sup>TH</sup> SWORD, DOBERMAN, DEAD SQUAD, INDESTRUCTIBLE: STINGRAY, DEAD SQUAD: AYALA TAL, SIDE-KICKED, DEAD MAN'S PARTY, FAKE EMPIRE) and the characters and other elements contained therein (collectively, the "Properties"), which may be used by you for publication and/or promotional purposes. If, after your review, you are interested in acquiring the Material, I will enter into an acquisition agreement with you in your standard form.

In the meantime, however, I recognize that because of your position in the entertainment industry, your files are replete with ideas, stories and characters for comic books, movies, television shows and other entertainment projects, and that new ideas for such projects are constantly being submitted to you or being developed by you, whether based on the Properties or otherwise. I also recognize that many ideas, stories and characters are similar, and that different ideas, stories and characters often relate to one or more common underlying themes. I recognize the possibility that the Material may be similar or identical to material that has or may come to you from other sources. Such similarity in the past has given rise to litigation, so unless you can obtain adequate protection in advance, you will refuse to consider the Material. Accordingly, I understand and acknowledge that, without this agreement, you will refuse to accept the Material for review and consideration. The protection for you must be sufficiently broad to protect you, your related corporations, your and their employees, agents, licensees and assignees, and all parties to whom you submit material. Therefore, all references herein to "you" or "Company" include each and all of the foregoing.

Therefore, as an inducement to you to accept the Material for review, and in consideration of your doing so, I agree to the following:

1. I acknowledge that the Material was written and/or drawn by me and is submitted by me voluntarily and not in confidence, and that no confidential relationship is intended or created between us by reason of my submission of the Material.

2. You agree that you shall not use the Material unless you either (a) enter into an acquisition agreement with me or (b) determine in good faith that you have the independent legal right without my consent to use all or any part of (or any features or elements in) the Material either because (i) I do not own or control such Material or such features or elements or (ii) the Material or features or elements used by you and claimed by me to be the Material or embodied in the Material is in the public domain, is not new or novel, is not legally protected or capable of being legally protected, was not originated by me, or was independently created or developed by you or obtained by you from other sources, including your own employees. Specifically, without limiting the generality of the foregoing, I acknowledge and agree that you

shall have the right to use (x) characters, titles, events, themes, theories, plots, ideas, stories, content, dialogue, artwork, visual images and other elements contained in or derived from any other source; (y) any material submitted or suggested by me that is not original to me and owned by me; and (z) generic ideas, scenes a faire and other forms of expression not protected by copyright that are contained in the Material, without any obligation whatsoever to me, regardless of any similarity between your use thereof and my Material.

3. I represent and warrant that, except to the extent that the Material is based on the Properties, the Material is original to me, and I solely and exclusively own the Material and all rights therein and thereto, free of all claims or encumbrances, and that I have the exclusive right to offer all rights in the Material to you on the terms and conditions set forth herein, each and all of which shall be binding on me and on my agents, heirs, successors and assignees. I further acknowledge your intellectual property rights (including copyrights and trademark rights) in and to the Properties. I shall not make any use of the Properties whatsoever except in the creation of the Material, and I shall not make any use of the Material whatsoever except in submitting it to you for your review and consideration hereunder.

4. I agree that no obligation of any kind is assumed or may be implied against you by reason of your consideration of the Material or any discussions we may have with respect thereto, unless you are interested in acquiring the Material and we enter into an acquisition agreement, which, by its terms, will be the only contract between us.

5. If I should claim that you have used all or any part of the Material or any features or elements in the Material or breached any alleged agreement to use or compensate me for the use of the Material or any features or elements thereof, I undertake the entire burden of proof of originality, copying, similarity, and all other elements necessary to establish your liability, and I agree that my submission of the Material shall in no event give rise to a presumption or inference of copying or taking or that anyone in your organization, other than the particular individual to whom the Material is delivered by me, had access to the Material or examined same. I further acknowledge that you shall be free to enter into agreements and collaborate with any persons or companies that may have had access to my Material without thereby incurring any obligation to me or creating any inference of access to or copying from my Material.

6. If I should bring any action against you for wrongful appropriation of the Material or any features or elements thereof or any breach of any alleged agreement to use or compensate me for the use of the Material or any features or elements thereof, or any other claim based, in whole or in part, on the submission of the Material or any other matters or events relating to or based, in whole or in part, on the submission of the Material, such action shall be limited to an action at law for damages, and I shall in no event be entitled to an injunction or any other equitable relief. Should I be unsuccessful in any such action, I assume, and agree to pay to you upon demand, all of your costs and expenses entailed in defending or contesting such action, including all court costs, costs of depositions, attorneys' fees, and the fees or charges of any experts engaged by you to ascertain originality, public domain status, or any other facts or factors deemed necessary or advisable by you in the defense or contest of such action. I further agree that as a condition precedent to any such action, I will give you prior written notice thereof specifying in complete detail the grounds on which I will base such action and that any such action shall be and is hereby forever waived and barred unless duly filed by me within six (6) months after you first publicly release or use what I claim to be the Material (or any claimed features or elements thereof) or ninety (90) days after you notify me in writing that you deny liability to me, whichever is earlier.

7. In agreeing to the provisions of the preceding paragraph, I understand that I may be waiving rights with respect to claims that are at this time unknown or unsuspected, and in accordance with such waiver, I hereby acknowledge that I have read and understand, and hereby expressly waive the benefits of, Section 1542 of the Civil Code of California, which provides as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

8. I have retained a copy of the Material and agree that you shall not be obligated to return the Material to me, and I release you from all liability if the Material is lost, misplaced, stolen or destroyed.

9. This is our entire agreement. No statements or representations have been made except those expressly stated in this agreement. This agreement may be modified only by a subsequent written agreement signed by both you and me. This agreement will be interpreted in accordance with the laws of the State of California. You may freely assign your rights under this agreement.

10. I hereby agree expressly for Company's benefit that I will not claim that Company or its employees or agents or any studios, financiers or distributors with which it has an agreement has had, or may in the future have, access to the Material other than through you; and this agreement applies to all access of the Material had by any such party, even if you never submit the Material to such party.

11. This Agreement shall inure to the benefit of Company and the officers, directors, shareholders, employees, agents, representatives, attorneys and affiliated and related companies of each of them, and all of their respective heirs, successors, licensees and assignees.

Very truly yours,

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**AGREED AND ACCEPTED:**

**DARBY POP PUBLISHING, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_