LAW AND FORMS GUIDE: INTELLECTUAL PROPERTY AND MARKETING LAW

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The Association of National Advertisers (ANA) is pleased to issue this 21st edition of its Law and Forms Guidebook, with brand new and updated material. These documents have been compiled for use by industry members, lawyers and academics. It is meant to be a practical and a useful tool to help in dealing with everyday problems, issues, filings, and agreements.

Attorneys and marketing professionals should find the numerous articles instructive. The authors, experts in their respective field, have also sought where possible to provide a practical approach in context. Those using this product should also be helped by the numerous form agreements, registration forms, as well as by the special sections contained herein.

Special thanks to our contributors for their generous contributions of time and insights.

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A Digital Advertising Primer on Preparing for the Post-Cookie World

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I. Introduction

In a time of constant change in digital advertising, there is one consistent question that persists on advertiser’s minds: what do we do after third-party cookies are gone? The digital marketing ecosystem was built on the ability to track and target consumers as they surf across websites, apps, and online platforms. This is done through third-party cookies – the small digital files that websites download to a user’s device to help identify the user as they interact with a website and traverse the Internet. And in two years, the third-party cookie will likely be obsolete, and with it, the third-party consumer behavioral based digital advertising model.

Due to a confluence of new data privacy laws and advertising technology standards, the cookie, and specifically the third-party cookie, is scheduled to be phased out by the end of 2023. The question advertisers are correctly asking themselves now is what will take the place of third-party cookies and how should they best position themselves to market their brands in the post-third-party cookie world. The good news is that alternative data solutions are already being developed and the picture of what the digital advertising post “cookie-pocalypse” landscape may look like is starting to slowly come into focus.

This article will provide advertisers with a primer on third-party cookies, the privacy laws and the big tech phase-out leading to their demise, and the emerging industry alternatives laying the foundation for the post-third-party cookie digital advertising ecosystem. We will close with some key takeaways and best practices advertisers should consider sooner rather than later to start preparing for the inevitable industry transition from a consumer tracking and targeting based framework to what may come next.

II. What are Third-Party Cookies and Why they are Important

Cookies are small text files stored on a user’s computer or mobile device generated by a website through the user’s device’s browser when a user visits a website. Websites use cookies for many purposes. At the most basic level, cookies help to improve or simplify a user’s web experience by allowing web servers to keep track of users’ activities on the site. For example, websites use cookies to identify users, remember user language preferences and passwords, and store user information from one page to another when browsing. Cookies can also be used by a
third party, i.e., not the website the user is visiting, to enable online behavioral or interest-based advertising.

There are a wide variety of cookies and they can be broken down by lifespan, purpose, and domain:

- **Lifespan**: as the name suggests, these cookies turn on their temporal use. Session or temporary cookies are only active while the browser is open and disappear when the user closes the browser, whereas persistent cookies remain on the user’s device for a defined period and are used to remember information like settings, preferences and log-in information.  

- **Purpose**: there are four basic categories of use case cookies:
  - Strictly Necessary or Essential, which are used to provide basic functions on the website and without which the website would not work as intended.
  - Performance or Static, collect information about how user’s use a website, like which pages were visited and which links were clicked. Think analytics cookies, which are usually aggregated and do not identify individuals.
  - Functional or Preference, allow websites to track and “remember” the user’s past preferences and choices on the website to provide a more personalized experience, e.g., username, password or login, region and language.
  - Targeting or Tracking, used for the purpose of managing the performance and display of advertisements and/or building user profiles.

- **Domain**: First-Party v. Third-Party cookies, i.e., the entity storing the cookie on the device:
  - First-Party cookies are set by the web server of the visited page and share the same domain;
  - Third-Party cookies are set by a different domain other than the website being visited.

First-party cookies allow websites to collect analytics data to, among other things, provide a deeper understanding of user habits, while also helping to provide a better user experience.

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2 Id.
3 Id. at 7.
4 Id. at 6.
experience. These cookies cannot be used to track a user’s activity anywhere but the original website that set the cookie. Third-party cookies, on the other hand, are used by social media platforms, advertisers and AdTech companies to track users’ online behavior to deliver personalized or targeted ads. Types of third-party cookies include advertising, tracking, and targeting cookies, which are specifically made to build user profiles for visitors to a website. Tracking cookies collect data ranging from geographic location to browsing history and purchase trends and can follow a user across multiple websites or platforms.

Third-party cookies have been a mainstay of digital marketing for over twenty years and over time advertisers have developed a variety of ways to leverage them in ad campaigns. It is important to recap these use cases to understand what functionalities brands may be losing when they can no longer rely on third-party cookies to power their on-line advertising strategies. For instance, it is the third-party cookie – after it has been assigned to a user’s browser - that enables a number of key programmatic advertising tools such as the use of software and algorithms to automate the buy/sell of ads and fuel real time bidding. Third-Party cookies use cases for digital advertising can be categorized into the following buckets:

- **Identification**: this is one of the most popular uses of third-party cookies. AdTech platforms like Supply Side and Demand Side Platforms use third-party cookies to identify users across the web. The cookies are then used for behavioral targeting and retargeting once an AdTech platform can identify users, to show them personalized ads based on their behavior and interest.

- **Frequency capping**: this practice helps identify whether a user a company is trying to reach has seen a given ad a specific number of times and helps limit the number of times a user is shown the same ad.

- **Measuring performance and attribution**: Third-party cookies can also help measure the performance of a campaign and run attribution allowing advertisers to understand which action was responsible for the conversion, what ads were clicked, viewed, and led to a purchase.

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6 Id.


11 Lucinda Southern, *Beyond ad targeting, the demise of the third-party cookie will hit key digital media functions*, DIGIDAY, [https://digiday.com/media/cookie-collateral-damage/](https://digiday.com/media/cookie-collateral-damage/) (last visited Sept. 13, 2021).

12 Id.
• Audience Activation: this use case enables advertisers to use data management platforms (DMPs) to leverage cookie syncing (see below) to create audiences and target them across different websites.¹³

• Cookie Synching (aka cookie matching): underlies many of the above use cases, e.g., audience activation, and basically means synching/matching cookies that have been created by different players in the digital advertising ecosystem, e.g., DSPs, SSPs and DMPs, into one cookie ID to theoretically identify the same user (theoretically because the cookie synching and tables have their limitations and are far from a perfect match).¹⁴

Many of these third-party cookies’ use cases are part of most digital advertising campaigns today. That is probably why the end of third-party cookies and what to do after they are gone has become such a big deal for digital advertising. Brands may still be able to run a combination of targeting, measurement, and attribution without third-party cookies, particularly with some of the potential solutions discussed below, but the key difference will be one of scale. Simply put, advertisers may not be able to get the same scale in terms of targeting ads and measuring their performance across multiple different websites without third-party cookies and that likely reality should inform brand’s post-cookie strategy.

III. Privacy Laws And Cookies

In the recent years, there has been a proliferation of comprehensive privacy laws and regulations that have begun to limit companies’ ability to collect, track, and share consumer’s personal information for advertising purposes. Although the leading privacy law in the European Union (“EU”) is the General Data Protection Regulation (“GDPR”), which went into effect in May 2018, the regulation of cookies actually dates back to 2009 when the EU amended its ePrivacy Directive. Passed in 2002, and originally focused on the confidentiality of electronic communications, the ePrivacy Directive has come to be known as the “Cookie Directive” because of its 2009 amendment which basically requires consumer consent for almost all third-party cookies.¹⁵ The only type of cookie excluded from the ePrivacy Directive consent requirement are strictly necessary cookies.¹⁶

Prior to the adoption of the GDPR, website publishers generally sought to satisfy the ePrivacy Directive consent requirement with a cookie banner that notified website visitors that the website deployed cookies and provided a link to an opt out mechanism. With the adoption of the GDPR, EU regulators are now requiring that website publishers obtain express opt-in consent

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¹⁶ See Id. at 15. Cookies exempt from consent include User-input cookies, such as first-party cookies that keep track of user input for the duration of a session, Authentication cookies that identify users once they log in (for the duration of a session), and User-centric security cookies, which are used to detect authentication abuses (for a limited persistent duration), among others. Id.
before deploying non-essential cookies on a website visitor’s browser.\textsuperscript{17} As an initial matter, the GDPR removes any doubt that most cookies, by their nature, involve the processing of personal data. Under recital 30 of the GDPR, cookies can be considered personal data if they can be used to identify users, and thus, are subject to the GDPR.\textsuperscript{18} Article 4(11) of the GDPR defines “consent” as: “any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.” The EU regulators are now applying this consent definition to the cookie consent requirement of the ePrivacy Directive.\textsuperscript{19}

To comply with the GDPR and the ePrivacy Directive, advertisers must (1) receive consent from the user before cookies are used (except for strictly necessary cookies), (2) disclose accurate information regarding the data each cookie tracks, as well as its purpose before consent is attained, (3) document and store user consent, (4) allow users access to the platform even if consent to use cookies is denied, and (5) provide an easy method to withdraw consent that was previously given.\textsuperscript{20} Notably, these regulations apply to first-party cookies as well.

The draft ePrivacy Regulation (“EPR”) will eventually replace the ePrivacy Directive. The EPR is intended to ensure consistency between the ePrivacy rules and the GDPR as well as update the scope of the ePrivacy Directive based on new technological developments.\textsuperscript{21}

In the United States, California continues to be a leader in privacy protection. The California Consumer Privacy Act (“CCPA”) came into effect in 2020, and like the GDPR, shifted the privacy protection regulatory and compliance landscape. Under the CCPA, businesses that sell personal information (“PI”) are required to disclose that they sell PI and provide consumers with the right to opt-out of the sale of PI through a Do Not Sell My Personal Information (“DNS”) link.\textsuperscript{22} The definition of PI includes a “unique identifier,” which is “a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including, but not limited to, . . .

Sale is broadly defined to include all transfers of personal information to third parties for monetary or other valuable consideration. Certain companies have taken the position that permitting third-party cookies on their websites is not a sale of personal information under the CCPA because there is arguably no transfer of personal information in that context. That conclusion, however, is currently subject to challenge. In recent California Office of the Attorney General (“OAG”) enforcement actions, publicized on the OAG website, the OAG has basically taken the position that allowing third-party tracking cookies on a publishers’ website constitutes a sale of PI under the CCPA.

The CCPA was recently revised and expanded through the California Privacy Rights Act (“CPRA”), which becomes effective on January 1, 2023. The CPRA resolves any uncertainty on the third-party cookie sale debate and explicitly allows consumers to restrict businesses from sharing PI for cross-context behavioral advertising. The CPRA introduces several new opt out rights, including the “sharing” of consumers’ PI, which is distinct from selling. Sharing means disclosing consumers’ PI to third parties for “cross-context behavioral advertising, whether or not for monetary or other valuable consideration, including transactions between a business and a third party for cross-context behavioral advertising for the benefit of a business in which no money is exchanged.”

Two additional recently passed – but yet to become effective - U.S. state laws have third-party cookies in their sights. The Virginia Consumer Data Protection Act (“VCDPA”), which comes into effect in 2023, allows consumers to opt out of targeted advertising. Targeted advertising is defined as “displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from that consumer’s activities over time and across nonaffiliated websites or online applications to predict such consumer’s preferences or interests.” It is important to note that unlike the CCPA, the VCDPA limits the definition of “sale” to an exchange of personal data for “monetary” consideration by the controller to a third party.

Similarly, the Colorado Privacy Act (“CPA”), the third comprehensive privacy law in the U.S., grants consumers the right to opt out of the processing of their personal data for purposes of targeted advertising. Additionally, the CPA, which also takes effect in 2023, has a broad definition of “sale” of personal data defining it as “the exchange of personal data for monetary or...
other valuable consideration by a controller to a third party.”32 Under the CPA, when a controller sells personal data or uses it for the purposes of targeted advertising, the controller must clearly and conspicuously disclose that, as well as how the consumer can opt out.

Finally, it is important to note the two self-regulatory CCPA frameworks in the United States applicable to third-party cookies: (1) the Interactive Advertising Bureau (“IAB”) and its CCPA Compliance Framework and Limited Service Provider Agreement (“LSPA”), and (2) the Digital Advertising Alliance (“DAA”) and its CCPA Opt-Out Tool.

The IAB approach requires participating publishers that choose to deploy third-party tracking cookies to California residents in connection with the programmatic delivery of digital ads to include information about the rights of consumers under the CCPA, explain what will happen to data collected from them, and to communicate to downstream technology companies they do business with that such disclosures were given.33 It also requires participating publishers that deploy third-party tracking to provide a DNS link.34 When a consumer clicks on the DNS link, it sends a signal to downstream AdTech companies who have signed on to the LSPA that the inclusion of that consumer’s information in profiles created for advertising purposes should cease.35 The IAB approach presumes that the deployment of a third-party tracking cookie may constitute a sale.

The DAA CCPA opt-out tool provides consumers with the ability to transmit requests under the CCPA for a browser to opt out of the sale of PI to one or more DAA participating companies.36 The DAA recommends a text link and green icon for publishers to display on their websites and apps. The text link should read “CA Do Not Sell My Personal Information” or other CCPA compliant language, and must take users to a notice, which includes recommended language, that provides user information and control. Lastly, the opt-out tool is supposed to allow users the ability to opt out of the sale of their PI by any or all of the participating companies. Although the DAA tool arguably gives consumers broader privacy control than the CCPA requires, allowing consumers to opt out of the sale of PI across all DAA participating companies from one website or app, the DAA approach presumes that collection of data through third-party tracking cookies does not constitute a sale. As discussed above, the OAG is challenging this position.

IV. The Big Tech Phase Out Of The Third-Party Cookie And The Emerging Industry Alternative Landscape

As discussed above, for the last two decades, advertisers have been using third-party cookies to track consumers and collect data to target digital advertisements and build consumer profiles. For many consumers, consumer rights organizations, and government regulators, the

32 COLO. REV. STAT. §6-1-1301 (2021).
34 Id.
35 Id.
online tracking and targeting of consumers became so pervasive as to be seen as an invasion of privacy, which led to privacy laws such as the GDPR and CCPA, that among other things, regulate the use of third-party cookies. But regulation is not the only driver pushing the third-party cookie to the technological dustbin. Just as integral – if not more so - to the demise of the third-party cookie than privacy laws is the “big tech” industry phase-out of third-party cookies that began in 2020 and will likely be complete by 2023.37

Starting in 2017, Safari and Firefox browsers announced that they would no longer be enabling third-party cookies. By the end of 2022, Safari, Firefox and Mozilla are scheduled to phase out third-party cookies. But the tectonic plates did not really start to shift until Google announced in 2020 that its Chrome browser (by far the most widely used in the industry) would no longer support third-party cookies by the end of 2022. Google has since decided to postpone its phase out until mid-2023 and end in late 2023 as it continues to workshop feasible third-party cookie alternatives.38 More on those below.

Perhaps just as impactful as Google’s decision to disable third-party cookies on its browser, was Apple’s determination earlier this year to require apps running on its devices to obtain opt-in consumer consent before tracking consumer’s activity on other apps and websites.39 This position was consistent with Apple’s decision to remove third-party cookies from its Safari browser and was tied to Apple’s release of iOS 14.5’s privacy feature: App Tracking Transparency (“ATT”). iOS 14.5 users now receive pop up boxes when opening an app that reads “allow [insert app] to track you across other companies’ apps and websites.”40 The user is given two options: “Ask App not to Track” and “Allow.”41 If the user decides not to allow an app to track, the developer will lose access to the identifier for advertisers (“IDFA”), which is a method used by apps to track users across apps.42 Additionally, a signal sent to the application informs the business that the user has requested not to be tracked in other ways like using their

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37 One potential development that is outside the scope of this article is whether the anti-trust concerns being raised by regulators and others with respect to some of the larger tech companies post-third-party cookie solutions may delay, or otherwise affect, the phase-out. Martin Coulter, Google is under investigation again by the EU, this time over its online ads business, INSIDER, https://www.businessinsider.com/google-eu-antitrust-investigation-ad-business-2021-6 (last visited Sept. 16, 2021).


41 Id.

42 Id.
email address.  

Notably, Apple’s ATT Framework definition of “tracking” is fairly expansive and covers a wide variety of use cases.

In the wake of these developments, the ad industry currently lacks a consensus on the alternative to third-party cookies. But it is beginning to appear that the lack of consensus is in and of itself a preview of what the post-cookie landscape may actually look like. Meaning that the “one cookie to rule them all” approach will instead be replaced by a variety of different alternatives. At the moment, the emerging post-cookie eco-system appears to include some combination of the following: first-party data, Google’s Privacy Sandbox and Federated Learning of Cohorts, Apple’s SKAd Network, People-Based Identifiers, Anonymous Identifiers and contextual advertising. We will briefly summarize each in turn below.

One thing that basically everyone agrees with is that in the post-cookie world, first-party data will be key. First-party data – as the name suggests - is data collected by companies directly from the consumer. Remember, first-party cookies? That is the kind of data that will become even more important with the demise of third-party cookies. First-party data includes information like intent to purchase, browsing behavior, transaction history, loyalty and rewards programs, and preferences from surveys, among other things. Granted, there will be certain players that will have a natural first-party data advantage. The large social media platforms have been collecting, collating, and organizing first-party data for years. Similarly, large brands with extensive customer engagement platforms should have a head start as they possess significant data sets of first-party data. Finally, premium publishers should have an advantage given that many have data platforms with robust first-party connectivity (many consent-based) and are already combining first-party data with contextual advertising strategies. There is also the related concept of “zero-party” data, data that is voluntarily provided by the consumer to a brand. Zero-party data is arguably more reliable and accurate than first-party data as it is actively and willingly shared by users.

43 Id.

44 Apple’s ATT Framework defines “tracking” as the act of linking user or device data collected from one app with user or device data collected from other companies’ apps, websites or off-line properties for targeted advertising. This includes (1) Sharing device location data or email lists with a data broker; (2) Sharing a list of emails, advertising IDs or other IDs with a third-party advertising network; and (3) Placing a third-party software development kit in an app that combines user data from the company’s app with user data from other developers’ apps to target advertising. How privacy laws and adtech standards limit third-party data use, IAPP, https://iapp.org/news/a/how-privacy-laws-and-adtech-standards-limit-third-party-data-use/ (last visited Sept. 13, 2021).

45 Although the industry is moving to phase-out third-party cookies, it should be noted that first-party cookies are very much here to stay and will to continue to be relied on by website operators and publishers for all the use cases discussed above in section II. That also means that websites will still need to leverage consent management providers (“CMPs”) to meet privacy requirements summarized in section III above with respect to first-party cookies, as well as ensure they are making the proper disclosures of use of first-party cookies in their privacy notices.


After first-party data, the most important post-cookie development that advertisers should become familiar with is arguably Google Chrome’s Privacy Sandbox, a protected test environment used to determine how to run ad targeting, measurement, and fraud prevention without third-party cookies. At the most basic level, Google will, in effect, replace cookies with application programming interfaces (“APIs”) and advertisers will then use the APIs to get data about their ad campaigns. For example, there is a trust API being developed to rely on anonymous “trust” tokens confirming that the person is a real human; a conversion measurement API alternative to let advertisers know if a user saw an ad and then bought the product. The crux here is that it appears that consumers may still be tracked to serve relevant ads, but just by Google and not by a multitude of parties.

Google’s Federated Learning of Cohorts (FLoC) API is one of the Privacy Sandbox proposals garnering the most amount of attention. This is Google’s post-cookie interest-based ad targeting solution. FLoC uses AI and machine learning algorithms to model groups of people according to their browsing behavior and interests without creating individual ad profiles and effectively keeping the individuals web history private on the browser. The important thing to understand is that targeting will be done on a cohort-level and data will be processed on-device itself, meaning no user data will be passed to an AdTech platform, just the name of the interest group to which the user belongs.

Similarly, with Apple’s new ATT Framework making it significantly more difficult to track Apple device owners at scale, Apple is providing advertisers with an alternative to attribute impressions and clicks to app installs on iOS apps: the SKAdNetwork. SKAdNetwork works like a mini-Walled Garden. It shares conversion data with advertisers without revealing any user-level or device-level data. The attribution process happens within the App Store before being verified on Apple’s servers. Data is then cleansed of anything that could compromise a person’s identity before being shared with the ad network or platform.

In addition to FLoC and SKAdNetwork, advertisers also need to become familiar with platform agnostic, industry-wide post-cookie solutions such as People-Based Identifiers and Anonymous Identifiers. People-Based Identifiers use first-party data such as emails, phone numbers, credit card numbers, and loyalty IDs. This data is used to identify customers and connect them correctly across devices and match that with other data brands have collected, from purchase data, to email engagement to device information, all to create a singular view of the customer and then market to that individual. The feasibility of People-Based marketing could be limited for brands that do not have adequate first-party data and login information about their customers. There are various technology platforms that allow marketers to resolve identification

49 See id.
50 Id.
52 Id.
53 Id.
55 Id.
56 Id.
and behavioral data like purchase data, email engagement, device information, but not everyone will have enough data to make this work on the scale and price point that cookie-based retargeting allowed.

Anonymous Identifiers are also emerging as tools for creating audience segments in a post-third-party cookie world. Under this framework, users consent to the creation of anonymous identifier tied to the user’s identity. Typically, the user provides consent for the creation of the anonymous ID in exchange for premium content or some other valuable incentive. For instance, LiveRamp is partnering with publishers and matching data back to its own RampID, formally known as IdentityLink, which uses emails, addresses, and numbers.

The Trade Desk is going one step further with its Unified ID. The 1.0 version of Unified ID was first developed by The Trade Desk as a universal cookie ID. When Google announced its plan to get rid of third-party cookies in Chrome, The Trade Desk pivoted to develop Unified ID 2.0 that serves as a cookie replacement, using consumers anonymized email addresses - hashed and encrypted – that are gathered from a user logging into a website or app (mobile or connected TV). The identifier regularly regenerates itself, ensuring security. At the point of login, the consumer gets to see why the advertiser wants to create this identifier and understands the value exchange of relevant advertising, in simple terms (unlike today’s cookies). They also get to set their preferences on how their data is shared. Trade Desk has donated the technology and infrastructure behind Unified ID to an open-source framework administered by the IAB. Launched in October 2020, Unified ID 2.0 already has several partners spanning across the digital ecosystem.

The final piece of the emerging post-cookie puzzle is contextual advertising. Contextual advertising has been around in one form or another for decades but became less popular due to the advent of behavioral targeted advertising. Now, without the ability to track people around the internet, as a result of the third-party cookie phase-out and the development of sophisticated AI powered algorithms, contextual advertising is experiencing a resurgence. Contextual advertising means ads relevant to the consumer’s content. Think beer ads in a bar. In the digital advertising space, contextual advertising uses keywords, content, and the sentiment of a webpage to display ads to consumers; an alternative to serving ads based on the user’s past behavior. In other words, the ads placed on webpages are based on the content of the webpages instead of any data

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58 Id.
60 Id.
gathered about the consumer. From the average consumers’ perspective, contextual ads are generally seen as more relevant and far less creepy than cookie-based behavioral targeting. And along those lines, raises significantly less privacy compliance concerns.

Think of it this way: with contextual targeting, the ads you see are based on the content you are looking at instead of your overall behavior profile. When you are looking at car and mechanics blogs, you see ads for auto parts, and when you are reading up on your post-pandemic travel trip locales, you see ads for flights and hotels. That said, while contextual advertising may avoid some of the privacy issues endemic to third-party cookies, it reintroduces issues that the third-party cookie was used to solve such as frequency capping and attribution/conversion measurements.

V. BEST PRACTICES TO PREPARE FOR THE POST-COOKIE WORLD

So what can marketers do to prepare for the cookie-pocalypse? For starters, it is pretty clear even at this early stage that brands are going to need to take a multi-pronged approach to developing their post-cookie strategy. There will, in all likelihood, not be a one size fits all solution for brands. Instead, advertisers will need to look at a combination of alternatives that best match their current data sets, ad stacks and prospective marketing plans while considering the emerging and evolving privacy conscious regulatory and technology framework.

To that end, brands should start with understanding their current reliance on third-party cookies. It is difficult to make an informed decision on a post-cookie strategy until you have a practical sense of what role third-party cookies play in your current advertising strategy and to what extent your marketing dollars and impressions are tied to behavioral, interest-based ad targeting. If the answer to these questions is that the majority of your ad stack, marketing dollars and impressions are tied to behavioral advertising, the loss of third-party cookies, without a plan in place, will have a devastating impact on your advertising plans come 2023.

Auditing data also includes understanding a brand’s reserve of first-party – or even zero-party data. Most well-established brands are sitting on a reservoir of first-party data and many may not even know it. And even if brands are aware of their first-party data, they may not have a full audit of the scope and quality of their data. As discussed earlier, in a world without third-party cookies, knowing your first-party data sets will be critical to any post-third-party cookie advertising plan. Brands should invest in data platform technologies to help organize their first-party data assets. For example, customer data platforms (“CDPs”) support the creation of unified, optimized profiles for existing consumers. And well in advance of the big tech third-party cookie phase-out, brands should use existing and upcoming campaigns to grow their first-party audience and first-party data through email campaigns, surveys, loyalty and rewards programs, or sign-up campaigns to capture data around audience interest and demographics. Developing a plan to leverage, as well as grow, first-party data is also important. For instance, brands should analyze how to translate current data sets into a Data Management Platform and match it to a Demand Side Platform. Advertisers should also look into leveraging “synthetic data” to gain a better understanding of their first-party data trends and analytics.

After first-party data is optimized for activation, data clean rooms then provide brands secure, privacy-by-design platforms to connect their anonymized data from multiple parties.65 By onboarding first-party data into a clean room, a brand has a comprehensive set of anonymized consumer profiles for audience identification, activation, and measurement across media channels. Clean rooms also provide the security and governance that enable brands to leverage second-party data—another company’s first-party data—to enhance and power effective marketing efforts.

Although first-party data audit and analysis is a necessary first step, brands also need to consider third-party cookie alternatives outside their immediate control like Google’s FLoC to generate interest-based audiences and Apple’s SKAdNetwork to measure ad campaigns. Brands also need to evaluate various emerging consent-based, People-based, and Anonymous identifiers to see what framework best matches their strategies.

Finally, advertisers should begin to weave contextual advertising into their digital ad strategies. Businesses should spend time identifying key categories for their audience and combine with the full suite of industry brand safety and suitability tools, building inclusion and exclusions lists and keywords, and leveraging sentient and contextual AI. These tools can all be combined and coordinated with brands’ and/or publishers’ first-party data sets to develop privacy friendly ad campaign strategies.

On that note, one thread running through the various post-cookie alternatives is an emphasis on consumer privacy. That should come as no surprise because the advent of international and domestic privacy laws is one of the drivers behind the demise of the third-party cookie. What this translates to for advertisers in the post-third-party cookie world is adopting to a certain degree of “privacy by design” type mindset that privacy professionals have been advocating for years in the product development space. Bottom-line, brands should keep consumer consent models in mind when developing a post-third-party cookie strategy. Not only will a consent-based approach help ensure regulatory compliance with the patchwork of global and US state privacy laws, but it will also be consistent with the most relevant emerging industry-wide, non-platform dependent cookie-alternative strategies and tools such as first-party data, people-based and anonymous user IDs.

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Challenges to Data Driven Advertising in the United States

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If you are scrolling through your social feed and start to feel like someone is watching, you would not be wrong. Data driven advertising, a marketing strategy allowing brands to utilize automation and AI to engage with consumers on a more “personal” level by analyzing available data about their behavior, is on the rise. The upside of such a strategy is clear – namely, the strengthening of a brand’s connection with its audience in a targeted and cost-effective manner using insights from past performance to maximize return and minimize risk. However, as consumers become more sophisticated about who has access to their personal information and how that information may be used, advertisers must exercise more caution in balancing the need to reach their audience, wherever they are, with the recognition that disregarding the legal limits on the access to, and use of, personal data could result in consequences more severe than the loss of a customer.

Brands large and small are leveraging search and location data, purchase history, browsing behavior and more to deliver a more personalized online advertising experience, an approach that seemed almost sci-fi a few short years ago (whether the use of metrics and analytics has a detrimental effect on creative content is beyond the scope of this article). Idly browsing the latest high tech skin care gadget? Suddenly, your social feed is full of content from local clean-beauty boutiques and the hottest laser chain. Chatting with a friend about ice cream? Coupons for the newest “low cal but tastes like the real thing” start popping up in your Inbox.

In addition to ensuring that one is using the most complete and accurate data – one surefire way to lose a customer is to send them a “personalized” email containing the wrong name -- and that such data is in a form that can be utilized in a systemic manner, brands need to be aware of the ways in which even a perfectly executed data driven campaign can have unintentional negative consequences.

Years ago, Target learned the hard way how using patterns identified from data about consumer buying habits and demographics to market to parents-to-be could backfire when it unintentionally revealed a teen’s pregnancy to her father.

More recently, Netflix tweeted information about viewing habits in a year-end campaign that had consumers questioning whether the company was taking data privacy seriously enough. In the same year, the New York Times did an exposé about software used on gaming apps, which, once downloaded onto a smartphone, could track a user’s viewing habits, even when the game was not being played, by using the smartphone’s microphone to identify audio signals in

¹ The author would like to thank Rebecca Aschen for her invaluable assistance in the preparation of this article.
television ads and programming. The collected data could then be used to more accurately target ads and analyze which ads drove a particular consumer behavior.

Earlier this year, four different companies were found to have violated Facebook’s anti-discrimination policies (and possible federal or state civil rights laws) by targeting ads for financial services, including credit cards and home equity loans, to restricted age groups. Two of the four advertisers had already been identified, albeit not as defendants, in a lawsuit against Facebook by civil rights groups for age-restricting financial ads.

Last year, Facebook’s ad delivery algorithms were found by researchers at Northeastern University to result in the display of ads to highly targeted audiences based on the ad’s content, such as job ads for nurses, administrative assistants and cleaners to women, and job ads for workers in QSRs (quick service restaurants), supermarket cashiers and taxi drivers to Black users.

At the end of 2020, the Federal District Court in the Northern District of California dismissed, with leave to amend, a case alleging violations of children’s privacy rights brought against the operator of a video sharing platform and channel operators, including Mattel, DreamWorks Animation and Hasbro Studios, holding that the plaintiff’s common law privacy and other state law claims were preempted by COPPA, the Children’s Online Privacy Protection Act. COPPA, which applies to an operator of a commercial website or online service (such as mobile apps) directed to children under 13 or a general interest site that knowingly collects, uses and/or discloses such children’s personal information, requires verifiable parental consent, or consent from a child’s legal guardian, before such personal information can be collected or used. As the name suggests, video sharing platforms allow users to share content via social media accounts, without registering with the video sharing platform itself, though the use of cookies, which allow the operator of the platform to collect a user’s personal information as well as what sites have been visited by that user and how much time she/he/they have spent on those sites. That data, in turn, may be sold for advertising purposes.

The effectiveness and efficiency of data driven advertising means it is here to stay, although the burden on online advertisers to ensure that their practices successfully navigate the ever-more-challenging landscape is steadily increasing. In response to consumer concerns, states are taking steps to protect the personal information of their residents, including through the imposition of duties on businesses, such as transparency, specification of purpose, care, minimization and prior consent for the processing of sensitive data. Some of the more recent legislation is summarized below.

1. The California Privacy Rights and Enforcement Act of 2020 (“CPRA”), or Prop 24, which will take effect on January 1, 2023, amends the California Consumer Privacy Act (“CCPA”) by, among other things, imposing new requirements on covered businesses – namely, those businesses that, as of January 1st, generated over $25 million in gross revenue during the preceding calendar year; alone, or in combination, annually buy, sell or share, the personal information of 100,000 or more consumers or households; and derive 50 percent or more of their annual revenue from selling or sharing consumers’ personal information. These new requirements
include “reasonably” minimizing data collection, limiting data retention, and protecting data security. When possible, consumers must also be notified of the length of time the business intends to retain each category of personal information. If such notification is not possible, businesses must disclose the criteria by which the retention period is determined, which may in no event be longer than is reasonably necessary for the disclosed purposes. In addition, covered businesses must conduct privacy risk assessments and cybersecurity audits, and regularly submit them to regulators.

The CPRA will also allow consumers to request a correction to inaccurate personal information maintained by a business and to require a business that collects personal information to disclose to consumers their right to request such a correction.

2. The Virginia Consumer Data Protection Act (“VCDPA”), signed into law earlier this year and scheduled to go into effect on January 1, 2023, gives Virginia residents certain rights with respect to personal information, including the right to opt-out of the sale and processing of their personal information for targeted advertising purposes. The VCDPA will apply to businesses that conduct business in Virginia or produce products or services targeted to Virginia residents and that either control or process personal information of at least 100,000 Virginia residents, or control or process the data of at least 25,000 Virginia residents and make 50% or more of their gross revenue from the sale of personal data.

3. The Colorado Privacy Act (“CPA”), signed into law on July 8, 2021, and scheduled to take effect on July 1, 2023, applies to businesses that conduct business in Colorado or intentionally target Colorado residents (called “consumers” by the CPA) in the sale of products or services, and (a) control or process personal data of 100,000 or more consumers during a calendar year, or (b) derive revenue or receive discounts from the sale of personal data and control or process data of a minimum of 25,000 consumers. Under the CPA, consumers have the ability to opt out of the processing of their personal data for (i) targeted advertising; (ii) the sale of such personal data; and (iii) profiling in connection with decisions producing legal or similarly significant effects concerning a consumer, including provision or denial of insurance, education, employment or healthcare.

4. The Nevada Senate Bill 220 Online Privacy Law (effective October 1, 2019), was amended in June 2021 by the signing into law of SB260, which goes into effect on October 1, 2021, and provides important updates to Nevada’s existing internet privacy laws. Among other changes, the latest round of amendments expands the law’s prior requirements by adding a new class of regulated entities called “Data Brokers” – namely, persons “whose primary business is purchasing covered information about consumers with whom the person does not have a direct relationship and who reside in [Nevada] from operators or other data brokers and making sales of such covered information. The new law also modifies the activities that are considered “sales” under the statute to mean “the exchange of covered information for monetary consideration by an operator or data broker to another person. It is important to note that an entity that does not collect, but merely purchases or otherwise obtains, personal information from a third party, may be considered a “data broker” under Nevada law.
5. The Maine Act to Protect the Privacy of Online Consumer Information, signed into law on June 6, 2019, prohibits a broadband Internet access service provider from using, disclosing, selling or permitting access to customer personal information without express consent from the customer. Moreover, the service provider cannot refuse service, charge a penalty, or offer a discount, to a customer, if the customer does, or does not, provide the required consent. The law took effect on July 1, 2020.

6. The Illinois Biometric Information Privacy Act (“BIPA”), which has been in effect since 2008, regulates the collection, safeguarding, retention, storage, use and destruction of biometric information and identifiers, which include fingerprints, and retinal and facial scans. In 2019, the Illinois Supreme Court, in *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, upheld the plaintiff’s right to pursue a claim under BIPA, even where there is no actual damage or harm, stating that it is sufficient if a business violates the consent, notice or disclosure requirements of the Act.

7. The New York City Biometric Information Privacy Act, which went into effect on July 9th of this year, requires certain businesses to post formal notices if they collect biometric data and prohibits the use of such data for transactional purposes. The Act also creates a private right of action for statutory damages.

8. The proposed Consumer Data Privacy Act, Pennsylvania HB-1126, introduced to the House on April 7, 2021, would give consumers in Pennsylvania greater control over their personal information. It would also impose certain disclosure and notice requirements on covered for-profit businesses and create a private right of action following a 30-day cure period. If approved, the Act will go into effect immediately.

9. If it had been passed, Hawaii SB 418 would have required all businesses collecting information from Hawaiians, regardless of the size of the business, to (1) disclose the categories and specific pieces of identifying information collected about a consumer upon verifiable request from the consumer; (2) disclose the identity of third parties to which the business has sold or transferred identifying information about a consumer upon verifiable request from the consumer; (3) publicly disclose the categories of identifying information that collected from consumers and the purposes for collection; (4) and delete identifying information collected from a consumer upon verifiable request from the consumer.

10. Proposed in January 2019, Massachusetts S-120 would have applied to for-profit businesses that collect personal information from Massachusetts consumers if they either have annual gross revenues over $10 million or derive more than 50% of annual revenues from third party disclosures of consumer information. However, in February 2020, the Joint Committee on Consumer Protection and Professional Licensure tabled the bill.

There are many other states looking to follow the examples set in California, Virginia and Colorado, including North Carolina, North Dakota, Rhode Island, Alabama and Alaska. As appealing as it is to remain competitive in a digital world, the legal environment around the use of data and technology to deliver targeted commercial content to consumers is changing.
quickly and online advertisers need to institute practices that anticipate apparent trends in consumer protection.
Impact of Major Platforms’ Privacy Changes

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Consumers are increasingly aware, and wary, of how their data is being used by advertisers and platforms. Where before consumers freely traded access to certain personal information, browsing habits, and device usage, these same consumers have demanded more transparency and control over their data. While government regulation is increasing on a state level, major platforms have continued to implement privacy-oriented changes that are having a substantial impact on the digital advertising ecosystem. Below we have summarized a few of the announced changes and the potential impact on advertisers.¹

Apple’s Privacy Changes, Challenges, and Solutions

App Tracking Transparency

Apple’s recent privacy changes relate primarily to information gathered through apps on mobile devices. After months of build-up, one of Apple’s biggest updates – a feature called App Tracking Transparency (ATT) – went into effect on April 26, 2021 with the iOS 14 software update, making it a requirement for apps to ask for consent to tracks users. This comes on the heels of Apple’s launch of its privacy nutrition label, requiring app developers to provide a description of the app’s privacy practices in a standardized format.

In connection with ATT, Apple defines “tracking” broadly as “linking user or device data collected from [one company’s] app with user or device data collected from other companies’ apps, websites, or offline properties for targeted advertising or advertising measurement purposes.”² While there are a few narrow exceptions (e.g., fraud detection/prevention, security, and consumer reporting agency reporting on credit worthiness), workarounds like device fingerprinting are prohibited. ATT doesn’t apply to first-party tracking.³

With respect to user experience, it is worth noting that app developers have few options to customize the design, content and flow of Apple’s ATT consent screen. Developers generally aren’t allowed to do much more than add a snippet of text to the ATT consent screen to explain why tracking is needed. Developers may provide a pre-alert message if more space is needed to explain tracking (subject to specific rules in Apple’s App Store Review Guidelines).⁴ Requests for permission to track must be presented to the users before tracking occurs. If users want to change their initial decision about tracking, they can go into Apple’s Settings “to see which apps have requested permission to track, and make changes as they see fit.”⁵ Apps that don’t comply with

¹ Platform developments are ongoing and are subject to change.
³ Id.
these requirements can be removed from the App Store, which is the only way to install software on an iPhone. Legal counsel should work with clients to ensure that proper disclosures are made within the app, including assessing how to best deliver and manage messaging about tracking.

While reports on user opt in rate for tracking have varied over the past few months (from 4% initially to 40% more recently in the United States), it is clear that, to date, the majority of users are not opting in. When users don’t opt in, this impacts marketers’ ability to measure the effectiveness of mobile ad campaigns, target certain audience segments, and deliver personalized advertising. Facebook issued an early warning about this, explaining how ATT could end up hurting small businesses the most because small businesses have the most to lose. They rely on Facebook’s platform to reach and engage customers, but post-ATT they will no longer have the same certainty that their marketing efforts will yield results. This can put their survival at risk. (According to a 2020 study conducted by Facebook, small businesses could see a cut of over 60% of website sales from ads without personalized ads powered by their own data). With all of this increased uncertainty, it’s not surprising that ad spend is down 15% from pre-ATT enforcement days.

Apple’s SKAdNetwork offers a privacy-friendly solution for ad attribution that does not require IDFA. SKAdNetwork was originally introduced in 2018 as an optional feature, but following the implementation of ATT, advertisers must rely SKAdNetwork if they want to gain insights on opted out users (e.g., impressions, clicks, and app installs are shown at an aggregated level). Note, however, that this aggregate reporting has been criticized for not being considered detailed enough to be useful to most of the industry under today’s reporting standards.

### Personalized Ads Prompt

Apple’s Personalized Ads Prompt went live in September 2021 with the release of iOS 15. The introduction of this new pop-up gives users the option to opt in to personalized ads within the App Store and other Apple apps. In previous versions of iOS, personalized ads was enabled by default, and users had to navigate to device Settings to disable it. If a user chooses to opt out of personalized ads, the relevance of ads the user receives (not the number) decreases.

While it is too early to report on user opt in rates for this feature, it is worth noting that these numbers are not Apple’s only focus. Apple’s decision to launch the Personalized Ads Prompt aligns with its privacy-forward image, which was arguably in need of repair because the ATT framework was only imposed on developers and advertisers. By imposing similar restrictions on itself, Apple is giving users more control over their data and seemingly responding to the antitrust scrutiny that it is facing, including a complaint that alleged that Apple users were insufficiently

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8 Id.
9 Id.
10 Id.
informed about the processing of their personal information within the company’s apps for ad targeting.\(^{12}\)

**Other Privacy Updates**

iOS 15 brings several other privacy features that will impact cookies and targeted advertising including the following:

- Mail Privacy Protection, which “stops senders from using invisible pixels to collect information about the user. The new feature helps users prevent senders from knowing when they open an email, and masks their IP address so it can’t be linked to other online activity or used to determine their location.”\(^{13}\) Users will have to opt in to this feature. It is not turned on by default.

- Hide My Email, which provides a way for users to create and delete an unlimited amount of email addresses that forward to their personal inboxes.\(^ {14}\) This helps users keep their personal email address private and gives them control of who is able to contact them.\(^ {15}\) As a result, marketers may have to worry about an influx of fake email addresses, which essentially is similar to a user unsubscribing from emails from a data collection standpoint.

- iCloud Private Relay, which encrypts all traffic from a user’s device so that no one can access or use their IP address, location, and browsing activity to create a detailed profile on them.\(^ {16}\) This feature keeps third parties from collecting data about the user and using that data for their own purposes (including marketing). This service is available to people who pay extra for Apple’s iCloud data storage.

**Google’s Privacy Changes, Challenges, and Solutions**

**Extended Timeline for Phasing Out Third-Party Cookies**

Google’s privacy changes relate to both browser-based activities and mobile devices. On June 24, 2021, Google announced an updated timeline for deprecating third-party cookies in its Chrome browser, delaying the date from March 2022 to late 2023.\(^ {17}\) Currently, the maximum duration that third-party cookies can be set is for more than a year. Gradually, by late 2023, the maximum duration that third-party cookies can be set will be decreased from months to weeks to days, until third-party cookies are completely phased out.\(^ {18}\) This extension gives Google more time for

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\(^{13}\) Id.

\(^{14}\) Id.

\(^{15}\) Id.

\(^{16}\) Id.

\(^{17}\) An Updated Timeline for Privacy Sandbox Milestones, Google Blog (June 24, 2021), [https://blog.google/products/chrome/updated-timeline-privacy-sandbox-milestones/].

\(^{18}\) Id.
“…public discussion on the right solutions” and “continued engagement with regulators.” It also allows “for sufficient time... for publishers and the advertising industry to migrate their services.”

The deprecation of third-party cookies are certain to impact the value of advertisement for ad platforms, including Google, because it will be more difficult to track how individuals interact with digital properties. Google estimates that publishers’ digital ad revenue would be reduced by 52% on average without third-party cookies, which could ultimately impact publishers’ ability to provide free content on their domains as well as their ability to serve relevant ads to users. Major browsers have been blocking third-party cookies since 2017, but third-party cookie deprecation will have a larger impact because of Chrome’s share of the web browser market.

Google has proposed a set of tools that would replace third-party cookies and provide the functions that they have performed in the past, as a part of its Privacy Sandbox Initiative. Of those proposals, the Federated Learning of Cohorts technology, which is designed to be a third-party cookieless solution for interest-based advertising, appears to be gaining the most traction. This technology would enable the targeting of groups – or FLoCs – of users based on common interest rather than using a pseudonymous identifier for each individual user. (Specifically, this tool would identify large groups of at least 1,000 users with certain interests, and would permit disclosure of no more than 5 attributes of these users to any one company). Google claims that advertisers who use this tool can expect to see “at least 95% of the conversions per dollar spent when compared to cookie based advertising.” However, this has been met with some skepticism. No other browsers have given any indication that it would support FLoC in its current form, and several have explicitly said they would block it due to concerns about whether it would sufficiently protect user privacy.

Google’s other Privacy Sandbox proposals will potentially be just as important for advertisers. Among them are:

- TURTLEDOVE, which is a proposed solution for retaining information locally on a user’s device to permit remarketing;
- Conversion Measurement API and Aggregated API, which would both address ad conversion measurement;
- Privacy Budget, which would limit the data a site can collect about a user’s browser or device in order to ensure that fingerprinting is not used as a workaround for tracking;
- Trust Tokens API, which would help evaluate a user’s authenticity and identify bots and other types of fraud;
- First Party Sets, which provides a way for declaring a set of owned and related domain; this aligns with Google’s plans to continue to support companies’ first-party relationships with consumers; and

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19 Id.
- WebID, which would permit privacy-preserving sign in with federated identity providers.

Taken together, these proposals will enable advertisers to deliver ads and measure ad performance without tracking users. Generally speaking, the user’s browser will instead record activity and provide aggregated, anonymized reports. Note, however, that advertisers will have to navigate several limitations. First, as detailed above, there is no single replacement for all that third-party cookies do. Second, none of these proposals have made it out of the testing phase yet. Third, and finally, even if these proposals enter the implementation phase they would likely need AI/ML to smooth gaps in data insight in order to be of use. Google has been criticized for its decision to deprecate third-party cookies, on the basis that it allegedly pushes advertisers towards its substitute solutions in order to bolster its ad business and gain even more access to data. In fact, the UK’s Competition and Markets Authority and European Commission have announced investigations into possible antitrust issues related to Google’s Privacy Sandbox efforts.

**Opt Out of Ads Personalization (ATT Lite)**

In addition to phasing out third-party cookies, Google announced in June 2021 that it will be updating its “Opt Out of Ads Personalization” setting on Android devices to restrict developer access to its proprietary, device-level identifier – the Google Advertising ID (GAID), which is used for personalized advertising among other things. While the effect of Google’s GAID opt out is essentially the same as Apple’s IDFA opt out, Android users will have a more difficult time effectuating their choices related to app tracking than iPhone users. Android users will have to navigate to device settings to opt out instead of being presented with a permissions prompt before tracking occurs.

When a user opts out of ads personalization, developers will still be able to access a new device identifier offered by Google called the App Set ID for fraud prevention and analytics purposes. This tool allows for the correlation of usage or actions across a set of apps owned by an organization. App Set ID cannot be used for ads personalization or ads measurement.

**Other Privacy Updates**

In May 2021, Google revealed a number of other privacy updates at its I/O developer conference, including a privacy dashboard which provides a summary of the data accessed by and permissions granted to various apps, the android private compute core – which allows developers to run on-device learning models with data that never gets exposed to third parties, and app hibernation which revokes permissions for apps that haven’t been used recently.

**Facebook’s Privacy Changes, Challenges, and Solutions**

**Privacy-Enhancing Techniques**

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26 Id.
Not to be left out of the wave of recent privacy updates, Facebook recently announced its plans to minimize data collection for online ads in the future. Similar to Google’s Privacy Sandbox initiative, the goal would be to find a way to reach users with relevant ads while still preserving consumers’ privacy. The following privacy-enhancing technologies appear to offer a way forward:

- Multi-Party Computation makes it possible for companies to share insights without actually sharing their data sets.
- On-Device Learning provides a way for Facebook to show consumers relevant ads “without needing to ever learn about specific actions individuals take on other apps and websites.” Consumer data would be processed by an algorithm that runs locally on their phone rather than being sent to the cloud or Facebook’s servers.
- Differential Privacy, which is essentially a technique that adds “noise” to data sets to obfuscate identities. This makes it more difficult to know exactly which consumers took a certain action (e.g., purchased a product after clicking an ad). This technology is often used with large data sets released for public research.

Facebook claims that, unlike Apple, it is focusing on industry collaboration, supporting small businesses, and boosting an open internet economy rather than “exerting its control…to benefit its own bottom line.”

**What Other Choices Do We Have?**

In addition to solutions proposed by major platforms, the industry is also weighing its other options as well.

**Unified ID 2.0**

Years ago, when Google announced its decision to stop supporting third-party cookies, the adtech industry, spearheaded by the Trade Desk, switched gears from developing a universal cookie identifier (UID 1.0) to developing Unified ID 2.0 (UID 2.0) – a replacement for third-party cookies. UID 2.0 is essentially the consumer’s hashed and encrypted email address. This encrypted ID is generated when consumers interact directly with a brand or publisher (e.g., by signing up to receive newsletters), providing a way for advertisers to estimate cross-site/app reach, manage frequency caps across digital properties, create targetable audience segments, and attribute conversions. One potential question is whether opt-in rates could be high enough be a true replacement for third-party cookies (analysts have predicted 20%). Another limitation is that widespread adoption from publishers has yet to happen. This could, however, increase as the date for third-party cookie deprecation in Chrome gets closer.

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Businesses that implement UID 2.0 should consider reviewing their privacy policies to ensure that UID 2.0 activity is adequately disclosed. In addition, businesses subject to the California Consumer Privacy Act and similar privacy laws and regulations should review internal processes and technology to confirm that applicable data subject rights are honored in connection with UID 2.0 activities.

**Contextual Advertising**

Another option for the industry is to revisit the type of advertising that was in use before behavioral advertising – contextual advertising. Contextual advertising involves displaying ads to consumers that relate to the content of the page being viewed, rather than targeting specific consumers. While this is a viable solution moving forward, it is important to keep in mind that contextual advertising continues to have limitations. For example, frequency capping and attribution will be a challenge without cookies or other identifiers to help with measurement. It will likely take a combination of new technologies, including artificial intelligence and machine learning, to advance contextual advertising to the point where it is a replacement for third-party cookies.

A list of the major changes and deadlines we can expect to see from Apple, Google and Facebook are below.

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Negative Option Plans – Is Your Subscription Plan Compliant?

Nicole Murray, Partner, Quarles & Brady LLP

Garrett Hutchinson, Associate, Quarles & Brady LLP

I. Overview of Negative Option Plans

A “negative option plan” is a transaction in which the buyer and seller agree in advance that one or more subsequent offers from the seller will be deemed to be accepted unless the buyer explicitly rejects the offer. See Federal Trade Commission, Negative Options: A Report by the Staff of the FTC’s Division of Enforcement (2009). The FTC has identified four types of plans that fall into this category:

- **Pre-notification negative option plan:** a plan in which consumers receive periodic notices offering goods and will receive the goods and incur a charge unless they specifically reject the offer.
- **Continuity plan:** a plan in which consumers agree in advance to receive periodic shipments of goods or provision of services until they take steps to cancel the agreement.
- **Automatic Renewal:** a plan in which sellers automatically renew contracts at the end of a fixed period unless consumers instruct otherwise.
- **Free to pay:** a plan in which consumers receive a good or service for free (or at a nominal price) for an introductory period, following which period they incur a charge for future goods or services unless they take affirmative action to cancel, reject, or return the good or service before the end of the trial period.

Id. While negative option plans existed prior to the internet age (for example, in “wine of the month” clubs or magazine subscriptions), in recent years consumers have come to rely on subscription services for everything from their meals to their nightly entertainment, and these plans have become of particular interest to regulators and lawmakers. Accordingly, brand owners should carefully consider the federal and state law governing these plans prior to implementing a negative option plan in their business.

