

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

**NON-DISCLOSURE AND NON-COMPETE AGREEMENT  
(INDEPENDENT CONTRACTOR)**

**THIS NON-DISCLOSURE AND NON-COMPETE AGREEMENT** is entered into on \_\_\_\_\_, 2004  
by \_\_\_\_\_ ("Independent Contractor") and Super Duper, Inc. ("Company").

**RECITALS**

**WHEREAS**, the Agreement contains material restrictions on Independent Contractor's right to disclose or use certain information learned or developed by her during her association with Company and thereafter; and

**WHEREAS**, the Agreement contains material restrictions on Independent Contractor's right to work for other businesses that develop educational materials and/or services that compete with the educational materials and/or services of Company; and

**WHEREAS**, Company considers this Agreement to be vitally important to the protection of its business,

**NOW THEREFORE**, in consideration of the mutual promises stated in this Agreement and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereby agree as follows:

**1. DEFINITIONS.** For purposes of this Agreement, the following terms will have the following definitions:

**(a) "Company"**: includes Super Duper, Inc. d/b/a Super Duper Publications and all its present and future subsidiaries and affiliates;

**(b) "Confidential Information"**: means any and all information that is not generally known and that is proprietary to Company or any of its clients, consultants, licensors, licensed dealers or distributors. Confidential Information includes, without limitation, business plans, customer lists, consultants, financial information, and trade secrets about Company and its products and information or other proprietary information relating to designs, formulas, developmental or experimental work, know-how, products, processes, computer programs, source codes, databases, designs, schematics, other original works of authorship, or other subject matter related to Company's research and development, manufacturing, engineering, purchasing, finance, marketing promotion, distribution and selling activities, whether now existing, acquired, developed or made available anytime in the future to Company. All information which Independent Contractor has a reasonable basis to consider confidential or which is treated by Company as confidential shall be presumed to be Confidential Information, whether originated by me or by others. Independent Contractor agrees that any Confidential Information acquired by her is the property of Company.

**(c) "Trade Secret."** A type of intangible property that generally consists of valuable, secret information or ideas that Company collects or uses in order to keep its competitive edge, including confidential information supplied to it by its customers, clients, vendors, or agents. This information includes, but is not limited to proprietary technology and technical information such as manufacturing or operating processes, equipment design, product specifications, source code, and business information such as selling and pricing information and procedures, customer lists, business and marketing plans, and financial statements.

**(d) "Work."** (1) Any direct assignments or required performance by or for Company, and (2) any other output relating to Company's business that is produced during the course of the Independent Contractor's employment. Work conducted or completed after normal working hours, away from Company's premises, on an unsupervised basis, alone or with others is considered present.

**2. INDEPENDENT CONTRACTOR RELATIONSHIP.** Company hereby employs Independent Contractor, and Independent Contractor hereby accepts employment, to further Company's business at such times and places as the Parties agree. The Parties fully understand that Independent Contractor is under no obligation to perform any services for Company whatsoever, and that control over the time and place of such services is under the control of Independent Contractor.

**3. COMPENSATION.** Company agrees to pay Independent Contractor for all services rendered such compensation as the Parties agree. In addition, Company agrees to reimburse Independent Contractor for certain expenses such as travel and lodging expenses, as the Parties agree and as in accordance with the law.

**4. POSITION, DUTIES, AND TERM.** Independent Contractor shall hold the position of Super Duper Party Rep and perform such responsibilities as required by Company in this position. The term of this Agreement shall be from the date it is signed by both Parties until one Party gives the other Party notice in writing that it is terminated. The Parties agree that the Agreement may be terminated at any time for any reason.

**5. NON-COMPETITION.** During the term of this Agreement, Independent Contractor shall not, directly or indirectly, as an employee, employer, consultant, advisor, agent, principal, partner, officer, director, independent contractor, or in any other individual or representative capacity, engage or participate in any business or activity that is competitive in any manner whatsoever with the activities and business of Company. Independent Contractor further agrees that it will not receive payment from any person, entity and/or business that conducts any business or activity that is competitive in any manner with the Company, including, and not limited to the sale of

speech language and hearing products and/or services to the educational market, whether this market consists of speech-language pathologists, special educators, primary grade school teachers, reading teachers, other educators, consumers and/or parents. Notwithstanding the above, the Parties acknowledge and agree that Independent Contractor currently provides services for certain persons, business, and/or entities as further contained in Exhibit A attached to this Agreement and incorporated herein, and that these services are not in violation of this Agreement.

