

DRAFT

License and Confidentiality/Trade Secret Agreement Regarding Armando Lucero Sleight of Hand Workshop and Related Educational Literature.

This Agreement is entered into regarding the licensing of card sleight of hand pamphlets (“the workbooks”) that Armando Lucero had written and will distribute at a private workshop that he is holding for qualified magicians. It also relates to the licensing of the information taught in the workbooks and in the workshop.

1. **Parties:** The parties (“Parties”) to this License and Confidentiality-Trade Secret Agreement (“Agreement”), entered into in Los Angeles, California, are:
 - a) “Lucero.” Armando Lucero (also referred to herein as the “Company”), a sole proprietor doing business in Los Angeles County, California.
 - b) Last name: “_____” First and last: _____
(also referred to herein as “you” or Licensee)

2. **License of the Materials:** In return for a fee: _____, the Company grants you a non-exclusive, royalty free license to attend a workshop and/or use the workbooks provided at the workshop to study and learn certain sleight of hand techniques and choreographies that Lucero has created. The Company is providing the workbooks to better ensure that workshop participants can learn and retain the techniques taught. As further discussed below, your license excludes the right to display, rent, duplicate, lend, or sell the workbooks, and it further excludes the right to disclose or expose any information about the techniques taught in the workbooks or in the workshop. Your license also **excludes** the right to perform the subject techniques or choreographies on television, film, or video – whether for general audiences or magicians. Lucero retains all such rights.

The license lasts for the rest of your natural life, subject to your compliance with this Agreement. You may not transfer the license to a third party under any circumstances and it expires upon your death (at which point your executor must destroy the workbooks). This agreement is binding on you and your heirs, administrators, representatives, executors, trustees, successors and assigns, and will inure to the benefit of the Company and its successors, assigns, representatives, administrators, and heirs.

3. **Ownership of Information:** You agree that the workbooks and the information taught therein (and in the workshop) are the exclusive property of the Company. You (including any assistant, employee, agent, officer, or representative) will not use or let others use or copy, duplicate or replicate the workbooks or any related information unless expressly permitted by this Agreement.

Initials: _____

4. Trade Secrets, Confidential Information, and Injunctive Relief: You recognize that the value of the workshop and its workbooks lies in the secret of the sleight of hand techniques and choreographies taught. You agree that these techniques and choreographies — and their uses for the magic tricks that are taught to those who acquire licenses from the Company -- are trade secrets not known generally (if at all) to magicians and non-magicians. These secrets are important to preserving not only their inherent value (e.g., so that they can be used to entertain and deceive the general public and/or other magicians) but also to maintain the Company's competitive advantage and to ensure that its products are not misappropriated by third parties.

For these reasons, you promise to preserve the confidentiality of the Company's trade secrets and commercially useful confidential information learned from licensing the workbooks and any future related products acquired from the Company and to use all such information only to deceive audiences with the performances of magic. You must safeguard against disclosure all information touching on the trade secrets and/or privacy interests of the Company or other licensees of the Company. This duty includes an obligation not to disclose any specific information about the techniques to other magicians or any other individuals on Internet discussion groups (e.g., the Genii Forum, The Magic Café, and the Electronic Grimier), at magic club meetings, or to any non-licensee of the workshop. Performers may disclose the techniques to persons with a "need to know" (e.g., assistants, theatrical directors, television directors and/or television cameramen before rehearsing a performance or taping a television program) if they get such person(s) to sign a confidentiality agreement in advance, which Lucero will provide upon at least 14 days written notice.

You agree that the workbooks and the magic effects that you will be taught to perform are trade secrets within the meaning of the Uniform Trade Secrets Act, as codified in California Civil Code Section 3426.1(d).

You further agree that breaches of your obligations concerning this license, the subject trade secrets and/or confidential information will create irreparable harm for which monetary damages would be an inadequate remedy, and that the Company may seek and upon proper proof obtain (from a court with proper jurisdiction) an injunction (without the posting of a bond or other security) to prevent any actual or threatened breach of this Agreement, as well as damages for already caused harm in the event of breach of any obligations herein regarding confidentiality. You further agree that it would be difficult to calculate actual damages but that a reasonable estimate of the present discounted value of such damages is \$50,000 given the opportunities that the Company has (a) to market these techniques and choreographies to other magicians via workshops, private lessons, instructional DVDs, lectures for magicians at conventions and magic club meetings, and (b) to perform tricks using these techniques and choreographies on television for the general public.

5. Consequences of Violation of Agreement: If any party violates his promises herein, including but not limited to disclosing or misappropriating any confidential or trade secret information, such party will be liable for all costs, including reasonable attorneys' fees, incurred by the aggrieved party in prosecuting any claims accrued as a result of

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the breach of this Agreement. Any judgment or order entered in any such lawsuit should contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment. For the purposes of this section, attorney fees include, without limitation, fees incurred in the following: (1) post-judgment motions; (2) contempt proceedings; (3) garnishment, levy and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. Costs (as used in this section) means all expenses reasonably incurred in conjunction with legal proceedings, including but not limited to messenger fees, photocopying, telephone calls, travel for the purpose of taking depositions and/or interviewing witnesses, parking, and postage.

In addition, a violation of the confidentiality obligations and duties set forth in this Agreement constitutes a material breach of the license and will cause it to terminate – thereby requiring you immediately to return the workbooks and all related materials to the Company at your expense and barring you from being able to use the techniques and choreographies that you learned in the workshop and from the workbooks. If you fail to voluntarily return these items in the event of a breach, the Company may recover possession of the provided materials by filing suit and seeking all available remedies, including but not limited to a pre-judgment writ of possession and/or a pre-judgment writ of attachment. You acknowledge that this is a commercial transaction that relates to a business or profession (magic) and is not a consumer transaction.