II. Federal Law

The primary federal statute addressing unfair marketing claims is Section 5 of the FTC Act, which gives the FTC the power to promote truth in advertising by prescribing rules, investigating claims, and handing down injunctions and fines. 15 U.S.C. § 45. Because the FTC is empowered to police negative option plans, a good place to for merchants to begin when considering a negative option plan is with the FTC’s 2009 report on negative options, which outlines five general principles developed by the FTC in order to guide merchants in complying with Section 5 when implementing a negative option plan:

- Merchants should disclose the material terms of the offer in an understandable manner.
• Merchants should make the appearance of disclosures clear and conspicuous.
• Merchants should disclose the offer’s material terms before consumers pay or incur a financial obligation.
• Merchants should obtain consumers’ affirmative consent to the offer (e.g. should require consumers to take an affirmative step, such as clicking “I agree”).
• Merchants should not impede the effective operation of promised cancellation procedures.

Federal Trade Commission, supra, at iv-v. In addition to these general principles, the FTC has also promulgated rules covering specific types of negative option plans and specific scenarios, including 16 C.F.R. § 310.1, which prohibits deceptive telemarketing acts including failure to disclose any material term of a negative option plan, and 16 C.F.R. § 425.1, which requires merchants offering a pre-notification negative option plan to disclose in a clear and conspicuous manner the material terms of any negative option plan in the promotional material for that plan. Under § 425.1, “material terms” includes any minimum purchase obligations assumed by the subscriber and the subscriber’s right to cancel his or her membership at any time, as well as other specifically outlined details of the plan. Section 425.1 also requires that merchants, prior to sending a selection purchased under a negative option plan, send certain information to the subscriber, including an identification of the selection and a form instructing the subscriber they will receive the selection unless they instruct the merchant otherwise.

In addition to FTC regulations, merchants considering negative option plans should also consider federal statutory law on the subject, namely, the Restore Online Shoppers’ Confidence Act (ROSCA) (15 U.S.C. § 8401 et seq.). ROSCA was enacted in 2010 and is the primary federal statute governing negative option plans.

Section 8402 of ROSCA contains general provisions that may apply to negative option plans; namely, ROSCA states that it is unlawful for any post-transaction third-party seller to charge any consumer’s financial account for goods or services sold in an online transaction unless they have clearly and conspicuously disclosed all of the transaction’s material terms prior to obtaining the consumer’s billing information and have received express informed consent for the charge by the consumer. 15 U.S.C. § 8402. “Material terms” under § 8402 include at least:

• a description of the goods or services being offered;
• the fact that the seller is not affiliated with the initial merchant; and
• the full cost of the goods or services. Id. “Express informed consent” must be obtained by obtaining from the consumer their name, address, and charge account number, and by requiring them to perform an additional affirmative action (e.g. clicking on an “I agree” button).

Id. Section 8403 of ROSCA pertains specifically to negative option marketing on the internet, and states that it is unlawful for any person to charge or attempt to charge a consumer for goods and services sold on the internet through a negative option feature unless such person:

• provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information;
• obtains a consumer’s express informed consent before charging the consumer’s credit card, debit card, bank account, or other financial account for products or services through such transaction; and
• provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer’s credit card, debit card, bank account, or other financial account.

15 U.S.C. § 8403. Merchants should be cognizant of these basic requirements and should err on the side of caution in complying with them, as the penalties for violation can be significant. A violation of ROSCA is treated as a violation of the FTC Act, and thus is enforced by the FTC, violators could be subject to sanctions including a fine of up to $16,000 per individual violation, injunctive relief, and, in certain circumstances, criminal enforcement. See 15 U.S.C. § 8404(a).

III. State Statutes

In addition to federal statutes and regulations, merchants implementing a negative option plan must be aware of the various state laws addressing the issue. A large number of states have enacted laws which prohibit unfair or deceptive acts in commerce, which are commonly applied to negative option plans. This is particularly key in the internet context, where a single negative option campaign is likely to implicate the law of multiple states.

As is the case with many issues implicating the law of multiple states, a good place to start here is with California. Cal Bus & Prof Code § 17602, which governs negative options in California is arguably the strictest in the nation, and states that a merchant offering a negative option plan must:

• Present the terms of the offer in a clear and conspicuous manner before the agreement is fulfilled in a way that is in visual proximity (or, if a verbal offer, temporal proximity) to the request for consent to the offer. The provision must also be made in a larger font than the surrounding text; in a type, font, and/or color that is in contrast to the surrounding text; and/or must be set off from the surrounding text in a way that makes the language clearly stand out.
• If the offer includes a free gift or trial, clearly and conspicuously explain the price that will be charged or the manner in which the subscription will change upon conclusion of the trial.
• Obtain affirmative consent to the offer terms, including the terms of an automatic renewal offer or continuous service offer that is made at a promotional price for a limited period of time, prior to charging the consumer.
• Include an acknowledgement that includes the cancellation policy, as well as information regarding how to cancel in a manner that is capable of being retained by the consumer. In the event of a free gift or trial, the consumer must be informed of how to cancel, and allowed to cancel, prior to being charged.

Cal Bus & Prof Code § 17602. See also, Hall v. Time, Inc., 2021 U.S. App. LEXIS 15368 (9th Cir. 2021). In addition to these requirements, the merchant must provide a cost-effective, timely, and easy to use mechanism for cancellation, and include a description of the same in the acknowledgement described above. If the offer is accepted online, the consumer must be allowed to cancel the offer online. Further, if the terms are materially changed, the consumer must be notified of the change and given information on how to cancel.
New York also recently enacted a new automatic renewal statute that generally tracks the California requirements, N.Y. Gen. Bus. Law §§ 527 and 527-a. Importantly, this statute only applies to business-to-consumer transactions, not business-to-business transactions. That said, businesses will still need to comply with New York’s prior automatic renewal law governing business-to-business transactions, N.Y. Gen. Oblig. Law § 5-903. Under the new New York law, businesses making the automatic renewal or continuous service offers must:

- Present the following information to the consumer clearly and conspicuously, prior to the consumer's acceptance of the offer:
  - that the subscription or purchasing agreement will continue until the consumer cancels;
  - the cancellation policy that applies to the offer;
  - the recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
  - the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and
  - the minimum purchase obligation, if any.

The above information must be presented in a clear and conspicuous manner before the purchasing agreement is fulfilled and the business must obtain the consumer's affirmative consent to the agreement with the automatic renewal offer terms (including those made at a promotional or discounted price for a limited period of time) before charging the consumer's credit or debit card or third-party payment account. If the offer also includes a free gift or trial, the offer must include a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change on conclusion of the trial. Finally, the business must provide an acknowledgment, in a manner that is capable of being retained by the consumer, that includes: the automatic renewal offer terms; the cancellation policy; and the information regarding how to cancel. Like California, a consumer that accepts an automatic renewal offer online must terminate exclusively online. Finally, businesses must provide the consumer notice of any material change to the terms of the automatic renewal that has been accepted by a consumer via a clear and conspicuous notice.

In addition to New York and California, several other states have statutes governing automatic renewals and negative options, but each state statute contains slight nuances. For example, Oregon’s OR Rev. Stat. § 646A.295, is similar to California’s statute with two noteworthy differences. First, Oregon does not require a merchant to disclose a free trial in a clear and conspicuous manner. Second, businesses do not have to provide consumers that accept a negative option plan online the option to terminate the plan online as well. Similarly, Virginia’s automatic renewal statute, VA Code Ann. § 59.1-207.45 et seq., has comparable requirements to California’s statute, but does not require merchants to provide online termination options for agreements entered into online by consumers. However, from a practical standpoint, giving

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1 Please note, this article is not a complete 50-state survey of all automatic renewal statutes, but instead is intended to provide a high level summary of the automatic renewal law landscape. We encourage you to conduct your own research to confirm compliance with specific state laws.
consumers an online option to terminate the plan may be the most efficient method for a business to implement and track, especially given the requirements of the New York and California statutes.

While California’s statute is arguably the strictest in the nation, some other jurisdictions do include requirements separate from those outlined in the California statute. For instance, Washington D.C.’s statute, D.C. Code § 28A-201 et seq., includes basic requirements that automatic renewal provisions and cancellation procedures be clearly and conspicuously disclosed in the contract containing them, as well as the basic requirement that if a free trial is included, the offer shall clearly and conspicuously explain the price that will be charged upon conclusion of the trial. In addition to these fairly typical requirements, the D.C. statute includes two requirements not found in other statutes. The first applies only to contracts with an initial term of 12 months or more that will automatically renew for one month or more unless affirmatively cancelled, and requires that a merchant notify the consumer of the first renewal (with additional annual notifications as necessary) no fewer than 30 days and no more than 60 days before the cancellation deadline. The second requirement applies to contracts involving a free trial with a term of one month or more where the contract automatically renews at the end of the trial period, and requires notification at least 15 and no more than 30 days prior to the expiration of the free trial period. In addition, the D.C. statute requires, notwithstanding the consumer’s consent to the free trial, an additional affirmative consent by the consumer before the consumer is charged for the automatic renewal.

Similarly, Vermont’s automatic renewal statute, 9 V.S.A. § 2454a, applies only to contracts with an initial term of one year or longer with a renewal term that is longer than one month. In addition to requiring the terms of the automatic renewal to be stated clearly and conspicuously in plain language and in bold-faced type, the law requires that the consumer specifically opt in to the automatic renewal provision in addition to accepting the contract as a whole. The Vermont law also has similar requirements to California regarding termination procedures, including a requirement that online consumers be able to terminate the contract online.

As consumers continue to make an increasing amount of their purchases according to an online, subscription-based model, the amount of negative option plans in the marketplace is likely to continue to grow in coming years. While the five principles provided by the FTC provide an underlying rationale for both the federal and state law in this area, the numerous state laws with differing requirements leave a complex framework for businesses to navigate when incorporating a negative option plan into their business.
That a product is “Made in the USA” is often a key selling point for consumers for various reasons, including patriotism and a desire to cut down on the environmental impact of making goods abroad. The FTC recently finalized a new rule cracking down on deceptive or misleading unqualified U.S. origin claims. The FTC’s new rule, which went into effect on August 13, 2021, does not create new substantive requirements for advertisers, but gives the FTC the ability to impose new, substantial monetary penalties for violation of the rule.¹

Before this new rule went into effect, the FTC’s requirements for “Made in the USA” labeling were based on a 1997 Enforcement Policy Statement which stated that unqualified U.S. origin claims should be substantiated with “evidence that the product is all or virtually all made in the United States.” A product that is “all or virtually all made in the United States,” under the prior enforcement policy, is “one in which all significant parts and processing that go into the product are of U.S. origin.”

The new rule maintains the “all or virtually all” standard from the prior enforcement policy. More specifically, the new rule prohibits marketers from making unqualified U.S.-origin claims unless:

1. Final assembly or processing of the product occurs in the United States;

2. All significant processing that goes into the product occurs in the United States, and

3. All or virtually all ingredients or components of the product are made and sourced in the United States.

However, the new rule differs from the FTC’s prior guidance in some noteworthy ways. Namely:

- The new rule enables the Commission for the first time to seek civil penalties of up to $43,280 per violation of the rule.

¹ Note that this new rule only applies to unqualified U.S.-origin claims, while the prior enforcement policy set forth guidance for qualified and unqualified U.S.-origin claims. Qualified U.S.-origin claims are therefore still subject to the prior FTC enforcement policy.
• The new rule includes a full or partial exemption if marketers have evidence showing their unqualified Made in USA claims are not deceptive. This exemption was not part of the previous policy.

• Unlike the prior guidance, the new rule does not make an exception for foreign ingredients that are unavailable in the U.S. Under the new rule, an unqualified U.S.-origin claim can only be made where no more than a de minimis amount of the product is of foreign origin – with no special accommodations if an ingredient in the product cannot be found in the U.S.
  
  o Under the prior guidance, advertisers were given a greater degree of flexibility for products containing raw materials that are “inherently unavailable in the United States.” In the prior enforcement policy, the FTC advised that unless the nonindigenous imported material constitutes “the whole or essence of the finished product” consumers are likely to understand a “Made in the USA” claim means that “all or virtually all of the product, except for those materials not available here, originated in the U.S.” In the new rule, the FTC stated it sees no support for this exception.

The FTC issued this rule in response to a 2019 petition filed by Truth in Advertising (“TiNA”), citing the need to combat “rampant Made in USA fraud.” Indeed, allegations of fraudulent U.S.-origin claims have recently caused disruptions across sectors, including in food and beverages, clothing, healthcare, and even the military. FTC Commissioner Rohit Chopra, Chair Lina M. Khan, and Commissioner Rebecca Kelly Slaughter noted this rule will be of particular help to small businesses that rely on the Made in the USA label, but lack the resources to defend themselves from imitators.

**FTC Enforcement of “Made in the USA” Claims**

Instituting the new rule signals that Made in the USA claims are a priority for the FTC. Though we are not yet aware of any enforcement actions the FTC has initiated under the new rule, advertisers should be aware that such actions are likely on the horizon. While at one point, the FTC had developed a reputation for doing little to enforce Made in the USA claims, it has been more aggressive about doing so in recent years. In 2020 and 2021, the FTC entered into multiple monetary settlements (including two $1M+ settlements) with advertisers who the FTC claimed were fraudulently representing that their goods were made in the USA. Specifically:

• In July 2020, the FTC approved a final order requiring Williams-Sonoma to pay $1 million in an action challenging U.S.-origin claims for Williams-Sonoma’s bakeware products and products sold under Williams-Sonoma’s Rejuvenation, Pottery Barn Teen, and Pottery Barn Kids brands.

• In February 2021, the FTC approved a final consent order settling charges that glue maker Chemence, Inc. and its president labeled their pre-packaged glue products with deceptive “Made in USA” claims. The settlement required Chemence and Cooke to pay $1.2 million to the FTC.
According to the FTC, this was the highest monetary judgment ever imposed in a Made in the USA case.

- In April 2021, the FTC entered into a $146,249 settlement with Gennex Media LLC and its owner to resolve claims that the media company falsely advertised its merchandise as being made in the United States.

**“Made in the USA” Consumer Class Actions**

In addition to FTC enforcement, consumer class actions also pose a potential risk to advertisers making “Made in the USA” claims. Geographic origin claims (including “Made in the USA” claims) have long been a favorite of the plaintiffs’ bar. Along with alleging violations of state consumer protection laws, plaintiffs in these lawsuits typically also allege violations of California Business Professions Code § 17533.7 – a California state statute specifically prohibiting “Made in the USA” claims unless foreign content makes up 5% or less of the products’ wholesale value (or up to 10% if the manufacturer can prove the foreign content is not available in the U.S.).

Just to name a few such lawsuits:

- In July 2020, a putative class action was filed against Bigelow Teas related to Bigelow’s claims that its teas are “manufactured in the USA,” “100% American Family Owned,” and “America’s Classic.” *Banks v. Bigelow*, Case No. 2:20-cv-06208 (C.D. Cal. filed July 13, 2020). According to plaintiffs, the tea is grown in tea plantations and then processed by tea processing plants located in Sri Lanka and India.
  - The complaint largely survived defendants’ motion to dismiss, with the court finding that plaintiffs had plausibly alleged causes of action under California’s Unfair Competition Law, False Advertising Law, Consumers Legal Remedies Act, and under California’s “Made in the USA” statute.

- In December 2015, a putative class action was filed against Rockstar Beverages, alleging defendants deceptively represented that their energy drinks were “Made In The U.S.A.” *Alaei v. Rockstar, Inc.*, Case No. 3:15-cv-02959 (S.D. Cal. filed December 31, 2015).
  - The court dismissed the complaint in its entirety on the pleadings, noting plaintiff failed to specify where the allegedly foreign-sourced ingredients were made and what percentage of defendants’ products are allegedly comprised of foreign-sourced ingredients.

- In a nearly identical complaint, the same named plaintiff sued condiment maker H.J. Heinz, based on claims that its goods were “MFD. In U.S.A.” Plaintiff alleged this was false because the products “contain foreign ingredients, [and] are wholly or partially made of and/or manufactured with foreign materials.” *Alaei v. H.J. Heinz Company and Kraft Heinz Foods Company*, Case No. 3:15-cv-02961 (S.D. Cal. filed December 31, 2015).
Defendants moved to dismiss, arguing that plaintiff’s allegations were entirely conclusory. However, the parties settled before the court ruled on defendants’ motion.

- In June 2014, two lawsuits were filed against clothing manufacturers alleging that they deceptively labeled their jeans as “Made in the U.S.A.” *Paz v. AG Adriano Goldschmeid*, Case No. 3:14-cv-01372 (S.D. Cal. filed June 4, 2014); *Hass v. Citizens of Humanity*, Case No. 3:14-cv-01404 (S.D. Cal. filed June 9, 2014).

  - *Hass v. Citizens of Humanity* was tossed on a motion to dismiss, with the court finding that the complaint failed to allege facts that plausibly explained how plaintiff knew that defendant’s “Made in the USA” claims were false.

  - In contrast, *Paz v. Adriano Goldschmeid* survived defendants’ motion to dismiss, and the case ultimately settled. The court was unconvinced by defendants’ argument that the FTC’s authority to regulate “Made in the USA” labels preempts plaintiff’s California state law claims. The court found that the FTC’s requirements were not inconsistent with California’s, and that it would not be impossible for manufacturers to comply with both.

With the new FTC rule bringing U.S.-origin claims into the spotlight, we expect to see an increase in related consumer class actions.

**Other Developments in U.S.-Origin Labeling**

The new FTC rule is not the only significant development surrounding U.S.-origin claims. Immediately following the FTC’s decision to strengthen regulations surrounding these claims, Agriculture Secretary Tom Vilsack released a statement indicating the USDA intends to “complement” the FTC’s efforts by “initiating a top-to-bottom review of the ‘Product of USA’ label” in order to “determine what that label means to consumers.” And even more recently, a bipartisan group of senators announced the introduction of the USA Beef Act – proposed legislation that would limit “Product of USA” labels to beef products that are born, raised, and slaughtered in the United States.

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This past January, President Biden issued an executive order directing the federal government to “maximize the use of goods, products, and materials produced in, and services offered in, the United States,” and advising that “[t]he United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America’s workers thrive.” As a result, “Made in the USA” claims may now be more important to marketers than ever before. But in light of the new FTC rule, its potential effects on consumer class actions, and recent developments in legislation and USDA regulation, the consequences of making an unsupported “Made in the USA” claim may also be greater than ever before.
All authors editors of Proskauer’s Advertising Law Blog
https://www.proskaueronadvertising.com/
Navigating Privacy in a Balkanized World of State Laws

The California Privacy Rights Act (CPRA) is a comprehensive rework of California’s paradigm-shifting 2018 consumer protection law (the California Consumer Privacy Act or CCPA) that was enacted through a ballot initiative on November 3, 2020, and will go into full effect on January 1, 2023. It amends the CCPA in several material ways to, among other things, eliminate the existing carve-outs for data collected from job applicants, employees and contractors, and for data of persons representing another business in connection with a business-to-business (B-to-B) transaction or communication. Those carve-outs expire on January 1, 2023. Further legislative extensions are unlikely, as the CPRA prohibits legislative amendments that do not “enhance” privacy, though there could ultimately be somewhat different rules for these non-consumer data subjects. The CPRA retains a number of existing carve-outs for data covered by other state and federal privacy laws, such as protected healthcare information.

As a reminder, on July 1, 2020, the AG began enforcement of the CCPA and has reportedly launched more than 200 investigations. On July 19, 2021, the AG published 27 summaries of concluded enforcement actions, providing important guidance on third-party cookies, digital advertising, global privacy controls and financial incentive rules as applied to loyalty programs and sufficiency of notices and consumer rights responses.

On March 2, 2021, the Virginia governor signed into law a new consumer protection law, becoming the second state in the US to enact a holistic data privacy law that regulates the collection, use and disclosure of “personal data” (broadly defined to include most information that would be personal information under the CCPA/CPRA) of its residents generally, but excluding data subjects outside of an individual or household context (i.e., does not include persons acting in an employment or B-to-B context). Like the CCPA/CPRA, certain already regulated data, such as protected healthcare information, is carved out of the new Virginia law.

Set to go into effect on January 1, 2023, the Virginia Consumer Data Protection Act (CDPA) is, in many ways, similar to the CPRA, but it also shares some additional concepts inspired by the EU’s General Data Privacy Regulation (GDPR). However, it is sufficiently dissimilar to each of those laws that a business developing a compliance strategy for compliance with the CDPA will not be able to rely solely on its CPRA and/or GDPR compliance efforts in complying with the act.

On June 8, 2021, the Colorado legislature passed SB 21-190, known as the Colorado Privacy Act (CPA), which the governor signed into law on July 7, 2021. The CPA is, in large part, modeled on the CDPA, but with CCPA/CPRA influences, such as a broader definition of “sale” and requiring companies to look for and honor global privacy signals. It uses the categories of controller and processor, as does the CDPA and the GDPR.

As a reminder, Nevada enacted a much more limited law regarding the sale (for cash consideration) of certain data collected online, effective October 1, 2019 (the PICICA), which was amended in 2021 to also cover sales by data brokers and to add a data broker registration requirement (California and Vermont also have data broker registration laws). Other states and the federal government are considering new consumer privacy laws. The regulatory requirements are evolving, so a privacy compliance program will need to be flexible enough to evolve with changes to law.

The infographics that follow summarize and compare these laws at a very high level. Detailed guidance materials are available.
<table>
<thead>
<tr>
<th></th>
<th>California Privacy Rights Act (CPRA) [Amends the CA Consumer Privacy Act]</th>
<th>Virginia Consumer Data Protection Act (CDPA)</th>
<th>Colorado Privacy Act (CPA)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overview</strong></td>
<td>Amends the California Consumer Privacy Act (CCPA)</td>
<td>Shares similarities with California’s CPRA, with additional concepts inspired by the EU’s General Data Privacy Regulation (GDPR), but is sufficiently dissimilar to require a separate compliance strategy.</td>
<td>Largely modeled after Virginia’s CDPA, but also overlaps with California’s CCPA/CPRA, and uses categories like “controller” and “processor,” similar to the GDPR and CDPA.</td>
</tr>
<tr>
<td><strong>Effective Date</strong></td>
<td>January 1, 2023, although administrative and civil enforcement will not commence until July 1, 2023.</td>
<td>January 1, 2023</td>
<td>July 1, 2023</td>
</tr>
</tbody>
</table>
| **Who Is Covered?**    | For-profit “businesses” that meet thresholds, including affiliates, joint ventures and partnerships that:  
1. Gross global annual revenue > US$25 million  
2. Annual buy, sell or “share” for cross-context behavioral advertising purposes of personal information of US$10,000 or more California consumers or households  
3. Derive 50% or more of annual revenues from selling or “sharing” for cross-context behavioral advertising California consumers’ personal information  
As well as, to a lesser extent, “service providers,” “contractors” and “third parties” | Business entities, including for-profit and B-to-B entities, conducting business in Virginia or that produce products or services that target Virginia residents and, during a calendar year, either:  
1. Control or process personal data of at least 100,000 Virginia residents  
OR  
2. Derive 50% of gross revenue from the sale of personal data and control or process personal data of at least 25,000 Virginia residents  
OR  
2. Both derives revenue or receives discounts from selling personal data and processes or controls the personal data of 25,000 or more Colorado residents | Any legal entity that conducts business in Colorado or that produces or delivers commercial products or services that intentionally target Colorado residents and that satisfies one or both of the following:  
1. During a calendar year, controls or processes personal data of 100,000 or more Colorado residents  
OR  
2. Both derives revenue or receives discounts from selling personal data and processes or controls the personal data of 25,000 or more Colorado residents |
Scope of Coverage
The following chart demonstrates the similarities and differences of the current US consumer privacy laws of general application, and compares them to the GDPR:

<table>
<thead>
<tr>
<th>Consumer Right</th>
<th>PICICA</th>
<th>CCPA</th>
<th>CPRA</th>
<th>CDPA</th>
<th>GDPR</th>
<th>CPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to access</td>
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<td>✓</td>
<td>✓</td>
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<tr>
<td>Right to confirm personal data is being processed</td>
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<td>✓</td>
<td>✓</td>
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<tr>
<td>Right to data portability</td>
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<td>Right to delete ◣</td>
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<tr>
<td>Right to correct inaccuracies/right of rectification</td>
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<tr>
<td>Notice and transparency requirements</td>
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<tr>
<td>Right to opt-out of sales</td>
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<td>Right to opt-out of targeted advertising (CO and VA)/cross-context behavioral advertising sharing (CA)</td>
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<td>Right to object to or opt-out of automated decision-making ◣ ◣</td>
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<tr>
<td>Opt-in or opt-out for processing of “sensitive” personal data? “Sensitive” is defined differently under CPRA, CDPA and CPA</td>
<td>✗</td>
<td>✗</td>
<td>Opt-out6</td>
<td>Opt-in</td>
<td>Opt-in7</td>
<td>Opt-in6</td>
</tr>
<tr>
<td>Right to object to/ restrict processing generally</td>
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<td>✗</td>
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<tr>
<td>Right to non-discrimination</td>
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<tr>
<td>Purpose/use/retention limitations</td>
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<td>Applies to both consumers and in HR and B-to-B contacts</td>
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<td>++</td>
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<tr>
<td>Privacy and security impact assessments sometimes required</td>
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<tr>
<td>Obligation to maintain reasonable security</td>
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</tbody>
</table>

1 Website and online service operators are required to offer an “opt-out,” but only for limited disclosures of certain information and only if the disclosure is made in exchange for monetary consideration.
2 Selling personal data under the GDPR generally would require the consent of the data subject for collection and would be subject to the right to object to processing.
3 However, certain data disclosures inherent in this type of advertising are arguably a “sale,” subject to opt-out rights.
4 Cash consideration required; online and offline data covered.
5 Any consideration required; online and offline data covered.
6 Under the CPRA, consumers’ opt-out rights do not apply to processing sensitive personal information for certain limited purposes. The purpose limitations to controller and processor obligations in the CPA would seem to apply to both personal data and sensitive data.
7 Under the GDPR, processing sensitive personal information is allowed with explicit consumer consent, or where it is otherwise justified under another recognized lawful basis.

+ Yes, but most provisions suspended until January 1, 2022.
++ Yes, but most provisions suspended until January 1, 2023.
– In California, deletion obligations are limited to PI collected from the consumer, but in Virginia and Colorado, it is any PI about the consumer.
– – Colorado and Virginia only regulate automated decision-making if it results in legal or similarly significant impacts on the consumer, whereas California leaves open the scope of the right for rulemaking.
Exclusions
The CPRA, CDPA and CPA include exclusions, some differing from CCPA and each other, as illustrated below:

<table>
<thead>
<tr>
<th>Exclusions</th>
<th>CCPA</th>
<th>CPRA</th>
<th>CDPA</th>
<th>CPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee/HR data</td>
<td>Now superseded by CPRA.</td>
<td>Mostly exempt until 1/1/23.</td>
<td>Exempt (CPPA/CPRA-style definition).</td>
<td>Exempt, but only in so far as maintained as an employment record.</td>
</tr>
<tr>
<td>B-to-B contact/communications data</td>
<td>Now superseded by CPRA.</td>
<td>Mostly exempt until 1/1/23.</td>
<td>Specifically exempt + data subjects are only consumers in so far as they act in an individual or household capacity.</td>
<td>Data subjects are only consumers in so far as they act in an individual or household capacity.</td>
</tr>
<tr>
<td>Publicly available</td>
<td>Exempts lawfully available government public records data.</td>
<td>Expands CCPA definition to also include lawfully obtained truthful information of public concern, information made available by another person not under a disclosure restriction, information from the mass media and information the consumer publicly makes available.</td>
<td>The same as CPRA.</td>
<td>Exempts lawfully available public records data and personal data the controller reasonably believes the consumer made available to the general public.</td>
</tr>
<tr>
<td>Household data</td>
<td>Not exempt.</td>
<td>Exempt from right to delete, right to correct and right to access (Sections .105, .106, .110 and .115).</td>
<td>Not exempt.</td>
<td>Not exempt.</td>
</tr>
<tr>
<td>Aggregate</td>
<td>Exempt (different definition than de-identified).</td>
<td>Exempt (different definition than de-identified).</td>
<td>Not exempt, unless meets the definition and requirements for de-identified.</td>
<td>Not exempt, unless meets the definition and requirements for de-identified.</td>
</tr>
<tr>
<td>Government entities</td>
<td>Exempt as a business or service provider but could be a third party or exempt third party.</td>
<td>Exempt as a business, but could be a service provider, contractor or third party.</td>
<td>Any Virginia state or local government agency or body and institutions of higher learning, as defined, are exempt.</td>
<td>Controllers are only regulated if they conduct business in, or produce or deliver commercial goods or services to, CO and meet the processing thresholds. Processors are any person processing on behalf of a controller.</td>
</tr>
<tr>
<td>Non-profits</td>
<td>Exempt as a business and service provider, but could be an exempt third party.</td>
<td>Exempt as a business, but could be a service provider, contractor or third party.</td>
<td>Exempts certain types of non-profit organizations (corporations organized under the Virginia Nonstock Corporation Act and organizations exempt from taxation under §§501(c)(3), 501(c)(6) and 501(c)(12) of the Internal Revenue Code).</td>
<td>Controllers are only regulated if they conduct business in, or produce or deliver commercial goods or services to, CO and meet the processing thresholds. Processor is any person processing on behalf of a controller.</td>
</tr>
<tr>
<td>Exclusions</td>
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<td>CPRA</td>
<td>CDPA</td>
<td>CPA</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>GLBA/financial institutions</td>
<td>Exempts PI collected, processed, sold or disclosed pursuant to the Gramm-Leach-Bliley Act (GLBA), but does not exempt security or breach liability.</td>
<td>Changes “pursuant to” GLBA to “subject to,” and adds the Federal Farm Credit Act (FFCA).</td>
<td>Exempts financial institutions subject to the GLBA, plus GLBA-regulated data and “PD collected, processed, sold, or disclosed in compliance with the” FFCA.</td>
<td>Financial institutions subject to the GLBA, and their affiliates, plus GLBA-regulated data.</td>
</tr>
<tr>
<td>FCRA/credit reporting</td>
<td>Exempts certain activities of consumer reporting agencies and users of consumer reports, each subject to compliance with the Fair Credit Reporting Act (FCRA).</td>
<td>Expands CCPA exemption to include certain furnishing of data for consumer reports.</td>
<td>Exemption largely tracks CCPA.</td>
<td>Exemption largely tracks CPRA.</td>
</tr>
<tr>
<td>HIPAA/health</td>
<td>Exempts medical information governed by the CA Confidentiality of Medical Information Act (CMIA) and protected health information under the Health Insurance Portability and Accounting Act (HIPAA) and CMIA providers and HIPAA, covered entities to the extent they protect patient data as required by CMIA and HIPAA, and certain clinical trial data.</td>
<td>Expands CCPA exemption to include certain biometric research.</td>
<td>Exempts covered entities and business associates, as those terms are defined by the Health Insurance Portability and Accountability Act (HIPAA) + protected health information, as defined under HIPAA, and certain other types of health-related information.</td>
<td>Exempts protected health information, as defined under HIPAA, and certain other types of health-related information, more detailed than under the CDPA or CCPA/CPRA.</td>
</tr>
<tr>
<td>COPPA/children</td>
<td>Not exempt.</td>
<td>“CPRA shall not be deemed to conflict with obligations under the Children’s Online Privacy Protection Act (COPPA).”</td>
<td>Exempts controllers and processors that comply with the verified parental consent requirements of COPPA.</td>
<td>Exempts personal data that is “regulated by” COPPA (i.e., personal information collected from a child under 13 online).</td>
</tr>
<tr>
<td>FERPA/educational</td>
<td>Not exempt.</td>
<td>Not exempt but certain exemptions regarding access to student records under the state Educational Code or to opt-in use for production of physical items such as yearbooks.</td>
<td>Exempts institutions of higher learning as defined by state law + personal data “regulated by” FERPA.</td>
<td>Exempts personal data that is “regulated by” FERPA.</td>
</tr>
<tr>
<td>Exclusions</td>
<td>CCPA</td>
<td>CPRA</td>
<td>CDPA</td>
<td>CPA</td>
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<tr>
<td>----------------------------------------</td>
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<td>----------------------------------------------------------------------</td>
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<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>DPPA/drivers information</td>
<td>Exempts PI “collected, processed, sold, or disclosed pursuant the Driver’s Privacy Protection Act” (DPPA).</td>
<td>Same as CCPA.</td>
<td>Exempts personal data that is “collected, processed sold, or disclosed … in compliance with the” DPPA.</td>
<td>Exempts personal data that is “collected, processed sold, or disclosed … pursuant to” DPPA, if such activity “is regulated by that law.”</td>
</tr>
<tr>
<td>Vehicles</td>
<td>Exempts vehicle information and ownership information retained or shared between manufacturers and dealers regarding motor vehicle repair and warranty use and no other purpose. Note, not all motorized vehicles meet the definition of motor vehicle.</td>
<td>Same as CCPA.</td>
<td>No specific exemption.</td>
<td>No specific exemption.</td>
</tr>
<tr>
<td>Air carriers</td>
<td>Not exempt (but preemption savings clause).</td>
<td>Not exempt (but preemption savings clause).</td>
<td>Not exempt (but preemption savings clause).</td>
<td>Exempt (as defined in 49 U.S.C. Sec.40101 and 41713).</td>
</tr>
<tr>
<td>Public utilities</td>
<td>Not specifically exempt, but see government and non-profits above.</td>
<td>Not specifically exempt, but see government and non-profits above.</td>
<td>Not specifically exempt, but see government and non-profits above.</td>
<td>Exempts customer data maintained by certain public utilities if “not collected, maintained, disclosed, sold, communicated, or used except as authorized by state and federal law.”</td>
</tr>
<tr>
<td>Activates protected by free speech/1st Amendment or other Constitutional rights</td>
<td>Exempt.</td>
<td>Exempt.</td>
<td>Exempt.</td>
<td>Exempt.</td>
</tr>
</tbody>
</table>

Note: CCPA, CPRA, CDPA, CPA, and DPPA refer to different privacy laws. CCPA and CPRA are similar in many aspects, while CDPA and CPA have specific exemptions and regulations. DPPA adds additional exclusions related to vehicle information and ownership information.
Recommendations

Below are high-level recommendations for adapting your current privacy program for CPRA, CDPA and CPA compliance, and to help prepare for other potential new consumer privacy laws that may follow, along with a summary of workstreams to enable you to do so. A more detailed 40-page version of the workstreams for use with project management is available for a fixed fee.

1. Assess Compliance and Gaps, and Prepare a 2023 Preparedness Plan

   Workstream 1: Preliminary Scoping and Information Gathering [Q4 2021]
   • Conduct a readiness assessment and gap analysis based on existing privacy compliance materials developed for CCPA compliance (e.g., data maps, internal policies, external privacy policy, rights requests procedures, contracts, training, etc.) and practices (e.g., consumer rights response program, cookie consent management platform, etc.).
   • Develop a detailed work plan listing all required/optional tasks to allocate roles and responsibilities and a way to track the status and completion of each task. We have tools available at a fixed fee to enable you to do this. Develop a budget tied to the project plan and obtain approval.

2. Create or Update Data Inventories or Maps and Develop and Deploy Data Management Capabilities

   Workstream 2: Data Mapping [Q4 2021 and Throughout 2022]
   • Update/develop data map(s) to identify how the following categories of PI\(^1\) are collected, used, transferred or disclosed, and for what purposes:
     - Sensitive PI
     - B-to-B contact PI
     - Employee/contractor PI
   • Identify categories of PI that may be totally or partially exempt from the CPRA, CPA or CDPA, such as PI regulated by the FCRA, GLBA and HIPAA, and certain educational data.
   • Determine the reasonably necessary retention period, and the processing purposes, for all PI.

3. Update Privacy Policy(ies) and Remediate Practices

   Workstream 3: Annual Privacy Policy Update and Program Audit [Q4 2021]

4. Refine Your Consumer Request Procedure

   Workstream 4: Consumer Rights [2022]
   • Modify processes for responding to requests to exercise existing CCPA consumer rights to address new CPRA, CPA and CDPA requirements (e.g., to reflect the longer look-back period for the right to access). In addition, you will need to expand existing rights processes to apply to B-to-B contact PI and applicant/employee/contractor PI for rights requests from California residents.

5. Implement Privacy-by-Design and Data Governance

   Workstream 5: Privacy Impact Assessments and Cybersecurity Audits [2022]
   • CPRA requires businesses that engage in high-risk processing activities to perform impact assessments that must be filed with the California Privacy Protection Agency. Similarly, the CDPA and CPA require a controller to conduct a data protection assessment of certain processing activities, including targeted advertising, the sale of PI, the processing of sensitive PI and any other processing activities that present a heightened risk of harm to consumers.
   • Consider a privacy impact assessment program for all PI processing, to help meet purpose, proportionality, data minimization, retention and other requirements and reduce risks.

6. Update or Implement a Vendor and Data Recipient Management Program

   Workstream 6: Vendor/Supplier Contracts [Q4 2021 and Throughout 2022]
   • Review and, as necessary, amend/execute (upstream and downstream) contracts to ensure compliance with the CPRA, CPA and CDPA (mainly prohibiting secondary uses, allowing for audits and requiring assistance honoring consumer rights) and to avoid transfers of PI being considered a “sale” and to address expanded deletion requirements.
   • Identify any (upstream and downstream) contracts that involve the processing of “de-identified” data to include new contract terms required by the CPRA, CPA and CDPA.

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\(^1\) PI means personal information under the CCPA/CPRA and/or personal data under the CDPA and/or CPA.
7. Update Policies

**Workstream 7: Review/Develop/Update Policies [2022]**

- Update/develop policies to support CPRA, CPA and CDPA compliance, including:
  - Privacy policy(ies) and notices (internal and external)
  - Consumer rights procedures
  - Privacy impact assessments
  - Audit functions
  - Data retention policies and schedules
  - Record-keeping requirements

8. Implement Reporting, Recordkeeping and Training

**Workstream 8: Administration and Training [2022]**

- Update training materials for personnel with specific responsibilities for handling consumer requests or compliance to reflect new CPRA, CPA and CDPA requirements. Consider broader training, especially regarding privacy impact assessments and privacy-by-design and security.
- Confirm that record-keeping and reporting meet the requirements of the final regulations, and any new rulemaking as promulgated throughout 2022.

9. Shore-up Data Security and Breach Preparedness

**Workstream 9: Other Compliance (Optional But Recommended) [2022]**

- Review and update a written information security program plan, including incident response plan, acceptable use policy, cookie management and vendor security program.
- Conduct privacy compliance and security breach preparedness (i.e., “tabletop”) exercises.

10. Project Audit and Go-Live [Q4 2022]

**Workstream 10: Final Compliance Check and Remediation**

- Use a project tracker and compliance checklist to confirm that the responsible persons have signed off on the completion of each task. We have developed such a tool and provide it to clients for a fixed fee.
- Beta test and QA check the new notices and consumer rights tools before going-live.

Businesses will benefit from immediately taking steps to develop and implement a CPRA/CDPA/CPA preparedness plan and to thereafter continue to improve compliance on a risk-based basis. Doing so will further help a business prepare for additional consumer privacy laws likely to follow, at the state or federal levels, and will provide the added benefit of better understanding its data and how that can be commercially exploited in a legal and consumer-friendly manner.

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  - Associate, Los Angeles
THE TCPA AFTER FACEBOOK, INC. v. DUGUID

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Shannon Z. Petersen, Partner, Sheppard Mullin Richter & Hampton LLP
Lisa Yun Pruitt, Associate, Sheppard Mullin Richter & Hampton LLP

The Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 et al. (“TCPA”) prohibits certain calls and text messages to residential and wireless telephone numbers using an automatic telephone dialing system (“ATDS”) and/or prerecorded or artificial voice call without sufficient prior express consent or an exemption. The TCPA also regulates fax communications and prohibits telemarketing calls to residential telephone subscribers who have placed their phone numbers on the National Do-Not-Call (“DNC”) Registry, subject to certain exceptions. 64 C.F.R. § 1200(c)(2).

The TCPA allows individuals to bring private actions to recover actual monetary loss or a statutory penalty of $500 per violation (i.e. each call or text message in violation). 47 U.S.C. § 227(b)(3). If the violation is knowing or willful, the court may increase the statutory penalty up to $1,500 per violation. Id. In most lawsuits, including class actions, plaintiffs do not seek actual damages. Instead, they seek statutory penalties of $500 to $1,500 for each violation.

Notably, the TCPA has a statute of limitations of four years. Thus, potential liability in a class action for calls or texts made over a four year time period can often be significant. For example, damages at $500 per call/text could be $500,000 for 1,000 calls/texts; $5 million for 10,000 calls/texts; and $50 million for 100,000 calls/texts.

The Automatic Telephone Dialing System
Until recently, a majority of TCPA actions were based on the use of an ATDS. The TCPA defines an ATDS as having the capacity “(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). The interpretation of ATDS had been vigorously disputed for many years, resulting in a Circuit split. The Third, Seventh, and Eleventh Circuits had narrowly interpreted ATDS, while the Second and Ninth Circuits broadly interpreted ATDS. Thus, in the Second and Ninth Circuits, it was more likely that dialing equipment would fall under the definition of ATDS.

In April 2021, the Supreme Court finally put an end to the Circuit split in favor of a narrow interpretation of ATDS. In Facebook, Inc. v. Duguid, the plaintiff Noah Duguid sued Facebook on a class action basis, alleging that Facebook violated the TCPA by sending him text messages using an ATDS. Duguid alleged that Facebook maintained a database of phone numbers to transmit login notification text messages to specific phone numbers, which are triggered by attempts to log in to Facebook accounts associated with those phone numbers. Duguid v. Facebook, Inc., No. 15-cv-00985-JST, 2017 U.S. Dist. LEXIS 22562, at *11-13 (N.D. Cal. Feb. 16, 2017). The district court concluded that Duguid insufficiently alleged that Facebook used an ATDS because his allegations suggested direct targeting that is inconsistent with random or sequential number generation that is required under the TCPA. Id. at *12.

On appeal, the Ninth Circuit reversed the dismissal of Duguid’s complaint, finding that “an ATDS need not be able to use a random or sequential generator to store numbers[.]” Facebook, Inc. v. Duguid, 926 F. 3d 1146, 1151 (9th Cir. 2019). The Ninth Circuit explained
that “it suffices to merely have the capacity to ‘store numbers to be called’ and ‘to dial such numbers automatically.’” *Id.*

On April 1, 2021, the Supreme Court unanimously reversed the Ninth Circuit’s judgment, narrowly defining ATDS. *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021). The Supreme Court held that “[t]o qualify as an ‘automatic telephone dialing system’ under the TCPA, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator.” *Id.* at 1165. Thus, merely having the capacity to store numbers (e.g. a list of phone numbers) and to dial them randomly is insufficient to qualify as an ATDS.

The Supreme Court explained that the case “turns on whether the clause ‘using a random or sequential number generator’ in §227(a)(1)(A) modifies both of the two verbs that precede it (‘store’ and ‘produce’), as Facebook contends, or only the closest one (‘produce’), as maintained by Duguid.” *Id.* The Supreme Court sided with Facebook and found that the clause “using a random or sequential number generator” modified both of the words “store” and “produce,” as opposed to just the word “produce.” *Id.* at 1169. The Court explained that this was the most “natural construction” of the definition and that Duguid’s interpretation “would capture virtually all modern cell phones, which have the capacity to ‘store . . . telephone numbers to be called’ and ‘dial such numbers.’” *Id.* at 1171.

The Supreme Court also concluded that legislative purpose supported a narrow interpretation of ATDS. The Supreme Court noted that Congress expressly found that the use of random and sequential number generator technology caused unique problems and specifically defined ATDS to prohibit technology that could randomly dial emergency lines or tie up sequentially numbered phone lines at a single business. *Id.* at 1166. Thus, the Court explained
that “[e]xpanding the definition of an autodialer to encompass any equipment that merely stores and dials telephone numbers would take a chainsaw to these nuanced problems when Congress meant to use a scalpel.” *Id.* at 1171.

Accordingly, to qualify as an ATDS, the equipment must use a random or sequential number generator to either store or produce phone numbers to be called. Merely dialing numbers automatically from a stored list or database of phone numbers will not be sufficient to constitute an ATDS under the TCPA.

**The TCPA After Facebook v. Duguid**

The Supreme Court’s ruling in *Facebook* significantly reduced the amount of dialing equipment that qualifies as an ATDS, thereby narrowing liability under the TCPA. Based on the Supreme Court’s decision, it is likely that in most cases there will not be any liability under the TCPA for automatically calling or texting cell phones from a stored list of numbers, such as a database of current or former customers or debtors.

However, plaintiffs may still argue that even if a random or sequential number generator was not actually used to store or produce phone numbers, there can still be liability if the equipment has the “capacity” to store or produce such numbers. This “capacity” argument may be a difficult one to make, however, based on the Supreme Court’s ruling and the D.C. Circuit’s rejection of a broad definition of the term “capacity” within the meaning of ATDS. *ACA Int’l v. Fed. Commc’ns Comm’n*, 885 F. 3d 687 (D.C. Cir. 2018). Moreover, the Supreme Court explicitly stated that “the equipment in question must use a random or sequential number generator” – “in all cases” – to fall under Congress’ definition of an ATDS. *Facebook*, 141 St. Ct. at 1170.
Not surprisingly, after the Facebook decision, there has been shift away from TCPA actions based solely on the use of an ATDS. The plaintiffs’ bar has instead re-focused their attention on prerecorded and artificial voice calls and violations of the National Do-Not-Call regulations, which are not addressed by the Supreme Court’s ruling. Thus, even though dialing equipment is less likely to fall under the scope of the TCPA, callers must still be aware of other restrictions and regulations under the TCPA, such as the National Do-Not-Call regulations, restrictions on making prerecorded and/or artificial voice calls, and even fax restrictions.

Callers should also be aware of state telemarketing laws and regulations. Many states have their own statutes and regulations regarding calls made by automatic dialing devices, often referred to as an “ADAD.” In fact, after the Facebook ruling, Florida signed into law Senate Bill 1120, which created numerous amendments to Florida’s Telemarketing Act (Florida’s “Mini-TCPA”).

Significantly, the definition of autodialer under Florida’s Mini-TCPA is broader than the post-Facebook definition of ATDS. The Mini-TCPA states that a caller “may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” SB 1120. The term “automated system” is not specifically defined in the Mini-TCPA, but applies to any “automated system for the selection or dialing of telephone numbers.” Thus, the plaintiffs’ bar will most likely argue that an “automated system” under Florida’s Mini-TCPA is much broader than an ATDS under the TCPA and can encompass equipment that automatically dials from a stored list of phone numbers.
Notably, like the TCPA, Florida’s Mini-TCPA has the potential for staggering damages. Florida’s Mini-TCPA allows aggrieved parties to bring private actions to recover $500 to $1,500 per violation. Indeed, half a dozen class actions have already been filed under Florida’s Mini-TCPA, including *Cooper v. Batteries Plus, LLC*, No. 2021-017128-CA-01 (Fla. Cir. Ct. July 13, 2021), which was filed just 12 days after the law took effect on July 1, 2021.

Thus, despite the ruling in *Facebook v. Duguid*, which significantly narrows liability under the TCPA, callers should nonetheless be cognizant of stricter state laws and other provisions of the TCPA that continue to subject unwary callers to harsh penalties.
The TCPA After *Facebook, Inc. v. Duguid*

By: Lisa Yun Pruitt, Shannon Petersen and Jason Mueller

**The Telephone Consumer Protection Act**

The Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 *et al.* (“TCPA”) prohibits certain calls and text messages to residential and wireless telephone numbers using an automatic telephone dialing system (“ATDS”) and/or prerecorded or artificial voice call without sufficient prior express consent or an exemption. The TCPA also regulates fax communications and prohibits telemarketing calls to residential telephone subscribers who have placed their phone numbers on the National Do-Not-Call (“DNC”) Registry, subject to certain exceptions. 64 C.F.R. § 1200(c)(2).

The TCPA allows individuals to bring private actions to recover actual monetary loss or a statutory penalty of $500 per violation (*i.e.* each call or text message in violation). 47 U.S.C. § 227(b)(3). If the violation is knowing or willful, the court may increase the statutory penalty up to $1,500 per violation. *Id.* In most lawsuits, including class actions, plaintiffs do not seek actual damages. Instead, they seek statutory penalties of $500 to $1,500 for each violation.

Notably, the TCPA has a statute of limitations of four years. Thus, potential liability in a class action for calls or texts made over a four year time period can often be significant. For example, damages at $500 per call/text could be $500,000 for 1,000 calls/texts; $5 million for 10,000 calls/texts; and $50 million for 100,000 calls/texts.

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In April 2021, the Supreme Court finally put an end to the Circuit split in favor of a narrow interpretation of ATDS. In *Facebook, Inc. v. Duguid*, the plaintiff Noah Duguid sued Facebook on a class action basis, alleging that Facebook violated the TCPA by sending him text messages using an ATDS. Duguid alleged that Facebook maintained a database of phone numbers to transmit login notification text messages to specific phone numbers, which are triggered by attempts to log in to Facebook accounts associated with those phone numbers. *Duguid v. Facebook,*
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The Supreme Court explained that the case “turns on whether the clause ‘using a random or sequential number generator’ in §227(a)(1)(A) modifies both of the two verbs that precede it (‘store’ and ‘produce’), as Facebook contends, or only the closest one (‘produce’), as maintained by Duguid.” Id. The Supreme Court sided with Facebook and found that the clause “using a random or sequential number generator” modified both of the words “store” and “produce,” as opposed to just the word “produce.” Id. at 1169. The Court explained that this was the most “natural construction” of the definition and that Duguid’s interpretation “would capture virtually all modern cell phones, which have the capacity to ‘store . . . telephone numbers to be called’ and ‘dial such numbers.’” Id. at 1171.

The Supreme Court also concluded that legislative purpose supported a narrow interpretation of ATDS. The Supreme Court noted that Congress expressly found that the use of random and sequential number generator technology caused unique problems and specifically defined ATDS to prohibit technology that could randomly dial emergency lines or tie up sequentially numbered phone lines at a single business. Id. at 1166. Thus, the Court explained that “[e]xpanding the definition of an autodialer to encompass any equipment that merely stores and dials telephone numbers would take a chainsaw to these nuanced problems when Congress meant to use a scalpel.” Id. at 1171.

Accordingly, to qualify as an ATDS, the equipment must use a random or sequential number generator to either store or produce phone numbers to be called. Merely dialing numbers automatically from a stored list or database of phone numbers will not be sufficient to constitute an ATDS under the TCPA.

**The TCPA After Facebook v. Duguid**

The Supreme Court’s ruling in Facebook significantly reduced the amount of dialing equipment that qualifies as an ATDS, thereby narrowing liability under the TCPA. Based on the Supreme Court’s decision, it is likely that in most cases there will not be any liability under the TCPA for automatically calling or texting cell phones from a stored list of numbers, such as a database of current or former customers or debtors.

However, plaintiffs may still argue that even if a random or sequential number generator was not actually used to store or produce phone numbers, there can still be liability if the equipment has the “capacity” to store or produce such numbers. This “capacity” argument may be a difficult one to make, however, based on the Supreme Court’s ruling and the D.C. Circuit’s rejection of a broad definition of the term “capacity” within the meaning of ATDS. ACA Int’l v. Fed. Commc’n Comm’n, 885 F. 3d 687 (D.C. Cir. 2018). Moreover, the Supreme Court explicitly stated that “the equipment in question must use a random or sequential number generator” – “in all cases” – to fall under Congress’ definition of an ATDS. Facebook, 141 St. Ct. at 1170.
Not surprisingly, after the Facebook decision, there has been a shift away from TCPA actions based solely on the use of an ATDS. The plaintiffs’ bar has instead re-focused their attention on prerecorded and artificial voice calls and violations of the National Do-Not-Call regulations, which are not addressed by the Supreme Court’s ruling. Thus, even though dialing equipment is less likely to fall under the scope of the TCPA, callers must still be aware of other restrictions and regulations under the TCPA, such as the National Do-Not-Call regulations, restrictions on making prerecorded and/or artificial voice calls, and even fax restrictions.