**6. CONFIDENTIALITY.** Independent Contractor agrees at all times during the term of this Agreement and thereafter to hold in strictest confidence, and not to use, except for the benefit of Company, or to disclose, transfer or reveal, directly or indirectly to any person or entity, any Confidential Information without the prior written authorization of Company.

Independent Contractor recognizes that Company has received, and in the future will receive, Confidential or Proprietary Information from third parties, subject to a duty on Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Independent Contractor agrees that she owes Company and such third parties, during the term of this Agreement and thereafter, a duty to hold all such confidential or proprietary information in the strictest of confidence and not to disclose it to any person, firm or corporation (except as necessary in carrying out my work for Company consistent with Company's Agreement with such third party) or to use it for the benefit of anyone other than for Company or such third party (consistent with Company's Agreement with such third party) without the express written authorization of Company. Any such information shall be considered Confidential Information for the purposes of this Agreement.

**7. RETURN OF MATERIALS.** At the request of Company or on the termination of the relationship of the Parties, Independent Contractor will immediately deliver to Company all papers, notes, data, reference materials, sketches, drawings, memoranda, documentation, software, tools, apparatus, uniforms and any other materials furnished to her by Company or that were prepared or made, in whole or in part, by her at any time during her association with Company.

**8. SURVIVING TERMS.** Independent Contractor's obligations with respect to Paragraph 6 in this Agreement survive the termination of her association with Company.

**9. BREACH.** If any Party fails to perform its obligations under this Agreement, that Party shall be in breach of this Agreement, and the other Party shall be entitled to any legal or equitable relief available against the breaching Party. If any Party obtains legal counsel to obtain any relief whatsoever arising under this Agreement, and/or if any Party brings an action in law equity and/or arbitration to enforce any terms of this Agreement and/or recover damages under this Agreement, the non-prevailing Party shall be liable for paying all reasonable attorney's fees, costs, and expenses of any kind whatsoever, including but not limited to all consequential, special, and punitive damages, incurred by the prevailing Party in enforcing the Agreement.

**10. NOTICE.** Independent Contractor authorizes Company to notify others, including customers of Company and Independent Contractor's future employers, of the terms of this Agreement and Independent Contractor's responsibilities.

**11. INJUNCTIVE RELIEF.** Independent Contractor understands that in the event of a breach or threatened breach of this Agreement by her, Company may suffer irreparable harm and consequently will be entitled to injunctive relief to enforce this Agreement.

**12. ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. There shall be one arbitrator, to be chosen directly by the AAA. Costs of the arbitration, including the cost of any record or transcripts of the arbitration, administrative fees, arbitrator fee, and all other fees and costs, shall be borne equally by the Parties. Despite the forgoing, the arbitrator may assign to one Party or the other any and all arbitration fees, attorneys fees and costs as part of any arbitration award.

**13. NON-ASSIGNMENT.** This Agreement shall be binding upon and defer to the benefit of the successors and permitted assigns of the Parties. Independent Contractor may not assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of Company.

**14. WAIVER, AMENDMENT, MODIFICATION.** No waiver, amendment or modification, including those by custom, usage of trade, or course of dealing, of any provision of this Agreement will be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No waiver by any party of any default in performance by the other party under this Agreement or of any breach or series of breaches by the other party of any of the terms or conditions of this Agreement shall constitute a waiver of any subsequent default in performance under this Agreement or any subsequent breach of any terms or conditions of that Agreement. Performance of any obligation required of a party under this Agreement may be waived only by a written waiver signed by a duly authorized officer of the other party, that waiver shall be effective only with respect to the specific obligation described in that waiver.

**15. GOVERNING LAW.** The validity, construction and performance of this Agreement shall be governed and construed by the internal laws of the State of South Carolina.

**16. JURISDICTION IN SOUTH CAROLINA.** The Parties agree that any disagreements under this Agreement will be governed by the laws of the State of South Carolina; that any disagreements arising hereunder will be subject solely to the jurisdiction of the courts

of the State of South Carolina, with the jurisdiction of any other court or body being hereby forever waived; and that all Parties hereto voluntarily submit themselves to the jurisdiction of the South Carolina courts for the purpose of personal and subject matter jurisdiction as to any matter whatsoever, including but not limited to all matters of enforcing or interpreting this Agreement, arising hereunder.

**17. CERTAIN INVALID SECTIONS.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

**IN WITNESS** of this, Independent Contractor and Company have executed this Agreement as of the day and year first written above.

Independent Contractor:

Company: Super Duper, Inc. d/b/a Super Duper Publications

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

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

Name: \_\_\_\_\_

Name: M. Thomas Webber, Jr.

Title: \_\_\_\_\_

Title: Chairman/CEO

## **EXHIBIT A**