6. No Gambling Use And Indemnification: You agree to use the techniques and choreographies taught for magic entertainment purposes only. You further agree not to use the techniques and choreographies for any gambling or gaming purpose of any kind, or any other unlawful purpose, whether civil or criminal. You agree to indemnify, defend and hold harmless the Company and all persons, agents, and attorneys who have acted on its behalf (including but not limited to Armando Lucero and Jeffrey Cowan) in the development, design, and licensing of the workbooks against any liability, loss, cost or expense, including attorneys' fees, incurred by such party as a result of having to defend against any civil, criminal or administrative claims regarding your use of them.

7. Integrated Complete Agreement: This Agreement integrates and supersedes all other prior and contemporaneous written and oral agreements and understandings between you and the Company and comprises the entire agreement between you and the Company with regard to issues relating to the workshop and workbooks (other than your method for paying for the workshop). You understand that this Agreement may be amended, terminated or rescinded only by a further express written agreement between you and the Company that has been executed by you and Armando Lucero; and that this Agreement cannot be altered by informal discussions or written communications from either of us to the other. No waiver of any rights or obligations under this Agreement will be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver will be deemed a waiver of any other or subsequent rights or obligations.

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8. Venue and Governing Law: This Agreement will be governed by and construed in accordance with the laws of the State of California. The parties agree that any litigation arising from or relating to this Agreement will take place in California. You consent to personal jurisdiction in California. Venue for any action in California will be Los Angeles County.

9. Waiver: No waiver of any provision of this Agreement will be valid unless evidenced by a writing signed by the party to be charged therewith. The waiver of, or failure to enforce, any provision of this Agreement will not operate as a waiver of any further breach of such provision or of any other provision hereof. The waiver by any party of the time for performing an act will not constitute a waiver of the time for performing any other act or identical acts required to be performed at a later time. The exercise of any remedy provided in this Agreement will not be a waiver of any remedy provided by law, and the provisions in this Agreement for any remedy will not exclude any other remedy unless it is expressly excluded.

10. No Warranty: Except as otherwise provided above, the workbooks are provided “as is”, and all other express or implied conditions, representations, and warranties including, without limitation, any implied warranty of merchantability, fitness for a particular purpose (even if informed of such purpose), or arising from a course of dealing, usage, or trade practice, are hereby excluded to the extent allowed by applicable law. No warranty is made regarding the results of your using the techniques or choreographies taught or your ability to use them properly, or that they will meet your performing requirements. You acknowledge that the techniques and choreographies in question requires substantial practice and that there is no guarantee that you will ever gain the expertise and facility with it necessary to deceive audiences.

11. Limitation of Liability: In no event will the Company be liable for any lost revenue, lost profits, damage to reputation, business interruption, or any other indirect, incidental, consequential, special, punitive, exemplary or any similar type of damages arising out of or in any way related to this agreement, the use or the inability to use the techniques, or the provision of any services, even if advised of the possibility of such damages.

You further acknowledge that simply demonstrating the techniques in a gambling casino may violate casino rules and/or the laws of the governing jurisdiction, and you assume all risks from such use – including but not limited to prosecution and/or physical harm. You agree that the Company will not be liable for any consequences arising from your using these techniques in either a casino or environment in which people are playing card games.

In no event will the Company’s liability, whether in contract, tort, breach of warranty, claims by third parties, or otherwise, exceed one hundred percent of the license fees. Licensee is obligated to pay the Company under the terms of this Agreement.

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12. General Provisions:

- a) The terms and conditions of this Agreement will apply to, be binding upon, inure to the benefit of and be enforceable against the parties hereto and their respective heirs, successors, executors, personal representatives, administrators, and legal representatives whether by will, the laws of descent and distribution, merger, reverse merger, consolidation, sale of stock or assets, operation of law or, without limitation, otherwise.
- b) If any provision of this Agreement should be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in whole or in part, such provisions or portions will be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portions of this Agreement enforceable, and, as thus amended, will be enforced to give effect to the intention of the Parties insofar as that is possible.
- c) This Agreement will not become effective and binding until fully executed by both the Company and by you.
- d) The headings inserted at the beginning of each section of this Agreement are for convenience of reference only and will not limit or otherwise affect or be used in the construction of any of the terms and provisions of this Agreement.
- e) You agree that you have participated in the drafting of this Agreement and have had the opportunity to have it reviewed by a lawyer acting on your behalf. This Agreement will be construed according to its fair meaning and not for or against you or the Company regardless of who is responsible for its preparation in whole or in part. Any uncertainty or ambiguity (if any) existing herein must be interpreted according to the application of rules of interpretation of contracts.
- f) This Agreement may be executed in multiple counterparts, all of which together will constitute a single agreement executed by the parties to such agreement.

13. Conditions Of Execution: Each party acknowledges and warrants that his or its execution of the Agreement is free and voluntary.

14. No Representation: You represent and acknowledge that in executing this Agreement you do not rely upon any representation or statement not set forth herein that may have been made by the Company (or the Company's agents, representatives or attorneys) with regard to the subject matter, basis or effect of this Agreement, or otherwise.

Initials: _____

By Lucero:

_____ Date: _____

Armando Lucero

Email: armando@armandolucero.com

Website: <http://armandolucero.com/>

(702) 496-8837

By you:



_____ Date: _____

Print Name: _____

Address: _____

Email: _____

Phone: _____