Callers should also be aware of state telemarketing laws and regulations. Many states have their own statutes and regulations regarding calls made by automatic dialing devices, often referred to as an “ADAD.” In fact, after the Facebook ruling, Florida signed into law Senate Bill 1120, which created numerous amendments to Florida’s Telemarketing Act (Florida’s “Mini-TCPA”).

Significantly, the definition of autodialer under Florida’s Mini-TCPA is broader than the post-Facebook definition of ATDS. The Mini-TCPA states that a caller “may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” SB 1120. The term “automated system” is not specifically defined in the Mini-TCPA, but applies to any “automated system for the selection or dialing of telephone numbers.” Thus, the plaintiffs’ bar will most likely argue that an “automated system” under Florida’s Mini-TCPA is much broader than an ATDS under the TCPA and can encompass equipment that automatically dials from a stored list of phone numbers.

Notably, like the TCPA, Florida’s Mini-TCPA has the potential for staggering damages. Florida’s Mini-TCPA allows aggrieved parties to bring private actions to recover $500 to $1,500 per violation. Indeed, half a dozen class actions have already been filed under Florida’s Mini-TCPA, including Cooper v. Batteries Plus, LLC, No. 2021-017128-CA-01 (Fla. Cir. Ct. July 13, 2021), which was filed just 12 days after the law took effect on July 1, 2021.

Thus, despite the ruling in Facebook v. Duguid, which significantly narrows liability under the TCPA, callers should nonetheless be cognizant of stricter state laws and other provisions of the TCPA that continue to subject unwary callers to harsh penalties.

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This alert is provided for information purposes only and does not constitute legal advice and is not intended to form an attorney client relationship. Please contact your Sheppard Mullin attorney contact for additional information.
To the untrained eye, a “raffle” is a “sweepstakes” is a “giveaway” is... a prize promotion. Even sophisticated marketing teams may conflate these terms in their push to draw attention to their campaigns, tout their charitable giving efforts, and generally increase their visibility with consumers. But the downside to using these terms interchangeably to signify what is, ultimately, a game of chance is that these buzzwords may draw the attention of state and federal regulators, too. And the way you structure and conduct your campaign can have serious repercussions for your company in both the court of law and the court of public opinion.

I. Overview

In reviewing any prize promotion, the critical first step is to ensure that the campaign is not an illegal lottery. Lotteries, which are regulated under federal law and the laws of all 50 states, have three elements: they offer (1) prizes; (2) on the basis of chance; and (3) consideration is paid to enter. At least one of these elements must be eliminated before a prize promotion can lawfully proceed, unless the promotion otherwise qualifies for an applicable exemption that permits the presence of all three elements.¹ This overview focuses on sweepstakes and raffles, though other types of promotions like contests and giveaways may also be considered lawful prize promotions if structured properly.

In very broad strokes, a sweepstakes is permissible provided that consideration is not required to win a prize awarded on the basis of chance—either the promotion must be free of charge (or any purchase requirement) to enter, or there must be a free, alternative method of entry that negates any consideration element and ensures the campaign is not an unlawful lottery.

Separately, most states have exceptions for charitable lotteries, known as raffles. Raffles generally includes all three elements of a lottery, and thus are prohibited. However, certain “eligible” or “qualified” nonprofit organizations may be permitted to conduct raffles, under specific exceptions in state and/or local laws, subject to strict requirements.

Raffles and sweepstakes are subject to significant regulation at the federal, state, and local levels. The U.S. Department of Justice, U.S. Postal Service, Federal Communications Commission, and the Federal Trade Commission have jurisdiction over prize promotions at the federal level, but it is state and local laws regulating prize promotions that are the most onerous and, therefore, the most critical for compliance reasons.² Failure to comply with the rules

¹ When state governments offer lotto and instant-win games, they are offering them under specific statutory exceptions to the gambling laws. Likewise, raffles conducted by non-state actors must also meet an exception.

applicable to raffles and sweepstakes may constitute illegal gambling, which may lead to injunctions, civil and criminal penalties, as well as negative publicity for the entity conducting the promotion.

II. State Regulation of Charitable Raffles

States limit raffles such that only tax-exempt organizations may conduct them. Often, there are even narrower restrictions limiting further the types and qualifications of tax-exempt organizations that may qualify to conduct a raffle. For example, many states limit raffle eligibility to tax-exempt charities recognized under Section 501(c)(3) of the Internal Revenue Code; others impose additional in-state presence requirements, like having been registered and in active existence in the state for a specified period of time leading up to the raffle registration application.³

Once a nonprofit organization determines that it is eligible to conduct a raffle, additional requirements, criteria, and limits on the structure of the promotion must be considered. Though the limitations under state and local laws are seemingly as varied as the number of applicable laws themselves, among the most common restrictions affecting raffles are that:

- Most states impose registration, reporting, accounting, and record-keeping requirements on raffle organizers;

- There are often limits on the types or amounts of prizes that can be awarded;

- There may be restrictions or requirements that a certain portion of funds raised in the raffle be reserved for use by the charitable organization;⁴

- Federal and state law restrictions may limit the geographic reach of the raffle;⁵

³ For example, in California, an organization may operate a raffle in the state only if: (i) it is a private, nonprofit organization; (ii) that has been qualified to do business in California for at least one year before conducting the raffle; and (iii) it is exempt from taxation pursuant to select sections of the California Revenue and Taxation Code. Cal. Penal Code § 320.5. In Tennessee, usually only qualified 501(c)(3) organizations that have submitted an application to the Tennessee Division of Charitable Solicitations and Gaming and that have been approved by the Tennessee General Assembly may conduct raffles in the state. To be qualified to apply for a license, most organizations must demonstrate continuous and active existence in the state for a period of years, typically ranging from three to five years, depending on the nature of the organization’s activity. Tenn. Code Ann. § 3-17-102(1).

⁴ For example, in California, at least 90% of the gross receipts generated from the sale of raffle tickets for any given draw must be used to benefit or provide support for the beneficial or charitable purposes of the eligible organization that conducted the raffle (or be donated to another eligible organization). Cal. Penal Code § 320.5(a)(4)(A). This limits the eligible organization to utilizing only 10% of the gross receipts for the administration or other costs of any given draw, thus dubbing the restriction as the “90/10 rule,” and eliminates the ability to run a traditional “50/50” raffle.

⁵ For example, U.S. Postal law restrictions provide that neither money nor tickets for the purchase of a raffle ticket may be sent through the U.S. mail unless the raffle ticket is free. 18 U.S.C. § 1302.
• There may be restrictions on the manner in which the raffle itself may be advertised;\(^6\)
• States may restrict the manner of collecting funds from the sale of raffle entries;\(^7\) and
• There may be limitations on whether people outside of the organization can help administer the raffle.

The effect of the variety and specificity of each state’s regulation of charitable raffles is that a nationwide raffle is practically impossible to carry on lawfully by a tax-exempt organization, and a for-profit company would be categorically barred from conducting its own charitable raffle. Consequently, no independently run corporate prize promotion should be conducted or labeled as a raffle.

However, a for-profit company may, in limited ways, support a charitable organization eligible to conduct a raffle. Although a company may be unable to help the nonprofit administer the raffle, the company could nonetheless donate prizes or act as a sponsor for the charitable organization by making a donation to support it in its conduct of the raffle event.

III. State Laws’ Two-Pronged Regulation of Charitable Sweepstakes

Given the complexities and limitations when it comes to conducting a multi-state charitable raffle, charitable organizations and brands frequently pivot and choose to run a traditional random draw sweepstakes instead. “Charitable sweepstakes,” or promotions that offer an entry with a donation to charity, have become increasingly popular as a way to draw consumers’ attention. Such promotions are tricky, though, in that they trigger regulatory compliance concerns not only with respect to federal and state “sweepstakes,” lottery and gambling laws, but also with respect to state charitable solicitation laws.

a. States’ Lottery and Gambling Laws

The structure and legal compliance considerations with respect to traditional sweepstakes and sweepstakes involving charitable donations are similar in most respects:

• The prize promotion must have comprehensive rules that are readily available to all eligible participants;\(^8\)

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\(^6\) See, e.g., Tex. Occ. Code § 2002.054 (prohibiting advertising or selling tickets statewide).

\(^7\) See, e.g., D.C. Mun. Regs. tit. 30 § 1502.4 (“Only United States currency or coin shall be accepted by a licensed organization as payment for any raffle ticket.”).

\(^8\) The official rules serve as a contract between the promotion’s sponsor and the participants, and provide promotion sponsors with some protection from liability (e.g., liability releases if the promotion does not go as planned or if there is an injury to an entrant or winner that is attributable to the use of the prize or participation). Official rules generally include the same points included in disclosures, together with: limits on entries; details on the winner verification process (in addition to winner selection); the right to amend or modify the promotion and select winners from the entries received as of the termination date; disclaimers and limitations on liability; release of publicity rights; the
• State laws require rules that include certain specific terms and require that certain “material terms” also be disclosed in the marketing about the sweepstakes (for example, in emails or on the internet). One of the most common disclosures required (“no purchase necessary”) may be adapted for charitable sweepstakes. Best practices, regulatory guidance, and industry standards counsel that the wording of the campaign must make clear that donations are not required to enter. For example, a sweepstakes sponsor could add that donations are “suggested;” and

• For consumer-facing promotions where the prizes exceed a certain value, registration and posting bond may also be required.

One of the most significant compliance differences between a traditional sweepstakes and one involving a charitable donation, however, is the need to consider how states’ charitable solicitation laws regulate persons who fundraise for charitable organizations or purposes.

b. Overlapping State Charitable Solicitation Law Considerations

Approximately 40 U.S. jurisdictions have laws governing the solicitation of contributions for charitable purposes. These charitable solicitation laws regulate any direct or indirect request for contributions when the request indicates that the contribution will be used by a charitable organization or for a charitable purpose. The laws serve principally to protect the public from sponsor’s name and contact information; and intellectual property statements, among other prize- or promotion-specific terms.

9 The required disclosures generally include the following:

• No purchase necessary (which must be clearly and conspicuously disclosed);
• Void where prohibited, void in (list states that must be voided/sponsor wishes to void);
• Sponsor’s name and address;
• Eligibility requirements (e.g., age, geographic restrictions, employment, etc.);
• Start and end dates (and times, if applicable), as well as any deadline dates for entry, prize claims, and free game piece requests;
• Details on how to enter (mail-in option must have “equal dignity,” i.e., same deadline as purchase deadline; allow five additional days for receipt);
• Odds of winning; and
• Description of the prize(s) (including number available and approximate retail value), prize restrictions, taxes on prizes, etc.

10 A U.S. consumer-facing promotion must be bonded in Florida, New York, and (for retail promotions) in Rhode Island; however, sweepstakes where a nonprofit organization acts as sponsor are generally treated differently, and registration and bonding will not be required unless a charitable raffle is involved. In Florida, a specific statute addresses nonprofit sweepstakes that is separate from the consumer promotions law requiring registration and bonding. See Fla. Stat. § 849.0935. The New York Department of State generally has not required registration of charitable sweepstakes as a matter of practice.

11 See, e.g., definitions of “solicit” or “solicitation” in Cal. Bus. & Prof. Code § 17510.2(a); Fla. Stat. § 496.404(24); N.Y. Exec. Law § 171-a(10). Note, too, that for purposes of states’ charitable solicitation laws, “charitable purpose”
fraudulent activity perpetrated in the name of serving a charitable purpose. To meet this objective, states typically require those under their purview to register prior to soliciting contributions, file periodic reports, and make certain disclosures when communicating with potential donors.

i. **Charitable Solicitation Laws’ Regulation of Charitable Sweepstakes**

Notably, soliciting contributions is not limited to fundraising efforts engaged in by the nonprofit itself. A third party who solicits contributions on behalf of a charitable organization is also subject to these states’ charitable solicitation laws. Depending on the type of activity engaged in by the third party, this conduct can trigger an obligation to register, post bond, file contracts, and report on the results of those campaigns upon their conclusion.

Two of the most common ways in which affirmative compliance obligations under states’ charitable solicitation laws may be triggered are (i) when a company acts as a commercial coventurer by conducting a charitable sales promotion, and (ii) when a company engages in activity that could lead to its classification as a professional fundraiser. In the context of a charitable sweepstakes, where the public is offered a chance for a prize if they donate or submit a free alternative method of entry, it is the latter consideration that more often comes into play.

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12 A **charitable sales promotion** is an advertisement or representation that the purchase or use of a good or service offered by a commercial coventurer (“CCV”) will benefit a charitable organization or charitable purpose. A CCV is a person or entity who, for profit or other consideration, is regularly engaged in trade or commerce (other than being in the business of fundraising) and conducts a charitable sales promotion. See, e.g., Cal. Gov. Code § 12599.2(a); Mass. Gen. Law 68 § 18. Of the states with charitable solicitation laws, the majority require at least a contract and certain disclosures to be made in connection with each charitable sales promotion. Further, seven states expressly or in practice impose registration, bonding, and/or reporting requirements on the CCV for each charitable sales promotion conducted in those states. Those states are Alabama, California (unless exempt), Hawaii, Illinois (arguably as charitable trustees), Massachusetts, Mississippi, and South Carolina.

13 As of the time of writing this article, California’s legislature passed Assembly Bill 488 and the legislation has been enrolled and presented to Governor Newsom for signature. The bill, which is expected to be signed into law, would be a first of its kind that addresses gaps in the existing charitable solicitation law framework as applied to charitable fundraising performed in online platforms. Historically, charitable fundraising platforms—like those whose business model is to offer prize promotions in exchange for recommended donations—had to shoehorn their compliance obligations into the framework for professional fundraisers. In most cases, strict, letter-of-the-law compliance with professional fundraiser requirements was elusive. The new law provides a streamlined approach to regulation of these online platforms that recognizes and meets the practical realities of how online fundraising efforts have evolved in the years since the charitable solicitation law began regulating certain types of third-party fundraisers.
This is because a **professional fundraiser**, generally, is a person who is compensated or receives other consideration to solicit contributions on behalf of a charitable organization and/or who has custody and control of contributions solicited. When a company advertises its sweepstakes and notes that a suggested donation may be made as a method of receiving a chance to win, the company has engaged in a solicitation for charitable contributions. As such, whether the company receives “compensation or other consideration” in exchange for that solicitation is determinative in answering whether professional fundraiser status has been triggered and the company will need to comply with the onerous compliance obligations associated with that status.

Companies who do not intend to be in the **business of fundraising** should be sure to avoid classification as a professional fundraiser by not retaining any portion of the funds raised through a charitable sweepstakes. In doing so, the company positions itself as a bona fide, unpaid, volunteer fundraiser for the charitable organization. Although volunteer fundraisers are still covered by other obligations under states’ charitable solicitation laws, they are generally not subject to onerous registration, bonding, and reporting requirements.

**ii. Complying with Charitable Solicitation Laws as a Volunteer Fundraiser**

Companies that conduct charitable sweepstakes and neither retain or hold any portion of the funds raised for charity, nor receive other compensation or consideration in exchange for doing so, should follow state charitable solicitation law requirements and industry best practices applicable to volunteer fundraisers and charitable sweepstakes sponsors. Most states’ charitable solicitation laws do not explicitly address volunteer charitable sweepstakes sponsors in their rules. However, the basic frameworks of those laws, coupled with new legislation, increased state regulatory attention through enforcement actions, and guidance issued by state attorneys general.

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14 See, e.g., Cal. Gov’t Code § 12599(a); Fla. Stat. § 496.404(21); N.Y. Exec. Law, §171-a(4).

15 Although some companies are engaged in the business of fundraising, with business models built around offering, for a profit, charitable sweepstakes, the considerations facing those companies are beyond the scope of this article.

16 In the coming days, the Governor of California is expected to sign into law Assembly Bill 488, which will regulate charitable fundraising platforms and require them to make “conspicuous disclosures” to prevent a likelihood of deception, confusion, or misunderstanding. See, supra, n. 13. Cal. Gov. Code § 12599.9(e)(1)-(5) (expected).

17 For example, the California Attorney General brought enforcement actions against several charitable sweepstakes and fundraising companies in late 2019, alleging that they operated in violation of the state’s charitable solicitation law and/or they were running illegal lotteries (charitable sweepstakes platforms Prizeo US, LLC and CharityBuzz, LLC both received cease and desist orders and subsequently appealed them, and Omaze, Inc. settled with the state).

and the Federal Trade Commission\textsuperscript{18} provide direction to companies on how best to minimize their legal exposure in conducting these campaigns. Among the most important considerations for a successful charitable sweepstakes promotion, companies should generally:

- Ensure strict compliance with the sweepstakes laws, including (a) offering a “no donation required method of entry;” that is (b) clearly and conspicuously disclosed close to the donation method of entry; and (c) offered equal dignity to the donation method of entry (i.e., entries are treated the same with the same opportunity to win the same prizes); as well as (d) disclosure of all other material terms in official rules is made.

- Enter into a written agreement with the charitable beneficiary to obtain the organization’s consent to use their name and marks in the fundraising materials, and have the charity approve all such uses of their name and marks in fundraising materials;

- Arrange for the donations raised to be promptly received by either the charitable organization directly, to an account under its name and control, or an intermediary charity such as a sponsoring organization that maintains donor advised funds and can promptly recommend grants to the intended charitable beneficiary; and

- Ensure the charity for whom donations are being solicited is in good standing with the Internal Revenue Service (i.e., its tax-exempt status has not been revoked) and applicable state charitable solicitation and tax laws.

In addition, keep in mind that the disclosures that sponsors of charitable sweepstakes should make will vary depending on the identity and structure of the charitable organization that receives, directly from the sweepstakes, the donations made. In general, among the more important disclosures to include in charitable sweepstakes from a charitable solicitation law compliance perspective are:

- Making “unavoidable and prominent” disclosure that: (i) no fees are charged on the donations raised; and (ii) in cases where an intermediary charity is used to receive the donations from the promotion, describe if, how, and when donations will be transferred to the named beneficiary, including the circumstances where the intermediary charity may exercise discretion and control to reassign funds;\textsuperscript{19}


\textsuperscript{19} According to the PPGF Voluntary Settlement (see, supra, n. 15), to be “unavoidable and prominent” means that the information is located on a page that each donor must access prior to making a donation, and in a position immediately proximate to a necessary field of button to be used by each donor, rather than on an optional pop-up window or another hyperlinked page.
• Conspicuously disclosing the name, contact information, and tax-exempt mission of the charity to whom donations will be made and other material terms (including, of course, any sweepstakes-specific rules and disclosures that must be publicized);\(^{20}\)

• Whether the charity has been reviewed for compliance with applicable state charitable solicitation law(s);

• Whether, and with whom, potential donors contact information will be shared; and

• Whether the donation is tax-deductible (in most cases, donations made for an entry into a sweepstakes are not deductible to the contributor).\(^{21}\)

IV. Conclusion

Despite the frequency with which the terms “raffle” and “charitable sweepstakes” may be used interchangeably to mean a prize promotion whose paid entries benefit a charitable organization, the terms are fundamentally distinct. Companies whose consumer-facing activations include this form of cause-related marketing would be well-served to remember the differences between these categories.

In particular, companies seeking to offer charitable sweepstakes should ensure that their promotions offer a free alternative method of entry and clearly disclose to the public that the free method is available, and offer “equal dignity” to all entrants who do not choose to donate. All material terms of the promotion must be disclosed in “Official Rules” as well. Moreover, companies sponsoring this type of promotion must choose either to take no part of the monies raised or if they do, to undertake registration as a nonprofit fundraiser.

Keep in mind that the landscape affecting charitable sweepstakes—particularly states’ charitable solicitation laws and industry best practices—is evolving quickly. Confirming with counsel that the agreement with the charity and promotion disclosures comply with current law is recommended.

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\(^{20}\) See, supra, n. 16.

\(^{21}\) See I.R.S. Rev. Rul. 67-246, 1967-2 C.B. 104; see also I.R.S. Priv. Ltr. Rul. 110217-99 (Mar. 24, 2000). A Private Letter Ruling (PLR) does not constitute precedential guidance, and it cannot be relied on by taxpayers other than the taxpayer that requested such ruling. See 26 U.S.C. § 6110(k)(3). Nevertheless, PLRs are useful indicators of how the Internal Revenue Service has handled particular scenarios in the past and thereby provide a view on how similar matters might be treated in the future.
Advertising Agency/Client Agreement – Checklist of Generally-Covered Terms:

Compensation:

- Commission based
- Retainer based
- Commission/retainer combination
- Project Based
- Other (e.g. royalty, incentive, bonus structure)

Basis for Setting the Retainer (where applicable):

- Specified deliverables
- Overall Advertiser budget (production and media)
- Expected agency hours
- Scope of specified services within retainer (regardless of number of executions)
- All other services on negotiated project basis

Other Compensation-Related issues:

- Use of “in house” services at market prices (casting, production work)
- Allowed mark ups if any on third-party services purchased on behalf of Advertiser
- Separately, production mark ups or specified percentage of production as an element of compensation
- Periodic review to determine "fairness"
- Payment schedule (in advance for the month, or at end of month)
- Payment schedules on production and media (e.g. 50 percent up front, etc.)
- Requirement for signed estimates in advance (in particular for production)
- Timing and payment procedures

Scope of Work:

Clearly most important with respect to retainer agreements, where the distinction between what is “in” and what is “out” is crucial.

- Strategic planning
- Account management services
- Media planning and buying
- Creation of advertising materials in specified media (broadcast, print, online, outdoor, etc.)
• New media development (PDA’s, some types of online, viral marketing, word of mouth campaigns etc.)
• Direct mail
• Promotional materials/PR/sales collateral
• Trade shows/sales meetings/annual meetings
• Branding services
• Sweepstakes and promotions (creative development; administration; fulfillment)

Legal Clearance and Review:

• Occurs at different stages
  o Initial clearance prior to pitch
  o Initial clearance of series of ideas
  o Final clearance prior to production
  o Final clearance prior to release for publication
• Review of advertising materials for claims substantiation, network clearance, third-party rights clearance and licensing
• What is the extent of clearance?
• When and how does clearance occur, and at whose expense?

Indemnification:

• Agency is usually responsible for IP, privacy, publicity claims
• Advertiser is usually responsible for (1) risks brought to the Advertiser’s attention where the Advertiser directs the Agency to proceed; (2) materials supplied by it; (3) materials altered after provision by Agency and in violation of third party rights; (4) product liability claims; and (5) claims regarding the Advertiser’s own products or services and/or those of its competitors

Agent Relationship:

• Agency is independent contractor, except agency is authorized to enter into third party agreements as agent for a disclosed principal when it:
  o Buys media
  o Engages talent
  o Enters into production agreements
  o Licenses third party IP -- i.e. music, trademarks, copyrighted material
• Advertiser may want prior approval over third-party contracts entered into by Agency as agent
• Whether and when Agency may subcontract is subject to negotiation
  o Who is responsible for subcontractors’ acts (Advertiser will want it to be the agency)
  o Is Advertiser approval required prior to engaging subcontractors?
Ownership of Materials:

- Advertiser will want: All advertising ideas, slogans, plans, copyrightable material, copyrights, programs, concepts and materials prepared or procured by Agency for Advertiser shall become the property of Advertiser whether or not used.
- Agency will want: All finished advertising and marketing materials prepared or procured by Agency for Advertiser shall become the property of Advertiser upon full payment of Agency’s invoices; materials not used remain Agency’s property

Exclusivity:

- Heavily negotiated
- Advertiser will want it as broad as possible
- Agency will want it confined to a narrow market segment and one office of a global agency, for example
- Client will want notice if any office of agency (or any office performing services for client) enters into negotiations with an arguably competitive entity
- Definition of competitive entity will generally require agreement

Insurance:

- Advertiser will want to be named as an additional insured, and will want to see:
  - General Comprehensive Liability Workers Comp
  - Errors and Omissions
  - Auto Liability
  - Crime Insurance
  - Property Insurance for the property of Advertiser

Termination:

- Notice (30, 60, 90 day)
- Cause or no cause
- Notification to third party vendors
- Advertiser remains responsible for non-cancelable agreements
- Provide for orderly transition of materials and final payment

Miscellaneous:

- Non-solicitation
- Confidentiality
- Data protection and security
- Choice of law and jurisdiction
AGREEMENT

This Agreement is entered into this ___ day of ________, 20___ by and between

_______________ ("Agency"), as agent for its client, _______________ ("Client"), with offices
at _______________, and ________________ ("Charity"), with offices at _______________.

WHEREAS, Charity, a non-profit charitable organization, tax-exempt pursuant to IRC
§501(C)(3), is _______________ [Describe function / mission statement of Charity] and

WHEREAS, Client, is sponsoring _______________ [Name of promotion] (the "Promotion"), which [Describe promotion] and

WHEREAS, Client has agreed to donate to Charity _______________ [Describe].

NOW, THEREFORE, in consideration of the mutual promises hereafter set forth, the
parties agree as follows:

1. During the Term (as defined below), Client will donate to Charity [Describe donation].
   All such donations will be made in accordance with Paragraphs 6, 7 and 8 hereof.

2. Throughout the world, Client and Agency may disclose in publicity, promotion and
   advertising for the Promotion that $_____ will be donated to Charity for [Describe]. Client and
   Agency will consult with Charity regarding the wording of any such disclosure. Charity
   covenants, warrants and represents that it owns or has the right to use during the Term, the
   trademarks, trade names and service marks (collectively, the "Trademarks") which Client or
   Agency may use as set forth herein. Charity grants to Client and Agency permission to use the
   Trademarks during the Term to the extent required as set forth herein.

3. This Agreement is subject to all applicable state, federal, county and municipal laws,
   statutes and regulations including, without limitation, all such laws, statutes and regulations
   relating to applicable the solicitation of charitable contributions. Charity will comply with all
   applicable charitable solicitation statutes and commercial co-venturer statutes including by, if
   applicable, filing copies of this Agreement with the appropriate state officials prior to the
   commencement of the Promotion. Charity will be properly registered in all states and other
   jurisdictions that require registration for purposes of the solicitation of charitable contributions
   prior to the commencement of the Promotion.

4. The term of this Agreement (the "Term") will commence as of the date first set forth
   above and shall continue thereafter in full force and effect until [Date].
5. Client represents that the Promotion is currently scheduled to commence on [Date] and end on [Date].

6. Client and Agency will render semi-annual statements of account to the first day of April and the first day of October and shall mail such statements to Charity in the July and January following together with checks in payment of the amounts due thereon (provided that Client and Agency have each received a copy of the IRS determination letter granting tax exempt status pursuant to IRC §501(C)(3) to Charity). Client will render a final accounting to Charity within one hundred and eighty (180) days after the expiration of the Term. Each such statement and the final accounting shall set forth, in reasonable detail, the number of copies of the ________ sold either during the semi-annual period to which such statement relates or during the entire Term, as applicable, and the dollar amount payable to Charity as set forth herein.

7. CHARITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT, WITHOUT COST, PENALTY, OR LIABILITY, FOR A PERIOD OF FIFTEEN (15) DAYS FOLLOWING THE DATE ON WHICH THIS AGREEMENT IS FILED BY CHARITY WITH THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, BY WRITTEN NOTICE TO AGENCY TO SUCH EFFECT AT THE ADDRESS SET FORTH ABOVE, C/O __________. A DUPLICATE COPY OF ANY SUCH NOTICE OF TERMINATION SHALL BE MAILED BY CHARITY TO THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AT THE FOLLOWING ADDRESS: State of New York, Office of The Attorney General, Charities Bureau, The Capitol, Albany, New York 12224.

8. Neither Client nor Agency has not made, and does not hereby make, any representation or warranty of any kind or nature with respect to the quantities of the ________ that may be sold, it being acknowledged by the parties that the extent of such sale is speculative. The judgment of Client with regard to any matters affecting the sale of the ________ shall be binding and conclusive upon Charity. Charity shall not make any claim (of any kind, whether in contract, tort or otherwise), nor shall any liability be imposed upon Client or Agency based upon any claim, that more ________ could or should have been sold.

9. This Agreement shall be interpreted according to the laws of the State of New York, and conflict of law rules shall apply.

10. This Agreement constitutes the sole agreement between the parties hereto and no amendment, modification or waiver of any of the terms and conditions hereof shall be valid unless in writing and signed by both parties. No assignment shall be binding on either of the parties without the written consent of the other. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

[CHARITY]  
By: ____________________  
Name: ____________________  
Title: ____________________  

[AGENCY], as agent for [CLIENT]  
By: ____________________  
Name: ____________________  
Title: ____________________  

By: ____________________  
Name: ____________________  
Title: ____________________
CONTEST MANAGEMENT AGREEMENT

Between:

(hereinafter referred to as "Agency")

- and -

(hereinafter referred to as "Client")

1.0 Services

Client hereby retains Agency to provide and Agency hereby agrees to provide, in connection with the (Name) contest (the "Contest"), the management services indicated in Schedule "A" attached hereto on the terms provided herein.

2.0 Compensation

Client shall pay Agency for its services hereunder the fees, charges and disbursements set out in Schedule "A" hereto. If Client requires services in addition to those outlined in Schedule "A", Agency will, if it is agreeable to providing such services, provide a written quote of the fee for such services. Upon written acceptance of same by Client, Agency will render such services. Such services will be governed by the terms of this Agreement and invoiced on the basis of the quote provided by Agency.

3.0 Compliance with Laws

Client shall ensure that the Contest and all related advertising and promotional materials comply with all applicable federal, provincial and municipal laws, and nothing contained in this Agreement shall require Agency to take any action in contravention of such laws.

4.0 Indemnities

4.1 Agency shall indemnify and hold Client harmless from and against any loss, damage, claim, action, suit, proceeding, deficiency or expense including, without limitation, all reasonable legal fees on a solicitor client basis, relating to or arising from or in connection with any negligence on the part of Agency, its employees or contractors in connection with its or their performance hereunder, provided that Agency's liability hereunder shall not in any event exceed the value of the prizes in issue, up to a maximum liability of $X.

4.2 Client shall indemnify and hold Agency harmless from and against any loss, damage, claim, action, suit, proceeding, deficiency or expense including, without limitation, all reasonable legal fees on a solicitor client basis, relating to or arising from or in connection with any aspect of the Contest, the prizes offered in the Contest or the
advertising, publicizing or promotion of the Contest, subject to Agency's obligations of indemnity pursuant to Paragraph 4.1 above.

4.3 This Article 4.0 shall survive the expiration or termination of this Agreement and continue in full force thereafter.

5.0 Inspection and Retention of Records

Client shall have the right to inspect Agency records relating to the Contest within Agency's regular business hours and on two days notice. Agency shall not be required to retain unselected entries for more than __________ weeks after the random selection of entries of potential winners and shall not be required to retain any other records or material relating to the Contest for more than ____________ following Agency's delivery of the final winner's list and copies of the winner releases to Client.

6.0 Termination

This Agreement may be terminated by either party on X days written notice.

7.0 Confidential Information

To the extent that in the negotiation or implementation of this Agreement, Agency receives or received any confidential information about Client, including without limitation, Client's marketing plans, Agency acknowledges that it has not as at the date hereof and agrees that it will not, during the term of this Agreement or thereafter, disclose, directly or indirectly, or otherwise make available to others, or use for its own purposes, any such information and will hold such information in strictest confidence until such time as it comes into the public domain through no fault of the Agency. This provision shall survive the expiration or termination of this Agreement.

8.0 Relationship of Parties

Agency, in performing its services hereunder, is an independent contractor and is in no way restricted from providing contest management services to any other person.

9.0 Assignment

This Agreement may not be assigned in whole or in part by either party hereto without the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

10.0 Notices

Any notice, demand, consent, payment or other communication (a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by
personal delivery or by facsimile sent or delivered as set out below or to such other address or facsimile number as may from time to time be the subject of a Notice:

  a. (Agency)

     Attention:
     Facsimile No.:

  b. (Client)

     Attention:
     Facsimile No.:

Any Notice, if personally delivered or sent by facsimile, shall be deemed to have been validly and effectively given and received on the business day next following the day it was received.

11.0 Waiver

The failure of either party to require the performance of any term of this Agreement or the waiver by either party of any breach hereof will not prevent a subsequent exercise or enforcement of such terms or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement.

12.0 Severability

Each of the provisions contained in this Agreement is distinct and severable and the declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions or parts of provisions hereof.

13.0 Governing Law

This Agreement shall be governed by and construed exclusively in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

14.0 Entire Agreement/Modifications/Binding Effect

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended, altered or qualified except by agreement in writing signed by both parties. There are no oral warranties, representations or other agreements in fact or relied upon between the parties in connection with the subject matter hereof except as specifically set forth or referred to in this Agreement. This
Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

15.0 Language of Agreement

Both parties hereto declare that they have requested and do hereby confirm their request that the present Agreement, and related documents, be in English; les parties déclarent qu'elles ont exigé et par les présentes confirment leur demande que le présent contrat ainsi que les documents qui s'y attachent, soient rédigés, en anglais.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

CLIENT:              AGENCY

By: ____________________________    By: __________________________
(Please print name)            (Please print name)

Signature: _____________________  Signature: ___________________

Title: _________________________  Title: _______________________

NOTE: This form has been prepared by Joseph Lewczak of Davis & Gilbert. This form is not a substitute for legal advice and may not be suitable in a particular situation. For further information please contact Joseph Lewczak at (212) 468-4909 or jlewczak@dglaw.com. Consult your attorney for legal advice.]

[NAME OF COMPANY]
COUPON REDEMPTION POLICY

This Coupon Redemption Policy (“Policy”) governs the redemption terms relating to the [Describe applicable coupons] (collectively, the “Coupons”), each good at [Describe merchants at which Coupons are redeemable] (“Merchants”). By submitting any Coupon for redemption, Merchants and Merchants’ coupon clearinghouse (the “Clearinghouse”), if any agree to be bound by this Policy.

1. Redemption. [Name of Company] (“Manufacturer”) will reimburse you for all Coupons you have redeemed on our products IF you do the following:

- The Coupons you send us must have been redeemed in accordance with Manufacturer’s offer as stated on the coupon (“Terms”). When you send us Coupons for redemption, you are verifying that those Coupons came from retail customers only, in connection with their purchase of the specified product(s), and the Terms set forth on the Coupon itself.

- All information required on the reverse of the Coupon must be completed in full, including an indication of which product was purchased, your store name and code #, and your store invoice number. EACH SUBMISSION MUST BE ACCOMPANIED BY A COPY OF THE INVOICE RELATING TO THE PRODUCT PURCHASE.

- If your submission is proper, we will send you a check for the face value of the coupons submitted. YOU MAY NOT DEDUCT THE AMOUNT YOU CLAIM FROM MANUFACTURER OR DISTRIBUTOR INVOICES. Please allow ___ to ___ weeks for delivery of check.

- Any transfer, assignment, reproduction, or other distribution of Coupons, not authorizing in writing by a designated Manufacturer’s representative shall render those Coupons void.

- Manufacturer’s actual count of Coupons received shall be final and shall govern our payment. Manufacturer may reject a submission or withhold payment on any Coupon submission containing Coupons which have not been redeemed in accordance with this Policy and Manufacturer may confiscate all Coupons submitted. Manufacturer may request you provide proof of purchase of sufficient stock to cover Coupons presented for redemption. Any use or
submission of Manufacturer’s Coupons other than as permitted in this Policy may constitute fraud.

- By submitting any Coupons for redemption, Merchant hereby represents and warrants that such submissions are correct and complete and otherwise comply with the terms of this Policy, and that Merchant has not committed any fraud or deception relating in any way, directly or indirectly, to such submission.

- Merchant shall indemnify, defend and hold Manufacturer, its affiliates, and each of its respective officers, agents, employees, successors, and assigns, harmless from and against any and all claims, demands, regulatory proceedings, and/or causes of action, and all damages, liabilities, costs (including settlement costs and additional contract or cancellation costs) and expenses associated therewith (including, but not limited to, reasonable attorneys’ fees), to the extent that they arise from any breach by Merchant of any of the terms, conditions, representations or warranties set forth in this Policy.

2. Misredeemed Coupons. Manufacturer may reject all or part of a submission, withhold payment and confiscate Coupons as it deems appropriate, in its sole discretion. Manufacturer shall notify Merchant of any rejections for cause and such cause shall be specified. Merchant agrees that any claims it may have must be asserted in writing to Manufacturer within ninety (90) days of the date of such notice or such claims shall be waived. Manufacturer reserves the right to destroy misredeemed Coupons within one hundred eighty (180) days of the date of its notice that redemption is being denied. Merchant agrees that in the event of such destruction, Manufacturer’s records as to the propriety of the Coupons themselves have been destroyed.

3. Financial Risk of Intermediate Clearinghouse. The credit risk of dealing with the Clearinghouse, if any, is borne by Merchant.

4. Third Parties. Coupons will not be honored if presented through third parties which have not been authorized by the Manufacturer to present coupons for redemption.

5. Termination. Manufacturer may terminate this Policy at any time.

6. Audits. Merchant and Clearinghouse, if any, shall each keep full, true and accurate books of account and other records containing all particulars relating to the Coupons, Coupon redemption, and all sales of products made with Coupons. All such books and records shall be maintained by Merchant and/or Clearinghouse for a period of five (5) years following the expiration of the Coupons. Manufacturer or its representatives shall have the right to inspect, during regular business hours and upon prior reasonable notice, such books and other records.
7. **Limitation of Liability.** Manufacturer’s sole obligation hereunder is limited to reimbursing Merchant the face value of all Coupons redeemed by Merchant if redeemed in accordance with the terms hereof. In no event shall Manufacturer’s liability hereunder exceed the total face value of all valid Coupons submitted by Merchant in accordance with the terms hereof.

8. **Provisions Relating to Clearinghouse.** In the event that Merchant using a Clearinghouse, the following provisions shall apply:

(a) Merchant’s Clearinghouse agrees that any Coupons submitted for redemption by Merchant through Clearinghouse is a chose in action claim, belonging solely and exclusively to Merchant. Clearinghouse agrees that with respect to the collection of Coupon reimbursements, it is acting solely as agent and has not independent right to the funds.

(b) In the event Clearinghouse experiences Financial Difficulties (as defined below), Manufacturer (or its clearinghouse) may pay sums due directly to Merchant and Clearinghouse agrees to provide such information in such form as may enable Manufacturer (or its clearinghouse) to identify and pay Merchant’s directly. In such event, Clearinghouse agrees to collect its fee directly from Merchant unless Manufacturer (or its clearinghouse) is notified at least fourteen (14) days in advance in writing of the claimed fee with respect to any one or more Coupon submissions.

“Financial Difficulties” which shall give rise to Manufacturer’s (or its clearinghouse) right to make direct payment as described above include:

(i) in the event of any material change in ownership or management of the Clearinghouse.

(ii) submission by the Clearinghouse to Manufacturer of any false or fraudulent reports or statements, including, without limitation, claims for any refund, credit, rebate, incentive, allowance, discount, reimbursement or other payment, in contravention of this Policy or any other policy, requirement or schedule imposed, established or specified by Manufacturer from time to time pursuant hereto.

(iii) in the event of bankruptcy, composition, re-organization, receivership, liquidation or insolvency of the Clearinghouse or in the event any similar actions or proceedings are instituted by, on behalf of or against the Clearinghouse.

(iv) in the event it becomes physically or legally impossible or commercially impracticable for either party to perform its obligations by virtue of Force Majeure, or due to any acts of the governments within the Territory, the United States of America, or any other government or any change in such governments’ laws, regulations or policies.
NOTE TO MERCHANTS

If you use a Clearinghouse,

READ THIS IMPORTANT WARNING

COUPON CLEARINGHOUSES ARE YOUR AGENTS OR REPRESENTATIVES AND ALTHOUGH, FORM TIME TO TIME, MANUFACTURER AGREES TO WORK WITH SUCH COMPANIES, MANUFACTURER HAS NO RESPONSIBILITY FOR THEIR ACTIONS, INCLUDING BUT NO LIMITED TO PAYMENTS.


(a) No failure by either party to exercise any power given it under this Policy, or to insist upon strict compliance by the other party of any obligation hereunder, and no custom or practice of the parties at variance with the terms of this Policy will constitute a waiver of such party’s right to demand exact compliance with the terms hereof.

(b) Should any provision(s) of this Policy be declared invalid for any reason, such decision shall not affect the validity of any other provisions, which other provisions shall remain in force and effect as if this Policy had been agreed to with the invalid provision(s) eliminated.

(c) This Policy will be governed and construed in accordance with the federal laws of the United States and the state laws of the State of __________. Any action or proceeding brought by any party hereto which is related to this Policy shall be brought in a Federal or State court having proper subject matter jurisdiction and located within the United States, State of __________ and County of __________.

(d) This Policy cannot be altered or modified except by Manufacturer, in its sole discretion.
EMAIL LIST RENTAL AGREEMENT

This Email List Rental Agreement dated as of ____________ __, 2003 (this “Agreement”) is between ______________ (“Vendor”), a ____________ corporation located at ________________________________, and ______________ (“Company”), a ______________ corporation located at ________________________________.

WITNESSETH:

WHEREAS, Vendor is in the business of renting lists of email addresses and delivering messages for marketing campaigns; and

WHEREAS, Company wants to offer one or more of its products and/or services to email addresses supplied by Vendor subject to the terms and conditions of this Agreement (the “Internet Marketing Campaign”); and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions contained in this Agreement, Vendor and Company hereby agree as follows:

1. Services.

   (a) List of Email Addresses. Subject to the terms and conditions of this Agreement, Company hereby engages Vendor to conduct an Internet Marketing Campaign to the list of ______________ email addresses (the “Email Addresses”) in the categories set forth on Attachment I hereto and all other services set forth herein or on an attachment to this Agreement. In the event Company requests Vendor to compare the Email Addresses to another list provided by Company, Vendor will process such name and email address files against files provided by Company to delete duplicates and remove any addresses designated as “do-not-email” or such similar designation.

   (b) Message Approval. Vendor shall include in the messages delivered to the Email Addresses only the content, including any text, hyperlinks and graphics, delivered to Vendor by Company (the “Content”) without any modification by Vendor. Vendor shall prepare a mock-up of the email and present it to Company for its prior approval. Vendor shall make any changes to the standard email requested by Company. Vendor shall not transmit any emails until it has received Company’s prior written approval to do so.

   (c) Reports. Within five (5) business days after delivery of the approved messages to the Email Addresses, Vendor shall deliver a report to Company (the “Report”) which sets forth the number of messages transmitted and the email addresses to which such messages were transmitted. In addition, the Report shall contain detailed information reasonably necessary for Company to measure the success of the campaign, including but not limited to, the number of hard bounced emails (i.e., invalid email address), the number of soft bounced emails (i.e., the recipient’s mailbox is full and the message was not received), any duplicate email addresses and the number of opt-out requests (collectively, the “Invalid Messages”).
(d) Pricing. Within thirty (30) days of receipt of the Report, Company shall pay Vendor _____ Cents ($0.__) per One Thousand (1,000) emails delivered, less any Invalid Messages.

(e) Company Lists. In the event that Company delivers any or all email addresses to Vendor for use in the Internet Marketing Campaign, Vendor shall use such list solely for the benefit of Company, shall not disclose such lists to any third party and shall promptly delete all such email addresses from its systems after it has delivered the Report.

2. **Mutual Confidentiality Obligation.** Each party agrees that the marketing materials, information and techniques provided by the other party with respect to Internet Marketing Campaign, and all other proprietary, non-public information provided by such party to the other party hereunder, including the terms of this Agreement, whether oral or written, and whether or not labeled as confidential by such party, is confidential and proprietary to such other party and will be received in confidence by such party, and such party will not use, disclose, reproduce or dispose of such information in any manner except as provided herein. The Reports shall be considered the confidential information of Company.

3. **General Representations, Warranties and Covenants.**

   (a) **Mutual Representations, Warranties and Covenants.** Each party represents, warrants and covenants that: (i) it is duly qualified and licensed to do business and to carry out its obligations under this Agreement and that entering into this Agreement does not violate any law, regulation or agreement to which it is a party and (ii) in fulfilling its obligations pursuant to this Agreement, it will comply with all applicable federal and state laws, rules and regulations.

   (b) **Email Representations, Warranties and Covenants.** Vendor represents, warrants and covenants that: (i) it shall perform its obligations under this Agreement in a professional and workmanlike manner with due care, (ii) it owns the list of Email Addresses or has acquired the written authority to the list of Email Address to use for the Internet Marketing Campaign, (iii) the Email Addresses were not collected in violation of Vendor’s, or any third party’s, privacy policy, (iv) the list of Email Addresses does not include any person under the age of 13, (v) the Email Addresses were collected on an “opt-in” basis, provided that “opt-in” shall mean than an individual has made an affirmative and verifiable action or statement consenting to, and requesting that they, receive emails in the nature of the Internet Marketing Campaign and (vi) the use of the Email Addresses in the Internet Marketing Campaign will not violate any applicable law, rule or regulation.

4. **Indemnification.**

   (a) **Indemnification Obligations.** Each party (the “Indemnifying Party”) will indemnify, defend and hold harmless the other party, its parents, subsidiaries, affiliates, directors, officers, employees, agents and sub-contractors (any such party seeking indemnification, the “Indemnified Party”) from and against any and all liabilities, losses, claims, damages and expenses, including reasonable attorney fees and expenses, (a “Claim”) arising from or relating to any breach of this Agreement by the Indemnifying Party.

   (b) **Indemnification Procedures.** The Indemnified Party will notify the Indemnifying Party in a reasonably prompt manner of any Claim for which the Indemnified Party is seeking indemnification pursuant to this Section 4. The Indemnifying Party may thereafter assume control of such Claim, provided that the Indemnified Party will have the right to participate in the defense or settlement of such Claim at its expense. Neither the Indemnifying Party nor the Indemnified Party may settle such Claim or consent to any judgment with respect thereto without the consent of the other party hereto (which consent may not be
unreasonably withheld or delayed). The Indemnified Party will provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Claim.

(c) No Consequential Damages. EXCEPT IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS IN SECTION 4, IN NO EVENT WILL EITHER PARTY HERETO BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION INDIRECT LOST PROFITS), EVEN IF SUCH PARTY HAS BEEN OR WILL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Arbitration. Any controversy arising in connection with or relating to this Agreement, and any amendment hereof, will be determined and settled by arbitration in New York, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any award rendered therein will be final and binding on each of the parties hereto and their successors and assigns, and judgment may be entered thereon in any court having jurisdiction. The parties will keep confidential, and will not disclose to any person, except as may be required by law, the existence of any controversy or dispute hereunder, the referral of any such controversy or dispute to arbitration or the terms of the resolution of such controversy or dispute. The parties will continue their performance under this Agreement while any such arbitration proceeding is pending.

6. Use and Ownership of Trademarks, Marketing Materials and Other Intellectual Property. Except as expressly permitted by this Agreement, neither party will make any use of trademarks, service marks, logos or other intellectual property owned by, licensed to or used by the other, including the Content, without first obtaining the other’s written consent. All intellectual property created by Company, its employees, agents or sub-contractors, including without limitation the Content or any other materials used in connection with the Internet Marketing Campaign, is and will remain the property of Company, and Company shall be the sole and exclusive owner of the Reports, and Vendor may not use the Reports for the benefit of any other party.

7. Assignment. This Agreement may not be assigned, in whole or in part, by either of the parties without the prior written consent of the other party (which consent may not be unreasonably withheld or delayed).

8. Notices. Any notice or other communication given under this Agreement will be in writing and will be delivered by hand, sent by facsimile transmission (provided acknowledgment of receipt thereof is delivered to the sender), sent by certified, registered mail or sent by any nationally recognized overnight courier service to the following addresses:

   for Company: for Vendor:

   ____________________________  ____________________________
   ____________________________  ____________________________
   ____________________________  ____________________________
   Attn: [_________] Attn: [_________]
   Fax: ________________ Fax: ________________
   cc: Legal Department (at same address and number)
9. **Governing Law; Severability; Construction.** This Agreement will be subject to and governed by the laws of the State of Delaware, without regard to its choice of law principles. If any provision of this Agreement will be held illegal, void or unenforceable, then the remainder of the Agreement will continue in full force and effect, but only to the extent that the original intent of this Agreement would remain unchanged in any material respect. The construction and interpretation of this Agreement will not be strictly construed against either party hereto.

10. **Further Assurances.** Each party will cooperate with the other party to the extent reasonably requested by such other party in connection with the performance of this Agreement and, at any time or from time to time upon the request of any party, each party will execute and deliver such further documents and do such other acts and things as the requesting party may reasonably request in order to carry into effect more fully the intent and purposes of this Agreement.

11. **Legal Fees Incurred in Enforcing this Agreement.** In each and any action initiated to enforce or interpret this Agreement, the principally prevailing party therein will be entitled to recover its reasonable costs and expenses (including without limitation reasonable attorneys’ fees and expenses) incurred in connection therewith.

12. **Waivers.** No failure or delay by either party to exercise, and no course of dealing with respect to, any right of such party regarding an obligation of the other party to this Agreement, will operate as a waiver thereof, unless agreed to in writing by both parties. Any single or partial exercise by either party of any of its rights will not preclude such party from any other or further exercise of any such right or the exercise of any other right. Any single or partial waiver by either party of any obligation of the other party under this Agreement will constitute a waiver of such obligation only as specifically provided in a written waiver and will not constitute a waiver of any other obligation.

13. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between Company and Vendor with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, arrangements, or understandings, whether written or oral with respect thereto. This Agreement may be amended only by a writing signed by both Vendor and Company.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

By: _____________________________
   Name: _________________________
   Title: __________________________

By: _____________________________
   Name: _________________________
   Title: __________________________
ATTACHMENT I

[INSERT EMAIL ADDRESS LIST CATEGORIES]
EVENT SPONSORSHIP AGREEMENT

_________________________________________ [EVENT NAME]
_________________________________________ [EVENT LOCATION]

This EVENT SPONSORSHIP AGREEMENT("Agreement") is made effective as of
______________________________________ (“Effective Date”) by and between
______________________________________, a ________________________________, a
______________________________________ (“Company”), and _________________________________________, a
______________________________________ (“Promoter”).

WHEREAS, Promoter has the exclusive right to conduct the
______________________________________, a ____________________________________________________________________________, a [Event Name], a  __________________________________
[Event Description] occurring at
______________________________________, a ________________________________ [Event Location] from _____________ through
______________ [Event Dates] (hereinafter defined as the "Event"); and

WHEREAS, Company wishes to purchase, and Promoter desires to sell, certain
promotional, sponsorship and other related rights with respect to the Event;

NOW THEREFORE, in consideration of the recitals set forth above and for other
good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged
and intending to be bound, the parties hereby agree as follows:

1. Promoter's Duties. (a) Promoter will, at its own expense, organize, promote,
produce, run and perform all acts necessary to stage the Event, which acts include, but are not
limited to: (i) obtaining in advance all permits and licenses required to conduct the Event; and
(ii) complying with and ensuring that the Event complies with any and all federal, state and local
laws, rules and regulations governing the Event.

(b) Company will have no obligation to perform and/or pay any sums to secure the
performance of any of the foregoing except as otherwise specifically provided on Exhibit B,
attached hereto and incorporated herein by this reference.

(c) Promoter shall perform all duties listed on Exhibit A, attached hereto and
incorporated herein by this reference.

2. Sponsorship Rights; Duties of Company. Promoter represents and warrants that it
has the sole and exclusive authority to grant, and it hereby grants to Company, the promotional
rights listed on Exhibit A. In consideration of the grant of such promotional rights, and
Promoter’s proper performance of all of its obligations hereunder, Company agrees to pay to
Promoter the sponsorship fee set forth in Section 3 below and to be responsible for the specific obligations set forth on Exhibit B.

3. **Sponsorship Fee.** Company agrees that it will pay the sum of ______________ dollars ($__________) (the “Sponsorship Fee”) to Promoter in consideration for Promoter’s proper performance of all of its obligations hereunder and the benefits listed on Exhibit A. Payment shall be made according to the terms, if any, listed on Exhibit B.

4. **Term.** The term of this Agreement shall commence as of the Effective Date and shall expire on ____________________, or upon Promoter’s full performance of all of its obligations hereunder, whichever is later, unless terminated earlier or renewed in accordance herewith.

5. **Option to Renew; Right of First Refusal.**

   (a) Should Promoter conduct the Event in one or more successive years following this year’s Event, Company is hereby granted the option to renew this Agreement for ________ successive years, provided Company exercises its option for each successive year by notifying Promoter in writing no less than ___ months prior to the commencement of such year’s Event. The terms of each such renewal shall be the same as provided herein, unless otherwise agreed to in writing by the parties.

   (b) Should Company elect not to renew this Agreement or should this Agreement expire by its own terms, Promoter grants to Company a right of first refusal for one year thereafter to match any competitive offer from another _______________ [Specify Sponsor’s category of goods and services. For example, “automotive.”] sponsor for similar rights and privileges at the next subsequent Event. Such right of first refusal must be exercised by Company by giving Promoter written notice of exercise within ten (10) business days of receipt of written notice from Promoter of such competitive offer setting forth the terms and conditions thereof. Other than the terms and conditions of any competitive offer matched by Company pursuant hereto, the sponsorship agreement for the next subsequent year shall be substantially on the terms and conditions set forth herein.

6. **Signage.** Except as specified on Exhibit A, Company shall provide, at its sole expense, all banners, signs and other materials containing the Company name or logo which Company is permitted to utilize during the Event. Subject to the restrictions set forth in Sections 9 and 10 hereof, Promoter shall, at its own expense, provide all other signage, including such signs featuring the Company name or logo as Promoter is permitted to use as provided herein. Promoter shall be responsible at its own expense for maintaining all banners or signage displayed at the Event in first class condition throughout the Event.

7. **Indemnification.** Promoter agrees to indemnify, defend and hold Company, its parent, its subsidiaries and the affiliates of each such entity, as well as each officer, agent (including advertising agencies), distributor, employee, attorney, dealer, successor and assign of any of the above, harmless from and against any and all expenses, damages, claims, suits, losses, actions, judgments, liabilities and costs whatsoever (including, without limitation, attorneys’
fees) arising out of: (i) Promoter's breach, misrepresentation or non-performance under this Agreement, and/or breach of any of its representations and warranties hereunder; (ii) any claim or action for personal injury, death, bodily injury, property damage or otherwise, including without limitation any right of privacy claim or claim of infringement of any third party trademarks, copyrights, or other intellectual property, suffered or incurred by any persons or entities in connection with or arising from the Event; or (iii) any payment owed by Promoter to persons or entities associated with the Event.

8. Insurance. (a) Promoter agrees to carry full insurance coverage for the Event and all other activities reasonably connected with the Event and this Agreement, in the types and at the minimum amounts listed below:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive General Liability</td>
<td>$1,000,000 Combined Single Limit, per occurrence</td>
</tr>
<tr>
<td>- Broad Form Contractual</td>
<td></td>
</tr>
<tr>
<td>- Personal Injury</td>
<td></td>
</tr>
<tr>
<td>- Advertising Liability</td>
<td></td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory limits</td>
</tr>
<tr>
<td>Employer's Liability</td>
<td>$1,000,000 per occurrence</td>
</tr>
</tbody>
</table>

(b) Other than the workers' compensation policy, each insurance policy required hereunder shall name Company as an additional insured, and all policies shall contain a provision whereby the insurer(s) agrees not to alter or cancel this coverage without at least ten (10) days' prior written notice to Company. The Comprehensive General Liability Policy shall have a commercially reasonable deductible, with no deductible for any excess. Each such policy shall provide that Company is not liable for any premium associated therewith. Promoter shall furnish Company with Certificates of Insurance evidencing the above coverage’s within three (3) days of contract execution by forwarding such certificates to the following address:

(c) Nothing herein shall limit or prohibit Company from obtaining insurance for its own account, and any proceeds payable thereunder shall be payable as provided in the underlying policy.

(d) Should the Event involve any of the following activities: hot air ballooning, auto racing, ski competitions, motorcycle racing, or other dangerous activity(ies), then the amount of Comprehensive General Liability Insurance listed in (a) above shall be $5,000,000, with all other terms being the same.

9. Intellectual Property. Company may, from time to time, grant to Promoter the right to use trademarks, trade names, service marks, logos, artwork, designs, copy or other intellectual property owned by Company (“Company Intellectual Property”). Promoter and its
affiliates and agents, if any, shall have no interest in or right to the use of such Company Intellectual Property, except for any limited right of usage which Company may grant in writing pursuant to this Agreement. Any such limited right shall, in any event, be expressly limited to the Event and any activities or promotions reasonably incident thereto. All right, title, and interest in and to the Company Intellectual Property is and shall remain the sole and exclusive property of Company; and Promoter shall not acquire any rights therein by reason of this Agreement. If for any reason Promoter obtains any rights in the Company Intellectual Property, Promoter hereby assigns all right, title, and interest in and to the Company Intellectual Property to Company. Promoter agrees to execute and deliver to Company all documents necessary to protect and/or register its Company Intellectual Property. Promoter shall, in all activities relating to this Agreement, perform its obligations hereunder in a manner so as to preserve the good will of the Company Intellectual Property.

(b) Whenever Promoter uses a name, mark or logo licensed hereunder, it shall (1) print or display the following statement: "The [relevant name, mark or logo] is used solely by permission of [COMPANY NAME]"; or (2) when the statement is impractical, either print a registered trademark symbol (®) or trademark symbol (™), whichever is appropriate. In the alternative, Promoter may request in writing an alternate display method.

(c) The limited license granted hereunder is nonassignable and does not inure to the benefit of Promoter's permitted assigns and successors. In the event Promoter or any affiliate or agent attempts to transfer or assign this limited license, such limited license shall terminate immediately without further action from Company.

(d) Promoter hereby grants to Company the right to use any trademarks, trade names, service marks, logos, artwork, designs, copy or other intellectual property, whether owned by Promoter or by a third party, which is part of the name of the Event or otherwise provided by Promoter in connection with the Event ("Promoter Intellectual Property") in Company advertising or promotional materials created for or disseminated in connection with the Event or otherwise.

10. Prior Approval. (a) Any advertising or other material prepared by Promoter which contains any Company Intellectual Property or which otherwise utilizes any trademark, trade name, service mark or logo owned by Company shall be provided to Company in advance of publication for Company's review. All such materials must receive the written approval of Company prior to each specific instance of publication thereof, such approval not to be unreasonably withheld.

(b) For any Event where the Company name is featured in the Event name, Company shall have the right to disapprove of any additional sponsor or advertiser, such as a sponsor of alcoholic beverages for the Event, should Company decide, in its sole discretion, that participation of such additional sponsor or advertiser would be detrimental to the public image of the Company brand name. Should Promoter or any such sponsor or advertiser and Company fail to agree to a reasonable solution on such a matter, Company may terminate this Agreement upon thirty (30) days written notice to Promoter.
11. **Default; Remedies.** (a) The following events shall constitute an Event of Default ("Event of Default") under this Agreement regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:

(i) Promoter shall fail to cause to be carried and maintained the insurance required under Section 8 hereof;

(ii) Either party shall make any material misrepresentation or shall breach any representation or warranty made herein; and such failure shall continue unremedied for a period of thirty (30) days after the receipt of written notice thereof from the non-defaulting party;

(iii) Either party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief;

(iv) Either party shall otherwise fail to perform or observe any other covenant or condition set forth herein and such failure shall continue unremedied for a period of thirty (30) days after the receipt of written notice thereof from the nondefaulting party;

(v) Either party should commit an act which brings its name into disrepute, or otherwise substantially diminishes the value of the sponsorship association for the other party; or

(vi) Any third party necessarily associated with the Event (e.g., sports team, sponsoring or sanctioning organization, host charity beneficiary) should become incapable of performing as the parties have anticipated in drafting this Agreement.

(b) Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the nondefaulting party may declare, at its option, this Agreement to be in default and: (1) may immediately terminate this Agreement without any liability whatsoever; (2) may seek enforcement by appropriate court action of the terms hereof and recover damages for the breach hereof; (3) may exercise any other right or remedy available to it under law or in equity; or (4) may seek any permitted combination of such remedies. No remedy is intended to be exclusive, but each shall be cumulative, and the exercise of any such remedy shall not preclude the simultaneous or later exercise of any other remedy.

(c) In the event this Agreement is terminated pursuant to Section 10, 11, 13 or 28 hereof, no Sponsorship Fee shall be due or payable in connection with the Event, and Promoter shall promptly refund to Company any Sponsorship Fee previously paid to Promoter hereunder and shall promptly return any vehicles and other personal property previously delivered by Company to or for the benefit of Promoter hereunder.
12. **Representations, Warranties and Covenants of the Parties.** Each party represents and warrants to the other party that: (a) the execution, delivery and performance of this Agreement have been duly authorized by all necessary action; (b) this Agreement is a valid and binding obligation of each party enforceable against it in accordance with its terms; and (c) there are no pending or threatened actions or proceedings which if adversely determined would impair either party's right to perform its obligations hereunder. Promoter further represents and warrants to Company that (a) Promoter has sole and exclusive authority to grant the sponsorship and promotional rights to Company which are the subject of this Agreement, that the exercise of such rights will not violate the rights of any third party, and that no rights are needed from any third parties in order to exercise such rights; (b) all materials provided or created by Promoter in connection with the Event, including but not limited to the Promoter Intellectual Property, will be entirely original and will not violate the intellectual property rights (including, but not limited to, rights under the laws of copyright or trademark) or other rights of any third party; (c) it will conduct the Event in accordance with the highest standards applicable to Events of a similar kind or nature, consistent with the first class Company brand name and reputation, and in accordance with all applicable laws, rules and regulations and with the terms of this Agreement; and (d) it will at all times during the Event provide adequate and appropriate security for the Event and all Company vehicles or other property at the Event.

13. **Event Delay/ Adverse Changes.** (a) **Force Majeure.** In the event inclement weather or other force majeure outside Promoter's reasonable control forces Promoter to stage the Event at another time during the year, such a failure to hold the Event on its originally scheduled date shall not be treated as a breach of this Agreement, provided (i) Promoter uses its best efforts to reschedule the Event as quickly as possible, (ii) the rescheduled Event is to take place no later than _______________ (“Latest Reschedule Date”), and (iii) Promoter bears all costs associated with the rescheduling. If Promoter is unable to hold the Event on or before the Latest Reschedule Date for any reason whatsoever, Company may terminate this Agreement effective immediately without liability whatsoever by giving written notice of termination to Promoter.

(b) **Changed Circumstances.** In the event there are changed circumstances that do not require the cancellation or rescheduling of the Event but which materially reduce the anticipated benefits of the Event to Company, then Company shall have, in its sole discretion and upon fifteen (15) days’ written notice to Promoter, the right (1) to immediately terminate this Agreement without any liability whatsoever by giving written notice of termination to Promoter; or (2) to a pro rata reduction in the amount of the Sponsorship Fee and any other compensation paid or due Promoter under this Agreement.

14. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns. Promoter may not assign its rights or obligations under this Agreement without Company’s prior written consent.

15. **Survival.** The provisions of Sections 5, 7-18, 22, 25, 26 and 27 of this Agreement shall survive this Agreement's cancellation, termination or expiration.
16. **Accounting and Audit.** (a) Promoter shall retain all records which are pertinent to the performance of Promoter’s obligations under the terms of this Agreement, including, but not limited to, records sufficient to show Promoter’s fulfillment of its obligations as set forth on Exhibit A, for a period of two (2) years following the final billing issued by Promoter hereunder. Such records shall be maintained in accordance with recognized accounting practices and in such a manner that they may be readily audited. Promoter shall make all such records available to Company or its designated representatives upon Company's request and shall cooperate with and assist Company or its representatives in the conduct of any such audit.

(b) Promoter shall require all subcontractors and suppliers to maintain similar records and make such records available for audit by Company or its designated representative(s). Promoter shall require that Promoter’s subcontractors and suppliers shall cooperate with and assist Company or its designated representative(s) in the conduct of such audit.

(c) If any audit conducted pursuant to this Section 16 shows that Company did not receive any rights and/or benefits to which it is entitled under these terms, Promoter will immediately refund to Company (or Company shall have the right to retain) that portion of the Sponsorship Fee allocable to those rights and/or benefits.

17. **Independence.** The parties shall at all times act independently. Nothing contained in this Agreement shall be construed to make one party the partner, joint venturer, principal, agent or employee of the other party hereto. Specifically, Promoter shall have no express or implied authority to act for or on behalf of Company. Further, no officer, director, employee, agent, affiliate or contractor retained by Promoter to perform work on Company's behalf hereunder shall be deemed to be an employee, agent, or contractor of Company. Promoter is solely responsible for payment of (1) all income, disability, withholding, and other employment taxes as well as (2) all medical benefit premiums, vacation pay, sick pay or other fringe benefits resulting from Promoter's retention of any such officers, directors, employees, agents, affiliates or contractors. Promoter shall indemnify, defend, and hold Company harmless from any claim for any such tax or benefit payment.

18. **Governing Law; Jurisdiction.** The validity, interpretation and construction of this Agreement, and all other matters related to this Agreement, shall be interpreted and governed by the laws of the State of California. Any action or proceeding commenced by either party in connection with this Agreement shall be commenced exclusively in the state or federal courts situated in the County of Orange, State of California.

19. **Headings.** The headings herein used are for convenience purposes only and shall not be used to construe the meaning of this Agreement in any respect.

20. **Entire Agreement.** This Agreement, together with the Exhibits hereto and any extensions or renewals hereof, constitutes the parties' entire agreement with respect to the subject matter hereof and supersedes all prior statements or agreements, both written and oral. This Agreement may be amended only by a writing signed by the party against which enforcement is sought. Ambiguities herein shall not be construed against the drafter hereof.
21. **Severability.** If any court of competent jurisdiction finds any provision of this Agreement to be unenforceable or invalid, then such provision shall be ineffective to the extent of the court's finding without affecting the enforceability or validity of this Agreement's remaining provisions.

22. **Attorneys' Fees.** Should either party institute or participate in a legal or equitable proceeding against the other seeking to enforce or interpret this Agreement, the non-prevailing party in the proceeding shall pay the prevailing party's costs (whether by final judgment or out-of-court settlement), expert and professional fees, and outside and in-house attorney fees, including costs and fees on appeal. Said obligation of the non-prevailing party will be deemed to accrue on the date of commencement of such proceeding.

23. **Notices.** Whenever notice is to be served hereunder, service shall be made personally or by registered or certified mail, return receipt requested, postage prepaid. Notice shall be effective only upon receipt by the party being served, except notice shall be deemed received 72 hours after posting by the United States Post Office, by method described above. All notices shall be sent to the addresses described below:

   To Company:

   With a copy to:

   To Promoter:

24. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original instrument and all of which together shall constitute the same instrument.

25. **Broadcast rights.** The rights to make motion pictures or to broadcast or televise the Event or any phase or portion thereof shall remain the property of Promoter. Promoter hereby grants to Company a non-exclusive license to use any such film, videotape, or other visual or audio recording of the Event as may exist for purposes of creating promotional materials or advertising therefrom, subject to any artists approvals which may be required.

26. **Evaluation/Market Research.** Promoter agrees to permit and assist Company in completing a quantitative evaluation of the promotional and sponsorship investment made hereunder by Company. This evaluation will include, but is not limited to, Company or its agent conducting on-site consumer surveys among attendees at the Event, collecting a database of Event attendees on-site for follow-up telephone research, and/or conducting telephone surveys for market research purposes utilizing additional databases available to Company. Company
reserves the right to select its own independent research organization to assist in the evaluation/market research process.

27. **Confidentiality.** The specific terms of this Agreement shall be confidential and shall not be disclosed by Promoter or Company to any other person or entity except (i) as mutually agreed by the parties; or (ii) where disclosure is required by law, provided that the disclosing party gives the other party prompt notice of the request for disclosure, cooperates with the other party in obtaining a protective order or other remedy, and discloses only that portion of the Agreement which it is legally compelled to disclose.

28. **Termination without Cause.** Company shall have the right to terminate this Agreement, in whole or in part, prior to the commencement of the Event, with or without cause, upon thirty (30) days’ written notice to Promoter.

29. **Right to Remove Name.** Company shall have the right, at any time and for any reason, to request in writing that Promoter remove Company’s name and/or logo either temporarily or permanently from any and/or all signage and other materials at or associated with the Event. Promoter shall comply with said request, but if Promoter will incur any additional expense in connection with such compliance, it will notify Company in writing and obtain Company’s prior written approval. Company will reimburse Promoter only for such previously approved expenses. Notwithstanding the foregoing, if Company's request for removal is made due to any act or omission of Promoter, Promoter will immediately comply with such request at its own expense, such remedy shall not preclude Company’s exercise of any other available right or remedy.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[COMPANY]  
By: ____________________________  
Its: ____________________________

[PROMOTER]  
By: ____________________________  
Its: ____________________________
Promotional rights granted to Company [examples of standard rights only]:

1. The exclusive commercial, sponsorship and promotional rights for the Event in the _____________ category.

2. Promoter shall refer to the [COMPANY PRODUCT] as the official [PRODUCT] of the Event.

3. Promoter shall prominently display the Company name and logo on all print and electronic media, marketing/sales brochures and press releases which Promoter prepares or issues for the Event.

4. Company may use the Event name and logo in any advertising it may wish to place.

5. [Insert Other Company Benefits/Rights]
Exhibit B
to
EVENT SPONSORSHIP AGREEMENT
[EVENT NAME]

Obligations of Company:

1. Company shall pay for all sales and promotional literature distributed by its representatives.

2. Company shall provide such camera-ready art as Promoter shall reasonably request for inclusion into Event-related media and print materials or advertisements.

3. Company shall pay Promoter the Sponsorship Fee of $______________ as follows:

[Insert Payment Terms]
FREELANCER AGREEMENT

Agreement (this “Agreement”) is to confirm the terms by which you, the undersigned, will be engaged as an independent contractor/consultant/freelancer to ______________ (the “Company”).

1. This Agreement will be in effect for the period specified on Exhibit A attached hereto (the “Term”). It is further understood that company will have the right to terminate this Agreement at any time with written notice.

2. (a) You agree to provide such services as are mutually agreed to by the parties.

   (b) You agree to perform your services diligently, competently and in a professional manner to complete the project(s) or assignment(s) under this Agreement (as specified above) within the time agreed for the completion of each such project or assignment. You further agree to complete the project(s) or assignment(s) to the satisfaction of the Company and take full responsibility for your failure to do so within a timely manner.

   (c) You will furnish the necessary tools, equipment, materials and the like to complete the project(s) or assignment(s) under this Agreement, and you will be responsible for the costs associated with your or your employees’ services, if any, including employee benefits and employee business expenses.

3. It is understood and agreed that your fee during the Term (including the method, manner and timing of the payment by the Company of such fee) will be as set forth on Exhibit A attached hereto. If specified on Exhibit A, any normal and reasonable business expenses incurred by you in the Company’s behalf will be reimbursed, providing those expenses have been approved in advance by the Company and are itemized on your monthly invoice.

4. It is further understood and agreed that your engagement hereunder will not constitute you, or your employees, as employees of the Company for any purpose whatsoever, and that you or your employees will not be entitled to the benefit of any employee plans or programs or benefits mandated by applicable law, including insurance benefits, of the Company. You acknowledge that you will be responsible for the withholding and payment of all federal, state and local income taxes and social security taxes and the payment of all workers’ compensation, state disability and unemployment contributions or premiums, or other taxes or contributions under any benefit program mandated by applicable law, associated with the fees you receive and the employees you hire, and that you will hold the Company harmless against any liability incurred with respect to such taxes, contributions or premiums, and you agree to indemnify the Company for any costs or liabilities, including attorney’s fees, arising from your failure to withhold and pay such taxes, contributions or premiums.
5. You acknowledge that during the course of your services hereunder the Company, its clients and/or its prospective clients may disclose to you certain information, and you may otherwise discover certain information, about the Company, its clients and/or its prospective clients. All such information about the Company, its clients and any of its prospective clients, including but not limited to technical and business information relating to the Company’s, its client’s or its prospective client’s products, research and development, production, costs, engineering processes, profit or margin information, finances, customers, marketing, and future business plans, shall be deemed “Confidential Information.” You agree that you will not, at any time (whether during the Term or after termination or expiration of this Agreement), disclose any Confidential Information or trade secrets of the Company or any client or prospective client of the Company, or utilize such Confidential Information or trade secrets for your own benefit, or for the benefit of third parties. In addition, all memoranda, notes, records or other documents compiled by you or made available to you during the Term concerning the business of the Company, its clients and/or its prospective clients will be the property of the Company and will be delivered to the Company on the termination or expiration of your engagement or at any other time prior to termination upon request.

6. In entering this Agreement, you hereby grant to the Company all rights, titles and interest in and the right to copyright materials conceived or first produced for the Company, its clients or its prospective clients by you (including, but not limited to, copy, scripts, storyboards, writings, trademarks, artwork, music, media plans, research projects, new product ideas and business systems or ideas), and you agree that such copyrightable materials are works made for hire exclusively for the Company, its clients or its prospective clients, as applicable, under the copyright laws of the United States. In the event that any such work is not a work made for hire under said copyright laws, you hereby assign to the Company all rights, titles and interests in such work and to execute whatever assignment of copyright and ancillary and confirmatory documents as may be required or appropriate to transfer exclusive title in such work to the copyright therein to the Company.

7. This Agreement will be terminated immediately by the Company in the event you become unable to perform, or breach any of, your duties under this Agreement. No modification or waiver of this Agreement is valid unless it is in writing and signed by you and the Company. This Agreement will be governed and construed under the laws of the State of New York.
If the foregoing is satisfactory and reflects your understanding of the business arrangement, please so indicate by signing and returning the enclosed copy of this Agreement.

Sincerely,

[Company]

By:

Name:

Title:

Date

Agreed and Accepted:

(Specify company name, if applicable)

By:

Name:

Title:

Date

(Specify Address and Telephone #)
Term; Fee

Term:

Fee (specify amount, method, manner and timing of payments):

Expenses (specify whether expenses will be reimbursed):
JOINT PROMOTION AGREEMENT

This Agreement, effective as of _____________, 200_ ("Effective Date") is made by and between ____________________ (the "Company") and _________________________. Individually, each party shall be referred to herein as a “Promoter,” and collectively, the parties shall be referred to as the “Promoters.”

WHEREAS, the Promoters each desire that a promotional offer be conducted (the “Promotion”) as more particularly described in Exhibit A hereto, incorporated by reference subject to the terms hereof (the “Promotion Document”); and

WHEREAS, the parties desire to reduce their agreement respecting the Promotion to writing;

NOW, THEREFORE, the parties agree as follows:

1. Responsibilities.

A. Each Promoter agrees to conduct its respective elements of the Promotion as described in, and in accordance with, the Promotion Document at its own expense unless otherwise mutually agreed. Any and all elements of the Promotion not expressly detailed in the Promotion Document shall be as mutually agreed herein or as agreed in writing hereafter.

B. Each Promoter represents and warrants that it will prepare, coordinate, and execute its elements of the Promotion so as to comply with all applicable laws, regulations and directives as they are currently interpreted and enforced, and that any materials it may prepare in connection therewith shall not contravene any such laws in any respect. Each Promoter agrees to promptly notify the other Promoter’s appropriate, designated representatives of any significant problems, irregularities, questions or complaints arising in connection with the Promotion, and the Promoters agree to work diligently to fully resolve same. Each Promoter agrees that no competitor of the other Promoter, and no party other than those specified hereunder, will be permitted to advertise or otherwise be associated with the Promotion unless specifically agreed by both Promoters. The parties agree to cooperate with each other, as reasonably required, to facilitate the successful performance of their respective obligations, and all elements of the Promotion.

2. License. Each Promoter hereby grants to the other Promoter a non-exclusive royalty-free license to use the trademarks, trade identities and copyrighted material designated by and belonging to the other Promoter solely in connection with this Promotion in a manner submitted or approved for use as provided in paragraph 3 below. Each Promoter acknowledges that the provisions of this paragraph do not convey any right, title or ownership interest in any of the licensor Promoter’s properties (except as expressly set forth in this paragraph) and that any such use by the licensee Promoter shall inure solely to the benefit of the licensor.

3. Approvals. Each Promoter agrees to submit to the other, in a timely fashion prior to finalization, copies of any materials utilizing the other Promoter’s trademarks, trade identities
or copyrights or making reference to the other Promoter or its products, as well as any other materials concerning the Promotion. Each Promoter agrees to notify the other Promoter whether it approves or disapproves any submitted material within five (5) working days after receipt of the material. Failure to notify the other Promoter within such five-day period shall be deemed to be approval.

4. **Warranty.** Each Promoter represents and warrants that it has obtained appropriate authorizations of all holders of any trademarks, copyrights or other rights required to be obtained in connection with performance of its obligations concerning the Promotion.

5. **Indemnification.** Each Promoter agrees to indemnify and hold harmless the other Promoter, its parent, affiliates and respective officers, directors, employees, agents and representatives (collectively, the “Indemnified Parties”) from and against any loss, damage, liability or expense, including reasonable attorneys’ fees and costs, in connection with any action or claim against any of the Indemnified Parties arising from such Promoter’s activities and responsibilities, in connection with the Promotion, or any advertising or promotional copy prepared by or for such Promoter in connection with the Promotion, including but not limited to, any such action or claim based on: (i) that Promoter’s actual or alleged breach of any of its representations, warranties or obligations under this Agreement; (ii) the actual or alleged negligence or willful misconduct of that Promoter or any of its employees, agents, contractors, or subcontractors; (iii) use of that Promoter’s trademarks, trade identities, copyrighted or other material as approved (or deemed approved) for use in connection with the Promotion; or (iv) Promoter’s products or services. This provision shall survive the termination of this Agreement.

6. **Termination.** This Agreement shall commence as of the effective date written above and shall terminate as of the end date of the Promotion, unless earlier terminated in writing by the non-breaching Promoter, after a material breach of this Agreement by the other Promoter which has not been cured within ten (10) days from receipt of written notice of such breach. Each Promoter agrees to use its best efforts to resolve any dispute which may arise under this Agreement in good faith, to the mutual, reasonable satisfaction of all parties. This Agreement may also be terminated by either Promoter at its sole option on written notice if the other becomes insolvent or becomes involved in any public controversy which, in the terminating Promoter’s good faith opinion, is likely to reflect negatively on the Promotion or on said Promoter or its products among a substantial segment of the public.

7. **Force Majeure.** Any delay or failure of a Promoter to perform its obligations hereunder shall be excused to the extent that it is caused by an event or condition beyond its reasonable control such as, by way of example but not limitation, death, serious illness or injury, governmental action, flood, storm or other natural disaster, fire, explosion, war, civil disorder or labor dispute; provided, however, that the Promoter claiming force majeure promptly notifies the other Promoter of the event of force majeure, the anticipated duration of the event of force majeure, and the steps taken to remedy or ameliorate the problem. If a Promoter anticipates that any circumstance beyond its control may occur, that Promoter shall promptly furnish written notice of such circumstance to the other Promoter and shall use its best efforts to carry out the terms of this Agreement as soon as reasonably possible, subject only to delays caused by such circumstance. Notwithstanding, the foregoing each Promoter will take all reasonable steps to
anticipate foreseeable problems and to have alternatives available to enable it to carry out its
duties in the event difficulties arise.

8. Miscellaneous.

(a) This Agreement constitutes the entire agreement between the parties regarding the
Promotion and the promises stated herein (including the Promotion Document) shall be the only
obligations of the Promoters to each other in connection with the Promotion. The provisions of
this Agreement may not be modified, amended or waived without the prior written consent of
each Promoter.

(b) The parties hereto agree to keep the specific terms of this Agreement, together
with all nonpublic information about each other acquired in connection with the Promotion,
confidential during the Term hereof and thereafter until such time as it becomes public
knowledge without the fault of any party. Each Promoter shall be responsible for the compliance
by its employees, agencies, suppliers and contractors with this provision and shall take
appropriate steps to notify such third parties of these obligations, securing their written
agreement whenever such is reasonably necessary. Each Promoter agrees not to disclose the
specifics of this promotional arrangement or such other nonpublic information about the other, to
any third party, other than to its advertising or promotion agencies or other third party suppliers
or contractors and then only to the extent such disclosure is needed by them to help the Promoter
fulfill its obligations hereunder. Each Promoter agrees to disclose the results of the Promotion
(redemption rate, etc.) only to the other Promoter and only to the extent such disclosure does not
involve information that is subject to a nondisclosure obligation to a third party.

(c) Each Promoter agrees not to act in any manner which may reflect unfavorably
upon the good name, goodwill, reputation or image of the other Promoter during the Term. In
addition, each Promoter will not engage in any joint promotion or similar activity with a direct
category competitor of the other Promoter in the same territory or market involving Promoters
products that are the subject of this Promotion during the Term hereof.

(d) Neither Promoter shall have any liability for the other’s products or services or
their quality, price or method of sale or distribution. Each Promoter agrees to comply with all
applicable laws and regulations in connection with the manufacture, marketing, sale and
distribution of its products and services.

(e) Except in connection with the indemnification provided herein against third party
claims and actions, neither Promoter shall be liable to the other for any indirect, incidental,
special or consequential damages, even if advised of the possibility thereof.

(f) Each Promoter will use its best efforts to resolve all complaints received from
consumers and/or governmental agencies with respect to its own products or services. Each
Promoter shall promptly notify the other Promoter of all material complaints and all responses
thereto that relate to the products or services related to the Promotion. Each Promoter shall
retain records of such complaints and responses for at least one year after the termination of this
Agreement.
(g) Neither Promoter shall produce, distribute or publish or cause to be produced, distributed or published, any press release or other publicity referring to the Promotion or this Agreement without the express, prior written approval of the other Promoter.

(h) This Agreement may not be assigned, in whole or part, by either Promoter without the other Promoters written consent.

(i) This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to its choice of law provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

_____________________________   [NAME OF COMPANY]

By:_____________________________   By:_____________________________
Principal contacts of each party:

____________________________
THE COMPANY
[ADDRESS]
____________________________
____________________________
____________________________
____________________________

Contract between THE COMPANY and
____________________________, dated _________________, 200_

**Responsibilities of The Company:**

**Responsibilities of Co-Promoter:**

*Please sign your name below*

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MARKETING SERVICES AGREEMENT

THIS AGREEMENT, effective the ___ day of __________, 200__ is by and between [MARKETER] with principal offices located at [address] (hereinafter referred to as "[Client]"), and ________________________ with principal offices at [address] (hereinafter referred to as "Company").

Client is a producer and distributor of [insert product description]. Since Company is in the business of providing professional [sales promotion and/or public relations] services, Client may, from time to time, wish to engage the services of Company for specific promotional and/or public relations programs ("Programs"). Company and Client wish to establish by this Agreement the terms and conditions which shall apply to individual Programs to be developed or managed by Company for Client. For each Program, Company shall submit a written proposal outlining services to be performed, including an estimated timetable and itemized budgetary requirements. Each Program, when and if accepted by Client, shall be subject to and incorporate the terms of this Agreement; in the event of a conflict, the terms of this Agreement shall control. For each Program accepted by Client, the parties shall enter into a separate Project Agreement in the form attached hereto as Exhibit A.

NOW THEREFORE, the parties agree as follows:

1. Performance. Company agrees that Client shall have no obligation to engage Company for any Programs. Client's engagement, in its sole discretion, of Company for any Programs shall be subject to the execution of a Project Agreement by Client and Company with respect thereto. Company shall perform for Client the services described in each Project Agreement in accordance with the general terms and conditions set forth in such Project Agreement. [Note to reader: it may be appropriate to include "Scope of Services" in this section, or as a subsection. Because these services may vary significantly, they have not been included in this form.]

2. Compensation. The sole consideration to Company for its execution hereof shall be Client considering Company from the date hereof for sales promotional or public relations programs. If any Project Agreement is executed, Client shall pay Company the amounts set forth in the Project Agreement according to the terms and time frames set forth therein for such payment.

[IMPORTANT NOTE TO THE READER: Sections 3 through 22 should be read in conjunction with the equivalent provisions/headings contained in the "Sweepstakes, Contest and Game Administration Agreement by the same author. In some instances, the provisions vary slightly. The provisions in the latter agreement may be more appropriate, depending upon the circumstances.]
3. **Agreement Termination.** This Agreement shall remain in effect unless and until termination by either party. When no Project Agreement is in effect, either party may terminate this Agreement at any time, with or without cause, by giving ten (10) days written notice to the other party. After such termination, Company shall not be considered for any Program until the parties have executed a new agreement, it being understood that Client may, but shall not be obligated to, enter into a new Agreement with Company.

4. **Project Termination.** Any Project Agreement may be immediately terminated (a) by Client if, in its sole discretion Company is unable to perform the services to be provided hereunder or (b) by either party if a Default, as defined below, by the other party after written notice and correction period of ten (10) days has elapsed without corrective action being taken. Except as otherwise specifically provided herein, and subject to the provisions of Paragraph 20 herein, termination of a Project Agreement shall not relieve the parties of any obligation accruing with respect to this Agreement prior to such termination. The term "Default" shall mean any of the following:

(i) failure by a party to comply with or to perform any provision or condition of this Agreement and continuance of such failure for 10 days after written notice thereof to such party; or

(ii) a party becomes insolvent, is unable to pay its debts as they mature or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; or makes an assignment for the benefit of creditors; or is named in, or its property is subject to a suit for appointment of a receiver; or is dissolved or liquidated; or

(iii) any warranty made in this Agreement is breached, false, or misleading in any material respect.

In the event of such termination, the non-defaulting party shall be entitled to pursue any remedy provided in law or equity, including injunctive relief and the right to recover any damages it may have suffered by reason of such Default.

5. **Work Product Ownership.**

a. Company represents and warrants to Client that all work supplied by Company in connection with this Agreement is Company's original work unless identified as and acknowledged to be the work of Company's subcontractor or other identified third party, and that such work does not, to the best of Company's knowledge, infringe any copyright, trademark, patent, right of publicity or any other rights of any third party.

b. Company agrees that for the fees to be paid to Company by Client as set forth in each Project Agreement, Client has purchased all right, title and interest, of Company or Company's subcontractor, including but not limited to any copyright, in all materials, including but not limited to images, photographs, artwork, writings, documents, abstracts and summaries.
thereof, or any portions or components of the foregoing, created, written, developed, made, conceived, perfected or designed pursuant to this Agreement (hereinafter singularly and collectively referred to as "Products") by Company, Company's employees or subcontractors, or any third party authorized or engaged by Company pursuant to this Agreement, for all uses, which Products shall be and remain the sole and exclusive property of Client. The Parties agree that all Products falling within the scope of 17 U.S.C. § 101(2) shall be deemed works made for hire belonging solely to Client.

c. Company shall obtain all necessary consents, assignments and agreements required to enable it to convey all of its or its subcontractor's right, title and interest in and to the Products, including any copyright, free and unencumbered to Client. Company shall furnish to Client, at no additional cost, such written consents, assignments or agreements, or other assistance, as Client may reasonably require from Company, its employees and subcontractors, or third parties authorized or engaged by Company pursuant to this Agreement, to establish, perfect or confirm Client's rights in the Products obtained pursuant to this Agreement, including but not limited to, the giving of evidence in suits and proceedings to obtain, maintain and assert copyrights, trademarks, patents and other rights in the Products.

d. Company shall hold Client harmless against any claims which may be incurred by Client as a result of Company's misrepresentation or breach of warranty as set forth in paragraph 5(a) hereof. In the event of such claim, Company shall indemnify Client against all costs, including but not limited to awards, damages, court costs and reasonable attorneys fees associated with such claim. When submitting to Client any matter or material developed or created by Company pursuant to this Agreement, Company shall call to Client's attention any trademark/logotype, symbol, etc. of another of which it is aware, which may in any way be similar to the item(s) provided by Company.

6. Practicality. Company represents that to the best of its knowledge, all ideas, plans, concepts, designs and other promotional materials submitted to Client, will be feasible and cost efficient, and to the best of its knowledge and belief, all such ideas, plans, graphic designs, concepts and other promotional materials are sound from a legal, engineering, production and cost perspective. Company agrees further that it will submit no ideas, concepts, plans, graphic designs or other materials to Client, the implementation or use of which it knows to be impractical or likely to submit Client to legal action or adverse publicity or to denigrate Client's image.

7. Exclusivity. Company agrees that it will not develop any promotional plans for any product(s) competitive with Client product(s) participating in a program prior to completion of the project and for a period of three months thereafter.

8. Conflict of Interest. Company shall not utilize the services or purchase the products of any subsidiary or other entity in which it or its officers, directors or employees may have a financial interest in connection with the services Company provides to Client hereunder unless Company shall have disclosed such interest to Client and shall have received prior written approval from Client including approval of the amount or rates to be charged for such services.
9. **Confidentiality.** Company shall regard as confidential and proprietary all of the information communicated to it by Client in connection with this Agreement (which information shall at all times be the property of Client). Company shall not, without Client's prior written consent, at any time (a) use such information for any purpose other than in connection with the performance of its obligations under this Agreement or (b) disclose any portion of such information to third parties, excluding Company's agents or subcontractors which are directly performing services for Company in connection with this Agreement. Company shall promptly upon the expiration or earlier termination of this Agreement return to Client, without retaining copies thereof, all such information which is in written or tangible form (including, without limitation, all copies, summaries and notes of the contents thereof), regardless of the party causing the same to be in such form, and destroy all written materials prepared by Company which incorporates or includes any such information. Company shall disseminate such information to its employees, agents and subcontractors only on a "need-to-know" basis. Company shall cause each of its employees, agents and subcontractors who has access to such information to comply with the terms and provisions of this Paragraph 9 in the same manner as Company is bound hereby, with Company remaining responsible for the actions and disclosures of any such employees, agents and subcontractors. In addition, except as otherwise provided herein, Company shall not, without Client's prior written consent, disclose to third parties any information developed for Client by Company or the nature of and discussions regarding, this Agreement. Company agrees that any breach of this Paragraph by Company, its employees, agents or subcontractors shall cause irreparable injury to Client, that Client shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and that Company agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

Notwithstanding the foregoing, Company's obligations pursuant to the above paragraph shall not apply to (a) information that, at the time of disclosure, is, or after disclosure becomes part of, the public domain other than as a consequence of Company's breach, (b) information that was known or otherwise available to Company prior to the disclosure by Client, (c) information disclosed by a third party to Company after the disclosure by Client, if such third party's disclosure neither violates any obligation of the third party to Client nor is a consequence of Company's breach, or (d) information that Client authorizes, in writing, for release.

10. **Approval.** Client shall be the sole judge as to whether the promotional plan or plans and all related concepts, ideas, graphics, symbols, designs and all component parts thereof, are satisfactory. Client reserves the right to reject any plan or plans or any aspect thereof as proposed or submitted to Client by Company. In entering into this Agreement, Client is under no obligation whatsoever to accept, implement or finally use any of the ideas, plans or concepts developed by Company.

11. **Notice.** All notices, reports, and receipts shall be in writing and shall be deemed duly given on (i) the date of personal or courier delivery; (ii) the date of transmission by telecopy or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by postage paid, return receipt requested first-class mail; or (iii) three (3) business days after the date of deposit in the United States mails, by postage paid, return receipt requested first-class mail, addressed as follows:
Either party may change its mailing address by written notice to the other party in accordance with this paragraph.

12. **Independent Contractors.** Nothing contained herein shall be deemed or construed to create any partnership or joint venture between Client and Company. All activities by Company or its subcontractors under the terms of this Agreement shall be carried on by Company or its subcontractors, as an independent contractor and not as an agent for or employee of Client. Under no circumstances shall any employee of Company or employee of its subcontractors be deemed or construed to be an employee of Client. Client shall not be liable for any injuries or damages incurred by Company, or its subcontractors, as a result of its activities in the performance of this Agreement, unless due to a negligent act or omission of Client.

13. **Indemnification.** Company agrees to indemnify and hold Client harmless from any liability, claims, damage or expense (including, without limitation, reasonable attorneys' fees) resulting from (a) Company's] material breach of this Agreement, (b) Company's failure to use due care in all matters undertaken or supplied by Company or at Company's direction pursuant to this Agreement and the activities contemplated hereby, (c) Company's violation of the rights of any third party, or (d) Company's failure to take all reasonable precautions to assure no violation of any laws or orders or regulations of any governmental agency, regulatory body or similar agency (e.g., the Better Business Bureau). Client agrees to indemnify and hold Company harmless from any liability, claims, damage or expense (including, without limitation, reasonable attorneys' fees) resulting solely from [Product] and other information and material which Client supplies to Company hereunder where Company has used reasonable precautions in adopting such information for use. Each party will notify the other of any claim which may require indemnification hereunder promptly after such party learns of such claim. In the case of an indemnified claim or action, the indemnifying party, at its sole expense, will provide counsel acceptable to the indemnified party, in its reasonable judgment.

14. **Audit Rights.** Client shall have the right to audit the books, records and work papers of Company which relate to its performance of this Agreement during business hours upon three business days written notice to Company.
15. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

16. **Waiver.** The failure or delay of either party to insist upon the other party's strict performance of the provisions in this Agreement or to exercise in any respect any right, power, privilege, or remedy provided for under this Agreement shall not operate as a waiver or relinquishment thereof, nor shall any single or partial exercise of any right, power, privilege, or remedy preclude other or further exercise thereof, or the exercise of any other right, power, privilege, or remedy; provided, however, that the obligations and duties of either party with respect to the performance of any term or condition in this Agreement shall continue in full force and effect. No express waiver shall be valid unless in a prior writing and signed by the party to be bound thereby.

17. **Insurance.** Company agrees to maintain during the term of this Agreement comprehensive general liability insurance and Promotion Agency Professional Liability (errors & omissions) insurance with aggregate limits of [SXXX], which insurance shall provide coverage with respect to (a) liability for libel, slander, privacy, copyright infringement and similar liabilities; (b) claims relating to a printing, production or other error in a promotion or game materials relating to a promotion and (c) a contractual liability endorsement covering Company's obligations, including, without limitation, its obligation to indemnify pursuant to Paragraph 13 of this Agreement. Company shall also maintain Workers' Compensation and Unemployment Insurance Coverage as required by applicable state law. Company shall furnish to Client true and correct copies of the certificates of insurance maintained in compliance with this Paragraph prior to the commencement of this Agreement. The certificate shall name Client as an additional insured, and shall contain a provision for thirty days prior notice to Client of cancellation, termination, or material change in coverage provision.

18. **Force Majeure.** If either party is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, strike, lockout or other labor trouble, riot, war, rebellion, accident or other acts of God, then upon written notice to the other party, the affected provisions and/or requirements of this Agreement shall be suspended during the period of such disability. During such period, the non-disabled party may seek to have its needs, which would otherwise be met hereunder, met by others without liability to the disabled party hereunder. The disabled party shall make all reasonable efforts to remove such disability within thirty days of giving notice of such disability.

19. **Survival.** The provisions of paragraphs [insert provisions that should survive] hereof shall survive any termination of this Agreement.

20. **Governing Law.** This Agreement, all questions with respect thereto and all issues arising hereunder shall be interpreted and resolved in accordance with the laws of the State of [State].
21. **Successors/Assigns.** The rights and obligations of the parties to this Agreement shall inure to the benefit of and bind the successors, assigns and legal representatives of the respective parties; provided, however, that this Agreement shall not be assigned by either party without the prior written consent of the other party.

22. **Merger/Amendment.** This document and any documents incorporated by reference herein constitutes the entire agreement and understanding between the parties regarding the subject matter hereof, and supersedes and merges all prior discussions and agreements between them relating thereto. No waiver, modification or amendment to this Agreement shall be valid unless in writing, signed by the parties hereto. No usage of trade or course of dealing between or among any persons having any interest in this Agreement will be deemed effective to modify, amend, or discharge any part of this Agreement, or any rights or obligations of any party hereunder.

IN WITNESS WHEREOF, the parties, by their undersigned representatives, hereby execute this Agreement.

[CLIENT]     [COMPANY]

By: __________________________  By: __________________________

Title: _______________________  Title: _______________________

Date: ________________________  Date: ________________________
PROJECT AGREEMENT

THIS AGREEMENT, effective the ___ day of _______________, 200_ is by and between [Name of Client] with principal offices located at [address] ("Client") and ________________________, with principal offices at [address] ("Company").

The parties hereby agree as follows:

1. **TERMS.** This Contract is subject to the Promotion Services Agreement with Company dated ________________, 200_. The terms and conditions of that agreement supersede and govern the terms and conditions as stated herein to the extent of any conflict between them.

2. **THE PROGRAM.** This agreement is for services rendered by Company with respect to the [INSERT NAME OF PROMOTION______________]. Company shall perform the services outlined in its proposal, attached hereto as Exhibit A and incorporated by reference herein.

3. **FEES AND EXPENSES.** Client shall pay Company the fees and expenses as described in Exhibit A. Company shall invoice Client monthly for such fees and expenses, and shall include substantiating documentation. Payment shall be made within 30 days. The final invoice shall be submitted upon conclusion of the Program and shall be payable within 30 days and upon receipt of a project summary report.

IN WITNESS WHEREOF, the parties have duly executed this agreement this ___ day of ____________, 200_.

[CLIENT]     [COMPANY]

By____________________   By____________________
Title_________________   Title_________________
Date__________________   Date__________________
NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into effective as ____________, 200 and between ___________________________ ("Recipient") and ___________________________ ("Agency").

Recipient and Agency wish to discuss potential marketing proposals, campaigns and concepts ("Business Development"). In the course of discussions related to Business Development, the parties anticipate that Agency may disclose confidential and proprietary information to Recipient. Recipient and Agency agree that their disclosure of information in connection with discussions relating to Business Development shall be governed by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties mutually agree as follows:

1. "Confidential Information" shall mean any and all nonpublic and/or confidential information revealed by or through Agency (whether in writing, orally or by another means) to Recipient, including, without limitation, (a) all forms and types of nonpublic and/or confidential data and information concerning Agency and/or any of its clients (current or former) or prospective clients and/or any of their business activities, strategies or plans, including without limitation financial, business, scientific, technical, economic and/or marketing information, plans, designs, prototypes, methods, techniques, processes, procedures, programs and codes, whether tangible or intangible, and regardless of how stored, compiled, or memorialized, whether physically, electronically, graphically, photographically, in writing or by some other means, (b) any information traditionally recognized as a proprietary trade secret, and (c) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing. Without limitation of the foregoing, the fact and content of all discussions between Agency and Recipient concerning Business Development and the identities of any current, former or prospective clients of Agency discussed in connection with Business Development shall constitute Confidential Information. As between Recipient and Agency, Confidential Information and all applicable intellectual property rights embodied in the Confidential Information shall remain the property of Agency.

2. Recipient shall treat the Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but in any event with no less than a reasonable degree of care. Recipient shall not at any time disclose, duplicate, copy, transmit or otherwise disseminate in any manner whatsoever the Confidential Information or any portion thereof, except to officers, directors and employees (collectively "Employees") of Agency. Recipient will promptly report to Agency any breaches in security that may materially affect Agency or the confidentiality of the Confidential Information and will specify the corrective action to be taken. The Recipient will not commingling the Confidential Information with the information of any other person or entity. Notwithstanding anything in this Agreement to the contrary, Recipient shall comply with all privacy and data protection laws, rules and regulations which are or which may in the future be applicable to the Confidential Information.

3. Recipient shall not at any time use the Confidential Information (a) for its own benefit or that of any third party; (b) to the detriment of Agency or any current, former or prospective client of Agency; or (c) in any manner other than in connection with discussions with Agency relating to Business Development. This Agreement grants no patent rights, copyrights, trademark rights or
rights to any trade secrets, or any licenses, expressed or implied, to Recipient except to the extent necessary for Recipient to engage in discussions with Agency relating to Business Development.

4. Upon termination of the discussions of Business Development, or upon Agency's earlier request, Recipient shall promptly return to Agency and discontinue the use of any Confidential Information then in the Recipient's possession, including all copies and archived versions. Recipient shall retain no part or copy of any of the Confidential Information and, if requested in writing, Recipient shall promptly certify its compliance with the foregoing provision.

5. Recipient shall not make any public announcement of any prospective business arrangement with Agency and/or any of its clients (current or former) or prospective clients without Agency's express prior written authorization. Recipient shall not furnish the name, trademark or proprietary indicia of Agency or any client of Agency as a reference, or utilize the name, trademark or proprietary indicia of Agency or any client of Agency in any advertising, announcement, press release or promotional materials, including but not limited to testimonials, quotations, case studies, and other endorsements.

6. In the event that Recipient is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient will, to the extent permitted by law, provide Agency with prompt notice of such request or requirement so that Agency may seek an appropriate protective order.

7. Each party warrants that it has the right to enter into this Agreement and to comply with its obligations hereunder.

8. Recipient and Agency agree that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character, that Agency and/or its clients would be irreparably harmed by any disclosure of the Confidential Information in violation of this Agreement, and that the use of the Confidential Information for the business purposes of Recipient, or any third party, other than as expressly permitted hereunder, would enable Recipient or such third party to compete unfairly with Agency and/or its clients and otherwise would cause irreparable harm to Agency and/or its clients. For these reasons, Recipient waives any claim or defense that Agency has an adequate remedy at law, and Recipient agree that Agency and/or its clients, as applicable, shall be entitled to equitable relief, without the necessity of posting a bond, to prevent further use and/or disclosure in addition to all other remedies available to Agency at law or in equity for any breach of this Agreement.

9. This Agreement shall inure to the benefit of and be binding upon Recipient and Agency and their respective successors and assigns.

10. No delay or omission by Agency to exercise any right or power occurring upon any noncompliance or default by Recipient with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Agency of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to Agency at law, in equity, or otherwise.
11. If any term or provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain unimpaired and in full force and effect.

12. This Agreement may be signed in counterparts, each of which shall be deemed an original and both of which taken together shall constitute one and the same instrument. This Agreement may not be amended, modified or waived in any manner, except in writing signed by both parties. This Agreement embodies the entire understanding between the parties pertaining to the subject of this Agreement and supersedes all prior agreements pertaining to such subject.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of law rules. Any action brought in connection with this Agreement shall be brought in either the state or federal courts of New York located in the County of New York, and each party hereby irrevocably consents to the exclusive jurisdiction and venue of such courts. Furthermore, each party agrees not to assert the doctrine of forum non conveniens in any action in state or federal court in New York County.

IN WITNESS WHEREOF, Recipient and Agency have caused this Agreement to be executed.

[INSERT RECIPIENT NAME HERE]  [INSERT AGENCY NAME HERE]

By: ___________________________  By: ___________________________
   (Signature)                     (Signature)

Name Printed: ___________________  Name Printed: ___________________

Title: ___________________________  Title: ___________________________

Date: ___________________________  Date: ___________________________
PRIZE SUPPLIER AGREEMENT

This Agreement made this _____ day of __________, 20__ sets forth the terms and conditions under which [insert name of supplier and address] ("Supplier"), will provide to [insert name of company / promotion sponsor and address] on behalf of and for the benefit of itself, and its affiliates (collectively, “Company”) the Prize(s) described in Exhibit A in exchange for certain promotional services to be provided to Supplier by Company.

1. **The Promotion/Territory:** Company has developed a promotional campaign to tie-in with the [describe product]. As part of the aforementioned promotional campaign, Company will conduct a game piece promotion (the "Promotion") beginning on or about [insert start date taking into account any pre-sell days] and continuing through [insert end date], or until supplies are exhausted (the "Promotion Period"). The Promotion will be conducted through participating Company retail locations in the United States, Guam, Puerto Rico, and Canada [insert "U.S. military installations world-wide" if applicable].

2. **Term:** This Agreement shall commence as of the date hereof and remain in effect until such time as the Prize is awarded or until such time as all terms of this Agreement have been fulfilled by both parties ("Term"), but in no event shall the Term extend beyond [insert date].

3. **Use of Name and Logo:**

   A. Supplier agrees to grant Company and its respective licensees, franchisees, and agencies permission to use Supplier's names, logos and related trademarks ("Supplier Marks") for advertising and promotional purposes in the manner described herein. As reasonably requested by Company, Supplier will, at its sole cost, provide a black and white product shot (line drawing or photograph) and 4-color product shot and logo (hi-res file and/or vector art) to Company for use in preparing the Promotional Materials described below. The description of the Prize(s) and all uses of Supplier's logo and/or trademark(s) in the Promotional Materials shall be subject to Supplier's prior approval, which approval shall not be unreasonably withheld, and which shall be deemed given if not rejected in writing within two working days following submission by Company.

   B. Supplier and Company acknowledge that neither party has any other interest or rights in the other's trademarks.

4. **Promotional/Advertising Commitment:** Company and its licensees and franchisees shall have the right to reference the Prize(s) and/or Supplier Marks in connection with (i)
purchase materials; (ii) outdoor billboards; (iii) internal communication and/or crew incentive material; (iv) in electronic media, specifically, the Company worldwide web sites and/or Company intra-net sites; and (iv) in local radio and special event tie-in promotions (hereinafter collectively referred to as the "Promotional Materials"). Company shall also have the right, but not the obligation, to feature the Prize(s) in its advertising at no additional cost to Company.

5. **Prize:** Supplier will provide [insert "at no cost" if Company is not paying for prize] to Company the Prize(s) described in Exhibit A. Supplier will deliver the Prize(s) at [Company's/Supplier's as the case may be] expense to the fulfillment house or such other destination ("Destination") designated by Company's promotional agency, on or before the delivery date set forth in Exhibit A. All Prize(s) will be shipped pursuant to the delivery method described in Exhibit A. Supplier agrees to provide Company with proof of shipment including carrier name and tracking number, and will notify Company in writing of any non-deliverables or returns. No partial shipments or back-orders will be permitted.

6. **Exclusivity:** During the Promotion Period, Supplier agrees to neither participate in nor provide any of its products as prizes in any national consumer promotion for any [describe nature of Company’s goods and/or services] company other than Company and its affiliates.

7. **Representations and Warranties:**

   A. Supplier represents and warrants that the Prize(s) are of merchantable quality and fit for their intended use and safe for use by their intended age group, and that all Prizes comply with federal and state laws applicable to their manufacture, distribution, labeling, and advertising. Supplier's standard product warranty for the Prize(s) shall apply to all Prize winners in the Promotion. Supplier represents that all Prize(s) (i) have been accurately described to Company (including their approximate retail value), (ii) will be of the same or higher quality as that of Prizes previously approved by Company, (iii) will be accurately described in all Promotional Materials approved by Supplier, and (iv) will be shipped and delivered in accordance with all applicable U.S. Federal, state, and local statutes, ordinances, and regulations, including by way of example, but without limitation, requirements of the U.S. Customs Service, customs services of other forwarding, transit and/or destination countries; U.S. Consumer Product Safety Commission and safety agencies of other forwarding, transit and/or destination countries; and requirements of the American Society for Testing and Materials.

   B. Company represents and warrants that it will use its best efforts to cause all aspects of the Promotion to be conducted in accordance with applicable federal and state laws and regulations as currently enforced as advised by competent legal counsel.

   C. Each party represents and warrants that it has full power and authority to enter into this Agreement and that the rights granted by each other hereunder do not and will not infringe upon the rights of any third parties.
8. **Indemnification:**

A. Supplier agrees to defend, indemnify, and hold harmless Company, its respective officers, directors, employees, agents (including its advertising and promotion agencies), licensees, franchisees, affiliates, subsidiaries, parent company, successors and assigns from and against any and all claims, counterclaims, suits, losses, damages, liabilities and/or expenses (including reasonable attorney's fees) of every kind whatsoever, arising out of or relating to: (i) any breach of Supplier's warranties and representations made hereunder, (ii) the actions taken by Supplier in the performance of its obligations hereunder, (iii) any materials, trademarks, names, likenesses or other proprietary rights provided by Supplier to Company hereunder; and/or (iii) the manufacture, construction, delivery and/or performance of the Prize(s) by Supplier or any employee, agent, subcontractor, supplier or representative of Supplier.

B. Company hereby agrees to defend, indemnify, and hold harmless Supplier and its officers, directors, employees, agents, affiliates, subsidiaries, parent company, successors and assigns, harmless from and against any and all claims, counterclaims, suits, losses, damages, liabilities, and/or expenses (including reasonable attorneys' fees) of every kind whatsoever, arising out of (i) the use of Company's goods or services; (ii) any breach by Company of any of its warranties and representations made hereunder; and/or (iii) the actions taken by Company in the performance of its obligations.

C. Upon receiving notice or knowledge of any claim, event or loss for which indemnity is sought hereunder, the indemnified party shall tender the matter to the defending party and cooperate with its defense as that party may reasonably request, and permit the defending party to defend, try, settle, or appeal such matter as the defending party shall determine. Except as provided for herein, the indemnified party will not be reimbursed for attorneys’ fees or other expenses of defense which it incurs.

D. The above obligations of indemnity shall survive the termination or expiration of this Agreement.

9. **Insurance:**

A. During the Term of this Agreement, Supplier shall maintain in full force and effect a general liability policy including product liability which policy shall contain a combined single limit of liability of not less than five million dollars ($5,000,000) per occurrence. Coverage shall be placed with an insurer having a Best's Key Rating of "A-" or better. Such insurance shall be primary to any insurance either Company or its affiliates or franchisees and licensees may have or obtain. Upon execution of this Agreement, Supplier shall furnish Company with a Certificate of Insurance evidencing such coverage and naming Company as an additional insured.

B. If any of the foregoing coverage expires, changes, or is canceled, Supplier shall notify Company within fifteen (15) days prior to the effective date of such expiration, change or cancellation. Should Supplier fail to maintain the insurance coverage required hereunder,
Company may terminate this Agreement immediately upon its receipt of notice thereof, or Company shall have the right, but not the obligation, to purchase such insurance on Supplier's behalf, and to deduct the cost thereof from any amounts owed to Supplier under this Agreement.

10. **Termination:**

A. Either party shall have the right to terminate this Agreement at any time for a material breach by the other upon written notice to the breaching party, specifying any alleged material breach, provided that such breach is not fully cured with fifteen (15) days of notice. Notwithstanding any provision of this Agreement to the contrary, once the Promotion commences, Supplier shall be obligated to supply the Prize(s) and/or fulfillment services described in Exhibit A.

B. In the event that Company should decide to cancel the Promotion for whatever reason prior to the beginning of the Promotion Period, the parties shall be relieved of all of their obligations and commitments to each other hereunder. In such event, Company agrees to return any and all Prize(s) in its possession to Supplier to the extent such Prize(s) have not been purchased by Company.

11. **Force Majeure:** Neither party shall be liable for damages for its failure to perform due to contingencies beyond its reasonable control, including but not limited to, fire, storm, flood, earthquake, explosion, war, terrorist actions, accidents, public disorders, sabotage, lockouts, labor disputes, labor shortages, strikes, riots, or acts of God.

12. **Time is of the Essence:** Supplier acknowledges that the timely performance of all of its obligations described herein are vital to the strategic business plans of Company concerning the Promotion, and that any failure on the part of Supplier to perform these obligations on a timely basis may cause material problems and additional expense to Company. TIME IS OF THE ESSENCE IN SUPPLIER’S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. In the event of delay, Supplier will immediately notify Company of the anticipated delay and the reason therefor.

13. **Confidentiality:** Supplier agrees that it will, during the term of this Agreement and for two years thereafter, keep confidential and refrain from using or disclosing to others any and all confidential information including, by way of example but without limitation, marketing plans provided by Company to Supplier in connection with this Promotion. Supplier agrees further that it has not acquired, nor shall it acquire any proprietary interest in any such information, and shall return all such information to Company at the end of the Promotion and/or upon request.

14. **Dispute Resolution:** The parties shall attempt in good faith to resolve by mediation any dispute arising out of or relating to this Agreement. Either party may initiate a mediation proceeding by a request in writing to the other party. Thereupon, both parties will be obligated to engage in a mediation.
15. **Miscellaneous:**

A. Nothing contained in this Agreement shall be deemed or construed a joint venture or partnership between the parties hereto. Neither party, is by virtue of this Agreement authorized as an agent, employee or legal representative of the other party hereto. At all times the relationship of the parties shall be independent contractors with respect to each other. Neither party shall have any power or authority to commit or bind the other party.

B. Neither party may assign its rights or obligations under this Agreement to any other party without the written consent of the other.

C. The provisions of this Agreement shall be severable and the invalidity of any provision, or portion thereof, shall not affect the enforceability of the remaining provisions.

D. This Agreement sets forth the entire agreement between the parties and may not be amended except in a writing signed by both parties. It shall be governed by the laws of the State of ________.

E. The persons signing this Agreement shall have all legal authority and power in their respective capacities to bind Company and Supplier.

“SUPPLIER”

_________________________________________________

By:____________________________  By:____________________________

Its:____________________________  Its:____________________________

Date:__________________________  Date:__________________________
EXHIBIT A

SUPPLIER: [insert name]
[insert address]

CONTACT: [insert name]
[insert title]
[insert phone no.]

PRIZE(S)/APPROX. RETAIL VALUE [insert quantity, complete prize description, and approximate retail value]

TOTAL COST TO TACO BELL: [including shipping costs, if applicable]

METHOD OF DELIVERY: [insert method of delivery, e.g., 2-Day Federal Express Courier.] Prize(s) will be shipped fully insured via a mutually agreeable carrier, and title will pass to Company upon delivery and acceptance of the Prize(s) by the designated fulfillment house.

DELIVERY DATE: [insert date/schedule]
EVENT PHOTO/VIDEO RELEASE

In connection with my participation or attendance at _______________ ("Event"), I hereby grant ________________ ("Company") the absolute and irrevocable royalty-free right to forever use any photographs, videos, likeness, recorded voice of or related to me from the Event ("the Materials"). To the fullest extent permitted by law, I agree that Company shall have the unrestricted right to use – including, without limitation, transfer, alter, distribute, publish, display, incorporate into other works – the Materials in any medium (radio, television, internet, print, etc.) for any promotional and other business purpose. Further:

- I understand that Company is under no obligation to use the Materials and has made no representations to me in this regard.

- I hereby waive the right to inspect or approve the finished image, videotape, digital recording, sound track, advertising copy or printed matter incorporating the Materials that may be used or to any eventual use that it might be applied.

- I hereby waive the right to any compensation associated with Company’s use of the Materials.

I hereby release any and all claims, demands, damages, and causes of action of any nature that I have or may hereafter have against Company, its affiliates, officers, directors, employees, and agents arising out of or in connection with my participation or attendance at the Event or Company’s use of the Materials, including, but not limited to, any claims for defamation, invasion of privacy, right of publicity, infliction of emotional distress, negligence, any right, title or interest in the Materials, or any other physical or monetary injury.

I hereby certify that I am competent to contract in my own name. I have read this Release before signing below and warrant that I fully understand and agree to its contents.

PRINT NAME________________________________________________________

SIGNATURE_________________________________________________________

STREET_____________________________________________________________

CITY_______________________ ZIP CODE _______________________________

PHONE_________________________ DATE ____________________________

If minor or legal ward is named above, I affirm that I am the parent or legal guardian of said person and have legal right to consent to this Release on said person’s behalf.

PRINT NAME_______________________________________________________

SIGNATURE_________________________________________________________
SAMPLE PRODUCT PLACEMENT AGREEMENT

Dated as of: ______________________

1. Parties: Motion Picture Studio ("MPS")

________________________
________________________
________________________
________________________

Advertiser ("Advertiser")

________________________
________________________
________________________
________________________

2. Representations and Warranties: Advertiser hereby represents and warrants for the benefit of MPS that Advertiser has the right to enter into this agreement; and that with respect to the Advertising Agency named below (if any), said Advertising Agency is the authorized agent of Advertiser, and all acts, statements, representations, promises, and warranties specified herein are authorized and within the scope of said agency relationship.

3. Subject: Advertiser will provide signage, product with labels (collectively the "Goods") in the theatrical motion picture currently entitled "________________________" ("the Picture").

Advertiser has reviewed the relevant scenes of the Picture for which the Goods are intended and are aware of the intended use of the Goods. It is understood and agreed that such use may not occur at all, or may vary, in MPS's sole discretion, subject to the terms and conditions stated herein. Notwithstanding the foregoing, MPS represents and warrants that neither the product specifically, nor ___________ generally, shall be disparaged or cast in a negative light, either directly or indirectly, either verbally or otherwise, in the Picture.

4. Grant of Rights: For good and valuable consideration, receipt of which is hereby acknowledged, Advertiser hereby grants to MPS, its successors, licensees and assigns, the non-exclusive and irrevocable right and license to use the Product as set forth in the script pages attached hereto and as outlined hereunder, in the Picture and to exhibit, publicize and otherwise utilize and exploit the Picture containing the Product (and to use the Product as contained in the Picture in
trailers and advertising in connection with the Picture) by any and all means and methods whether now known or hereafter created or devised, including but not limited to, film of all widths and gauges, tapes, cassettes and discs, and in any and all media, whether now known or hereafter created or devised, including but not limited to, theatrically, non-theatrically, by all forms of television, including but not limited to, free, pay, toll, subscription, cable, satellite television, television devices, audio visual cassettes, cartridges and discs, and to exploit all so-called ancillary and subsidiary rights in the Picture containing the Product.

5. **Identifiability:** Advertiser acknowledges and agrees that neither MPS nor anyone on MPS's behalf has made any warranties, representations, guarantees, or agreements of any kind as to the exposure, (as defined below) if at all, of the Goods in the Picture, other than representing and warranting to make best efforts that the Goods will be identifiable in the picture and if the exposure does not occur or fails to meet the criteria of identifiability set forth below, MPS's only obligation shall be to return the value of the product packaging as well as the cost of development thereof (set at $___,000) to MPS by you pursuant to this Agreement in connection with the placement of Goods in the Picture, and the parties shall be relieved of any further obligations to each other hereunder.

The criteria of identifiability is as follows: on-screen, in-focus identification of product packaging for a minimum of ___ seconds and a verbal mention of the Goods in one or both of the scenes attached hereto.

6. **Verification:** After completion of principal photography and editing of the of Exposure Picture, if the Goods have been identifiably placed in the Picture, MPS will provide you with still photographs showing such exposure and offer you viewing of the dailies of the attached scenes. In such event, you and MPS shall use reasonable good faith efforts to reach agreement as to whether the goods are identifiable in the picture. Any and all stills furnished to you hereunder shall be for the sole purpose of the aforesaid verification and may not be used by you for any other purpose, other than in order to enforce this Agreement, nor may you dispose of the same to any third party for any purpose whatsoever, including but not limited, to use in advertising to the trade and/or to the public, point of sale displays, commercial tie-ups, promotional tie-ins, reports and other sales or promotional material. Violation of the aforesaid restriction shall be subject to both legal and equitable remedies,
which remedies shall be cumulative, including injunctive relief and punitive damages.

7. Credit: In the event the Goods appear identifiably in the Picture, MPS will have the right, but not the obligation, to accord you credit in the end titles of the Picture, all aspects of such credit, if any, to be determined by MPS in its sole discretion.

8. Non-disclosure: All information disclosed to you relating to the characters, themes, plots, story and story elements, designs, effects and special effects, hardware, artwork and visual representations in connection with the development and production of the Picture shall be considered confidential and shall be retained in confidence by you until the first public disclosure of such information by MPS.

9. General Terms:

A. You represent and warrant that the Goods are merchantable and suitable for their intended use. You shall indemnify, defend and hold harmless MPS, its parent, affiliated and subsidiary companies, and its officers, directors, agents and employees from and against any claims, actions, damages and costs (including any reasonable attorneys' fees in connection therewith) arising from any defect in any Goods supplied by you and/or any breach of any representation and/or warranty made by you. MPS shall give you prompt written notice of any claim of which MPS is advised so as to give you the opportunity to assume the defense thereof. Notice shall be sent by certified mail to the following address:

B. Settlement by MPS without your prior written consent shall release you from the indemnity as to the claim or action so settled. MPS shall have the right to represent itself using counsel of its own choosing at its sole cost.

C. You hereby authorize the use of the name and likeness and designs, trademarks, logos and physical characteristics of, the Goods, in the Picture.

D. You are aware that the existence and contents of this Agreement may be revealed to third parties, including without limitation, network executives and government agency officials, and you so consent.

E. MPS shall not to feature products competitive to Advertiser's product in the Picture.

F. This Agreement shall be interpreted under the laws of the State of ____________. The parties hereto agree and consent that jurisdiction and venue of all matters relating to this
Agreement shall be vested exclusively in the Federal, state and local courts within ____________ County, ______________.

G. Nothing contained herein shall in any way constitute a partnership or joint venture between the parties hereto or be construed to evidence the intention of the parties to constitute such. Neither of the parties hereto shall hold itself out contrary to the terms of this provision by advertising or otherwise.

H. If any provision of this Agreement is adjudged void, voidable or illegal, such adjudication shall not affect the remaining provisions hereof.

I. No waiver of any breach of any provision of this Agreement shall be deemed a continuing waiver thereof or a waiver of the breach of any other provision hereof.

J. This Agreement, when signed by the parties, shall constitute the entire understanding of the parties with respect to the subject matter, superseding all prior and/or concurrent representations, promises, understandings, and agreements, oral or in writing, between them with respect thereto; it may not be amended or rescinded except by a writing signed by the parties.

THIS AGREEMENT IS VALID ONLY WHEN SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF BOTH PARTIES.

MOTION PICTURE STUDIO
BY: ____________________________
ITS: ____________________________

ADVERTISER
BY: ____________________________
ITS: ____________________________
LIMITED TIME PROMOTION
TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT is effective as of the _____ day of __________, 20__, by and between ________________________________________________________ (“Licensor”), and ___________________________________________________________ (“Licensee”).

WHEREAS, Company is the owner of the trademarks set forth in attached Exhibit A (“Licensed Trademarks”), under which Company sells _______________ (“Company’s Products”);

WHEREAS, Licensee sells, distributes, or uses Company’s Products. For a limited time and in connection with the promotion described in Exhibit B (“Promotion”);

WHEREAS, Licensee desires to use and display the Licensed Trademarks on product packaging, websites, posters, pamphlets, and/or other media (collectively, the “Materials”); and

WHEREAS, Licensor wishes to associate its Licensed Trademarks with the Promotion and, as such, to permit Licensee’s use of the Licensed Trademarks under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **License.** Company hereby grants to Licensee, during the term of this Agreement, a non-assignable, revocable, royalty-free, non-exclusive right and license to use the Licensed Trademarks in connection with the marketing, sale, and distribution of Company’s Products for the promotion described in Exhibit B, subject to the terms and conditions herein set forth.

2. **Restrictions on Use of Trademarks.** Licensee shall make no use of the Licensed Trademarks except in the form and with the graphics approved, pursuant to the approval process set forth in Section 4.2, by Company and except in connection with the Promotion. Licensee shall not authorize any use of the Licensed Trademarks by any other entity or person. Licensee will not use the Licensed Trademarks or the Materials in such a manner as to deceive the public or in a manner that is disparaging to the Licensed Trademarks or Company. [Insert any specific additional restrictions on use.] Company reserves all rights in and to the Licensed Trademarks not specifically granted in this Agreement.

3. **Term.** The term of this Agreement shall commence on the date the Agreement is effective and continue until ________________, 20__, or until earlier terminated by either party consistent with this Agreement.

4. **Trademark Usage.**

4.1 **Compliance with Company’s Standards.** Licensee will use the Licensed Trademarks in accordance with such reasonable standards, specifications and
instructions as may be supplied by Company from time-to-time. All Materials (including labels, advertising, and promotion materials) bearing the Licensed Trademarks will be subject to the express written approval of Company prior to use, dissemination or publication by Licensee. Company shall provide any such approval or rejection within a reasonable time; provided, however, Company’s failure to respond to any request for approval shall be deemed rejection. Licensee shall not use any language in the Materials or display the Licensed Trademarks in such a way as to create the impression that the Licensed Trademarks are owned by or the property of anyone other than Company.

4.2 **Ownership Legend.** Each use of the Licensed Trademarks shall be followed by the trademark symbol ® or ™, as instructed by Company. The Materials bearing the Licensed Trademarks will bear the following legends: “The ________ trademark and trade dress are used with permission. ________ is a trademark of _____________________.”

5. **Indemnification.** Licensee shall indemnify, defend and hold harmless Company, its directors, officers, agents or employees from and against any and all liability, claims, suits, losses, damages and expenses of whatsoever nature or character (including personal injury or death, or damage to any property), and including but not limited to attorneys' fees, arising out of any and all claims relating to: (i) the promotion, sale or use of the Licensed Trademarks or Materials; or (ii) Licensee’s acts or omissions, including any breach of this Agreement.

6. **Termination.**

6.1 Either party may terminate this Agreement at any time upon written notice to the other party. Termination shall be effective thirty (30) days after receipt of such notice or on the date specified in the notice, whichever is later.

6.2 Notwithstanding the foregoing, Company may immediately terminate this Agreement if Licensee: (i) fails to cure a material breach of this Agreement within fifteen (15) days of receiving notice of such breach from the non-breaching party; or (ii) is the subject of a petition in bankruptcy, whether voluntary or involuntary, makes an assignment for the benefit of creditors, or ceases doing business.

6.3 **Use upon Termination.** Upon termination of this Agreement for any reason, Licensee will immediately cease all use of the Licensed Trademarks, including: (i) removal of the Licensed Trademarks from the Materials; (ii) cessation of further production of the Materials bearing the Licensed Trademarks; and (iii) cessation of any other use of Licensed Trademarks.

7. **Miscellaneous.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, successors, assignees and beneficiaries in interest. Licensee may not assign the rights or obligations set forth in this Agreement without Company’s prior written approval. The failure of either party to this Agreement to insist upon the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, shall not be construed as a waiver of future actions. No
modification or amendment to this Agreement will be valid unless in writing, signed by the parties. This document constitutes the entire agreement and understanding between the parties regarding the subject matter. This Agreement shall be construed in accordance with the laws of the State of ___________ and any action under or relating to this Agreement will be brought exclusively in an appropriate court of competent jurisdiction (state or federal) located in the State of ___________. Nothing contained herein will be deemed or construed to create any partnership or joint venture between Company and Licensee. All activities by Licensee under the terms of this Agreement will be carried on by Licensee, as an independent contractor and not as an agent for or employee of Company.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LICENSOR:  

______________________________  

By:  

Title:  

Date:  

LICENSEE:  

______________________________  

By:  

Title:  

Date:
Exhibit A

Licensed Trademarks
Exhibit B

Promotion Description
PROMOTIONAL SERVICES AGENCY AGREEMENT

(Long Form – Promotion and Advertising Services)

This Promotional Services Agency Agreement (the “Agreement”) is entered into effective __________, 2000, by and between _______________ (“Client”) and ___________________ (“Agency”). In consideration of the premises and mutual covenants contained herein and for the mutual benefits to be derived from this Agreement, it is hereby agreed as follows:

1. **SERVICES:** Agency’s assignment shall include the services outlined in the Statement of Work attached and made a part of this Agreement (collectively “the Services”). Agency shall also perform the Services described in any additional Statement(s) of Work signed by both parties, subject to the terms and conditions hereof. Agency is authorized to act on Client’s behalf as Client’s agent in order to perform the services outlined in any approved Statement of Work.

2. **AGENCY COMPENSATION AND BILLING:** Agency shall bill Client and Client shall compensate Agency for the Services as set forth in any applicable Statement(s) of Work. Should Client request Agency to make purchases for or render services to third parties (such as dealers, wholesalers, distributors, affiliates or franchisees), Client and third party shall be jointly and severally liable to Agency even though Agency may render invoices to, for or in the name of the third party.

3. **INSURANCE:** Agency agrees throughout the term of this Agreement to maintain in full force and effect at its own expense comprehensive general liability insurance policy protecting Agency in an amount not less than one million dollars ($1,000,000.00) per occurrence. Upon Client’s request, Agency shall furnish client with a current copy of the certificate(s) of insurance for this coverage and/or a copy of any such insurance policies. Such insurance policies shall not be terminated, cancelled or materially modified by Agency without ten (10) days prior written notice to Client.

4. **OWNERSHIP:** Except for third party licensed materials, Client shall be the sole owner of all rights in and to advertising or promotional materials developed and produced by Agency on Client’s behalf, provided Client has paid all invoices due and owing to Agency pursuant to this Agreement. Client shall have the right to make use of said materials during the term of this Agreement, or after its expiration or termination as Client shall determine, subject to limitations on third party licensed materials. Notwithstanding the above, (a) Agency shall be the sole owner of all rights in and to marketing strategies, concepts and programs, and materials developed prior to the date Agency began work for Client, and (b) Agency shall retain a file copy and shall at all times be and remain free to use in any manner any elements of any promotions, programs, plans, strategies, or executions that relate generally to or are inherent in the basic terms, conditions, or format thereof (e.g. the general form of a promotion such as a refund, rebate, coupon offer, tie-in with a charity, or other general promotional concept or element). By this Agreement, Client is not granting to Agency any right, title or interest in or to any of the materials provided by Client and all materials provided by Client shall at all times remain the sole and exclusive property of Client or its affiliated companies, as applicable.

5. **EXCLUSIVITY:** Agency agrees not to provide promotional services for any other business in the __________ category. This restriction does not prohibit Agency from working with a company, partnership, or concern that manufactures, distributes or sells competing products or brands where the competing product or brand is merely incidental to the overall marketing plan of the competing product or brand and is not specifically marketed or promoted by Agency.

6. **INDENMIFICATION; LIMITATION OF LIABILITY:**

   A. Agency will defend, indemnify and hold Client harmless from and against any loss, damage, liability, claim, demand, suit and expense (including reasonable attorneys’ fees and costs) (“Loss”) resulting from claims made against Client by third parties for (i) materials created and placed by
Agency and pertaining to infringement of copyright or of title or slogan, piracy, plagiarism, unfair
competition, idea misappropriation under implied contract or any invasion of privacy, and (ii) Agency’s
assurance that the rules for any sweepstakes or skill contest are in compliance with all federal, state and
local lottery laws as such laws are currently interpreted and enforced.

B. Client shall be responsible for the accuracy, completeness and propriety of information
concerning its organization, products, services and competitors’ products and services and for the rights,
licenses and permissions to use, and for the accuracy and propriety of, material furnished to Agency by
Client or on Client’s behalf in the performance of this Agreement, including any advertising, promotional
or marketing materials created by Client or Client’s other agencies upon which any of Agency’s
advertising, promotional or marketing materials are based.

C. Client represents and warrants that all materials provided by client, including, without
limitation, their logos, trademarks, service marks, trade names, corporate names and other marks, names,
titles and terms, and their copyrights, patents, characters, merchandise, products, symbols, drawings and
designs ("Client Materials"), and their use in a manner detailed in this Agreement, do not and will not
violate the rights of any third party. Client shall defend, indemnify and hold Agency harmless from and
against any Loss to Agency arising out of or resulting from: (i) Client Materials or research supplied by
Client and incorporated or used in connection with material prepared by Agency; (ii) Client’s additions or
alterations to materials furnished by Agency, or use of any Agency-created materials in any manner not
authorized by Agency; (iii) failure to comply with registration and bonding requirements for conducting
charitable solicitations; (iv) failure to redeem any coupon, rebate or other promotional offer or failure to
comply with terms, conditions or rules of any promotion; (v) collateral uses by Client of advertising or
marketing materials or elements therefrom, including slogans, taglines and marks, other than those created
and or placed by Agency; and (vi) the nature or use of any of Client’s products or services.

D. Upon the assertion of any claim or the commencement of any suit or proceeding against
an indemnitee by any third party, the indemnitee shall promptly notify the indemnitor of the existence of
such claim and shall give the indemnitor a reasonable opportunity to defend and/or settle the claim at its
own expense and with counsel of its own selection. An indemnitee shall not make any settlement of any
claims that might give rise to liability of an indemnitor hereunder without the prior written consent of the
indemnitor.

E. In no event whatsoever shall either party be liable to the other for any incidental, indirect,
special, consequential or punitive damages or lost profits under any tort, contract, strict liability, common
law or other legal or equitable theory, even if said party has been advised of the possibility of or could have
foreseen such damages.

F. This Section 6, insofar as it applies to work undertaken while this Agreement is in effect,
shall survive the termination of this Agreement.

7. NOTICE: All notices shall be sufficiently given if delivered in person, sent by facsimile with
confirmation sheet, by registered/certified mail, postage prepaid, or by prepaid overnight courier, addressed
to the representatives provided below. Such notice shall be deemed to have been given as of the date
delivered or sent by facsimile, or three (3) days after being mailed or the day after being sent by prepaid
overnight courier.

8. TERM AND TERMINATION:

A. This Agreement begins on _____________, 1999, and will continue in full force and
effect from that date until terminated by either party with ninety (90) days prior written notice to the other
party (the “Notice Period”).

B. The rights, duties and responsibilities of Agency and Client shall continue in full force
and effect during the Notice Period. Agency will receive normal commissions and/or fees as outlined in
Exhibit B during the Notice Period. Any non-cancelable contract or commitment made with Client’s
authorization, and still existing at the expiration of this Agreement, may be carried to completion by
Agency, upon Agency’s election, and paid for by Client unless mutually agreed in writing to the contrary,
in accordance with the provisions of this Agreement. Any materials or services Agency has committed to
purchase for Client (or any uncompleted work previously approved by Client either specifically or as part
of a plan), shall be paid for by Client and Agency shall receive applicable compensation as outlined in any
Statement of Work.

C. Upon termination or expiration, Agency shall transfer, assign and make available to
Client all property and materials in Agency’s possession or control belonging to or paid for by Client.
Agency will provide reasonable cooperation toward transferring with all reservations, contracts and
arrangements of advertising space, broadcast time, advertising materials or promotional materials yet to be
used, upon being duly released from the obligation thereof.

9. CONFIDENTIALITY: Agency shall take reasonable steps to ensure that proprietary or confidential
information (“Confidential Information”) supplied by Client to Agency is not disclosed to any person, firm
or corporation. Confidential Information does not include information known to Agency prior to disclosure
by Client, information that is publicly known or information available from or disclosed by a third party not
bound in a confidential relationship with Client. Agency shall inform Client of all requests for or inquiries
into Client’s Confidential Information by third parties and shall only provide same when legally compelled
to do so after notice to Client. In the course of performing the services required of Agency hereunder,
Agency may disclose Confidential Information as Client shall have approved for disclosure.

10. ENTIRE AGREEMENT; WAIVER; ASSIGNMENT: This Agreement constitutes the parties’ entire
understanding of the matters set forth herein and supersedes any prior understanding or agreement. This
Agreement may only be modified in a writing signed by the parties hereto. No waiver of any provision or
of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further
breach, and no such waiver shall be effective unless made in writing and signed by an authorized
representative of the party to be charged with such a waiver. Neither party shall assign this Agreement
without the other party’s prior written consent.

11. GOVERNING LAW; SEVERABILITY: This Agreement shall be interpreted in accordance with the
substantive laws of the State of Connecticut, without regard to its conflict of laws rules. The parties agree
and consent that jurisdiction and venue of all matters relating hereto shall be vested exclusively in the
federal, state and local courts located within the State of Connecticut. In the event that any provision of
this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance
of the Agreement shall continue in full force and effect.

12. FAILURE OF MEDIA AND SUPPLIERS; FORCE MAJEURE: Agency shall endeavor to guard
against any loss to Client as the result of the failure of media and suppliers to properly execute their
commitments, but Agency will not be responsible for their failure. Any delay or failure of either party to
perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or
occurrence beyond the reasonable control of the party and without its fault or negligence, such as acts of
God, actions by any governmental authority, fires, floods, windstorms, explosions, riots, natural disasters,
wars, labor problems, inability to obtain power, network or electric failures, material, labor, equipment or
transportation.

13. APPROVAL: Materials will be subject to timely approval by Client. Agency shall incorporate all
changes reasonable under the circumstances. Should Client fail to approve or disapprove any materials or
revisions within the prescribed time periods, at Client’s sole cost and expense, Agency may adjust any
shipping date to dates upon which Agency can deliver given the delays, the time required to incorporate the
changes, and to meet other production commitments. Client shall at all times be responsible for the
accuracy, completeness and propriety of information concerning its organization, products, services and
competitors’ products and services which Client furnishes to Agency in the performance of this Agreement.

IN WITNESS WHEREOF, the parties by their undersigned representatives hereby execute this Agreement.
Delete the services that don’t apply, and revise as needed.

SAMPLE STATEMENT OF WORK

I. SERVICES

1. **Strategic Planning**

   Assist Client in analysis and evaluation on brand strategy, consumer promotion and customer marketing issues and in the concept development of the promotional and advertising materials created by Agency hereunder.

2. **National Consumer Promotion**

   Agency shall perform the following fulfillment services in connection with any Client promotion, at Client’s request, which may include the following:

   - Concept development, including creative work to formulate the promotion format, execution, theme and prize;
   - Counsel and administration, including rendering practical advice on topics such as operational procedures, postal regulations which may affect the promotion, preparation of collateral materials, review of copy and design of any peripheral promotion pieces, as requested by Client;
   - Prepare the Official Rules based on information provided by Client;
   - Implement promotion which may include establishing an alternative entry method; where appropriate, including the establishment of a P.O. Box or toll free phone line; preparing affidavits of eligibility and publicity/liability releases (where applicable); registering and bonding the promotion where required; maintaining a list of major prize winners in the promotion and providing it to consumers upon request; filing major prize winner list with states to secure return of bond; print rules and game pieces; seeding game pieces (if applicable); receiving and responding to consumer requests for games pieces or Official Rules; judging the promotion and selecting winners; generating congratulatory letters for winners; conducting winner verification process; coordinate prize purchases, including the selection of vendors and purchase of prizes; administer prize fulfillment; prepare and send 1099 tax forms when required; provide administrative services to implement the promotion; respond to consumer inquiries relating to the promotion; follow-up investigation to determine complete or correct mailing addresses to contact winners.

3. **Premium Services.**

   Agency shall provide Premium Services to Client, at Client’s request, which may include the following services:

   - Source and purchase Premium items;
   - Manage appropriate inventory of Premiums; and
Pack and ship Premiums to vendors, participating stores or consumers, where appropriate.

At Client’s request, Premiums will be ordered through Client preferred vendors, where practicable. If Client sources Premiums independently of Agency, Client shall be responsible for (i) providing Agency an accurate description of Premium for use in connection with the advertising of the Premium offer, (ii) providing Agency with dates by which Premiums will be shipped/delivered and (iii) any claims arising out of the nature or quality of the Premium item.

4. Advertising Materials

Agency shall provide the following services in creating and developing Client’s advertising materials:

- Write, design, illustrate or otherwise prepare Client’s advertising materials, including preparation of scripts, storyboards, layouts, artwork, engravings, photography, film and other production materials as well as coordination of production services;
- Purchase, as Client’s agent, materials and services required for the production of finished advertisements and commercials;
- Properly incorporate Client’s advertising message in mechanical or other form and forward it with proper instructions for fulfillment of the order;
- Order the space, time or other means to be used for Client’s advertising as Client may approve using reasonable efforts to secure the most advantageous rates available;
- Forward advertising material with proper instructions to the media for fulfillment of orders;
- Audit advertising placed, including verification of insertions, examination of quality of reproduction and of position of printed advertisements, and ensure that television and radio affidavits correspond to the approved schedule; and
- Verify and pay appropriately invoiced and undisputed charges incurred on Client’s behalf.

5. Placement of Media

Upon Client’s authorization, Agency shall provide the materials and services necessary to execute the marketing plans and promotional campaigns approved by Client. In this connection, Agency shall:

A. Implement approved media plans by contracting for the space, time or other approved means to be used for Client's advertising, using reasonable efforts to secure the most advantageous rates available.

B. Negotiate, whenever possible, special terms with the media and other suppliers to provide savings over and above those which may be available under the published rates for such media or suppliers.
C. Coordinate between the agency assigned to the creative portion of Client's Account (the "Creative Agency") and the media for the timely forwarding of proper instructions to the media for fulfillment of the order on the agreed upon terms.

D. Audit all advertising placed, including verification of insertions, examination of quality of reproduction and of position of printed advertisements, and ensure that the television and radio affidavits correspond to the approved schedule.

E. Verify and pay appropriately invoiced and undisputed charges incurred on Client's behalf.
II. COMPENSATION

A. Management Fee

B. Billing For Production, Media, Fulfillment, Sweepstakes and Premium Sourcing

All billing will be based on estimated expenditures as indicated below:

(1) Production billing will be as follows:
   (a) Original billing will be based on 100% of the approved job estimate.
   (b) All adjustments will be communicated as a revision to the original estimate, and will require Client’s additional approval.
   (c) Upon receipt of all charges the job will be reconciled, and the final accounting will be sent. Third party invoices will be held by Agency for Client review.

(2) Media will be billed and the timing of Client’s payments shall be in such a way as to ensure that Client’s payments will be received prior to Agency’s release of funds or Agency’s guaranteed financial commitment to broadcast stations and print publications. Original media billing will be based on the cost of the media time or space ordered by Agency on Client’s behalf and will be adjusted to actual amounts once the station/publication invoices have been received and processed.

C. Discounts

Cash discounts, if any, allowed on purchases of whatever nature on Client’s account will be passed on to Client, provided that there is no overdue indebtedness then owing by Client to Agency. Written notice of any disputed amount must be given to Agency within thirty (30) days following invoicing, or invoiced amounts shall be deemed undisputed.

D. Timeliness of Payments

It is essential that Agency receive Client’s payments in available funds in sufficient time for Agency to meet its obligations to the media and other third-party vendors. To accomplish this, Agency will prepare invoices for submission to Client on a schedule which will meet Agency’s various payment and financial commitment obligations. Payment to Agency by Client will be due within thirty (30) days from the date of invoice unless otherwise specified in accordance with payment or guarantee demands by media or suppliers. Interest on overdue receivables will be charged to Client at a rate of 1% per month on the unpaid balance, or the maximum lesser rate allowed by law. Agency reserves the right in case of delinquency of Client’s payments, or such impairment of Client’s credit as in Agency’s opinion might endanger future payments to Agency, to change the requirements as to terms of payment under this Agreement.
E. **Billing Adjustments**

Agency will credit to Client any and all excess amounts (over and above cost estimates) which are billed to and paid for by Client, whether such excess amounts are ascertained during the term of this Agreement or thereafter. Agency will be responsible for and will pay the media or other appropriate third-party vendors the full amount of their charges which were reflected in the cost estimate or otherwise billed to and paid for by Client. In the event that Agency shall receive any refund, rebate or other payment relating to advertising placed by Agency and paid for by Client, Agency will credit such amount to Client forthwith, subject to the terms herein and provided there is no overdue indebtedness then owing by Client to Agency.

F. **Timeliness of Invoices**

Agency shall use reasonable efforts to obtain timely invoices from third parties for purchases for Client. However, Client shall remain responsible for reimbursement to Agency for all approved purchases regardless of the date of invoices and final billing to Client.

G. **Travel and Out-of-Pocket Expenses.**

Agency travel, meals and lodging relative to any Client services or Client requested travel shall be billed at the net out of pocket cost as part of the related project. Other out-of-pocket costs for charges such as express mail, freight, shipping, telegrams, messengers and couriers shall also be billed at cost. All travel must be approved in advance by Client and shall be reimbursed accordingly.

H. **Client Approvals.**

Agency will secure Client’s approval before making any expenditures or commitments on Client’s behalf or releasing any materials to third parties. Approval of estimates by Client will constitute approval of the costs and charges included therein. All Agency shall not be responsible for any media opportunities or deadlines missed by Client due to any delay in receiving Client’s approval. All commitments made on Client’s behalf with Client’s approval become Client’s responsibility to pay.
SPOKESPERSON AGREEMENT

[Date]

[Spokesperson]
[Address]
[City, State ZIP Code]

Dear __________:

This will set forth the agreement between ___________ (“Spokesperson”) and __________ (“Agency”) as agent for its client, __________ (“Client”), with regard to Spokesperson’s performance of public relations services for Client and its __________ products/services (the “Products/Services”). Our agreement is as follows:

1. **Term.** This agreement will be effective as of ____________ and will remain in effect through the period ending ____________ (“Initial Term”) unless terminated in accordance with paragraph 9 below. Agency shall have the option to renew this agreement for up to _____ (_) additional _____ period(s) (“Option Term(s)” and together with the Initial Term, the “Term”) upon the same terms and conditions as set forth herein for the Initial Term, upon written notice to Spokesperson of Agency’s election, not less than thirty (30) days prior to the expiration of the then existing term.

2. **Services.** Spokesperson agrees to act as a spokesperson and make personal appearances and render other public relations services for Client and Client's Products/Services as directed by Agency. In serving as spokesperson for Client, Spokesperson agrees to perform services as follows:

   [Customize to your specific deal, but be very detailed. Add any client-specific details or requirements]

3. **Name, Likeness and Statements.** During the term hereof, Agency and Client shall have the right to use, in perpetuity and throughout the world, Spokesperson's name, signature, likeness, photograph, biography, and statements pertaining to Spokesperson's use of and experiences with the Products/Services for general and publicity purposes, in personal appearances and in any publicity materials, including without limitation ____________/list/ (“Publicity Materials”).
Spokesperson's statements may be used in whole or in part and may be paraphrased, amplified, shortened, and/or put into conversational form to meet the requirements of copy, layout and/or script, provided their general sense is not changed. Spokesperson waives any right to inspect and approve finished Publicity Materials and Spokesperson will not hold Agency or Client responsible for any liability resulting from the use of the Publicity Materials in accordance with this agreement.

4. **Compensation.** In full consideration for Spokesperson's services and the use of the Publicity Materials produced hereunder, Agency will pay Spokesperson and Spokesperson agrees to accept, the following compensation:

   (a) [Customize to your specific deal, but at a minimum provide (1) the sum payable and (2) when and how it will be paid for each term]

   (b) If it is necessary for Spokesperson to travel from the area Spokesperson is in to render services hereunder, Agency shall provide round trip transportation plus accommodations and properly vouchedered and necessary living expenses to a maximum of $____ per work day.

   (c) Neither Agency nor Client shall be under any obligations for the payment of any commissions or fees to any agent of Spokesperson on account of this agreement.

5. **Ownership.** All Publicity Materials developed or used hereunder shall be and remain Client's property, and Agency and Client shall have the right to use, reuse, reproduce, copyright and exhibit them throughout the world in perpetuity. Without limiting the foregoing, it is specifically understood and agreed that any copyrightable works created hereunder shall be works “made for hire” and Spokesperson shall retain no ownership rights whatsoever in or to said works. If said works are not considered works “made for hire,” Spokesperson hereby assigns all rights to said works to Client.

6. **Exclusivity.** Spokesperson agrees that Spokesperson will not, at any time during the Term [and for ___ (_) days thereafter]:

   (a) Render any services of any kind directly or indirectly for any product competitive with the Products/Services (“Competitive Products”) [This provision should be reviewed carefully in consultation with your client]; or

   (b) Permit the use of Spokesperson's name, signature, photograph, likeness, endorsement, voice or biographical material in any manner in advertising or publicizing any product competitive to or incompatible with Client's Products/Services.
7. **Confidentiality.** By the nature of Spokesperson's duties, Spokesperson may be exposed to certain information deemed proprietary and confidential by Client. Spokesperson agrees that, during the term of this agreement and thereafter, Spokesperson will not at any time disclose to anyone any such confidential information without prior written consent from Client. This paragraph shall survive the termination or expiration of this agreement.

8. **Representations and Warranties.** Spokesperson represents and warrants that:

   (a) Spokesperson will perform services on such dates and at such times and places as Agency shall specify. Agency shall notify Artist of the designated times and dates at least forty-eight (48) hours in advance. Spokesperson will notify Agency within twenty-four (24) hours thereafter of Spokesperson's unavailability due only to a prior bona-fide contractual commitment or illness that would prevent Spokesperson from appearing and in such event, Agency shall reschedule and no further changes by Spokesperson (except for illness) will be permitted.

   (b) Spokesperson's statements will reflect Spokesperson's honest views and experience with the Products/Services (Spokesperson agrees, if necessary, to furnish appropriate testimonial affidavits);

   (c) Spokesperson will promptly notify Agency if Spokesperson's opinion of the Products/Services changes from that which Spokesperson has expressed to Agency to date;

   (d) Spokesperson has the right and authority to enter into this agreement without violating the rights of any third party; and

   (e) Spokesperson will comply with all applicable laws, regulations, orders and ordinances in rendering the services provided for herein.
9. **Termination.** Agency and Client shall have the right, at their option, to terminate this agreement immediately in the event that:

(a) Spokesperson fails, neglects or refuses to fully perform any of the obligations to be performed hereunder;

(b) Spokesperson materially breaches the terms of this agreement or any of the warranties or representations made herein;

(c) Spokesperson commits any act or does anything that is or shall be an offense involving moral turpitude under Federal, state or local laws, or which brings Spokesperson, Client or Agency into public disrepute, contempt, scandal, or ridicule, or which insults or offends the community or any substantial organized group thereof, or which might tend to injure the success of Client or any of Client's products or services; or

(d) Client decides not to continue Spokespersons services hereunder.

Agency's decision on all matters arising under this paragraph shall be conclusive.

10. **Repayment.** If this agreement is terminated under paragraphs 9(a), (b) or (c), Agency shall only be obligated to pay Spokesperson for services rendered and expenses incurred prior to the date of termination. If Agency terminates this agreement under paragraph 9(d), Agency shall pay Spokesperson 100% for services rendered and expenses incurred prior to the date of termination and 50% for all unused services. If Spokesperson's compensation has been pre-paid, Spokesperson will promptly return any overpayment to Agency and no further compensation shall be due to Spokesperson.

11. **Equitable Relief.** Spokesperson's services hereunder are special and unique, the loss of which could not be adequately compensated in damages and that Spokesperson's failure to perform the obligations hereunder would cause Agency and Client to suffer irreparable loss and damage. Accordingly, Spokesperson agrees that should Spokesperson fail to perform such obligations, Agency or Client shall be entitled to ex-parte injunctive or other equitable relief to prevent the continuance of such failure or to prevent Spokesperson from performing services for, or granting rights to others, in violation of this agreement.

12. **Status.** Spokesperson's status hereunder is that of an independent contractor and not an employee or agent of Agency or Client.

13. **Interviews.** Spokesperson shall not disclose the details of the engagement hereunder, without Client's prior written approval, although Spokesperson may, during interviews, respond, discuss and comment in a favorable and positive manner that Spokesperson is associated with Client and endorses and uses the Products/Services.
14. **Miscellaneous.** This agreement represents the entire agreement between the parties concerning the subject matter herein and shall be governed by and construed in accordance with the laws of the State of New York. This agreement may only be modified or assigned by a written document signed by both parties.

Please confirm your agreement with the terms of this letter by signing where indicated below and returning one copy to us.

Very truly yours,

[AGENCY]
as Agent for
[CLIENT]

By: ________________________________

ACCEPTED and AGREED:

____________________________________
Spokesperson

____________________________________
Social Security #

____________________________________
Date
To Whom It May Concern:

The following will set forth the agreement between ___________ ("Company") and _____________ ("Sponsor") by which Company grants Sponsor the right to be the sole sponsor of the _____________________ (the "Event") in accordance with the terms and conditions set forth below.

1. THE EVENT

[Describe Event].

2. COMPANY RESPONSIBILITIES

(a) Company shall develop and administer all aspects of the Event.

(b) Company hereby grants, recognizes and sanctions Sponsor as the sole sponsor of the Event. All Event letterhead, literature and external communication including without limitation invitations, press releases and signage, in perpetuity, shall identify Sponsor as the sole sponsor, unless otherwise required by Sponsor.

(c) The Event shall hereafter be called "______________" or any similar name as Sponsor may designate and Sponsor shall at all times be designated and identified as the sole sponsor of the Event in any and all advertising for the Event produced or obtained by Company or any third party acting on behalf of Company. Further, Sponsor shall have the right to refer to Sponsor's sponsorship of the Event and to use the Event name and designation in all of its media advertising, promotional and publicity materials in perpetuity.

(d) Company agrees to arrange for Sponsor's company, brand logo and name to be prominently displayed at all venues of the Event. Company will consult in good faith with Sponsor to ensure that all Sponsor identification is properly displayed.

(e) Sponsor shall have the right to have representatives present and actively involved at the Event.
3. **TERM**

   (a) The term of the agreement shall commence on the date hereof and continue in full force and effect for one (1) year.

   (b) Thereafter, Sponsor shall have the option, on an annual basis, to be the sole sponsor of the Event for each year. No later than 120 days after the conclusion of the then current Event, Sponsor shall have an automatic right to renew its role as sole sponsor of the following year's Event on the same terms and conditions as provided for herein. If Sponsor decides not to renew its sole sponsorship by such time, then Company can accept a third party's offer to sponsor that year's Event, but in order to do so, must thereafter provide Sponsor an additional 60 day period in which it may match such third party offer. If Sponsor matches said third party offer, then the sponsorship shall be contracted.

4. **PRESS CONFERENCES AND PRESS RELEASES**

   (a) Company agrees that at any press conference concerning the Event, Sponsor will be named as the sole sponsor, will have the right to deliver a statement of Sponsor's connection and commitment to the Event and will be allowed to respond to press inquiries.

   (b) Company agrees that all press releases concerning the Event will mention Sponsor as the sole sponsor and will be subject to Sponsor's approval prior to release.

   (c) Company and Sponsor agree that a national press release will be prepared and released on a mutually agreeable date announcing Sponsor's sponsorship of the Event and promoting the Event.

5. **ADDITIONAL PROMOTIONS AND EVENTS**

   Company agrees that it will secure all releases necessary which will give Sponsor the unlimited right, in perpetuity, to utilize individually and collectively the participants in the Event and the name, likeness, biography, and testimonial of each Event participant in print advertising, radio and television advertising and other promotional material developed by Sponsor. The grant of rights to Company and Sponsor shall be a prerequisite to participation in the Event.

6. **EVENT LOGO**

   Sponsor shall have the right to use the Event logos and to reference Sponsor's sponsorship of the Event in all Sponsor advertising, promotion and public relations materials.

7. **CONSIDERATION**

   (a) In full consideration for all of Company's undertakings hereunder and for the rights granted to Sponsor, Sponsor shall pay to Company and Company shall accept the guaranteed sum of $__________ to be paid as follows:
(i) $_________ upon execution of this agreement;

(ii) $_________ within five (5) days after the close of the Event.

(b) It is understood that the sums paid by Sponsor shall be used solely for the preparation and management of the Event including but not limited to transportation, housing and meals for Event delegates. No other sums will be due and owing unless agreed to in writing by an authorized representative of Sponsor.

8. PERMITS AND INSURANCE

Company agrees to be fully responsible for and to acquire, at its sole cost and expense, all licenses, permits, authorizations and insurance which may be required under any federal, state or local law or regulations in order to legally conduct the Event. In addition, Company shall provide general liability coverage, personal injury and property damage coverage for all Event personnel and participants in an amount of not less than $5,000,000.00 per occurrence. Company shall name Sponsor as an additional insured on all such policies and upon request shall provide Sponsor with a copy of the Certificate of Insurance evidencing such coverage. This coverage shall be non-cancellable except upon at least ten (10) days written notice to Sponsor.

9. RIGHT OF TERMINATION

Sponsor shall have the right to terminate this agreement if Company is adjudicated insolvent, declares bankruptcy or fails to continue its relevant business activities or for any other reason fails to perform its obligations under this agreement and such performance failure continues for fifteen (15) days after receiving written notification of such failure. If Sponsor terminates this agreement pursuant to this paragraph, the guaranteed sum set forth in paragraph 7(a) above shall be pro-rated to the effective date of termination, Company shall refund any such amount paid to it in excess of the pro-rated amount and Sponsor reserves all other legal and equitable rights.

10. TRADEMARKS

Company understands and agrees that it has no right, title or interest in or to any trademark, trade name, slogan, logo or other identification of Sponsor (except the right to use the same in accordance with terms and conditions of this agreement), and further agrees that any such trademark, trade name, slogan, logo or other identification are and shall remain the sole property of Sponsor. Company agrees to give legal and proper notice to any and all persons or entities, in accordance with any request or demand of Sponsor, in connection with any and all uses of such trademark, trade name, slogan, logo or other identification, indicating that the same are the property of Sponsor. The provisions of this section apply only to Sponsor, and are not intended in any way to apply to Company's name or identification, to which Sponsor claims no right, title or interest. Sponsor shall provide to Company the Sponsor trademarks, name and logo artwork necessary for use at the Event.
11. **INDEMNITY**

Company agrees to protect, indemnify, and save harmless Sponsor from and against any and all expenses, damages, claims, suits, actions, judgements and costs whatsoever, including reasonable attorney's fees, arising out of, or in any way connected with Sponsor's exercise of rights granted by Company hereunder or the nature or use of any of Company's activities, materials or services or material breach of this agreement by Company. The provisions of this paragraph shall survive any termination of this agreement.

12. **INDEPENDENT CONTRACTOR STATUS**

Company's relationship with Sponsor shall be that of an independent contractor, and nothing contained in this agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture between Sponsor and Company.

13. **CONFIDENTIALITY**

It is hereby agreed that the specific terms and conditions of this Agreement, including, but not limited to, the financial terms, and the duration are strictly confidential, and shall not be divulged to any third parties without the prior written consent of both Sponsor and Company, unless otherwise required by law to be disclosed.

14. **NOTICES**

All notices and/or submissions hereunder shall be sent via Certified Mail, Return Receipt Requested, to the parties at the following addresses, or such other addresses as may be designated in writing from time to time:

Sponsor:

Company:

15. **GOVERNING LAW; WAIVER; INVALIDITY**

This agreement shall be governed and construed in accordance with the laws of the State of New York. Any failure by Company or Sponsor to exercise any right granted herein upon the occurrence of any contingency set forth in this agreement will not in any event constitute a waiver of any such right upon the exercise of any such contingency. In case any term in this agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term shall be in any way affected thereby.
16. GENERAL PROVISIONS

(a) Representations and Warranties. Company and Sponsor each individually represents and warrants that it has full power and authority to enter into this agreement and to perform all of the obligations hereunder without violating the legal or equitable rights of any third party.

(b) Assignments. Neither Company nor Sponsor shall assign, transfer or delegate its responsibilities herein to any third party without the prior written consent of the other party.

(c) Amendments. Neither this agreement nor any of the terms or conditions hereof may be waived, amended or modified except by means of a written instrument duly executed by the consent of both parties.

(d) Captions and Headings. The captions and section headings used in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement or any of the provisions hereof.

(e) Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

(f) Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof, but all of which together shall constitute one and the same instrument.

(g) Entire Agreement. Except as otherwise set forth or referred to in this agreement, this agreement constitutes the sole and entire agreement and understanding between the parties hereto as to the subject matter hereof, and supersedes all prior discussions, agreements and understandings of every kind and nature between them as to such subject matter.

Please sign this agreement where indicated below to reflect your agreement with its terms, retain a copy for your files and mail the original to us.

Very truly yours,

[Sponsor]

By: ___________________________

ACCEPTED AND AGREED
on this ____ day of _______, 200_

[Company]

By: ______________________________
This Sweepstakes PRINTER Agreement (“Agreement”) is made as of _______________ (the “Effective Date”) by and between ___________________________ ("PRINTER"), A ________________ corporation, with a place of business at ___________________________ and ___________________________ (“CLIENT”), with a place of business at ___________________________.

THIS Agreement applies to all quotations and agreements for the production by PRINTER of promotional game pieces, giveaway tickets, sweepstakes entries, and similar products involving the awarding of prizes ("Items"), regardless of the form of the particular Items involved in relation to the attached Agreement for the "______________" Sweepstakes. The parties acknowledge that the production and distribution of Items involves unique responsibilities and risks for both PRINTER and CLIENT, and that it is in the mutual interest of the parties that they have a clear understanding of the allocation of the various responsibilities and risks between them. Therefore, PRINTER and the undersigned CLIENT agree as follows:

1. Warranty. Subject to the other terms and conditions set forth herein or incorporated by reference, PRINTER warrants that, when delivered, the Items will conform in all material respects (and within normal commercial tolerances) to the Specifications. The Items shall also be delivered in a merchantable condition and subject to the CLIENT’s responsibilities detailed herein, shall be fit for the purposes set forth in the Specification. PRINTER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND NO EMPLOYEE OF PRINTER HAS AUTHORITY TO MAKE ANY ADDITIONAL WARRANTIES ON BEHALF OF PRINTER; ALL WARRANTIES OTHER THAN THAT SPECIFICALLY SET FORTH ABOVE, ARE HEREBY EXCLUDED AND DISCLAIMED, INCLUDING THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ONLY REMEDIES FOR BREACH OF WARRANTY ARE AS SET FORTH BELOW, WHICH REMEDIES CLIENT ACKNOWLEDGES HAVE BEEN BARGAINED FOR AND ARE COMMERCIALLY REASONABLE.

2. Compliance with Applicable Laws and Regulations. It is CLIENT’s responsibility to ensure that the sweepstakes, contest, game or promotion (the "Game") involving the Items complies with all applicable laws and regulations, including federal, state and local laws relating to lotteries, gambling enterprises, and promotional games and contests, all consumer protection and advertising regulations, the Federal Trade Commission Act and all rules and regulations thereunder, and, if Items are to be exported, any import rules and national or local laws in the destination countries. CLIENT warrants that it is familiar with all of the applicable requirements referred to above and has designed its Game and the Items to comply therewith. CLIENT shall indemnify and hold PRINTER harmless from and against any and all claims, costs, losses and liabilities incurred as a result of non-compliance of the Game or the Items with any of the
foregoing, unless the non-compliance results solely from a failure of the Items to comply in all material respects with the agreed-upon Specifications or due to PRINTER's negligence, error or omission, in which case such claims, costs, losses and liabilities shall be PRINTER’s sole responsibility.

3. **Game Rules.** CLIENT shall submit the specific rules of the Game to PRINTER for review; but any review of the Game Rules by PRINTER shall not relieve CLIENT of responsibility set forth in item 2 above, as PRINTER is relying on CLIENT’s representation as to legal compliance. CLIENT shall be under no obligation to accept or incorporate any revisions or other recommendations from PRINTER with respect to said rules. CLIENT agrees that the Game rules must, in any event, provide for (a) alternate means of entry in the Game without requiring the consumer to purchase any product or otherwise to furnish anything of value which would render the Game illegal in any jurisdiction; (b) a provision that the Game is void where prohibited, with a specific exclusion of any States where the Game would not otherwise comply with local law; (c) the right of the CLIENT to award only the specified number of prizes in the event of printing or other errors in the Game or the Items; (d) a deadline date for redemption of winning Items, not later than three months after the end of the Game promotion; and (e) appropriate redemption and verification procedures for winning Items.

4. **Game Security.** The parties acknowledge that the integrity of the Game, that is, its security from having winning Items selectively identified by consumers or persons in the distribution chain other than as contemplated by the rules of the Game, is of great importance. PRINTER is responsible for the design of the Items and for the security of the Items, as so designed and as described in the Specifications, from compromise as a result of persons being able to pick out winning Items by any means whatsoever. PRINTER is also responsible for the conformity of the Items to the Specifications in all material respects. PRINTER is responsible for the physical security of the Items while in PRINTER's custody or control, including security against theft; PRINTER is not responsible for theft, forgery, or other similar security breach once the Items leave PRINTER's custody or control. In the event winning Items are printed separately and are to be "seeded" by hand or mechanical means, the parties' responsibilities are as follows: winners are to be delivered to CLIENT or CLIENT's designee for seeding. PRINTER shall have no responsibility for seeding and CLIENT shall assume all such responsibility, including responsibility for randomized seeding in accordance with requirements of applicable law, rules and regulations; and CLIENT shall be fully responsible for the physical security of the Items so delivered, including any excess quantities of winners delivered to CLIENT at CLIENT's request.

5. **PRINTER's Liability and CLIENT's Remedies.** PRINTER shall be liable to CLIENT only for material departures from the Specifications, and for failures to meet PRINTER's security responsibilities under Section 5. PRINTER's liability shall be limited to providing CLIENT with the following remedies:

(a) Refund or Replacement. In the case of material nonconformity to specifications which do not result in third party claims, actions or expenses, CLIENT's sole remedy shall be either a refund of the purchase price allocable to the defective Items or a printing, free of charge, of replacement Items. The choice of remedies shall be at CLIENT's option.
(b) Prize Liability. In the case of the printing and delivery which results in claims, losses, liabilities, actions and proceedings, including attorney’s fees and other expenses incidental thereto, made by any third party in connection with the Game, whether in tort, contract, or on any other theory whatsoever, PRINTER’s liability shall be limited to (i) payment plus (ii) reprinting, free of charge, any batches or runs of Items which have not yet been distributed when the excess prize problem is discovered and which are believed to contain a material amount of excess winners. PRINTER shall have no liability for prizes on Items presented after the redemption deadline in the Game rules. The foregoing remedies are conditioned upon CLIENT’s full cooperation in mitigating damages as follows: (1) CLIENT shall promptly inform PRINTER upon learning of any excess winners or of redemption rates or patterns which indicate that the specified prize structure of the Game may be exceeded; (2) CLIENT will cooperate and assist PRINTER in determining the batches or runs of Items containing excess winners and in locating and halting distribution of those Items. PRINTER may request termination regardless of the cause of the excess redemptions, and a termination request shall not be construed as an admission of responsibility on PRINTER’s part. In the event the Game is terminated at PRINTER's written request, then PRINTER shall refund the full price paid by CLIENT to PRINTER for this Game, and shall also reimburse CLIENT for any claims, losses, liabilities, actions and proceedings, including attorney’s fees and other expenses incidental thereto, made by any third party in connection with the Game. PRINTER will maintain Errors and Omission insurance from a qualified and licensed insurer in good financial standing throughout the term of this Agreement in an amount not less than $X,000,000, providing coverage against liability any claims which may arise out its responsibilities hereunder. The insurance shall be primary over any other insurance covering CLIENT and shall remain in effect continuously for the term of this Agreement and for such longer period as is necessary to support PRINTER’s obligations under this Agreement. PRINTER will name CLIENT as an additional insured. PRINTER will promptly provide certificate(s) from its insurers indicating the amount of insurance coverage, the nature of such coverage and the expiration date of each applicable policy. Such policy will provide that the insurance may not be cancelled or the coverage reduced without approval by CLIENT.

(c) Disclaimer and Indemnity. The foregoing are CLIENT’s sole and exclusive remedies for nonconformities in the Items. In no event shall either party be liable for damages of any kind, whether direct, indirect, incidental, consequential, or exemplary, except to the extent expressly set forth in items (a) and (b) of this Section 6. The above remedies are for the benefit of CLIENT and its client. CLIENT shall defend, indemnify and hold harmless the PRINTER from and against any and all claims, losses, liabilities, actions and proceedings, including attorney’s fees and other expenses incidental thereto, made by any third party in connection with breach of CLIENT's responsibility in connection with the Game, whether in tort, contract, or on any other theory whatsoever, except for claims, losses, liabilities, actions and proceedings resulting from the failure of the items to conform in all material aspects with the Specifications or any other negligence of PRINTER. PRINTER shall have the right to participate in the defense of any such claim using counsel of its own choosing at its own expense. CLIENT shall have the right to control the defense of any such claim.

6. Further Action. In the event that, at the time of execution of this Agreement, certain matters of detail are left to the further agreement of the parties, such as specification details, delivery
schedules, production options, approval of Item copy, or the like, the parties shall endeavor in good faith to agree on all such items as soon as practicable, and to execute such agreement in writing, as an AGREEMENT to all other existing written agreements between the parties.

7. The Term of this Agreement shall commence on the Effective Date and shall expire on the fulfillment of all PRINTER's obligations hereunder.

8. Nothing contained in this Agreement shall be deemed or construed a joint venture or partnership between the parties hereto. Neither party is by virtue of this Agreement authorized as an agent, employee or legal representative of the other party hereto. At all times the relationship of the parties shall be independent contractors with respect to each other. Neither party shall have any power or authority to commit or bind the other party.

9. Neither party may assign its rights or obligations under this Agreement to any other party without the written consent of the other.

10. The provisions of this Agreement shall be severable and the invalidity of any provision, or portion thereof, shall not affect the enforceability of the remaining provisions.

11. This Agreement sets forth the entire agreement between the parties and may not be amended except in a writing signed by both parties.

12. This Agreement shall be governed by the laws of the ___________ without regard to its conflicts of laws principles, and the PRINTER agrees to submit to jurisdiction and venue in ___________ for resolution of any disputes arising out of or in any way connected to this Agreement.

13. No Party shall be liable for any loss or damage caused by failure or delay in the performance, observance or fulfillment of any terms, obligations, provisions or conditions of this Agreement (including, without limitation, the failure to make any payments specified herein) if such failure or delay arises either wholly or in part from acts of the other Party, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, war, riot, accident, shortage, delay in transportation, or any other causes beyond the reasonable control of the Party whose performance is delayed, to the extent and for the duration of such Force Majeure, provided the Party notifies the other Party of such prevention.

This AGREEMENT has been executed and delivered by the parties' duly authorized representatives on this ______day of _____________, 200__.

CLIENT: PRINTER:

By: ___________________________ By: ___________________________

Title: ___________________________ Title: ___________________________
VENDOR NONDISCLOSURE AGREEMENT

For good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned ("Recipient") hereby agrees with _______________ ("Company") as follows:

1. Recipient acknowledges that during the course of discussions between Recipient and Company, Company may disclose to Recipient certain information, and Recipient may otherwise discover certain information, about Company and/or Company’s clients (the "Clients"). All such information about Company and the Clients, including but not limited to technical and business information relating to Company’s ideas or materials, or the Clients' products, services, research and development, production, costs, profit or margin information, finances, customers, client, marketing, and future business plans, shall be deemed “Confidential Information.”

2. As between Recipient and Company, all Confidential Information shall remain the sole property of Company and Recipient shall have no rights to or in the Confidential Information. Recipient shall hold the Confidential Information in strict confidence. Recipient shall not make any disclosure of the Confidential Information (including methods or concepts utilized in the Confidential Information) to anyone without the express written consent of Company.

3. As between Recipient and Company, Confidential Information disclosed under this Agreement shall be and remain the property of Company. No licenses or rights under any patent, copyright, or trademark are granted or are to be implied by this Agreement.

4. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that is, or becomes in the public domain, through no wrongful act of Recipient’s.

5. In the event Recipient is required by law, regulation or court order to disclose any Confidential Information, Recipient will immediately notify Company in writing prior to making any such disclosure in order to facilitate Company's seeking a protective order or other appropriate remedy from the appropriate body. Recipient further agrees that if Company is not successful in precluding the requesting legal body from reviewing the Confidential Information, Recipient will furnish only that portion of the Confidential Information which is legally required and will exercise its best efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

6. Recipient acknowledges and agrees that due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or any unauthorized use or release of any Confidential Information will allow Recipient or third parties to unfairly compete with Company or the Clients, resulting in irreparable harm to Company or the Clients and therefore, that upon any such breach or any threat thereof, Company shall be entitled to seek appropriate equitable relief in addition to whatever remedies it might have at law and to be indemnified by Recipient from any loss or harm, including, without limitation, reasonable attorney’s fees, in connection with any breach or enforcement of Recipient’s obligations hereunder or the unauthorized use or release of any such
Confidential Information. Recipient will notify Company in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

7. Immediately upon a request by Company at any time, Recipient will turn over to Company all Confidential Information and all documents or media containing any such Confidential Information and any and all copies or extracts thereof. Recipient understands that nothing herein requires the disclosure of any Confidential Information which shall be disclosed, if at all, solely at the option of Company.

8. This Agreement: (a) is the complete agreement of the parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures on such subject matter; (b) may not be amended or in any manner modified except in writing signed by the parties; and (c) shall be governed and construed in accordance with the laws of the State of New York without regard to its choice of law provisions. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys’ fees.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative.

Dated: ____________

COMPANY:

_________________________ _________________________
(Print Name) (Print Name)

By: _________________________ By: _________________________
Name: 
Title: 

RECIPIENT:
LICENSE AGREEMENT

AGREEMENT made as of _____________, 2004 between [Entity Managing Venue], a New York corporation, having an office at [Address] ("Licensor") and [Licensee's Name], having an office at [Address] ("Licensee").

1. The License. Licensor hereby grants Licensee the license and privilege (the "License") to use the area designated as the [Arena, Theatre or other area of Venue] (the "Premises") within the [Name of Venue] commencing at ______ A.M. on ____________ and ending at ________ A.M. on __________ (the "Period"). The License is being granted for the sole purpose of permitting Licensee to present a [description of event] entitled [Name of Artist or Event] (the "Event"). Notwithstanding the foregoing, Licensee specifically acknowledges and agrees that Licensor or its designees shall have the exclusive right to occupy [number of seats] (___) seats within the Premises during the Event, in locations to be selected by Licensor within its sole discretion, without payment of any kind whatsoever to Licensee.

2. The Period. Licensee shall use the Premises during the Period in strict accordance with the following schedule:

3. Consideration. In consideration for the grant of the License and the use of the Premises as provided herein, Licensee agrees to pay to Licensor, without demand, the total amount of [License Fee] payable by certified checks as follows: __________. In addition, Licensee agrees to pay to Licensor the sum of $______ payable by certified check on or before ________________ to cover estimated expenses for personnel, services, equipment and materials furnished by Licensor to Licensee pursuant to Paragraph 6 hereof, exclusive of stagehand costs. Finally, Licensee agrees to pay to Licensor the sum of $__________ payable by Licensee to Licensor by the same date prescribed in the preceding sentence hereof to cover estimated charges for stagehand costs for the move-in, set-up, operation and move-out of the Event, presuming the utilization of the Period as set forth in Paragraph 2 hereof. To the extent that actual expenses, and actual charges for stagehands, incurred pursuant to Paragraph 6 hereof or otherwise are in excess of or less than an aggregate of $_______, the payment hereunder shall be adjusted and payment shall be made therefor by Licensee or Licensor, as the case may be, pursuant to Paragraph 23 of the Standard Terms and Conditions attached hereto and made a part hereof.

Licensee hereby acknowledges that Licensor's estimate of the costs and expenses described herein are based upon the utilization of the Premises during the Period as described in Paragraph 2 above and Licensee's representations to Licensor with respect to the nature and requirements of the Event. Licensee hereby agrees that Licensor may modify its estimate if Licensee alters its use of the Premises during the Period or changes the nature or requirements of the Event, and that Licensee shall increase its deposit for such costs and expenses to the extent that Licensor's estimate thereof increases.

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4. **Licensee's Income.** Licensee represents and warrants to Licensor that neither Licensee nor any parent, shareholder, subsidiary, partner, principal, owner, co-venturer, associate or affiliate of Licensee shall derive any revenue, income, compensation or consideration from the Event from any source or by any means whatsoever, direct or indirect, except: [ticket sales] [merchandise] [television exploitation revenues] [fees charged to exhibitors (for trade shows)] [sponsorship fees].

5. **Standard Terms and Conditions.** Annexed hereto are Exhibit A and Licensor's License Agreement Standard Terms and Conditions (the "Standard Terms and Conditions") which are incorporated herein by reference. In the event of any inconsistency between the terms and conditions contained herein and such Exhibit A or such Standard Terms and Conditions, the provisions contained herein shall prevail. Licensee acknowledges that it has read and understands Exhibit A and the Standard Terms and Conditions.

6. **Personnel, Services, Equipment and Materials.** Licensee shall employ, and Licensor may at its option designate or furnish, the following personnel, services, equipment and materials pursuant to the terms and conditions contained herein:

   (a) Licensor's security officers, in a number sufficient in Licensor's opinion, which shall be conclusive, adequately to police the portions of the Premises inside and out affected by Licensee's use thereof.

   (b) Licensor's ticket sellers, ticket takers, doormen, ushers, maids, porters, watchmen and other guest services personnel, in a number sufficient in Licensor's opinion, which shall be conclusive, to service the Event.

   (c) Licensor's stagehands, as described in Paragraph 3 hereof, in a number sufficient in Licensor's opinion, which shall be conclusive.

   (d) At Licensee's request, Licensor shall arrange for the installation of telephones for Licensee's use during the Period. All charges, including, but not limited to, long distance telephone charges and service charges, shall be payable by Licensee to Licensor in accordance with Paragraph 23 of the Standard Terms and Conditions.

   (e) Licensor's personnel, in a number sufficient in Licensor's opinion, which shall be conclusive, to perform all carpentry and electrical work or other services and all other materials reasonably required to fit the Premises for the use of Licensee and its exhibitors, if any.

   (f) Ticket printing costs and/or allocated fees.

   All personnel, services, equipment and materials furnished to Licensee by Licensor, whether pursuant to the provisions of this Agreement, any agreement supplementing this Agreement, any work order, or otherwise, shall be subject to any applicable union minimum requirements and shall be paid for by Licensee at such rates as may be specified in this
Agreement, or any such supplemental agreement, work order or other applicable document or arrangement, as the case may be, and if no such rates shall be so specified, at the greater of the cost to Licensor or the prevailing rate of wages (including full reimbursement for Licensor's fringe benefit, payroll tax and other labor-related expenses associated with the Event), plus an additional fifteen (15%) percent for supervision and overhead. Except as otherwise provided in this Agreement, any charges for personnel, services, materials or equipment furnished by Licensor to Licensee which are payable by Licensee shall become due and payable when the same are furnished, and payment therefor shall be made as provided in Paragraph 23 of the Standard Terms and Conditions.

7. **Indemnification.**

   (a) Licensee hereby agrees to indemnify and hold harmless Licensor, and its corporate parent, affiliated entities and their respective officers, directors, employees and agents (collectively, "Affiliates"), from and against any and all liabilities, losses, damages, judgments, settlement expenses, claims, costs and expenses whatsoever (including court costs, attorneys' fees and related disbursements, whether incurred by Licensor in actions involving third parties or in actions against Licensee for claims under this Agreement) (individually, a "Loss" and collectively, the "Losses") arising out of or in connection with (i) the breach by Licensee of any of its agreements or covenants under this Agreement, (ii) the untruth of any of its representations and warranties hereunder, (iii) the presentation of the Event, or (iv) the use of the Building or the Premises, or any part thereof.

   (b) Without limiting the provisions of Subparagraph (a) above, Licensee hereby agrees to indemnify Licensor for any damage to the property (whether in or about the Building) of Licensor or any third party caused by persons participating in or assisting persons participating in, or attending, the Event. All repairs to the damaged property of Licensor shall be made by firm(s) designated by Licensor. The charges for such services shall not exceed the charges generally prevailing for comparable services.

8. **Insurance.** In connection with the Event, Licensee shall obtain and maintain the following insurance with insurance companies licensed to do business in the State of New York and with a minimum of an "All rating in the current edition of Best's Insurance Guide: 
(a) Public Liability Insurance

(1) Commercial General Liability Coverage, including coverage for personal and bodily injury, and blanket contractual liability coverage, which covers Licensor, its affiliates, Licensee and each of their respective officers, directors, employees, servants and agents, and which provides for limits of liability of at least Two Million ($2,000,000) Dollars for personal and bodily injuries to, or the death of, one or more persons in any one occurrence arising out of or in connection with the presentation of the Event and/or the use of the Premises or the Building, or any part thereof, in connection with the presentation of the Event.

(2) Property Damage Coverage which covers Licensor, its affiliates, Licensee and each of their respective officers, directors, employees, servants and agents, and which provides for limits of liability of at least Five Hundred Thousand ($500,000) Dollars for damages to property suffered by any third party in any one occurrence arising out of, or in connection with, the presentation of the Event and/or the use of the Premises or the Building, or any part thereof, in connection with the presentation of the Event and caused by persons participating in or assisting those participating in, or attending, the Event.

(b) Other Insurance. Workers' Compensation Insurance, Employer's Liability Insurance and all other insurance coverage of similar character applicable, or relating to, the employment of Licensee's officers, directors, employees, servants, agents or independent contractors.

c) Certificates:

(1) Certificates evidencing all insurance required hereunder shall be delivered to Licensor by Licensee at least thirty (30) days in advance of the first day of the Period. If such certificates are not delivered to Licensor by the date required, in a form and from an insurer satisfactory to Licensor, Licensor, at the sole cost and expense of Licensee, shall have the right, but not the obligation, to purchase the Comprehensive General Liability Coverage and/or Property Damage Coverage required hereunder to protect the interests of the additional named insureds set forth in clause 8(c)(2) below Licensor's failure to purchase said insurance coverage, in whole or in part, shall not give rise to any claim or defense by Licensee against Licensor, and shall not relieve Licensee of any of its obligations under this Agreement.

(2) Certificates of insurance evidencing the insurance required under this Agreement (excepting Workers' Compensation Insurance) shall contain the following endorsement:
"Coverage afforded under the Comprehensive General Liability Coverage and Property Damage Coverage shall cover, as additional named insureds, [Names of managing and Owning Entities] and their respective parent and affiliated companies with respect to any occurrences (but for Property Damage Coverage which shall relate solely to claims and/or damages to property of any third party) within the Building or the Premises occupied or used by the named insured for the purpose of presenting a ________________ show, including, but not limited to, areas utilized by guests attending such performances, box office areas, escalators, elevators, stairs, seating area, lavatories, restaurant and concession areas and all areas and facilities utilized for ingress and egress of guests, and during the period of utilization of the Building or the Premises by the named insured, with respect to or arising out of the use and occupancy of such Building or Premises. Such coverage shall be primary for all purposes."

(3) All certificates of insurance shall provide that such policies may not be cancelled or modified in any manner upon less than thirty (30) days prior written notice to Licensor.

(4) The parties acknowledge and agree that the limitations of liability required hereunder shall be on a "per event" basis (rather than an annual aggregate).

9. Music. Licensee agrees to reimburse Licensor for (a) any fees paid to ASCAP, BMI, SESAC and any similar organization for the use of music in the Event, and (b) additional musicians, if any, required for the Event by applicable union contracts.

10. Advertising and Promotion.

(a) All radio, television, newspaper or other advertising, as well as promotional releases, tickets, placards, or other written or printed matter, or any photograph, motion picture, television tape, recording or other items, materials or documents which relate to the Event or contain the name, picture or trademark of the Building, the Premises, the Event, Licensor or any of its affiliated entities, shall be submitted to Licensor, for Licensor's approval, at least seven (7) days prior to its intended publication, telecasting, broadcasting or other use. When appropriate, submitted material shall include a precise schedule specifying dates of advertising and medium(s) of coverage (e.g., designations of newspapers, television stations and/or magazines in/on which such advertising shall appear).

(b) In no event shall Licensee promote, advertise or arrange for the promotion or advertising of the Event, in any medium whatsoever, prior to receipt of written approval from Licensor. Such approval may be withheld by Licensor for any reason whatsoever in its sole discretion. Under no circumstances shall such approval be given until such time as there is full availability of tickets for the Event at Licensor's box office.
(c) In all advertising as described herein, the standard [Name of Venue] logo or other designation of Licensor must be displayed and/or described in the manner selected by Licensor in its sole discretion.

(d) Notwithstanding anything in this Paragraph to the contrary, Licensee acknowledges that there shall be no visual depiction of the Building or the Premises for advertising, promotional or any other purposes without the express written approval of Licensor. All advertisements or promotional material relating to the Event shall designate the Premises.

(e) Licensee represents and warrants to Licensor that it has secured all rights required to advertise or promote the Event, including the appearance of all artists, athletes or other persons participating therein. Licensee hereby guarantees that all persons or groups advertised as appearing in the Event shall in fact participate in the Event as advertised.

(f) Licensee agrees to pay Licensor the sum of Twenty Five Thousand ($25,000) Dollars as liquidated damages (and not as a penalty) for each and every violation of this Paragraph. Licensor may retain any monies due Licensee pursuant to Paragraph 23 of the Standard Terms and Conditions or otherwise to offset any such sums that may be due Licensor pursuant to this Paragraph. The foregoing shall not impair or diminish Licensor's rights to recover such larger damages as Licensor may suffer and prove, or limit or restrict any other legal or equitable remedy arising from a violation of this Paragraph.

(g) Licensee's failure to comply with any of the requirements of this Paragraph shall be deemed to be a material breach of this Agreement.

11. Special Liquidated Damages. Licensee agrees to pay Licensor the sum of Twenty Five Thousand ($25,000) Dollars as liquidated damages (and not as a penalty) for each performance during which any person appearing in the Event: (i) uses obscene language or gestures; or (ii) encourages members of the audience by words or action to leave their seats. Licensor may retain any monies due Licensee pursuant to Paragraph 23 of the Standard Terms and Conditions or otherwise to offset any such sums that may be due Licensor pursuant to this Paragraph. The foregoing shall not impair or diminish Licensor's rights to recover such larger damages as Licensor may suffer and prove, or limit or restrict any other legal or equitable remedy arising from a violation of this Paragraph.

12. Ticket Scale. Ticket scale as determined by Licensee shall be

13. Remote and Telephone Ticket Sales Requirements. Licensee acknowledges and agrees that the remote and telephone ticket sales requirements for the Event will be satisfied by such party as may be contractually authorized by Licensor to satisfy such requirements.

14. Portal Boxes. Licensor reserves the right to sell seating to the Event in the Portal Boxes of the Arena to its designees, such sales to be made at a price per seat to be mutually determined by Licensor and Licensee. The proceeds from such sales shall be paid to Licensee by
Licensor pursuant to Paragraph 23 of the Standard Terms and Conditions. In the event that Licensor does not sell any or all of such seating at least seven (7) days prior to the first performance of the Event, such unsold seating shall be returned to Licensor's box office for sale to the general public.

15. **Supplemental Seating Requirements.**

   (a) Licensor shall have the right to reserve and purchase up to seven hundred and fifty (750) seats for the Event for its own use or the use of its designees (exclusive of the complimentary seating reserved for the use of Licensor or its designees) as described in Paragraph 1 hereof. In the event that Licensor does not use any or all of such seating prior to the Event, it shall be made available to Licensor's box office for sale to the general public.

   (b) Licensee shall have the right to receive up to two hundred (200) complimentary tickets for the Event at locations determined by Licensor within its sole discretion. Such tickets shall be for Licensee's own use. Licensee shall not sell, trade or barter any of such tickets or otherwise receive consideration for the same. Any of such tickets not used by Licensee shall be delivered to Licensor's box office for sale to the general public at least forty-eight (48) hours prior to the applicable performance of the Event.

   (c) Upon written notice to Licensor by Licensee in advance of the public sale of tickets to the Event, Licensor shall reserve up to four hundred (400) tickets for each performance of the Event for sale to Licensee in such price category as Licensee may select. The precise location of such tickets shall be mutually determined by Licensor and Licensee.

   (d) Upon written notice to Licensor by Licensee and subject to availability, an additional amount of up to six hundred (600) tickets for the first performance of the Event shall be reserved for sale to Licensee, in locations to be selected by Licensor. Subject to availability, an additional amount of up to three hundred and fifty (350) tickets shall be reserved for sale to Licensee for each subsequent performance of the Event, if any, consistent with the prescriptions set forth above.

   (e) Any sales to Licensee or its designees of tickets to the Event in amounts greater than those set forth above shall be requested in writing by Licensee and shall be subject to the approval of Licensor, which may be withheld within its sole discretion.

   (f) Licensee covenants to Licensor that all resales of tickets to the Event by Licensee or its designees, if any, shall be made in strict compliance with applicable Federal, state and local laws, rules, regulations and other directives relating thereto.

16. **Laser, Pyrotechnic Devices, etc.** Licensee hereby agrees that with respect to the use of any and all laser and pyrotechnic devices to be operated in connection with the presentation of the Event, if any, it shall comply with all laws, rules, regulations, prescriptions, criteria and policies of all Federal, state and local authorities or agencies applicable thereto. Licensee shall deliver all supporting documentation confirming Licensee's compliance with the above
requirements at least seven (7) days prior to the first performance of the Event. Notwithstanding all of the foregoing, Licensee shall not use any laser and/or pyrotechnic devices whatsoever without the prior written consent of the Licensor, which may be withheld within its sole discretion.

17. Certain Concession Sales. Licensee shall provide to Licensor or its designees a first-class program and/or other souvenirs to be sold at the Event by Licensor or its concessionaire in such quantity and at such prices as Licensor or such concessionaire and Licensee shall jointly determine. Licensor shall require its concessionaire to pay to Licensee within a reasonable time after the Period sixty (60%) percent of Net Concession Revenues from the Event. The term "Net Concession Revenues" as used herein shall mean the entire proceeds derived from the sale or distribution of such programs and/or souvenirs, less (a) all Federal, state and local taxes thereon; (b) all costs of selling such programs and/or souvenirs; (c) actual out-of-pocket costs incurred in the retention of private security personnel hired by Licensor or its concessionaire to enforce a permanent injunction prohibiting the sale of unauthorized merchandise in and around the Building, currently estimated to be $_______ per performance; and (d) any returns, discounts or similar such items.

18. Guest Services Announcements. Licensee hereby agrees to permit Licensor to use Licensee's sound system at the Event for the purpose of: (i) making a brief taped or live welcoming announcement no later than five (5) minutes prior to the commencement of the performance; and (ii) making, from time to time during the Event, any other announcements which Licensor shall reasonably deem necessary in the event of a delay or non-appearance of any performer scheduled to appear in the Event or any other extraordinary circumstances occurring during the Event which may affect the guests attending the Event.

19. Merger Clause. This Agreement supersedes any and all other agreements, written or oral, between the parties hereto, and constitutes the entire agreement between such parties, with respect to the subject matter hereof. Accordingly, this Agreement may not be altered, amended, modified or otherwise changed, except by a document in writing signed by the parties.
IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed the day and year first above written.

LICENSOR

BY: __________________________

LICENSEE

BY: __________________________
1. No weapons of any kind or nature will be permitted to be brought into the Building and Licensor shall have the right, in its sole discretion, to request an advance weapon check for any person entering the Building. Any person found carrying a weapon will not be permitted to enter the Building.

2. It is hereby understood and agreed that Licensor, in its sole discretion, shall be entitled to utilize special security equipment anywhere in the Building, including, but not limited to, any entrances to be utilized by the public or Licensee or its employees, agents or backstage guests. In any such case, Licensee shall be responsible for all costs and expenses incurred in connection therewith.

3. Notwithstanding anything to the contrary contained herein, the parties hereto acknowledge that if the performance runs later than one hour after the scheduled conclusion time (such hour is sometimes hereinafter referred to as the "Grace Period") pursuant to Paragraph 2 of the Agreement, Licensee agrees to pay to Licensor the amount of $_________ for each hour (or portion thereof) that such performance runs later than the Grace Period.

4. The headline act (but no other act) shall be allowed, for personal security purposes and at its or Licensee's sole cost and expense, to admit up to four (4) of their own personal security officers to the backstage area. The specific function of such personal security officers must be clearly defined and approved in writing by Licensor prior to the Event. Notwithstanding the foregoing, the backstage area security shall be subject to the ultimate authority and control of Licensor's security.

5. In no event shall the Licensee, or any designee, employee or independent contractor of the Licensee, take any action or fail to take any action in connection with the Event that would or might interfere with or deleteriously affect any existing union jurisdictional arrangement relating to the Premises, or otherwise interfere with or deleteriously affect the regular business operations of the Licensor.

6. Licensor reserves the unilateral right to turn on the house lights at any time during the performance.

7. As between the parties, any and all security requirements or problems will be brought to the attention of, and will be subject to the ultimate authority and control of, Licensor's security personnel.

8. If the opening act or any subsequent act is not prepared to perform at its scheduled time, the Licensee shall use its best efforts to put the following act on stage as soon as possible.

9. Licensee or its duly authorized representative or employee must be present at the Premises during the period commencing not later than three (3) hours prior to the scheduled start of the performance and ending upon the completion of such performance. Licensee
acknowledges that such representative or employee shall have the authority to make all
decisions on its behalf regarding the Event in Licensee's absence. Licensor shall be entitled to
rely upon the decisions of Licensee or such representative or employee, and shall be entitled to
make such decisions itself if Licensee or such representative or employee is not present or fails
to render a decision on any appropriate matter. In any such case, Licensee hereby waives and
releases Licensor from all compensation or claims for damages resulting from Licensor's reliance
upon the decisions of Licensee or such representative or employee, and/or Licensor's own
decisions when acting in the absence of Licensee, or when Licensee or such representative or
employee fails to render a decision as contemplated hereunder.
License Agreement Standard Terms and Conditions

1. No Representations by Licensor. Neither Licensor nor Licensor's employees or agents have made any representations or warranties with respect to the Premises, and Licensee has examined the Premises and is satisfied with the condition, fitness and order thereof. Commencement of the use of the Premises by Licensee shall be conclusive evidence against Licensee that the Premises were in good repair and in satisfactory condition, fitness and order when such use commenced.

2. Assignment. Licensee shall not assign, transfer, hypothecate or encumber, directly or indirectly, this Agreement (including without limitation the sale or other transfer of majority equity ownership of Licensee) and shall not permit the Premises or any part thereof to be used or occupied by others without the prior written consent of Licensor.

3. Requirements of Law, Fire Insurance, etc. Licensee shall comply with the requirements of all laws, orders, regulations, directives and prescriptions of Federal, state, county and municipal authorities which shall impose any duty upon Licensor or Licensee with respect to the Premises (including, without limitation, any requirement under the Americans with Disabilities Act to provide certain auxiliary aids or services or access to tickets for purchase by persons with disabilities in connection with the Event). Licensee shall comply with all rules, orders, regulations or requirements of the Board of Fire Underwriters or any comparable body and shall not do or permit anything to be done in or about the Premises or the Building or bring or keep anything therein which shall increase the rate of fire insurance on the Building or on property located therein. No gasoline, acetylene or other fuel or combustible will be admitted to the Building without the approval of Licensor and the Bureau of Combustibles of the Fire Department; provided however, that under no circumstances whatsoever shall propane be admitted to the Building. Any decorating or other work, and the material therefor, done or furnished by Licensee shall be subject to approval by Licensor and the Fire Department and, unless so approved may be prevented or removed by Licensor. All decorations and other combustible materials must be fire-proofed, and Licensee shall deliver to Licensor a flame-proofing certificate in the form specified or required by and satisfactory to the Fire Department or any other agency of the City of New York having jurisdiction with respect thereto. No cut evergreens shall be permitted in the Premises or the Building.

4. Alterations, Signs, etc. Licensee shall not mark, paint, drill into or in any way mar or deface any part of the Premises or the Building. Licensee shall not display or erect any lettering, signs, pictures, notices or advertisements upon any part of the outside or inside of the Building or make any alterations or improvements in or to the Premises or the Building without the prior written consent of Licensor.

5. Use of Services and Facilities. Licensee acknowledges that besides the use of the Premises as contemplated by this Agreement, the Building and various parts thereof may or will be used for the installation, holding or presentation, and removal of activities, events and engagements other than the Event, and that in order for the Building to operate as efficiently as
practicable it may or will be necessary for the use or availability of services and facilities of the Building, including without limitation entrances, exits, truck ramps, receiving areas, marshalling area, storage area, passenger and freight elevators and concession areas, to be scheduled or shared. Licensee agrees that Licensor shall have full, complete and absolute authority to establish the schedule for the use and availability of such services and facilities and to determine when and the extent to which the sharing of any such services and facilities is necessary or desirable, and Licensee agrees to comply with any schedules so established and to cooperate in any sharing arrangements so determined. In no event shall Licensee enter or use any area, part, service or facility of the Building other than the Premises without first obtaining Licensor's consent.

6. **Entrances, Watchmen, etc.** The entrances and exits of the Premises shall be locked as Licensee may direct, subject to Licensor's prior approval. Licensee shall at its expense at all times maintain watchmen designated by Licensor at all exits and entrances when such exits and entrances are unlocked. Articles, fittings, fixtures, materials and equipment shall be brought into or removed from the Building only at entrances and exits designated by Licensor. No vehicle which with its contents weighs more than fifteen (15) tons shall be permitted by Licensee to enter the Building without the prior consent of Licensor. The total number of vehicles which may enter the Building at any one time shall be conclusively determined by Licensor.

7. **Removal of Disorderly Persons, etc.** Licensee hereby appoints Licensor, or any servant, employee or agent of Licensor, as Licensee's agent to refuse admission to or cause to be removed from the Premises or the Building any undesirable person. Any artisans or workmen employed by Licensee shall be under the general supervision and control of Licensor (but not as an agent or servant of Licensor) while on the Premises or in the Building and may be refused entrance to or ejected from the Premises and the Building by Licensor for non-compliance with any provision of this Agreement or for objectionable or improper conduct without any liability on Licensor's part for such refusal or ejectment.

8. **Rules and Regulations.** Licensee shall, and shall cause its servants, agents, employees, licensees, patrons and guests to, abide by such reasonable rules and regulations as may from time to time be adopted by Licensor for the use, occupancy and operation of the Premises and the Building.

   No collections, whether for charity or otherwise, shall be made or attempted without the prior written consent of Licensor.

9. **Destruction, Fire, Demolition, Alteration, etc.**

   (a) If the Premises or any portion of the Building is destroyed due to any reason beyond the control of Licensor prior to or during the Period to an extent that, in Licensor's opinion, which shall be conclusive, the Premises cannot be used by Licensee as provided herein, this Agreement shall cease and terminate, in which event, as Licensee's sole and exclusive remedy with respect to such termination, the amounts payable by Licensee to Licensor under the paragraph in this Agreement headed "Consideration" shall be pro-rated to the time of such
cessation and termination and shall be paid by Licensee to Licensor. Licensee hereby waives and releases Licensor from all damages, compensation or claims for damages to any person or property caused by such destruction.

(b) If the Premises or any portion of the Building is demolished by Licensor, or is scheduled to be demolished by Licensor, or if Licensor elects to cease utilizing the Building for the purposes contemplated under this Agreement, prior to or during the Period to the extent that, in Licensor's opinion, which shall be conclusive, the Premises cannot or will not be used by the Licensee as provided for herein, this Agreement shall cease and terminate and all payments previously made by Licensee to Licensor hereunder shall be promptly refunded as Licensee's sole and exclusive remedy with respect to such termination. Licensor shall deliver written notice to Licensee no later than ninety (90) days prior to the Event stating that such demolition or election to cease utilizing the Building has taken place or is scheduled to take place. Licensee hereby waives and releases Licensor from all damages, compensation or claims for damages to any person or property caused by such demolition or election to cease utilizing the Building.

(c) If the Premises is altered by Licensor, or is scheduled to be altered by Licensor, prior to the Period, so as to change materially its size or nature, Licensor shall deliver to Licensee written notice thereof no later than sixty (60) days prior to the Event. Either party hereto shall have the right to terminate this Agreement and all of their respective rights and obligations hereunder within ten (10) days following Licensee's receipt of such written notice that such alteration has taken place or is scheduled to take place. It is specifically acknowledged and agreed that if any such notice of termination is not delivered within such time period and in accordance with the terms hereof, this Agreement shall remain in full force and effect, on all of the terms and conditions contained herein, irrespective of such altered condition of the Premises. Licensee hereby waives and releases Licensor from all damages, compensation or claims for damages to any person or property caused by such alteration, whether or not this Agreement is so terminated.

(d) Licensee agrees that all of its property and any property of others brought or permitted by it upon the Premises or in the Building shall be at the risk of Licensee and that Licensor shall not be liable to Licensee for any loss or damage due to theft, cleaning, steam, electricity, gas, water, rain, snow or ice which may leak or flow from or into any part of the Building, from fire or explosion, or from any other similar or dissimilar cause whatsoever and Licensee hereby indemnifies Licensor for any such loss or damage.

10. **End of Period, etc.** Upon the expiration of the Period or the termination of this Agreement for any reason whatsoever prior to the expiration of the Period, Licensee shall immediately quit and surrender the Premises to Licensor. Upon such quitting and surrender, the Premises shall be in the same condition of cleanliness as at the beginning of the Period and in good order, ordinary wear excepted. Licensee shall promptly remove from the Premises and the Building any goods or chattels brought or permitted in the Premises or the Building. In addition to any and all other remedies available to Licensor at law or equity for non-compliance with the provisions of this paragraph, Licensee shall pay to Licensor as liquidated damages for each day or portion thereof during which the Premises are not surrendered or such goods or chattels are
not removed a sum equal to three times the amount equal to the daily average amount payable by Licensee under the paragraph in this Agreement headed "Consideration," which daily average amount shall be computed on the basis of the aggregate amount payable by Licensee to Licensor under such paragraph headed "Consideration" and the number of days or pro-rata part thereof that Licensee was entitled to use the Premises hereunder. At the end of the Period, Licensor shall have the right, but not the obligation, in addition to any other rights provided by law or elsewhere in this Agreement, to remove (and, if appropriate, store) the property of Licensee and any third parties occupying the Premises or the Building pursuant to this Agreement in such manner as it may deem reasonable under the circumstances. All costs resulting from the removal (and, if appropriate, storage) of such property shall be borne exclusively by Licensee, and Licensor shall have the right to retain box office receipts or any other funds otherwise payable to Licensee in satisfaction of such costs. Licensor shall incur no liability whatsoever in connection with such removal (and, if appropriate, storage), except for acts of willful malfeasance on its part.

11. Concessions. Licensor reserves and retains to itself and its assignees, licensees and designees the privilege of using such parts of the Premises as in its opinion, which shall be conclusive, are necessary or desirable for or to the operation of all concessions in the Premises and in the Building, including the concessions of checking clothing and other personal property and the sale of any and all items, including without limitation, drinks, food, tobacco products, programs and souvenirs, which privileges are reserved and retained by Licensor for the benefit of itself or its assignees, licensees or designees.

12. Access. Licensor, its officers, directors, servants, employees, agents, concessionaires, and its concessionaires' servants, employees and agents shall at all times have free access to the Premises upon presentation of identification issued to them by Licensor.

13. Announcements. Licensor, at such reasonable time or times as it may deem appropriate, may announce, describe and advertise over the sound system in the Premises, including without limitation announcements, descriptions and advertisements concerning other events being or to be held in the Premises, in other parts of the Building or elsewhere, and Licensor reserves and retains the right to use and may use the sound system and display advertising capabilities and facilities in the Premises in any manner which in its opinion, which shall be conclusive, is desirable or appropriate, provided that such announcements, descriptions, advertisements and use do not materially disrupt or interfere with the Event.

14. Air Conditioning and Light. Licensor shall furnish air conditioning, including heat and air cooling, to the Premises with the permanent equipment with which the Building is equipped at such times and in such amounts as shall be reasonably necessary in Licensor's opinion, which shall be conclusive, for the use and occupancy of the Premises and shall furnish illumination to the Premises at reasonable hours with the permanent equipment ordinarily used (not including spotlights or special television lighting) with which the Premises are equipped, except when prevented by strikes, labor disputes, accidents or other similar or dissimilar causes beyond the reasonable control or prevention of Licensor and except during the repairing of equipment and apparatus in the Building which is provided for such air conditioning and
illuminating purposes. If any other services, including without limitation water and electricity, are furnished by Licensor to Licensee, Licensor shall in no event be liable for a failure to provide such services when prevented by strikes, labor disputes, accidents or similar or dissimilar causes beyond the reasonable control or prevention of Licensor or during the repairing of equipment or apparatus in the Building which is provided by Licensor for such purposes.

15. Working Press Procedures. Licensor reserves the right to:

(a) assign working-area perimeters for all photographic coverage of the Event by members of the press, including newspaper, magazine, wire service and related personnel; and to restrict the number of such personnel which may be accommodated at the Event;

(b) permit photographic coverage by such members of the press as Licensor, in its sole opinion, deems appropriate;

(c) allocate seat locations for all reporters, critics, reviewers and other working press personnel. If not used for the accommodation of media representatives, such seat locations will be released for sale with the proceeds of such sales to be distributed in accordance with the terms of this Agreement;

(d) accredit and assign locations for newsfilm coverage of the Event, expressly providing for a two-minute limitation upon the use of such film footage for general news purposes;

(e) require a declaration, in writing, on the part of Licensee as to the policy it wishes to establish with respect to entrance into non-public locations (e.g., dressing room areas) by working press personnel; and further require that this declaration be delivered to Licensor not later than seventy-two (72) hours prior to the commencement of the Period. In the event that Licensee does not furnish such written declaration as herein provided, Licensor shall have absolute discretion in determining the policy for entrance into all such non-public locations by working press personnel;

(f) require distinctive identification for all members of the working press to be permitted access to non-public locations. The form of such identification shall be subject to the prior approval of Licensor;

(g) direct its security personnel to enforce fully all of the foregoing; and

(h) inform all designated press representatives of the above requirements.


(a) if before or during the Period (i) Licensee makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, (ii) a receiver or trustee is appointed for Licensee or Licensee's property, (iii) execution is issued pursuant to a judgment
rendered against Licensee, (iv) this Agreement is assigned, passed to or dissolves upon any
person, firm or corporation other than Licensee or Licensee attempts to assign this Agreement in
violation of the provisions of Paragraph 2 of these Standard Terms and Conditions, (v) use of the
Premises for any of the purposes specified under the paragraph in this Agreement headed
"License" is forbidden or suspended temporarily by competent public authority, (vi) Licensee
defaults in the performance or observance of any of its obligations or agreements contained
herein, including the agreement to make payments as provided herein, or (vii) Licensee vacates
or deserts the Premises (in which case surrender of the keys shall not be necessary to constitute
vacation or desertion), then, in any such event, this Agreement shall, at Licensor's option
expressed in a 12-hour written notice to Licensee, expire as fully and completely as if such date
and time of expiration were the date and time definitely fixed herein for the expiration of the
Period and of this Agreement, and Licensee shall then quit and surrender the Premises to
Licensor, but Licensee shall remain liable as hereinafter provided.

(b) Licensor or any other person by its order may immediately upon the
expiration of this Agreement as provided in subparagraph (a) above, or at any time thereafter,
enter the Premises and remove all persons and all or any property therefrom by summary
dispossess proceedings, or by any suitable action of proceeding at law, or by force or otherwise,
without being liable to indictment, prosecution or damages therefor, and possess and enjoy the
Premises together with all additions, alterations and improvements thereto. In any case where
pursuant to the provisions of this Agreement or by summary proceedings or otherwise this
Agreement expires or is terminated before the date and time definitely fixed herein for the
expiration of the Period and this Agreement, and in all cases of entry by Licensor, Licensor may,
but shall not be required to, relicense or let the Premises or any part or parts thereof, as the agent
of Licensee or otherwise, at any time or times during the Period, for whatever compensation or
rent Licensor shall obtain. Licensee shall, whether or not the Premises are relicensed or let, be
and remain liable for, and Licensee hereby agrees to pay to Licensor as damages, an amount
equal to all amounts payable by Licensee to Licensor hereunder, less the amount thereof already
paid and the net avails of relicensing or letting, if any, remaining after deducting the expense
which Licensor may incur in entering and relicensing or letting, and the same shall be due and
payable by Licensee to Licensor at the times specified herein for payments by Licensee to
Licensor hereunder. Licensee hereby expressly waives (I) the service of notice of intention to
enter and any and all right of redemption, (II) to the extent permitted by law, the service of the
10-day notice to quit provided for in Section 713 of the Real Property Actions and Proceedings
Law of New York, and (III) all rights to trial by jury in any proceedings hereafter instituted by
Licensor against Licensee in respect to this Agreement. Licensee also agrees that if Licensor
commences any summary dispossess proceeding against Licensee, Licensee shall not interpose
any counterclaim of whatever nature or description in any such proceeding. The words "enter"
and "entry" as used in this Agreement are not restricted to their technical legal meanings.

(c) In the event of a breach or threatened breach by Licensee of any of its
agreements or obligations hereunder, Licensor shall have the right of injunction and the right to
invoke any remedy allowed at law or in equity or otherwise as if entry, summary proceedings or
other remedies were not provided for herein.
(d) In the event of entry by Licensor, Licensor at its option may store at the cost of Licensee any personal property of Licensee or its servants, employees and agents then in the Premises or in the Building, or, in the alternative, as determined by Licensor in its sole discretion, thereafter dispose of such property in any way it sees fit, upon 5 days notice in writing to Licensee. If Licensor shall sell such personal property, it shall be entitled to retain from the proceeds thereof the expense of the sale and the cost of the storage.

(e) The filing of a voluntary petition in bankruptcy by Licensee before or after commencement of the Period, whether for the purpose of seeking a reorganization or otherwise, or the admission in writing by Licensee of its inability to pay its debts generally as they become due shall constitute a breach of this Agreement, and in either such event this Agreement shall forthwith terminate without notice, entry or any other action by Licensor. Notwithstanding any other provisions of this Agreement, Licensor shall forthwith upon termination be entitled to recover as its stipulated damages for such breach an amount equal to the amount payable by Licensee to Licensor under this Agreement for the remainder of the Period, and in any such case Licensor may file and prove its claim for such damages against the successor(s)-in-interest to Licensee.

17. Remedies, Cumulative, No Waiver.

(a) Reference in this Agreement to any particular remedy shall not preclude Licensor from any other remedy at law or in equity. Licensor's failure to seek redress for violation of, or to insist upon strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. No provision of this Agreement shall be deemed to have been waived by Licensor unless specific waiver thereof by Licensor shall be in writing.

(b) If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability and invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced as if such provisions had not been included, or had been modified as above provided, as the case may be.

18. Additional Expenses. Any expense or damage which Licensor may incur or sustain by reason of Licensee's non-compliance with any of the provisions of this Agreement shall be due and payable by Licensee to Licensor pursuant to the provisions of Paragraph 23 of these Standard Terms and Conditions.

19. Payment Restrictions. If any monies become due under this Agreement from Licensor or the ticket seller then in charge of Licensor's box office to Licensee or any permitted assignee or licensee of Licensee, and payment or transfer thereof is, or appears to Licensor to be, subject to Federal or other governmental licensing, withholding or other restrictive regulations, neither Licensor nor said ticket seller shall be obligated to pay over or transfer said monies
unless and until Licensor shall have been satisfied by Licensee that Licensor or such ticket seller may lawfully pay over or transfer such monies in compliance with such regulations, and any such payment or transfer of any such monies shall be subject to withholding if required under any such regulations.

20. **Not Partners, Agents Nor Joint Venturers.** Except as otherwise expressly provided for herein, nothing contained in this Agreement shall be deemed to constitute Licensor and Licensee partners, agents or joint venturers with each other or with any other party.

21. **Ancillary Rights.** Licensee and Licensor hereby agree that there shall be no electronic media exploitation of the Event whatsoever by either party to the Agreement without the prior written consent of both parties hereto. As used in the preceding sentence, the term "electronic media exploitation" shall be defined as the exploitation of the Event, to or at any point throughout the universe, whether on a live, delayed or other basis, through any means of signal distribution, exhibition or recordation now known or hereafter created including, but not limited to: standard commercial or noncommercial over-the-air television or radio broadcast, cable television, "over-the-air" subscription or pay television, pay cable television, direct-by-satellite (DBS) television, master antenna television, closed-circuit television, pay-per-view television, hotel, motel or hospital room service; and all cassette, disc and multipoint distribution service exhibitions, all on a subscription, license, rental, sale, or any other basis.

22. **Licensee's Failure To Make Timely Payments.** In the event that Licensee should not make timely payments to Licensor in strict accordance with the payment schedule set forth in Paragraph 3 of this Agreement, Licensor reserves the unilateral right to cancel the Event upon written notice to Licensee without waiving any other rights or causes of action which it may have against Licensee pursuant to this Agreement.

23. **Box Office Receipts, Service Charges, etc.** All ticket sales relating to Licensee's use of the Premises under this Agreement shall be made by Licensor or its authorized designees at such locations, through such mediums and at a scale of prices approved by Licensor, and the box office and other receipts (including, without limitation, any deposit and other sums paid by Licensee to Licensor, with respect to the Event, in advance of and upon the execution hereof, or otherwise) after taxes and credit card charges payable to third parties shall be held by Licensor and applied in payment of all sums of money which are or may become due from Licensee to Licensor by reason of Licensee's use of the Premises or for any other reason or under any other circumstances whatsoever. Any surplus remaining shall first be applied by Licensor in satisfaction of any remaining obligation or liability of Licensee to Licensor or any third party under this Agreement or otherwise. The aforesaid applications shall be deemed to have been made as and when said amounts become due, irrespective of the date upon which such applications shall be made upon the books of Licensor. Within a reasonable time after the Period, Licensor shall furnish to Licensee a statement showing all receipts relating to Licensee's use of the Premises hereunder and application of the same, and Licensor shall pay to Licensee (or Licensee shall pay to Licensor, as the case may be) such monies as shall be due as shown on such statement. Licensee agrees to examine such statement and to notify Licensor in writing of
any error in the account or of any objection to any charge within 30 days after the delivery or mailing of such statement, and unless Licensee shall notify Licensor of such claimed error or objection within 30 days, such statement shall be deemed to be a true, correct and final statement of the account between Licensor and Licensee. Licensee agrees to pay Licensor promptly any amounts shown to be due Licensor on such statement which are not paid by the application of box office or other receipts. In the event Licensee does not promptly pay any amounts shown to be due Licensor on such statement, then Licensor shall impose and Licensee shall be liable for and pay interest charges on such delinquent amount at the rate of eighteen (18%) percent per annum (or the maximum rate legally permissible, if less) commencing with such date and ending upon the payment of such delinquent and accrued interest.

24. **No Refund.** If Licensee shall for any reason fail to occupy or to use the Premises as provided in this Agreement, no refund shall be made of any amounts paid by Licensee to Licensor hereunder, and the aggregate amount payable by Licensee to Licensor hereunder, including any disbursements or expenses incurred by Licensor in connection herewith, shall be payable by Licensee to Licensor.

25. **Force Majeure.** If the Event cannot take place, in whole or in part, because of Act of God, national emergency, war, labor dispute or any other similar or dissimilar cause beyond the reasonable control of Licensor, Licensor shall have no obligation or liability to Licensee as a result thereof. In addition, with respect to any and all services, whether furnished by Licensor to Licensee with or without charge, Licensor shall in no event be liable for a failure to provide such services, or for the acts or omissions of any person or entity with respect to such services, resulting from strikes, labor disputes, accidents or any other causes whatsoever beyond the reasonable control of Licensor.

26. **Welding, etc.** Licensee represents and warrants that all welding relating to trusses or comparable fixtures in the Premises to be utilized by Licensee during the Event shall be performed or supervised by a licensed or other state-qualified welder. In connection with any trusses and hanging sound systems, Licensee shall submit to Licensor at least ten (10) days prior to the first performance of the Event relevant welding certificates and drawings approved by a state-licensed engineer. Notwithstanding all of the foregoing, all welding relating to the Event shall be subject to the prior approval of the Licensor (which may be withheld within its sole discretion).

27. **Club Suites.** Licensor reserves the right to sell, license or rent boxes designated as the Club Suites, which have been constructed above the Building's mezzanine level. All such proceeds shall be the sole property of Licensor.

28. **Admission to Non-Public Locations.** In order to promote the safety of all persons attending, or participating in, the Event, Licensor reserves the right to control the number of persons (including working-press personnel) admitted to non-public locations of the Building throughout the Period.
29. **Performers.** Licensee shall deliver to Licensor a list of all persons appearing in the Event at least thirty (30) days prior to the first day of the Period. The appearances of such persons in the Event shall be subject to Licensor's prior approval, which shall not be unreasonably withheld.

30. **Use of Name and Likeness.** Licensor shall have the right to use the name, picture, likeness, trademark and/or logo of Licensee and all persons appearing in the Event for purposes of advertising, promoting or publicizing the Event or Licensor or its affiliates, provided that such use does not constitute the direct endorsement of a product or service without the prior consent of the parties involved.

31. **Law of New York.** This Agreement shall be construed in accordance with the law of the State of New York applicable to agreements made and to be performed wholly therein.

32. **Notices.** A bill, statement, notice or communication which may be required hereunder, including any notice of termination or expiration, shall be deemed sufficiently given or rendered if in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or by any means of express mail with confirmed delivery receipt, addressed to the appropriate party at the address set forth in this Agreement. The time of rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is so delivered or mailed to the receiving party.

33. **Definitions.** The terms capitalized in these Standard Terms and Conditions shall have the same meanings as set forth in the Agreement to which these Standard Terms and Conditions are attached.

34. **Headings.** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

35. **Equal Employment Opportunity Clauses.** The Equal Opportunity Clauses as set forth in Sections 60-1.4, 60-250.4 and 6D-741.4 of the Rules and Regulations of the Office of Federal Contract Compliance, Department of Labor, issued pursuant to section 201, Executive Order 11246, as amended, relative to Equal Employment Opportunity, and any successors thereto, are specifically incorporated herein by reference.
LITERATURE OPTION/PURCHASE AGREEMENT

As of ______________________

[ADDRESS]

Dear ________________:

This letter will serve to set forth the basic terms of the agreement (the “Agreement”) between _____________________________ (“PRODUCER”) and AUTHOR (“Author”) regarding PRODUCER’s option to acquire certain rights in and to the unpublished novel written by Author entitled “______________________” (which, together with the title, themes, content, characters, and any other versions thereof, shall be referred to herein as the “Property”). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Option.

   (a) (i) In consideration of the sum of ________________ Thousand Dollars ($XX,000) (the “Initial Option Payment”), Author hereby grants to PRODUCER the exclusive and irrevocable option to acquire such rights in and to the Property as are set forth in Section 3 below (the “Option”). PRODUCER shall have the right to exercise the Option at any time on or before [option expiration date] (the “Initial Option Period”). PRODUCER shall remit the Initial Option Payment to Author within ten (10) business days after the execution of this Agreement. If PRODUCER exercises the Option pursuant to Section 1(a)(i), the Initial Option Payment shall be applied against, and shall reduce, the Purchase Price (as defined in Section 2 below) to be paid by PRODUCER for the rights to the Property granted hereunder.

   (ii) PRODUCER may extend the Option for an additional period of twelve (12) months (the “Second Option Period”) by giving written notice thereof to Author on or before [option expiration date]. In the event that PRODUCER so extends the Option, PRODUCER shall pay Author the additional sum of ________________ Thousand Dollars ($XX,000) (the “Second Option Payment”). PRODUCER shall remit the Second Option Payment to Author within ten (10) business days after the expiration of the Initial Option Period. The Second Option Payment shall not be applied against and shall not reduce the Purchase Price hereunder.

   (iii) The Initial Option Period and, if applicable, the Second Option Period shall be referred to herein, collectively, as the “Option Period.”

   (b) The Option shall be exercised, if at all, by PRODUCER by the delivery of written notice thereof to Author at any time during the Option Period. Alternatively, the Option shall be deemed exercised if PRODUCER commences principle photography of any motion
picture pursuant to the rights detailed in paragraph 3.A. below. In the event of such exercise, PRODUCER shall pay Author the Purchase Price (less any Initial Option Payment previously paid) within ten (10) business days thereafter.

(c) During the Option Period (and thereafter, if the Option is exercised), PRODUCER shall have the right to engage in development and/or pre-production activities with respect to any and all productions permitted hereunder which are based on the Property. It is hereby agreed and acknowledged that any materials (literary or otherwise) prepared by or on behalf of PRODUCER, as between PRODUCER and Author, shall remain the sole and exclusive property of PRODUCER.

(d) If the Option is not exercised prior to the expiration of the Option Period, then the Option shall be deemed to have expired and all rights granted hereunder to PRODUCER shall automatically revert to Author free and clear of any lien, encumbrance or claim on the part of PRODUCER; provided, however, that, as between Author and PRODUCER, PRODUCER shall continue to own all materials developed by it, including, without limitation, any screenplays based upon the Property which may have been written at the request of, or commissioned by, PRODUCER; provided further, however, that PRODUCER shall have no right to exploit any of such materials except to the extent that PRODUCER either has the right to do so as a member of the general public or acquires such right pursuant to an agreement with Author (or Author’s successor, licensee or assign) subsequent to the expiration of the Option Period.

2. Purchase Price.

In the event that PRODUCER exercises the Option granted to it hereunder, PRODUCER shall pay Author the aggregate amount of ______________ Thousand Dollars ($XX,000) ("Purchase Price"), less any Initial Option Payment previously paid. Such purchase price balance of ______________ Thousand Dollars ($XX,000) shall be paid to Author within ten (10) business days after PRODUCER’s exercise of the Option.

3. Rights Granted and Reserved.

A Subject to the reserved rights set forth in paragraph 3.B. below, upon its exercise of the Option, PRODUCER shall acquire, worldwide, in perpetuity:

(a) The sole and exclusive right to make, produce, adapt and copyright motion pictures based, in whole or in part, on the Property, in such format as PRODUCER, in its sole discretion, may select (e.g., a continuous-length feature, a mini-series, a movie-for-television, a pilot, series episodes, etc.) (collectively, such motion pictures are referred to herein as the “Picture”), including the right to make, produce, adapt and copyright Sequels and Remakes of the Picture (the Picture and any Sequel thereto and Remake thereof shall be referred to herein, collectively, as the “Versions”). In addition, PRODUCER shall have the right to record and reproduce, and license others to record and reproduce, in synchronization with any such Version, spoken words taken from or based upon the text or theme of the Property, and any and all kinds of music, musical accompaniments and/or lyrics to be performed or sung by the performers in any such Version, and any and all other kinds of sound and sound effects. Any Version produced hereunder may be fixed on film, tape, disc, wire, microchip, videogram, audiovisual
cartridge, or cassette, or by any other technical process now known or hereafter devised, and in any and all sizes, gauges, colors and types;

(b) The right to exhibit, transmit, perform, rent, lease, distribute, project, cablecast, telecast, broadcast, sell, and/or otherwise exploit any Version produced hereunder, in any language, by any and all means, media, markets, methods, devices and/or technical processes, now known or hereafter devised, including, without limitation:

(i) In theaters and by any and all forms and means of theatrical exhibition (as that term is commonly understood in the motion picture industry), including, without limitation, exhibition before a paying audience;

(ii) in non-theatrical markets (as that term is commonly understood in the motion picture industry) and by any and all forms and means of non-theatrical exhibition, including, without limitation, on airlines, trains and/or ships for in-transit exhibition, at military bases, in military installations, at hospitals and Red Cross facilities, and before any other educational, institutional or other groups or organizations;

(iii) by any and all forms and means of television, whether now known or hereafter devised, including, without limitation, superstations, free over-the-air television syndication, free over-the-air network television, pay cable, basic cable, pay-per-view, satellite television, DBS, STV, SMATV, MATV, MDS and MMDS;

(iv) by any and all forms and means of video devices, whether now known or hereafter devised, including, without limitation, videograms, audiovisual cassettes, Laser Discs, DVD and all other so-called “home video” or other playback devices causing a visual image to appear on the screen of a television receiver or any other viewing device where the video device and viewing device are in immediate proximity to one another; and

(v) by any and all forms and means of electronic exploitation, including, without limitation, by any and all digital, optical and magnetic information storage and retrieval systems, floppy diskette-based software, CD-ROM, and compact discs, on-line electronic or satellite-based data transmission, and other such systems, in any configuration (including, without limitation, cartridge-based and/or digital), and any other device or medium for electronic reproduction, distribution or transmission, whether now known or hereafter devised;

(c) Without limitation of any of the other rights to be granted to PRODUCER hereunder, the right to broadcast and/or transmit, by means of television or radio, or any process
analogous thereto, now known or hereafter devised, any excerpt(s) from any of the Versions produced hereunder, solely for the purpose of advertising or publicizing such Version or any other Version(s);

(d) The unrestricted right to use Author’s name, likeness and/or biography solely in connection with the advertising and publicizing of any Version produced hereunder, provided that use in any commercial tie-ins and merchandising shall be limited to “billing block” usage only; in connection herewith, Author may submit photographs, likenesses, and a biography to PRODUCER for its good faith consideration for use, provided that failure to use is not a breach hereunder, and provided further that such materials must be submitted within 72 hours of request (or prior to request) or PRODUCER need not consider such materials;

(e) The right to utilize portions of any Version produced hereunder for the following purposes:

(i) To publicize any Version produced hereunder (e.g., via the use of trailers or previews);

(ii) In so-called “making of” programs related to any Version produced hereunder; and/or

(iii) In any program about motion pictures airing on PRODUCER Network, the primary purpose of which is to promote motion pictures produced by PRODUCER and its affiliated companies, including, without limitation, any Versions produced hereunder;

(iv) The screenplay publication rights (provided the entire screenplay may not be sold as a novel) and any “making of” book rights; and

(v) The right, in connection with and for the purpose only of advertising and exploiting the rights granted hereunder (not for commercial sale by PRODUCER to the general public), to publish or cause or permit to be published, in such form and in such publications as PRODUCER may select, and to copyright in its own name, excerpts, summaries, synopses sketches and/or other adaptations of, concerning or based upon the Property, not to exceed 7,500 words in length for each such publication; and provided further that such excerpts shall not be serialized or issued in multiple parts so as to have the practical result of publication of the entire Property.

B Reserved Rights:

(a) If the Option is exercised, then the following rights are hereby reserved by Author (the “Reserved Rights”), provided, however, that there shall be a Holdback on Author’s exploitation of Radio and Legitimate Stage rights, and PRODUCER shall have a Right of First Refusal in connection with such exploitation, all as detailed below:
(i) **Legitimate Stage:** All rights of production and use on the legitimate speaking stage by living actors appearing and performing in the immediate presence of an audience without any recordation, transmission or broadcast thereof intended for aural or visual reception at places away from the place of performance, subject to the holdback specified in subparagraph (v) below (“Holdback”);

(ii) **Publication:** All publication rights, including electronic publication (including but not limited to CD-ROM, CD-7 and other similar disc systems), internet publishing, print-on-demand, books on tape, and all other print and audio publication rights (including all rights to print, distribute sell and promote on-line verbatim text of the Property for personal computers and dedicated handheld reading devices or “ebooks”), subject solely, however, to the publication rights sold and assigned to PRODUCER pursuant to subparagraphs 3.A.(e)(iv) and 3.A.(e)(v) of this Agreement, above;

(iii) **Radio:** All radio rights, subject to the radio rights sold and assigned to PRODUCER hereunder pursuant to subparagraphs 3.A.(c), (d), and (e)(i) and subject to the Holdback;

(iv) **Live Television:** The right to broadcast the Property or adaptations thereof by television direct from living actors only on a so-called “one-shot” basis and not as part of a series of television programs, that is, with living actors performing simultaneously with such telecast (as distinguished from the right to televise motion pictures or to televise by the use of tape or other devices) [subject to PRODUCER’s right to broadcast by radio and/or television (by living actors, transcriptions and other present or future means) dramatic versions, sketches, scenes, adaptations and material (none of which shall exceed five (5) minutes of broadcast time) from or based upon the Property or any motion pictures or programs based thereon solely for advertising and exploitation purposes, pursuant to subparagraph 3.A.], and subject to the Holdback, and provided that any period during which there is in effect, in any particular country, a network television broadcasting agreement for a television motion picture or series based upon the Property or based upon any television motion picture produced in the exercise of the rights granted under this Agreement or using a character or characters or any other elements of the Property in whole or in part, plus twelve (12) months, shall be deemed also included in the Holdback in such country, whether or not such period occurs wholly or partly during or entirely after the expiration of the Holdback.
(v) **Author-Written Sequels/Prequels**: All rights to sequel or prequel novels written or authorized by Author, subject to the provisions of paragraph 13;

(vi) **Electronic Rights**: All electronic computer retrieval, microfiche and database rights, subject to the Holdback; and

(vii) **Other Rights**: All other rights not specifically granted to PRODUCER hereunder, subject to the Holdback.

(viii) **Holdback**: If Author’s exploitation of a particular Reserved Right is subject to a Holdback, then Author agrees not to exercise or authorize or permit the exercise of, or to sell, license or otherwise dispose of such Reserved Right in any country or territory until four (4) years after the general release or broadcast in such country or territory of the first motion picture or television program produced hereunder based upon the Property or until six (6) years after the date of this Agreement, whichever period shall first expire. After the expiration of such period, Author may sell, license or otherwise dispose of such Reserved Right, but only in the manner specified in subparagraph (vi) below.

(ix) **First Refusal**: If, after the expiration of the Holdback, Author has or receives any bona fide offer to purchase, license or otherwise acquire a Reserved Right other than publication rights, or any interest therein, and Author proposes to accept such offer, Author shall notify PRODUCER in writing of such offer, the name of the offer (the “Third Party”), the proposed purchase price and other terms of such offer; and for the period of fifteen (15) business days after PRODUCER’s receipt of such notice, PRODUCER shall have the exclusive option to purchase, license or otherwise acquire, as the case may be, such Reserved Right at the same purchase price and upon the same terms as are set forth in such notice. If PRODUCER elects to exercise such option, PRODUCER shall notify Author in writing of the exercise thereof within such fifteen (15) day period. PRODUCER may not be required to meet such terms which cannot be as easily met by one person as another, such as the required employment of a certain writer, star or director. If PRODUCER fails to notify Author within such period, Author may accept such bona fide offer made by the Third Party but only upon the terms theretofore offered by Author to PRODUCER. Notwithstanding PRODUCER’s failure to notify Author within such period, PRODUCER’s option hereunder shall revive and apply to all other offers relating to such Reserved Right received by Author so long as Author retains any interest in such Reserved Right. Author shall not submit such offers to PRODUCER more often than once during any yearly period following the expiration
of the Holdback. Any gratuitous license of rights reserved by Author in the Work (other than publication rights) shall be subject to the written approval of PRODUCER.

(x) No Interference: The foregoing reservation of rights by Author shall not be construed to prevent or interfere with PRODUCER’s exercise and enjoyment of any or all of the rights acquired by PRODUCER hereunder, and such rights may be exercised and enjoyed by PRODUCER at any and all times hereafter, whether or not in competition with any or all of the rights hereby reserved by Author.

4. Ancillary Rights/Fees.

(a) Television Series.

(i) Consultant Services: In the event a series is produced based upon any television pilot produced hereunder, Author shall be engaged on a pay-or-play basis as a Consultant on a non-exclusive basis on the series for all episodes produced for the first telecast season, for a fee of $__________ per episode produced, with a minimum guarantee of six (6) episodes (including any pilot as one episode). This engagement shall not extend beyond the first such season. Such fee shall be payable upon commencement of principle photography of each such episode.

(ii) Series Sequel Royalty: $__________ for each original episode (A) produced after the original order (tentatively intended to be a six episode limited series), if any, and (B) based upon the Property, payable upon commencement of principle photography of each such episode.

(b) Theatrical Release Bonuses.

(i) If, within five (5) years from the date of this Agreement, a motion picture based upon the Property is produced by PRODUCER or a successor-in-interest for initial exhibition in the theatrical market in lieu of the limited television series, Author shall receive a theatrical release bonus in an amount equal to 100% of the Purchase Price for the rights to the Property herein, plus an amount equal to the television consulting fee for six (6) episodes (i.e. a total bonus of $XX,000), payable upon such picture’s release; such bonus amount is in addition to the Purchase Price due pursuant to paragraphs 1.(b) and 2, even if such theatrically released motion picture is the first production hereunder; or

(ii) If, within five (5) years from the date the first television episode airs, but no later than seven (7) years from the date of this
Agreement, a theatrical motion picture based on the Property is produced by PRODUCER or its successor-in-interest for initial exhibition in the theatrical market after the limited television series is produced, Author shall receive a theatrical release bonus in an amount equal to 100% of the Purchase Price for the rights to the Property herein plus an amount equal to the minimum consulting fee for six (6) episodes (i.e. a total bonus of $XX,000), payable upon such picture’s release.

(iii) If, after five (5) years from the date the first television episode airs or any time after seven (7) years from the date of this Agreement, whichever is later, Author (on his own behalf or on behalf of a third party) or PRODUCER desires to have a theatrical motion picture produced based upon the Property, PRODUCER shall have in perpetuity a right of first negotiation and last refusal to negotiate the theatrical release bonus to be paid for each such production, as follows: the party desiring to so produce shall notify the other party in writing of such desire, and for the period of thirty (30) business days after such notice, the parties shall exclusively negotiate in good faith regarding the appropriate bonus payment for such theatrical motion picture (with the bonus amount of $XX,000 as set forth in subparagraphs (i) and (ii) above as a minimum for such negotiations), and with the amount of the bonus to be within industry standards and PRODUCER’s customary parameters). If the parties are unable to reach such an agreement, then Author shall have the right to negotiate with a third party for production of such theatrical motion picture, subject to PRODUCER’s right of last refusal.

PRODUCER may not be required to meet such terms which cannot be as easily met by one person as another, such as the required employment of a certain writer, star or director. PRODUCER shall have a good faith right of last refusal for fifteen (15) days from PRODUCER’s receipt of the full description of any bona fide third-party offer Author desires to accept, during which period of time PRODUCER shall have the right to match such offer. If PRODUCER fails to notify Author within such period or PRODUCER does not match the third party offer, Author may accept such bona fide offer made by the third party but only upon the terms theretofore offered by Author to PRODUCER. Notwithstanding PRODUCER’s failure to notify Author within such period or match such third party offer, PRODUCER’s rights hereunder shall revive and apply to all other offers relating to such theatrical productions received by Author based on the Property so long as Author retains any interest in such rights necessary for such production.
MFTs, MOWs, Miniseries.

For each “long-form”, non-series and non-theatrical television motion picture produced by PRODUCER based upon the Property (e.g. movies-for-television, miniseries, direct to home video project, etc.), other than the initial such picture if it is the first motion picture produced under this Agreement (for which the Purchase Price of paragraph 2 is paid), PRODUCER shall pay a Author a royalty of [$_________] per hour.

Theatrical Sequels/Prequels/Remakes.

For each motion picture based upon the Property that is produced by PRODUCER for initial exhibition in the theatrical market, subsequent to the initial such motion picture (e.g. sequel, prequel, remake), a bonus of $XX,000 shall be paid Author upon each such motion picture’s theatrical release.

Television Series Spinoffs.

For each original episode of any “spinoff” series produced by PRODUCER from any initial television series based upon the Property produced by PRODUCER hereunder, PRODUCER shall pay Author 50% of the Series Sequel Royalty specified in subparagraph 4.(a)(ii) above.

5. Author Restrictions.

Subject to Author’s Reserved Rights and possible reversion of PRODUCER’s rights, Author hereby agrees that, during the Option Period (and thereafter, in perpetuity, if the Option hereunder is exercised by PRODUCER), Author shall not authorize or permit any other individual or entity to make, produce, create, market, distribute, transmit or otherwise exploit any motion picture or program of any kind, whether long-form or short-form (e.g., made-for-television film, feature film, episodic series, one-shot television special(s), etc.), in connection with or based upon, in whole or in part, the Property hereunder, or utilizing, either generally or specifically, any of the principal characters therein, or any of the content, plot or themes thereof, for distribution in any audiovisual medium, forum or market (e.g., television, home video, theatrical, non-theatrical (as that term is commonly understood in the industry), personal computers, the internet, etc.).

6. Promotional Activities and Obligations.

(a) Author agrees to engage in such promotional activities, on behalf of the Picture, as PRODUCER, in its sole discretion, may determine. Such promotional activities may include, without limitation, promotional appearances, participation in press conferences, interviews with various print and electronic media, live and/or recorded on-line chats or events, and the like, and shall be subject to Author’s reasonable availability. PRODUCER shall provide Author with business class round trip travel and PRODUCER customary hotel and other related expenses directly pertaining to any of the appearances referred to above. However, no separate fee need be paid by PRODUCER for any such appearance(s). It is hereby agreed and acknowledged that PRODUCER shall have the unrestricted right to use Author’s name in
connection with any Version and any and all on-air and off-air promotional activities engaged in by PRODUCER on behalf of any Version hereunder.

(b) Author agrees that he shall provide a “link” to PRODUCER’s (or its designate assignee’s or licensee’s) Web site from any Web site that he maintains, in order to promote PRODUCER’s (or its assignee’s) production(s) of any Version produced, and that he shall use his best efforts to get any Publisher of his novel to do same on its official Web site(s).

7. Credit.

(a) Authorship Credit: For each motion picture produced based upon the Property (including remakes, sequels, and prequels), credit on all positive prints of such motion picture shall be provided, substantially in the form “Based upon the novel ______ by Author” on a single card in the main titles adjacent to the writer’s credit, in no smaller type than used for the writer, (provided that if the title of such motion picture is also “________” then the credit need only be substantially in the form “Based upon the novel by Author”). If such motion picture is instead only based upon one or more characters created by Author contained in the Property, then at PRODUCER’s election, credit on all positive prints of such motion picture shall be provided substantially in the form “Based upon [a character/characters] created by AUTHOR” on a single card in the main titles adjacent to the writer’s credit, in no smaller type than used for the writer. Credit is also to be given in paid advertising issued by or under the control of PRODUCER, subject to PRODUCER’s customary exclusions, whenever the teleplay or screenplay writer of such motion picture receives credit, in no smaller type than that used for the teleplay or screenplay writer. All credits are subject to network or guild restrictions or requirements.

(b) Consultant Credit: For all series episodes produced (if any) for which Author provides all required consulting services, Author shall be accorded on all positive prints no less credit than “Consultant”; provided that PRODUCER will consider in good faith credit (but at its sole discretion) according credit as Consulting Producer.

(c) All other aspects of the credit to be accorded Author (including, without limitation, position and size of type) shall be determined by PRODUCER in its sole discretion. No casual or inadvertent failure to comply with the provisions of this paragraph shall be deemed to be a breach of this Agreement. PRODUCER shall notify third parties with whom it enters into agreements concerning the motion pictures authorized under this Agreement regarding the credit obligation hereunder. The noncompliance with the provisions of this paragraph by any third party shall not constitute a default or a breach by PRODUCER. In the event of a failure or omission by PRODUCER constituting a breach of its obligations under this paragraph, Author’s rights and remedies hereunder shall be limited to the right, if any, to obtain damages at law, and Author shall not have any right in such event to injunctive relief or to rescind this Agreement or any of the rights assigned to PRODUCER hereunder, but PRODUCER shall, upon receipt of written notice from Author, make reasonable efforts to correct such failure on a prospective basis.

It is hereby agreed and acknowledged that there shall be no restrictions, prohibitions or limitations of any kind or nature whatsoever on the sale by PRODUCER of commercial advertising time within, or the procurement by PRODUCER of commercial sponsors or program sponsorships in connection with, its transmission of any Version produced hereunder on any basic cable program service owned, operated or controlled by PRODUCER and/or PRODUCER Networks, Inc.


In the event a television series is produced as a direct result of a pilot produced that is substantially based upon the Property, PRODUCER shall pay Author a sum equal to XX% of 100% of the Contingent Participation (“CP”) realized for such television series and pilot, per the attached standard definition. Participations hereunder, if any, shall be defined, computed, accounted for and paid in accordance with such attached standard definition.


Author represents, warrants and agrees as follows:

(a) Author has the full, sole and exclusive right, power and authority to enter into this Agreement and to grant the rights contained herein; Author is the sole author of the Property; the Property is original with Author in all respects (other than material in the public domain); Author did not assign, license, hypothecate, dispose of or encumber any of the rights to the Property in derogation of, or in any manner inconsistent with, the rights granted to PRODUCER hereunder; to the best of Author’s knowledge in the exercise of reasonable prudence, the full use and exploitation of the Property by PRODUCER will not in any way infringe upon or violate any right whatsoever of any third party, including, without limitation, the right of publicity or privacy, or the right to be free from defamation; subject to the Reserved Rights and the possible reversion of PRODUCER’s rights hereunder, Author has not authorized and will not authorize any motion picture, television, radio, dramatic or other production based upon the Property to be made, produced or performed anywhere throughout the world; to the best of Author’s knowledge in the exercise of reasonable prudence, there is no claim, litigation or other proceeding threatened, pending or outstanding which in any way will prejudice any of the rights granted or to be granted to PRODUCER hereunder; and no amounts are or will be due to any third party in connection with this Agreement for the use of the Property as contemplated hereunder;

(b) To the best of Author’s knowledge in the exercise of reasonable prudence, the Property is and will be protected by copyright in the United States, and in all countries which are signatories to the Berne Union Convention and the Universal Copyright Convention. The Property is not in the public domain anywhere in the world where copyright protection is available. To the best of Author’s knowledge in the exercise of reasonable prudence, there has never been, nor is there now, any claim or litigation, existing or threatened, involving the title or ownership of the Property or of any copyright therein or of any rights granted hereunder; and

(c) Without limiting the representations, warranties and agreements contained herein, or PRODUCER’s rights hereunder or at law or in equity, Author agrees that PRODUCER
shall have the right to terminate this Agreement and all of PRODUCER’s rights and obligations hereunder if, within thirty (30) days following PRODUCER’s receipt of a copyright report for the Property and all other applicable chain-of-title documents requested by PRODUCER, PRODUCER reasonably determines that the copyright and/or Author’s authorship status thereof is not satisfactory. In such event, Author promptly shall return to PRODUCER all monies theretofore paid to Author by PRODUCER hereunder.

11. Indemnity.

(a) Author USA Cable Entertainment Development LLC, and its parent company, and Vivendi Universal Entertainment LLLP and their respective affiliated companies, partners, divisions, subsidiary and affiliated divisions and companies, distributors, assigns and licensees and the respective shareholders, directors, officers, employees and agents of the foregoing (“PRODUCER Indemnified Parties”), harmless from any loss, cost, damage, liability or expense (including reasonable outside attorneys’ fees) arising out of or in connection with any third-party claim inconsistent with any of Author’s representations, warranties and agreements set forth in Section 9 above or elsewhere in this Agreement.

(b) PRODUCER shall defend, indemnify and hold harmless Author from any loss, cost, damage, liability, or expense (including reasonable attorneys’ fees) arising out of or in connection with any material added to the Property by PRODUCER, on behalf of PRODUCER, at PRODUCER’s request, and/or by any third party employed by PRODUCER, and/or arising out of or in connection with the development, production, distribution, advertising and/or exploitation of any Version produced pursuant to the terms of this Agreement, other than claims or actions resulting from the breach of any representation, warranty or agreement made by Author hereunder, or from the misconduct of Author.

(c) In the event that either party is notified or otherwise becomes aware of a third-party claim or action which is or might be the subject of indemnification hereunder, such party shall give to the other party prompt written notice thereof. In such event, the indemnifying party shall have the right to the full control of the defense or settlement, or both, of each such claim or action through counsel of the indemnifying party’s own selection and at the indemnifying party’s own expense. The indemnified party shall cooperate fully with the indemnifying party in the defense or settlement of any such claim or action, and the indemnified party shall have the right to retain independent counsel, and participate in any such defense or settlement, at its own expense. In the event that the indemnifying party does not promptly assume the defense of or otherwise contest any such claim, then the indemnified party, at its own option, may defend or otherwise contest the claim, charging all expenses and costs thereof to the indemnifying party.


Notwithstanding anything to the contrary contained in this Agreement, Author agrees that PRODUCER shall have the unlimited right to vary, change, alter, modify, add to and/or delete from the Property, and to rearrange and transpose the Property and change the sequence thereof, and to alter or modify the characters and descriptions of the characters contained in the Property, and to use any portion(s) of the Property or any of the characters therein, or the plot or theme
thereof, in conjunction with any other literary, dramatic or other material of any kind. Author hereby waives the benefits of any provision of law known as the “droit moral” or any similar law in any country of the world and agrees not to institute, support, maintain or permit any action or lawsuit on the ground that any Picture or Version of the Property produced or exhibited by PRODUCER, or any of its assignees or licensees, in any way constitutes an infringement of any of Author’s droit moral or is in any way a defamation or mutilation of the Property or any part thereof, or contains any unauthorized variations, alterations, modifications, changes or translations thereof.

13. Author Sequels.

(a) Author hereby grants to PRODUCER the option to purchase the same rights as are granted to PRODUCER hereunder with respect to the Property, under the same terms as set forth herein, in each and every literary property (e.g., story, novel, drama, screenplay or otherwise) heretofore or hereafter written by Author and/or at Author’s direction, in which a character or setting taken from the Property is shown as participating, for the most part, in new or different events from those contained in the Property, and in which the story is substantially different from that of the Property (an “Author Sequel”). In connection with the foregoing, PRODUCER agrees that it must elect to so option such rights no later than ninety (90) days after its receipt of written notice from Author (which shall be sent to PRODUCER in a prompt and timely manner) advising PRODUCER of the existence of any such Author Sequel.

(b) Author shall not exercise or dispose of, or permit the exercise or disposition of, the motion picture, feature motion picture, television and/or allied or ancillary rights in any Author Sequel until two (2) years after the first release of any Picture produced under this Agreement, or four (4) years after the date on which PRODUCER exercises the Option, whichever first occurs, other than a disposition to PRODUCER as provided in Section 12(a) above. The procedure set forth in Section 12(a) above shall be followed with respect to all subsequent Author Sequels.

(c) Any disposition of motion picture, feature motion picture, television and/or allied or ancillary rights in any Author Sequel made by or to any party other than PRODUCER shall be made subject to the following limitation: If, prior to the expiration of any restrictive period set forth in Section 13(b) above, PRODUCER begins principal photography of a Remake of, or Sequel to, the Picture, then such restrictive period shall be extended until the date two (2) years after the first general release of such Television Remake or Television Sequel.


Author agrees to execute or provide, at PRODUCER’s request, any and all additional documents or instruments consistent herewith, including, without limitation, any and all releases which PRODUCER may require, a short form option agreement in the form attached hereto or such other form as approved by PRODUCER, a short form assignment in the form attached hereto, a formal literary purchase agreement (upon exercise of the Option), and a publisher’s release in the form attached hereto (which release is hereby requested), and to do any and all things and to take such further actions reasonably necessary or desirable to effectuate the purposes of this Agreement. In connection therewith, Author agrees to execute and return the
short form option agreement and short form assignment simultaneously with the execution of this Agreement. The short form assignment shall be left undated at the time of execution. PRODUCER is authorized to file the short form option agreement in the Copyright Office or elsewhere at any time after the date hereof. If PRODUCER exercises the Option, PRODUCER is authorized to date and file the short form assignment in the Copyright Office or elsewhere at any time after its exercise of the Option. If Author fails to do anything necessary or desirable to effectuate the purposes of this Agreement, including, but not limited to, renewing any copyrights (if applicable) and instituting and maintaining any action for infringement of any rights herein granted to PRODUCER under copyright or otherwise, Author hereby irrevocably appoints PRODUCER its attorney-in-fact with the right, but not the obligation, to do any such things and to renew any such copyrights and to institute and maintain any such action in Author’s name and on Author’s behalf, but for PRODUCER’s and Author’s benefit, which appointment shall be coupled with an interest and shall be irrevocable. PRODUCER shall provide Author (i) notice of any actions taken on his behalf, and (ii) a three-day opportunity to review and comment upon documents for which his signature is requested (unless the exigencies of the circumstances do not so allow). PRODUCER shall be responsible for the costs in connection with such actions taken in Author’s name.

15. Notices.

All notices hereunder shall be in writing and shall be given either by personal delivery, overnight mail, or telefax, or by registered or certified mail (postage prepaid), to the appropriate party at the address set forth below (unless such address has been changed in accordance with the provisions of this Section 15), and the date of such personal delivery, mailing, telegraphing, or telecopying shall be the date that such notice shall be deemed to have been given. All payments shall be made by check payable to Author and forwarded to the address for Author as set forth below.

To Author: Author
[ADDRESS/ c/o]

With a Courtesy Copy to: [ADDRESS/ c/o]

[RAVELLO ADDRESS]

Inadvertent failure to send a Courtesy Copy shall not be a breach hereunder.

16. Assignment.

Author shall not assign any of its rights or obligations hereunder (other than the right to receive monies due hereunder) without the express prior written consent of PRODUCER. PRODUCER may assign and transfer this agreement, or all or any part of its rights hereunder, to any person, firm or corporation (including any production entity that PRODUCER may appoint, designate or select), without limitation, and this agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors, representatives and assigns. No assignment shall relieve PRODUCER of its obligations hereunder, except (a) to the extent that such obligations are duly performed by the assignee, (b) if such assignment is to a so-called “major” or “mini-major” financier/distributor of motion picture photoplays, a U.S. television
network, or a person or entity of similar or greater financial responsibility than PRODUCER, and such assignee assumes PRODUCER’s obligations hereunder in writing, or (c) if such assignment is to an entity which acquires all or substantially all of the assets of PRODUCER.

17. **Equitable Relief.**

In the event that PRODUCER breaches any of the terms or provisions of this Agreement, Author shall be limited to his remedy at law for damages, if any, and in no event shall Author be entitled to injunctive or other equitable relief. PRODUCER, on the other hand, shall not be so limited. It is recognized and acknowledged that the representations made by Author in this Agreement are unique in nature and that a monetary award may not be an adequate remedy. As a result, PRODUCER, in the event of a breach by Author under this Agreement, in addition to whatever other remedies it may have, shall be entitled to seek injunctive relief.

18. **Miscellaneous.**

(a) **General:** This Agreement supersedes and replaces all previous agreements (oral or written, express or implied) between Author and PRODUCER relating to the Property and may not be modified or amended except by a writing signed by both parties. The section headings used in this Agreement are for convenience only and shall not be interpreted so as to limit or modify this Agreement.

(b) **Premieres:** Author shall be provided two invitations to each major United States premiere of the Picture under PRODUCER’s control, if any.

(c) **VHS Cassette and DVD:** In the event PRODUCER produces an initial motion picture hereunder, and Author performed all of his material obligations hereunder, then at Author’s written request to PRODUCER, PRODUCER shall provide Author with a ½-inch VHS videocassettes and/or a DVD copy(ies) of such initial motion picture upon its commercial availability, provided that Author executes PRODUCER’s then current videocassette/ DVD loan agreement and agrees that such videocassette/ DVD shall not be used for any commercial purposes whatsoever, shall not be copied and shall only be used for Author private, personal use.

(d) **Insurance:** With respect to each motion picture produced hereunder based upon the Property, Author shall be added as an additional insured to PRODUCER’s General Liability and Errors and Omissions insurance policies for such picture(s) (subject to the terms, conditions, and exclusions thereof); provided, however, that any such policies obtained by PRODUCER shall not cover Author with respect to any claims for which Author is required to indemnify PRODUCER hereunder.

(e) **Survival:** The indemnity obligations of both parties shall survive the termination, recission or expiration of this Agreement, as shall the insurance obligations of PRODUCER.

19. **California Law.**
This Agreement shall be interpreted, construed and governed in all respects under the laws of the United States and the State of California applicable to agreements executed and intended to be wholly performed therein.

20. Chain-of-Title.

Author shall timely provide PRODUCER with all documents respecting Author’s chain-of-title to the Property.


The parties hereto acknowledge and agree that this Agreement and the contents hereof shall be confidential with the exception of disclosures (a) by reason of the enforcement of a party’s rights, (b) as required by law, regulation, or court order, (c) in connection with customary publicity releases made by production entities in connection with any production commenced involving the Property (but such releases are not to include the financial terms hereof), (d) in connection with customary disclosures required to be made to potential assignees, or (e) to either party’s accountants, attorneys, agents, employees and/or other business representatives, in which case such accountants, attorneys, agents, employees and/or other business representatives shall be bound by the terms of this Section 21. No casual or inadvertent failure by PRODUCER or Author or any such third party pursuant to this Section 21 shall be deemed to be a breach of this Agreement.

ACCEPTED AND AGREED TO:  

[PRODUCER]

By ____________________________  
Its: ____________________________

AUTHOR  

Date: ____________________________
SHORT FORM OPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENT:

That, for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby sells, grants, conveys, transfers, sets over and assigns unto [PRODUCER] (hereinafter referred to as “PRODUCER”), and PRODUCER’s representatives, successors and assigns, an option to purchase all of the undersigned’s production rights, worldwide, in perpetuity, in and to that certain unpublished novel entitled “__________________,” which was written by Author, including, without limitation, the theme, title and content thereof, the characters therein, all present and future adaptations and versions thereof (excluding sequel books authorized by the undersigned or its assignees), the copyright(s) therein, and all renewals and extensions of such copyright(s).

The undersigned and USA are entering into a formal agreement dated as of __________, 2005 relating to the grant of the foregoing rights in and to such literary work, which rights are more fully described in such agreement, and this Short Form Option Agreement is expressly made subject to all the terms, conditions, and provisions contained in such agreement.

IN WITNESS WHEREOF, the undersigned has executed this Short Form Option Agreement as of the ____ day of _____, 2005.

____________________________________
AUTHOR
SHORT FORM ASSIGNMENT

KNOW ALL MEN BY THESE PRESENT:

That, for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby sells, grants, conveys, transfers, sets over and assigns unto [PRODUCER] (hereinafter referred to as “PRODUCER”), and PRODUCER’s representatives, successors and assigns, subject to the agreement referred to below, all of the undersigned’s production rights, worldwide, in perpetuity, in and to that certain unpublished novel entitled “__________________________” (the “Property”), which was written by AUTHOR, including, without limitation, the theme, title and content thereof, the characters therein, all present and future adaptations and versions thereof (excluding sequel books authorized by the undersigned or its assignees), the copyright(s) therein and all renewals and extensions of such copyright(s).

The undersigned and PRODUCER have entered into or are entering into a formal agreement dated as of ________________, 2005, relating to the transfer and assignment of the foregoing rights in and to the Property, which rights are more fully described in such agreement, and this Short Form Assignment is expressly made subject to all of the terms, conditions and provisions contained in such agreement.

IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the ___ day of _____, 2005.

____________________________________
AUTHOR
PUBLISHER’S RELEASE

The undersigned, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby assigns, transfers and quitclaims to [Producer] (hereinafter referred to as “Producer”), and USA’s representatives, successors and assigns, all the right, title and interest of the undersigned, if any, in and to the production rights in and to that certain unpublished novel written by Author, soon to be published by [__________________________], under the title of “______________________.”

Such literary work was registered in the United States Copyright Office in the name of [_____________] under entry number [_________________________.]

The undersigned further licenses to USA, for the purposes only of advertising and publicizing the exploitation of any motion picture or pictures, or television version(s), based upon such published novel, the right to publish, or cause or permit to be published, and to copyright in the name of USA or its nominee, excerpts, summaries or synopses, not exceeding 7,500 words in length, of or from such novel or motion picture or television version thereof.


By ______________________________
Name: ___________________
Title: ____________________
On behalf of ____________________
LIFE STORY RIGHTS AGREEMENT

As of May __, 2000

[Name and Address]

__________________
__________________

Re: “Name of Film” by _____________

Dear __________:

This letter confirms the basic terms of the agreement (“Agreement”) between Further Films (“Producer”) and you (“Author”) with regard to certain rights in and to your life story, including, without limitation, as depicted in the book entitled “___________________” written by Author and first published [in the United States] by “____________________” (“Publisher”), copyright ______ (the “Property”). The terms of the Agreement are as follows:

1. In consideration of the sum of __________ Dollars (U.S.) ($__________), you grant to Producer the exclusive and irrevocable option (the “Option”) to acquire the Rights, as defined in Paragraph 6 below, for an initial period of eighteen (18) months (the “Option Period”). The Option Period shall commence on the later of (i) Author’s delivery to Producer of executed copies of this Agreement and (ii) the date of Publisher’s delivery to Producer of executed copies of the Literary Option/Purchase Agreement being concurrently entered into and the accompanying Short Form Option and Short Form Assignment (collectively, the “Book Agreement”). It is acknowledged and agreed that the execution of both this Agreement and the Book Agreement shall be a condition precedent to the effectiveness of this Agreement.

2. (a) The Option Period may be extended for an additional period of eighteen (18) months by payment to Author of the sum of ________ Dollars ($__________) on or before the expiration of the initial period of the Option Period. All option payments shall be applied against the Set-Up Payment (as defined in Paragraph 2(b) below), and all option payments that have not been previously applied against the Set-Up Payment, as well as all amounts paid as the Set-Up Payment hereunder, shall be applied against the Purchase Price (as defined below).

(b) In the event Producer enters into an agreement with a major motion picture studio for the further development of the Property and/or the production of the Picture (as defined below), then, within seven (7) business days following the execution of such agreement, Author shall be paid an additional sum (“Set-Up Payment”) of ____________ Dollars ($_______).

3. During the Option Period and any extension thereof, Producer shall have the right to engage in development activities and/or pre-production with respect to one or more motion pictures or other productions intended to be based on the Property and/or the Rights (the first such motion picture or production shall be herein referred to as the “Picture”). It is understood
and agreed that any and all materials (including, without limitation, rewrites) developed by Producer in connection with the Picture shall, as between Author and Producer, be the sole and exclusive property of Producer, whether or not Producer exercises the Option. The Option Period shall be extended by any period or periods of time reasonably necessary to resolve any outstanding claims against Author and/or Publisher in connection with Author’s right to enter into this agreement and/or Publisher’s right to enter into the Book Agreement and for any periods of time during which Producer’s ability to develop the Property and/or the Rights for production is prevented by labor strike or similar circumstances.

4. (a) If Producer elects to exercise the Option, then Producer, as the purchase price (the “Purchase Price”) for the rights to be acquired by Producer hereunder, shall pay to Author the aggregate amount of ______________ Dollars ($_________), less all applicable amounts previously paid, upon exercise of the Option. The Option shall be exercised, if at all, by payment of the Purchase Price to Author prior to the expiration of the Option Period, as extended. If Producer commences principal photography of the Picture prior to the payment of the Purchase Price, the Option shall automatically be deemed to have been exercised and the Purchase Price shall become immediately due and payable to Author.

(b) If the Picture is produced, Author shall also receive _____ percent (___%) of one hundred percent (100%) of the Net Profits, if any, derived from the Picture. “Net Profits” will be defined in the same manner as applicable to any net profit participation by Producer; or, if there is no such definition for Producer, then the definition applicable hereunder shall be in accordance with Producer’s standard net profit definition, subject to good faith negotiation between Author and Producer.

5. If the Picture is produced, Author will receive on-screen credit adjacent to the screenwriter credit(s). Author will also receive credit in paid ads if and when the screenwriter(s) receives credit (subject to the usual exclusions and exceptions of the distributor(s) of the Picture. The size, prominence, and duration of type used for Author’s credit will be no smaller than the size, prominence, and duration of the corresponding screenwriter credit. If the title of the Picture is substantially the same as the title of the Property, Author’s credit shall be substantially in the form “Based on “______________________________” by _____________” otherwise, Author’s credit shall be substantially in the form, “Based on the book by ______________.” No casual or inadvertent failure by Producer, nor any failure by any licensee of Producer, to comply with the credit provisions hereof shall be deemed a breach by Producer of this agreement. In the event of such a failure by Producer, Producer agrees to use reasonable efforts to correct such failure on a prospective basis.

6. (a) As used herein, the “Rights” shall include the exclusive and irrevocable right to any and all rights (other than those expressly reserved to Author as provided herein) that Author may have in and to the Property, including, without limitation, the motion picture, television, audiovisual, allied and incidental rights, as well as the right to use Author’s name, likeness, voice and biographical material, and to otherwise depict Author and to utilize any information provided by or on behalf of Author, in connection with one or more theatrical and/or television motion pictures, television programs, literary publications and/or other productions or works based upon or in connection with Author’s life story (as depicted in the Property and otherwise), and to advertise, publicize, promote and exploit the same and all ancillary, subsidiary
and related rights therein and thereto, throughout the universe, in any manner, by any means or methods and in any medium (whether now known or hereafter devised) which Producer may desire. The Rights shall include without limitation, other all plots, themes, characters, and other material contained in the Property, and the right to produce sequels and remakes based on the Rights and/or the Property. Producer shall have the right to alter, modify, add to or subtract from, and otherwise change or adapt the Property and/or any other information regarding the Rights as Author may provide.

(b) Without limiting the generality of the foregoing, the Rights specifically include the right to represent, depict and impersonate Author under her own name or a fictitious name, in any manner which Producer may deem proper, and by any actor which Producer, in its sole discretion, shall select, and to portray any incidents, episodes, dialogues, scenes and situations whatsoever concerning Author, whether public or private, in a factual or fictional manner, related to Author’s life story or otherwise, and Author shall have no right of review or approval regarding Producer’s exercise of the rights granted hereunder.

(c) Upon exercise of the Option, Producer will acquire the Rights, exclusively, perpetually (or, if and to the extent applicable, for the life of the copyright and any renewals) and irrevocably.

(d) Author hereby waives any and all claims based on “droit moral” or similar doctrines in connection herewith, and agrees not to institute, support, maintain, or permit any action or proceeding anywhere in the world on the ground that any production by Producer or Producer’s licensees or assignees based on the Property violates Author’s droit moral or is in any way a defamation or mutilation of the Property, including without limitation, the rights, if any, of Author to authorize, prohibit, and/or control the renting, lending, fixation, reproduction and/or other exploitation of the Picture (or any rights therein) by any media and means now known or hereafter devised as may be conferred upon Author under applicable laws, regulations, or directives, including, without limitation, any so-called “Rental and Lending Rights” pursuant to any European Economic Community (“EEC”) directives and/or enabling or implementing legislation, laws, or regulations enacted by the member nations of the EEC. Author shall not transfer or attempt to transfer any rights, privileges, title or interest in and to any of the rights granted or agreed to be granted Producer hereunder nor shall Author at any time grant the rights to or authorize any person in any way to infringe upon the rights hereby granted to Producer, and Author authorizes Producer, at Producer’s expense, in Author’s name or otherwise, to institute any legal or equitable proceeding to prevent such infringement. Author further grants to Producer the right to use Author’s name, likenesses, and biographical data in and in connection with the exploitation of the rights granted hereunder.

7. (a) As between Author and Producer, Author hereby reserves the following rights (“Reserved Rights”) in and to Author’s life story, as depicted in the Property and otherwise: (i) all publication rights, including “books on tape” rights (except that Producer shall have excerpt rights for advertising, publicity and promotion (but not for novelization, serialization, publication in book form, or in other forms offered for commercial sale) related to motion pictures and television programs produced hereunder of seven thousand five hundred words (7,500) words or less); (ii) legitimate live stage rights and radio rights in the Property (but Producer shall own such rights in any material created by Producer); and (iii) as between Author
and Producer, the right to create Author-written sequels based on the Property or other works using characters and situations from the Property, and all rights (including publication rights and motion picture, television and allied and incidental rights, but expressly excluding the right to authorize others to exercise motion picture or television sequel and series rights (unless and until the rights revert to Author pursuant to Paragraph 7(c) below) in and to such Author-written sequels.

(b) Author will not exercise or dispose of or permit the exercise or disposition of any of the Reserved Rights, other than publication rights, audio recording rights, and radio rights, until three (3) years after the release of the Picture or five (5) years after the exercise of the Option, whichever shall first occur. With respect to any proposed disposition or exploitation of any of the Reserved Rights, other than publication, audio recording, stage, and radio rights, Producer shall have a right of first negotiation for not less than 30 days and the right to match any third party offer within 30 days after receiving notice of such offer from Author. Producer shall not be required to match any terms or conditions which cannot be met as easily by one person as by another, such as the required employment of a particular director or performer.

(c) If Producer has not either committed to production or produced the Picture within seven (7) years following the date of its exercise of the Option, Author shall have the right to cause all rights granted herein to revert to Author. Author shall exercise such right, if at all, by giving written notice to Producer and by repaying to Producer all sums previously received by Author from Producer, or by executing documentation (in form and substance satisfactory to Producer) guaranteeing that Producer will be repaid if any of the Rights are sold to another producer, or out of the first production sums available from another producer (and in no event later than the setting of a start date for any production based in whole or in part on the Rights) and granting Producer a first security interest in the Rights to secure such repayment obligation. In the event of such reversion (or the expiration of the Option), Producer will execute and deliver an acknowledgement of such reversion or termination, in reasonable form, within 30 days after Author’s written request therefor. In the event of any such reversion or termination, Author acknowledges that, as between Author and Producer, Producer will own any and all rights in and to any screenplays, treatments or other works prepared by or on behalf of Producer during the Option Period based in whole or in part on the Rights.

(d) With respect to each remake or sequel (other than Author-written sequels) or other production based on the Rights and/or the Property, Author shall be entitled to receive additional compensation as follows: (i) theatrical sequel, one-half (50%) of Purchase Price; (ii) Theatrical remake and one-half (50%) of Author’s share of Net Profits as calculated hereunder for the Picture; one-third (33-1/3%) of Purchase Price and one-third (33-1/3%) of Author’s share of Net Profits as calculated hereunder for the Picture; (iii) TV MOW/miniseries, $_____ per hour (maximum of $______); (iv) TV Series initially broadcast on United States network TV, $____ per one-half hour episode, $_______ per episode one hour or longer; (v) other TV Series, one-half hour, $____ per one-half hour episode, $____ per episode one hour or longer. Payments for theatrical productions shall be payable on commencement of principal photography; payments for TV productions shall be payable on broadcast.

8. Author agrees to provide her services to Producer as consultant in connection with the development of the screenplay for the Picture and, if requested, the production of the Picture.
Author’s consultant services shall be provided at such time(s) and place(s) and with such person(s) as Producer may reasonably request, subject to Author’s professional availability. If Author is requested to render services outside of the metropolitan area of Author’s residence (currently ________), Producer shall provide Author with round-trip transportation, accommodations and meals (or, at Producer’s election, a meal allowance). In full consideration for any and all such consultant services, Producer will pay Author the additional sum (“Consultant Fee”) of _______ Dollars ($______), payable one-half (1/2) upon the earlier of the date upon which Producer first requests Author to perform consultant services or the commencement of principal photography of the Picture and one-half (1/2) upon completion of production of the Picture.

9. (a) Author represents, warrants and agrees that: (i) Author is over the age of 18 and has the right to enter into this Agreement and to grant the rights herein granted to Producer, (ii) Author is not subject to, and shall not enter into, any conflicting obligations which will prevent Author from, or interfere with, the execution and performance of this Agreement, or which will or might conflict with or impair the complete enjoyment of the Rights granted and to be granted to Producer hereunder; (iii) the Property and the Rights are wholly original with Author and not in the public domain; (iv) to the best of Author’s knowledge, neither the Rights nor the Property shall infringe upon or violate any copyright of, or the right of privacy of, any person or constitute a libel or slander of any person, and shall not infringe upon or violate any other right of any person; (v) no motion picture, television, radio, dramatic or other version of the Rights or the Property has heretofore been made, produced or performed; (vi) to the best of Author’s knowledge, there is no claim, litigation or other proceeding threatened, pending or outstanding which might in any way prejudice the rights granted or to be granted hereunder; (vii) except for the publishing agreement with Publisher, Author has not assigned, licensed, hypothecated or encumbered any of the rights granted or to be granted hereunder; and (viii) all information furnished by Author, if any, whether orally or in writing, shall be true and accurate. Inasmuch as the Property is a work of fact, Author further represents and warrants that the Property contains no known inaccuracies and is based upon reasonably adequate research according to generally accepted standards of the academic community. Author shall keep all research files, including work papers, notes and drafts, and shall make them available to Producer upon request.

(b) Author agrees to and does hereby indemnify and hold harmless Producer, its officers, directors, employees, licensees, agents, representatives, successors and assigns from and against any and all damages, liabilities, costs, losses and expenses (including reasonable attorneys’ fees and court costs) arising out of any breach of the foregoing representations and warranties. Producer shall indemnify and hold harmless Author from and against any and all damages, liabilities, costs, losses and expenses (including reasonable attorneys’ fees and court costs) arising out of or in connection with any material added or incorporated into the Property by Producer. Author hereby expressly waives and releases Producer and its successors, licensees and assigns from any and all claims, liabilities, damages, losses, judgments, actions, costs and expenses (including, but not limited to, reasonable attorneys’ fees) based upon any right of privacy or publicity, libel or slander or other personal or property right, if any, which Author may now or hereafter have arising from or in any way relating to Producer’s use or licensing others to use and exploit the rights granted to Producer hereunder.
10. (a) Author acknowledges that the services herein agreed to be performed by Author and the rights herein granted are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law and that Author’s default will cause Producer irreparable injury and damage. Accordingly, Author agrees that in the event of a breach or threatened breach by Author of this agreement, Producer shall be entitled to seek injunctive or equitable relief, in addition to any remedies available to Producer.

(b) Author acknowledges that in the event of any breach hereunder by Producer, Author will be limited to such remedies as may be available at law for damages, if any, and (subject only to Producer’s timely payment of the Purchase Price) Author will not be entitled to seek injunctive or equitable relief, nor shall Author have the right to terminate or rescind this agreement or to enjoin or interfere with the development, production, distribution, advertising and/or exploitation of any motion picture and/or other production produced hereunder. Nothing herein shall obligate Producer to produce, exhibit, publish, advertise, or otherwise exploit any production or work hereunder, or to exercise or exploit any of the rights granted to Producer hereunder.

11. All notices hereunder shall be in writing and shall be given by personal delivery, by mail (postage prepaid) or by facsimile (with machine confirmation) to the addresses listed on the first page of this Agreement and the date of such personal delivery or facsimile, or three (3) days after deposit in the U.S. mail shall be the date of the giving of such notice. Notices regarding change of address and/or facsimile number shall be sent in accordance with the provisions hereof. For purposes of notices, the following facsimile numbers shall be applicable: For Producer: _____________ and for Author: _________. A copy of all notices given to Producer hereunder shall be sent to ____________________________________________, Attention: _____________, Esq. (Facsimile no.: ____________), and a copy of all notices given to Author hereunder shall be sent to: _______________ (Facsimile no.: ____________). All sums of money due Author under this Agreement shall be paid to the address applicable for notices.

12. Author shall, upon request execute, acknowledge and deliver such other documents as Producer may reasonably require in connection with the rights granted by Author hereunder. In the event Author shall fail to execute, acknowledge or deliver such documents to Producer, Author hereby grants to Producer the right, as its attorney-in-fact, irrevocably and coupled with an interest, to execute, acknowledge, deliver and record in the United States Copyright Office and elsewhere any and all such documents.

13. Nothing contained in this Agreement shall be construed to limit any rights Producer would have if this Agreement had not been entered into, nor to restrict or limit Producer’s right to use materials which were prepared in connection with the development of a production based on the Property but which are not themselves based on the Property (for example, characters, situations, or events which are not present in the Property).

14. This Agreement shall inure to the benefit of and bind Producer and its successors, licensees and assigns. This Agreement is personal to Author and Author shall not have the right to assign this Agreement, or any portion hereof, and any such purported assignment shall be null and void.
and void from the making thereof. This Agreement shall inure to the benefit of and bind Author and her heirs.

15. The parties hereto may enter into a more complete agreement, containing the provisions and terms customary in the motion picture industry (including without limitation customary provisions relating to warranties and indemnification, force majeure, disability and default, publicity, and notice). Until the complete execution of such Agreement, if any, this Agreement shall be the fully effective and binding agreement between the parties, and may not be changed, altered, or modified except by a writing signed by the parties hereto. This Agreement contains the entire understanding between the parties and supersedes all prior agreements, memoranda and understandings with respect to the subject matter hereof. If this Agreement conflicts with any applicable law or collective bargaining agreement, such law or collective bargaining agreement shall alter or limit the terms of this Agreement only to the extent necessary to ensure that Author receives the minimum benefits required under that law or collective bargaining agreement. This agreement shall be governed by the laws of California applicable to agreements made and fully performed within California.

Sincerely,

[PRODUCER]

By: ________________________________
Its; ________________________________

AGREED AND ACCEPTED TO:

______________________________
[NAME]
LOCATION AGREEMENT

Dated: _______________________

The undersigned (“Owner”) hereby grants to _______________ (“Producer”) the right to use the premises located at _______________ (“Property”) in connection with the production of a television program entitled "___________" (“Program”), upon the following terms and conditions:

1. During the “Term” (as defined below), Owner hereby grants Producer the right to utilize the Property as a location and to bring onto the Property such personnel, materials, vehicles and equipment as Producer deems necessary in connection with the production of the Program. Owner further grants to Producer the right to make still and motion pictures and sound recordings (“Photography”) of, on, in and about the Property, and to make and remove preparations, if any, for Photography. Owner hereby acknowledges that Producer is acting in reliance on this Location Agreement and that accordingly, Owner’s representations, warranties and agreements hereunder shall be irrevocable. In addition, Owner hereby acknowledges and agrees that the possible inclusion of the Photography in the Program is good and valuable and sufficient consideration for this Agreement.

2. The Term shall commence on or about ________________, 2005, and shall continue thereafter until _____________, 2005. Producer may postpone the commencement of the Term to a later date (subject to Owner’s reasonable approval) due to weather conditions, changes in production schedule, or if Producer is delayed by events beyond its control.

3. Unless otherwise specified herein, the "Property" shall include all buildings and other structures located at the Property, the grounds at said address, access to and egress from the Property, the real and personal property in, on and/or about the Property, all of the signs, displays, interiors, exteriors, and the like, if any, and Owner’s name, logo, trademark, service mark and/or slogan, as depicted in, on and/or about the Property, and any other identifying features thereof. Exceptions:_______________________________________________________

4. Producer agrees to use reasonable care to prevent damage to the Property, and will leave the Property in substantially the same condition as when entered by Producer, except for reasonable wear and tear from uses contemplated hereunder.

5. Owner represents and warrants that (a) Owner owns the Property or is the authorized agent of such owner, (b) Owner has the full right and authority to enter into this Agreement and to grant Producer the rights granted herein, (c) the consent of no other person or company is necessary, (d) Owner shall take no action, nor allow or authorize any third party to take any action which might interfere with Producer’s authorized use of the Property, and (e) any and all uses of the Property in connection with the Photography will in no way infringe or violate the right whatsoever of any person or entity.

6. Producer shall be the sole and exclusive owner of all rights of every kind in and to all Photography made pursuant to this Agreement, including (without limitation) the right to exhibit, distribute, and exploit such Photography by any and all means and media, now known or
hereafter devised, and in any publicity, promotion, and/or advertising of same, throughout the universe, irrevocably and in perpetuity. Owner’s sole remedy in the event of a dispute hereunder shall be an action at law for damages, if any. Neither Owner nor any tenant or invitee of Owner nor other party now or hereafter having an interest in the Property and/or interest through Owner shall have any interest in and/or right of action with respect to any Photography or any use thereof, including without limitation, any right to seek injunctive relief against Producer, its Successors and/or any other party. Nothing shall obligate Producer to produce the Program or to make any actual use of any Photography, or to otherwise use the Property.

7. Producer and Owner each will indemnify and hold harmless the other and their respective agents, employees, directors, officers, licensees and assigns from any loss, damages, costs and expenses (including reasonable attorneys’ fees) resulting from the breach by the indemnifying party of any of the terms of this Agreement.

8. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, representatives, assigns and licensees. This document sets forth the entire understanding between Producer and Owner and supercedes all prior understandings and agreements (whether written or oral) and may not be altered except by another written agreement signed by both parties.

AGREED AND ACCEPTED:

___________________________________________  ________________________________ (“Producer”)

(“Owner”) Print Name

By: ________________________________

Title: ________________________________

By: ________________________________

Title: ________________________________
MOTION PICTURE ACTOR’S AGREEMENT – LOANOUT
(Schedule “F” Player)

AS OF: _______________________________

COMPANY: ________________________________________
________________________________________
________________________________________
________________________________________
________________________________________

LOANOUT COMPANY: _______________________________ (“Lender”)

FEDERAL I.D. NO.: _______________________________

f/s/o ACTOR: _______________________________ (“Artist”)

SOCIAL SECURITY NO.: _______________________________

NOTICES AND PAYMENTS TO:
________________________________________
________________________________________
________________________________________
________________________________________

ROLE: ________________________________________

PICTURE: ________________________________________

The following sets forth the agreement (“Agreement”) between ____________________ (“Company”), and ______________________________________ (“Lender”) with respect to the services of ___________________________ (“Artist”) in connection with the above motion picture (“Picture”), which shall be based upon the Broadway musical production and the original theatrical motion picture by the same title.

1. CONDITIONS PRECEDENT. Company’s obligations under this Agreement are conditioned upon the following:

1.1 Execution of Agreement. Company’s receipt of fully executed copies of this Agreement;
1.2 Employment Eligibility. Artist’s providing Company with all documents which may be required by any governmental agency or otherwise for Artist to render services hereunder, including, without limitation, an INS Form I-9 (Employment Eligibility Verification Form) completed to Company’s satisfaction, together with Artist’s submission to Company of original documents establishing Artist’s employment eligibility;

1.3 Insurance. Artist’s ability to qualify for all insurance Company deems necessary (e.g., life, health, accident and/or cast insurance) at customary rates and subject only to customary exclusions and deductible amounts (if any);

1.4 Payment Documentation. Company’s receipt of all forms and documents necessary to enable Company to effect payment to Lender, including tax and corporation identification forms including, without limitation, California Form 590 if Lender is incorporated outside the State of California, and any other tax and corporation identification forms;

1.5 Approval of Screenplay and Budget. Company’s approval of a screenplay and budget for the Picture; and

1.6 Distribution/Financing Agreements. Company’s receipt of firm written commitments to fully finance the Picture.

2. LENDER. Lender shall furnish the acting services of Artist in connection with the Picture, and Artist shall look solely to Lender for Artist’s compensation.

3. SERVICES; START DATE. Company engages Lender to furnish Artist’s services in the Picture portraying the role designated above (“Role”). Artist shall render all services as are customarily rendered by actors in first-class, feature-length, theatrical motion pictures as, when and where reasonably required by Company. In connection therewith, Artist shall comply with all reasonable directions, requests, rules and regulations of Company, whether or not the same involve matters of artistic taste or judgment. Without limiting the foregoing, Artist shall render the following services in connection with the Picture:

3.1 Pre-Production Services. Artist shall render his exclusive services in connection with rehearsal during such time(s) as Company shall direct upon reasonable advance notice. It is contemplated that rehearsal and other pre-production services shall take place during the approximately four (4) weeks period immediately prior to commencement of principal photography of the Picture. Artist shall render his exclusive services in connection with pre-production meetings, pre-recording of the musical soundtrack, fittings for costumes, wigs and/or prosthetic devices and the like, make-up, tests, publicity and production stills, auditions, conferences regarding story, music and other production matters, and other pre-production services customarily rendered by actors on first-class, feature-length, theatrical motion pictures and as Company may require, such pre-production services to be rendered as, when and where reasonably required by Company (“Pre-Production Period”).

3.2 Production Services. Artist shall continue to render exclusive services in connection with the Picture during photography of the Picture, in accordance with the provisions of this Section 3.2, which photography shall commence on or about (i.e., two weeks either side of) ________________ (“Start Date”) and is currently estimated to take place over a period of
approximately twelve (12) weeks ("Principal Photography Period"). Artist shall render exclusive services from and after the Start Date for the period of photography of the Picture, whether consecutive or non-consecutive, plus any additional period of time during which Company requires Artist’s services in connection with photography of the Picture. Non consecutive services required following the conclusion of the Principal Photography Period, if any, shall be subject to Artist’s then existing professional contractual commitments, provided that Artist shall use good faith efforts to be available when and where reasonably required by Company.

3.3 Post-Production Services. Artist shall render post-production services in connection with the Picture as are customarily rendered by actors in first-class, feature-length, theatrical motion pictures and as, when and where Company may reasonably require, such post-production services to include, without limitation, looping, dubbing, voice-overs, retakes, trick shots, opticals, foreign versions, cover shots, added scenes and re-shooting for the Picture. Such post-production services, if non-consecutive to the period of Artist’s consecutive services in connection with the production of the Picture, shall be subject only to Artist’s prior professional contractual commitments, provided that (i) Artist shall use good faith efforts to be available to render such services as, when and where required by Company, and (ii) Artist shall give Company notice, as promptly as possible, of such professional commitments.

3.4 Promotional and Publicity Services. Artist shall render all services ("Promotional Services") if required by Company, as, where and when reasonably required by Company (both during production of the Picture and in connection with the initial theatrical and video release of the Picture), in connection with the publicity and promotion of the Picture, including without limitation attending premieres of the Picture, making appearances at press conferences or on television, making personal appearances, engaging in interviews, participating in photo sessions, cooperating in the photography of “behind-the-scenes” footage and participating in promotional tours and press junkets. Artist’s obligation to render all Promotional Services required by Company, as, where and when required by Company, shall be subject only to Artist’s prior professional entertainment industry contractual commitments to third parties (of which Artist shall give Company notice), provided that in any event Artist shall use good faith efforts to be available to render the Promotional Services as required by Company. No additional compensation or other remuneration shall be payable to Lender with respect to the Promotional Services; however, Artist’s Promotional Services are of the essence of this agreement and the Fixed Compensation (as defined below) shall be deemed to be allocable to, and in consideration of, the Promotional Services as well as Artist’s services in connection with the production of the Picture. If Company requires Artist to render Promotional Services hereunder at a Location (as defined below), Company shall provide Artist with transportation and travel expenses as specified in Paragraph 5.1 below, in connection with such Promotional Services.

4. COMPENSATION. Upon the condition that Lender and Artist fully perform all services and material obligations required hereunder and that neither Lender nor Artist are in "Default," and subject to Company’s rights of suspension and/or termination on account of Lender’s and/or Artist’s Default, Artist’s “Disability” or an “Event of Force Majeure” (as such terms are defined in the Standard Terms attached hereto), Company shall pay Lender, as full and complete consideration for Artist’s services and all rights granted hereunder by Lender and Artist, the following:
4.1 **Fixed Compensation.** For all of Artist’s pre-production, production, post-production and publicity services, the sum of ______________ Dollars ($____________) (“Fixed Compensation”), payable in approximately equal weekly installments during the scheduled period of principal photography of the Picture. All payments hereunder shall be payable on Company’s regular payday in the week following the week in which such payments shall have accrued.

4.2 **Flat Fee Basis.** The Fixed Compensation set forth in Section 4.1 above is a “flat fee” and neither Lender nor Artist shall be entitled to any additional and/or so-called “overage” compensation for any services rendered by Artist hereunder.

4.3 **Nights, Weekends, Holidays, Travel Time, Work Time.** No increased or additional compensation shall accrue or be payable to Lender for any of Artist’s services rendered at night or on Saturdays (or sixth days), Sundays (or seventh days) or holidays, or after the expiration of any particular number of hours of service in any period, or by reason of time spent by Artist traveling to or from any location where Artist may be required to render services in connection with the Picture.

5. **TRAVEL AND EXPENSES.**

5.1 **Location.** The location of Artist’s services hereunder will be determined by Company in its sole discretion, but it is currently contemplated that pre-production and production services will be rendered in ______________. If Company requires Artist to render services hereunder (other than for publicity or promotional services unless specified otherwise in Paragraph 3.4, above) at a location which is more than fifty (50) miles from ______________ (“Location”) (or from the location where Artist is immediately prior to the applicable services, whichever is closer), Company shall provide Artist with or reimburse Lender for the following:

5.1.1 **Transportation.** One (1) first-class round-trip air transportation, if available and if used, between Artist’s residence (currently, ______________) and the Location.

5.1.2 **Expenses.** A per diem to be negotiated in good faith, with due consideration to the budget of the Picture, in lieu of all living expenses.

5.1.3 **Ground Transportation.** Company shall provide Artist with non exclusive ground transportation to and from airports, hotels and sets while on Location which transportation may be shared, subject to the exigencies of production, only with above-the-line personnel.

5.1.4 **Arrangements.** All travel arrangements including, without limitation, the purchase or booking of airline tickets and accommodations, shall be made through Company’s travel/location department, unless Company’s prior written consent is obtained.

6. **CREDIT.**

6.1 **Artist’s Credit.** Upon the conditions that (i) Artist fully performs all of the services and material obligations required to be performed hereunder, (ii) neither Lender nor
Artist are in Default, and (iii) Artist shall appear recognizably in the Role in the Picture as released to the general public, Company shall accord Artist the following credit:

6.1.1 **On Screen.** On a separate card, in the main titles, whether located in the beginning or end of the Picture, on all positive prints of the Picture in a size of type not less than the size of type used in the credit accorded to any other cast member.

6.1.2 **In Paid Advertising.** In the billing block portion of all paid advertising relating primarily to the Picture issued by or under the direct control of Company (“Paid Ads”) in a size of type not less than the size of type used in the credit accorded to any other cast member.

6.2 **Exclusions and Exceptions.** Company’s Paid Ad credit obligations shall not apply to the following Paid Ads (hereinafter “Excluded Ads”): group, list, institutional or so-called teaser advertising; announcement advertising; advertising relating primarily to the source material upon which the Picture is based, or to the author, any member of the cast, the producer(s), writer(s) or any other personnel involved with the production of the Picture; so-called “award” or “congratulatory” advertisements, including advertisements or announcements relating to consideration or nomination for an award; trailers (including promotional films) or other screen, radio or television advertising; advertising in narrative form; advertising for film festivals, film markets and the like; advertising one-half page (or the equivalent in SAU’s) in size or less; outdoor advertising (including, but not limited to so-called 24-sheets); theater display advertising; advertising in which no credit is accorded other than credit accorded to up to four (4) stars of the Picture and/or to Company and/or to any other company financing or distributing the Picture. The following shall not be considered Paid Ads or Excluded Ads for any purpose hereunder: videocassettes, videodiscs and other home video devices and the covers, packages, containers or jackets, provided if the foregoing contains the standard billing block for the Picture then Artist shall be accorded credit in such billing block as provided in Paragraph 6.1.2, above (collectively, “Video Items”); publicity and promotional items and materials; advertising relating to subsidiary or ancillary rights in the Picture (including, but not limited to novelizations, screenplays or other publications, products, merchandising, music publishing or soundtrack recordings); voiceovers, advertising, publicity and exploitation relating to by-products or commercial tie-ins; and other advertising not relating primarily to the Picture.

6.3 **General Terms.** All other matters with respect to Artist’s credit shall be determined by Company in its sole discretion. Any reference to the “title” of the Picture shall be deemed to mean the “regular” title unless such reference is specifically made to the “artwork” title. Company shall use good faith efforts to inform third party distributors and licensees of the credit obligations herein, but shall not be responsible for the failure of any such third party to comply with same. No casual or inadvertent failure to comply with the provisions of this section nor any failure by third parties to comply with their agreements with Company shall constitute a breach of this Agreement by Company. In the event of Company’s failure to comply with any of its Paid Ad obligations hereunder, Company shall, upon receipt of written notice of such failure, use reasonable efforts to correct such failure in Paid Ads on a prospective basis only, i.e. those Paid Ads (if any) prepared after Company’s receipt of such notice (allowing for adequate time after receipt of notice to implement such correction).

7. **UTILIZATION OF SERVICES.**
7.1 **Company’s Rights.** Notwithstanding any contrary provision of this Agreement, Company shall have no obligation to engage Lender, to use Artist’s services or to include the results and proceeds thereof in the Picture, or to develop, produce, release or otherwise exploit the Picture, and Company may at any time abandon development and/or production of the Picture and/or terminate Lender’s engagement and Artist’s services in connection with the Picture for any reason, with or without cause; provided, however, that if Company terminates Artist’s services on the Picture “without cause” after Artist has become “Pay or Play”, as set forth below, Company shall remain obligated to pay Lender the Fixed Compensation in accordance with the terms hereof. Lender and Artist hereby release and discharge Company from all liability for any loss or damage Lender or Artist may suffer as a result of Company’s abandonment of the Picture and/or failure to develop, produce, release, distribute, advertise or otherwise exploit the Picture and/or failure to utilize Artist’s services in connection with the Picture or termination of Lender’s engagement and Artist’s services in connection with the Picture for any reason, with or without cause. If Company becomes obligated to pay to Lender any of the compensation provided for in Section 4 of this Agreement following a termination without cause pursuant to this Section and Artist performs services in the entertainment industry for any third party during what would have been the period of Artist’s exclusive services hereunder (if Artist’s services had not been terminated), Lender and Artist shall promptly notify Company in writing of the terms of such engagement and all sums payable to Lender and/or Artist for such third party services shall automatically offset and reduce (on a dollar-for-dollar basis) the amount payable by Company to Lender hereunder. Nothing herein shall be deemed to obligate Artist to seek out any such third party services. (For purposes hereof, a “without cause” termination shall be a termination for Disability, Default or Force Majeure as set forth in the Standard Terms).

7.2 **“PAY OR PLAY”.** Artist shall be deemed to be “Pay or Play” for purposes of the preceding section upon notice in writing to Lender of Company’s election to make Artist “Pay or Play” or when all of the following have occurred:

7.2.1 Company has approved, in its sole discretion, the final shooting script, budget and production schedules for the Picture;

7.2.2 All principal cast members and the director of the Picture have been made unconditionally “Pay or Play” for their Fixed Compensation; and

7.2.3 Company has advised Lender in writing that a firm date has been set for the commencement of principal photography, or alternatively, the commencement of principal photography of the Picture, whichever is the earlier.

8. **NAME AND LIKENESS; FILM CLIPS.**

8.1 **Name and Likeness.** Company shall have the right, in perpetuity and throughout the universe, to use, and to authorize others to use, Artist’s name, image, voice, likeness, and/or biography (the factual content of such biography to be pre-approved by Artist, provided such approval is not unreasonably withheld or delayed) in connection with the production, exhibition, advertising, promotion and/or other exploitation of the Picture, and/or subsidiary and ancillary rights of any nature relating to the Picture or Artist’s services hereunder, in any and all media,
whether now known or hereafter devised, including without limitation, trailers and promotional films and/or videos (including so-called “music videos”) and DVD bonus materials, “behind-the-scenes” or other footage, interviews, excerpts from the Picture, new footage shot in connection with trailers or promotional films, featurettes, one-sheets, souvenir programs, press books, novelizations and other commercial publications, soundtrack recordings embodied in any form now known or hereafter devised, including the packaging therefor, and in sheet music and song books, commercial tie-ins and merchandising items of any nature.

8.2 Film Clips. Lender hereby grants to Company the right to use and to authorize others to use film clips and excerpts from the Picture in which Artist appears recognizably (collectively, “Clips”) in promotional films and/or videos (including so-called “music videos”), featurettes, “behind-the-scenes” footage, DVD bonus materials, and interviews relating to the Picture, and in connection with commercial tie-ins, without any additional consideration to Lender or Artist therefor; provided, however, that if Company proposes to use any Clips in any films having a running time in excess of thirty (30) minutes, Company shall have the right to use such Clips therein automatically upon the payment to Lender of the minimum compensation required therefor pursuant to the Producer Screen Actors Guild Codified Basic Agreement (“SAG Agreement”) in effect as of the date of this agreement.

9. ARTIST’S APPEARANCE. Artist will not change Artist’s appearance (e.g., grow or shave a beard or mustache or change hair style or hair color) at any time between completion of pre-production makeup and hairstyling work and completion of all services in connection with the production and post-production of the Picture.

10. DUBBING AND DOUBLING. Company shall have the right to use the services of persons other than Artist (with or without the services of Artist) to “dub” or “double” Artist’s acts, poses, appearance, voice or sound effects attributed to the character portrayed by Artist and to use the name, likeness, voice or other sound effects of Artist in connection therewith. Such doubling or dubbing of Artist’s voice may be in English or any other language.

11. PUBLICITY LIMITATIONS. Neither Lender nor Artist shall issue, release, authorize or in any way participate in any publicity, press releases, interviews, advertisements or promotional activities relating to Company, the Picture, Lender’s engagement or Artist’s services hereunder without the prior written consent of Company, except personal publicity in which the Picture is only incidentally mentioned (“Personal Publicity”). No publicity issued by Lender or Artist, whether Personal Publicity or otherwise, shall contain derogatory mention of Company, the Picture, or the services of Artist or others in connection with the Picture. Neither Lender nor Artist may disclose any confidential information with respect to Company or the Picture (including, without limitation, the budget thereof or the terms of any contracts for services of persons engaged in connection with the Picture) without Company’s prior consent or unless compelled by a judicial order. Lender and Artist may disclose confidential information regarding this Agreement on a confidential basis to Artist’s legal and financial advisors as well as Artist’s theatrical agent.

12. ENTIRE AGREEMENT/STANDARD TERMS. All other terms and conditions of Artist’s services hereunder (including, without limitation, injunctive relief and Company’s rights of suspension and/or termination in the event of Default, Disability or Force Majeure) are set
forth in Company’s Standard Terms and Conditions applicable to the services of actors (the “Standard Terms”) attached hereto and incorporated herein by this reference. This Agreement (including the Standard Terms) constitutes the entire understanding of the parties hereto and replaces any and all former agreements, understandings and representations relating in any way to the subject matter hereof. No modification, alteration or amendment of this Agreement shall be valid or binding unless it is in writing and signed by the party to be charged with such modification, alteration or amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[COMPANY]

By: __________________________

Its: __________________________

[LENDER]

By: __________________________

Its: __________________________

EXECUTION DATE: _____________, 2004
STANDARD TERMS AND CONDITIONS

ACTOR’S AGREEMENT – LOANOUT

These Standard Terms And Conditions (“Standard Terms”) are part of, and are incorporated into, that certain agreement (“Underlying Agreement”), dated as of [Date], between [COMPANY] (“Company”), and [LENDER] (“Lender”) for the acting services of [ACTOR] (“Artist”) in connection with the motion picture tentatively entitled “[TITLE PICTURE]” (“Picture”). These Standard Terms and the Underlying Agreement shall hereinafter be collectively referred to as the “Agreement.” Unless expressly provided to the contrary herein, (i) all terms used herein shall have the same meaning as set forth in the Underlying Agreement and (ii) to the extent that any provision of these Standard Terms conflicts with any provision of the Underlying Agreement, the Underlying Agreement shall control. The term “Section(s)” refers to the numbered provisions of the Underlying Agreement and the term “Paragraph(s)” refers to the numbered provisions of the Standard Terms.

1. ARTIST’S SERVICES. Lender acknowledges and agrees that Artist’s services on the Picture will be rendered either alone or in cooperation with other persons in such manner as Company may direct, under the instructions and in strict accordance with the controls and schedules established by Company’s authorized representatives and at the times, places and in the manner reasonably required by said representatives. Such services shall be rendered in an artistic, conscientious, efficient and punctual manner to Artist’s best ability and with full regard to the careful, efficient, economical and expeditious production of the Picture within the budget, shooting schedule and policies established by Company, it being understood that Company’s production of motion pictures involves matters of discretion to be exercised by Company in respect to art and taste and Artist’s services and the manner of rendition thereof are to be governed by Company.

2. COMPANY’S OWNERSHIP RIGHTS; DROIT MORAL.

2.1 Work for Hire. Company hereby is and shall be the sole and exclusive owner and is the sole author for all purposes (including under the Copyright laws of the United States), in perpetuity and throughout the universe, of all of the following from the moment of their creation, at every stage of their development or completion: (i) all right, title and interest in and to the Results and Proceeds (as defined below) of Lender’s and/or Artist’s services hereunder, all of which shall be a “work made for hire” for Company prepared within the scope of Artist’s employment and/or as a work specially ordered or commissioned for use as a part of a motion picture or other audio-visual work; (ii) all right, title and interest in and to the Picture and the material upon which it is based, including, but not limited to, the copyright in and to the Picture and any renewals and extensions of such copyright and all moral rights of authors with respect thereto; (iii) all distribution, exhibition, exploitation, allied, ancillary and/or subsidiary rights with respect to the Picture and/or the Results and Proceeds in any and all media, whether now or hereafter known, including, without limitation, theatrical, non-theatrical, pay-per-view, home video (including videocassettes, digital videodiscs, laserdiscs and all other formats), all forms of television (including pay, free, network, syndication, cable, satellite and digital), video-on-demand, and all forms of digital distribution and/or transmission; (iv) all other tangible and intangible rights of any nature relating to, and all proceeds and benefits of any nature derived

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from, the Picture and/or the Results and Proceeds; and (v) all right, title and interest in and to the character portrayed by Artist in the Picture, including, without limitation, the right to (a) utilize such character in sequels, remakes, television programs and other productions without any obligation to Artist and/or (b) to merchandise or otherwise exploit such character (without using Artist’s name or identifiable likeness) with no obligation to Artist.

2.2 Assignment. Without limiting the foregoing, in the event that any of the Results and Proceeds are not deemed to be a “work made for hire” for Company, Lender and Artist hereby irrevocably and exclusively assign to Company (or if any applicable law prohibits or limits such assignment, Lender and Artist hereby irrevocably license to Company) all right, title and interest in and to such Results and Proceeds (including all copyrights therein and thereto and all renewals and extensions thereof), and all rights to exploit the same throughout the universe, in perpetuity, in any and all media, whether now known or hereafter devised.

2.3 Droit Moral; Rental and Lending Rights. Artist hereby waives any so-called “moral rights of authors” and “droit moral” rights (and any similar or analogous rights under the applicable laws of any country of the world) which Artist may have in connection with the Picture or the Results and Proceeds. Artist further hereby irrevocably assigns to Company (or if any applicable law prohibits or limits such assignment, Artist hereby irrevocably licenses to Company), in perpetuity throughout the universe, all of Artist’s rights, if any, to authorize, prohibit and/or control the renting, lending, fixation, reproduction and/or other exploitation of the Picture by any media and/or means now known or hereafter devised as may be conferred upon Artist under applicable laws, regulations or directives, including, without limitation, any so-called “Rental and Lending Rights” pursuant to any European Union (“EU”) directives and/or enabling or implementing legislation, laws or regulations enacted by the member nations of the EU. As used herein, “Results and Proceeds” shall mean all results and proceeds of Lender’s engagement and Artist’s services under this Agreement or otherwise relating to the Picture, including all themes, plot, characters, ideas and story contained therein and all other materials of any kind created by Artist or Lender during the period of Artist’s exclusive services hereunder and all so-called “moral rights of authors” or “droit moral” rights (and/or any similar or analogous rights under any applicable law of any jurisdiction) with respect to any of the foregoing, and the right to make such changes therein and/or uses thereof as Company shall from time to time determine in its sole discretion.

3. INJUNCTIVE RELIEF. Lender and Artist acknowledge and agree that the services to be rendered by Artist hereunder are of a special, unique, unusual, extraordinary and intellectual character, making them difficult to replace and giving them a peculiar value, the loss of which cannot be reasonably compensated in damages in an action at law; that if Lender or Artist breaches any provision of this Agreement, Company will be caused irreparable damage; and that, therefore, Company shall be entitled, as a matter of right, at its election, to enforce this Agreement and all of the provisions hereof by seeking an injunction or other equitable relief.

4. SUSPENSION AND TERMINATION.

4.1 Suspension. Lender’s engagement, Artist’s services and the accrual of compensation hereunder shall be automatically suspended (unless Company notifies Lender otherwise) during all periods when:
4.1.1 Disability. Artist is unable to perform Artist’s obligations hereunder by reason of mental or physical disability (including the death of Artist) (“Disability”). If any claim of Disability is made by or on behalf of Artist, Company shall have the right to have Artist examined by such physician(s) as Company may designate, with Artist’s physician present (at Artist’s sole cost) if Artist so requests, provided that such physician does not interfere with the examination conducted by Company’s physician;

4.1.2 Default. Lender or Artist fails, refuses or neglects to comply with Lender’s or Artist’s material obligations, respectively, hereunder or (directly or through any representative) states an intention to do so (“Default”); provided, however, that if (i) such Default occurs prior to Artist’s rendition of Pre-Production Services or after Artist’s rendition of services in connection with the principal photography of the Picture, and (ii) such Default is inadvertent (i.e., not intentional or repeated) and is by its nature reasonably curable, and (iii) allowing Artist to cure such Default will not result in additional expense to Company, then on a one-time-only basis Artist shall have a period of forty-eight (48) hours from the date of notice from Company of such Default within which to cure the first such Default; and/or

4.1.3 Force Majeure. As a result of any Act of God; war; accident; fire; strike; lock-out or other labor controversy; riot; civil disturbance; act of public enemy; law, enactment, rule, restraint, order or act of any governmental instrumentality or military authority; failure or inability to obtain any necessary permit or license; failure of technical facilities; inability to obtain sufficient labor, technical or other personnel (including, without limitation, cast or crew members); failure, delay or reduction in transportation facilities or water, electricity or other public utilities; death, disability, disfigurement (with respect to principal cast only), or inability to obtain health insurance for a principal member of the cast, the director, any producer or key crew member or inability to obtain visas, labor permits or other governmental licenses for any such persons (other than Artist); or any other cause not reasonably within Company’s control, Company is hampered in the development or production of the Picture or Company’s normal business operations become commercially impracticable (“Force Majeure”).

4.2 Effect of Suspension. If any such Force Majeure, Disability or Default should occur prior to the Start Date, the Start Date may be postponed by Company for a period equal to the duration of such Force Majeure, Disability or Default plus the period commencing on the occurrence of such event and ending on the originally scheduled Start Date, and (unless Company gives Artist notice to the contrary) such postponement shall not be deemed a suspension of this Agreement, Lender’s engagement, or Artist’s services hereunder; provided, however, that Company may reduce the period of postponement in its own discretion upon notice thereof to Lender. Any suspension shall be for the duration of any such Force Majeure, Disability or Default plus such reasonable period of time as may be deemed necessary by Company to commence or recommence development or production of the Picture and, unless Company notifies Lender in writing to the contrary, Artist’s services and Lender’s engagement hereunder shall be automatically extended by such number of days as equal the total number of days of such suspension. A suspension hereunder shall not relieve Lender or Artist of any of Lender’s or Artist’s obligations to perform hereunder. During any suspension, Artist shall not render any services for others, for Lender, or for him/herself in the field of entertainment, except that during a suspension predicated on Force Majeure, Artist may render such other services, provided that any and all commitments for such services are subordinate to the obligations of
Lender’s engagement and Artist’s services hereunder, including Artist’s obligation to resume rendering services to Company promptly upon termination of the suspension. Payment of any compensation accrued and unpaid prior to the suspension shall be subject to all of Company’s rights and remedies (including the right of offset) for Lender’s and/or Artist’s Default.

4.3 Termination.

4.3.1 Lender’s Termination Right. If a suspension predicated on Force Majeure (excluding a strike by a guild or union of which Artist is a member [“Own-UnionStrike”]) continues for eight (8) or more consecutive weeks or for an aggregate of ten (10) or more weeks, Lender may give Company written notice of Lender’s desire to terminate this Agreement, and unless Company terminates such suspension within seven (7) business days after its receipt of such notice, this Agreement shall terminate.

4.3.2 Company’s Termination Rights. Company shall have the right to terminate Lender’s engagement and Artist’s services upon the occurrence of any of the following by delivering written notice to Lender:

(a) Artist’s Disability continuing for either five (5) days during Artist’s rendition of Pre-Production Services or services in connection with the principal photography of the Picture or at any other time, ten (10) or more consecutive days or an aggregate of eighteen (18) or more days;

(b) Default;

(c) If an event of Force Majeure: (aa) occurs prior to or on the Start Date; or (bb) occurs after the Start Date and continues for eight (8) or more consecutive weeks or for an aggregate of ten (10) or more weeks (such period to be reduced to two (2) weeks during Artist’s rendition of Pre-Production Services and services in connection with the principal photography of the Picture); or (cc) arises from an Own-Union Strike; or (dd) affects development and/or production in a manner incapable of being corrected within the foregoing time periods; or (ee) has an impact that, at the time of onset, can reasonably be expected to continue for not less than two weeks; or

(d) Any event or contingency expressly provided for in this Agreement. Notwithstanding the foregoing, Company shall not terminate Artist’s services due to an event of Force Majeure unless the services of substantially all principal cast members have also been terminated.

4.4 Effect of Termination. If Lender or Company terminates this Agreement in accordance with the provisions of this Paragraph 4, Company shall be released and discharged from any liability or obligation whatsoever to Lender and/or Artist hereunder; provided, however, that if Company terminates this Agreement pursuant to this Paragraph 4 for any reason other than Lender’s or Artist’s Default, Lender shall be entitled to receive that portion of the Fixed Compensation that has theretofore accrued and become payable to Lender pursuant to the Agreement for services rendered by Artist prior to the date of such termination.
4.5 **Company’s Breach.** No act or omission of Company hereunder shall constitute an event of Default or breach of this Agreement unless Lender shall first notify Company in writing setting forth such alleged breach or Default and Company shall not cure the same within thirty (30) days after receipt of such notice (other than a failure to pay the Fixed Compensation which shall be cured within fourteen [14] business days of receipt of such notice).

4.6 **Other Agreements.** Any breach or Default by Lender or Artist of any other agreement between Company and Lender or Artist for Artist’s services in connection with the Picture (“Other Services Agreements”) shall constitute a breach or a Default by Lender and Artist under this Agreement. Any breach or Default by Lender or Artist under this Agreement shall constitute a breach or Default by Lender and Artist under the Other Services Agreements. No breach or Default by Lender or Artist under this Agreement or under the Other Services Agreement shall affect Company’s acquisition of rights in connection with the Picture (or any material upon which the Picture is based or which is incorporated therein) pursuant to any rights agreement with Artist, Lender or any other third parties.

5. **NOTICES.** All notices required hereunder shall be in writing and shall be given either by personal delivery, telecopy/facsimile or by United States mail (postage prepaid), and shall be deemed given hereunder on the date personally delivered or telecopied, or the date two (2) business days after the date mailed if mailed in the United States, and five (5) business days after the date mailed if mailed outside of the United States. Until further notice, the addresses of the parties shall be as indicated in the Underlying Agreement, and the facsimile numbers of the parties shall be: For Company: ______________ and for Lender and Artist: ______________.

6. **REPRESENTATIONS AND WARRANTIES.** Lender and Artist represent and warrant that:

6.1 **Authority and Non-Interference.** Lender is free to enter into this Agreement and to furnish Artist’s services in connection with this Agreement; Artist has the right to render services as herein provided; Lender is obligated to pay Artist at least the applicable annual guarantee required under Section 3423 of the California Civil Code; neither Lender nor Artist is subject to any obligation or disability which would interfere with Lender’s or Artist’s performance hereunder; and neither Lender nor Artist has done, nor will Lender or Artist do, any act, and neither Lender nor Artist has made, nor will Lender nor Artist make, any grant or assignment, which will or might interfere with the complete enjoyment of the rights and privileges herein granted to Company.

6.2 **Created Material.** All material, works, writings, ideas, “gags” or dialogue written, composed, prepared, submitted or interpolated by Lender or Artist in connection with the Picture or its preparation or production, shall be wholly original with Lender and Artist and shall not be copied in whole or in part from any other work, except that material submitted to Lender or to Artist by Company (or its agent) for inclusion in and included in the Picture.

7. **INDEMNITY.**

7.1 **Lender/Artist Indemnity.** Lender and Artist shall indemnify and hold Company, its parents, affiliates, subsidiaries, employees, directors, officers, agents, successors, assigns and
licensees, and each of them, harmless from and against any and all liabilities, judgments, claims, demands, damages, penalties, interest, costs and expenses of every kind whatsoever (including, without limitation, reasonable outside attorneys’ and accountants’ fees and disbursements) (collectively, “Expenses”) suffered or incurred by Company, the aforementioned parties and/or any of them, arising out of or resulting from any Default by Lender and/or Artist, or any breach or alleged breach (alleging facts that if true would constitute a breach hereunder and excluding frivolous and vexatious claims) by Lender and/or Artist of their respective representations and warranties hereunder and/or resulting from Lender’s and/or Artist’s grossly negligent conduct, or the failure of any rights granted by Lender and/or Artist to Company pursuant to this Agreement.

7.2 **Company Indemnity.** Company shall defend (selecting its own counsel), indemnify and hold Lender and Artist harmless from and against any and all Expenses suffered or incurred by Lender and/or Artist, arising out of or by reason of or resulting from any third party claim based upon material submitted by Company to Artist for inclusion in and included in the Picture and/or by reason of any third party claim arising out of Company’s development, production, distribution and/or exploitation of the Picture or any elements thereof; provided, however, that the foregoing indemnification shall not apply to any Expenses or third party claims arising out of or resulting from Lender’s or Artist’s tortious conduct or from any breach or alleged breach of Lender’s or Artist’s covenants, representations or warranties hereunder.

8. **COMMITMENTS TO OTHERS.** Lender and Artist shall not have the right or authority to, and shall not, (i) employ any person in any capacity, (ii) contract for the purchase or rental of any article or material, or (iii) make any commitment, agreement or obligation whereby Company shall be required to pay any monies or other consideration, without Company’s prior written consent in each instance.

9. **RIGHT TO WITHHOLD.** Company shall have the right to deduct and withhold from any sums payable to Lender hereunder (i) any amounts required to be deducted and withheld by Company pursuant to any present or future law, ordinance or regulation of the United States or of any state thereof or any subdivision of any state thereof, or of any other country, including, without limitation, any country wherein Artist performs any services hereunder, or pursuant to any present or future rule or regulation of any union or guild (if any) having jurisdiction over the services to be performed by Artist hereunder; and (ii) any expenses, including union or guild dues or other fees paid by Company on Lender’s and/or Artist’s behalf.

10. **INSURANCE.** Company shall have the right to apply for and take out, at Company’s expense, life, health, accident, cast or other insurance covering Artist, in any amount Company deems necessary to protect Company’s interest hereunder. Neither Lender nor Artist shall have any right, title or interest in or to such insurance. Artist shall assist Company in obtaining such insurance by submitting to usual and customary medical and other examinations (which shall be kept confidential by insurance company), and by signing such applications, statements and other instruments as may be reasonably required by any insurance company. In the event Artist fails or is unable to qualify for such insurance at customary rates and subject only to customary exclusions and deductible amounts (if any), Company shall have the right to terminate this Agreement. During the term of this Agreement, Artist shall not travel on any chartered or unscheduled airline or plane, unless requested to do so by Company, or engage in any hazardous sporting or other activities, or conduct prohibited by any policy of insurance obtained by
Company in accordance with this Agreement (provided Artist has been advised of such prohibited conduct).

11. **SAG AGREEMENT AND MEMBERSHIP.** To the extent that any provision of this Agreement conflicts with the mandatory provisions of the applicable Screen Actors Guild Basic Agreement (“SAG Agreement”), the provisions of the SAG Agreement shall prevail; provided, however, that in such event the Agreement shall be limited only to the extent necessary to permit compliance with the minimum mandatory terms and conditions of the SAG Agreement, and Company shall be entitled to the maximum benefits and shall be deemed to have the maximum rights provided in the SAG Agreement and any other applicable collective bargaining agreement. To the extent and during such periods as it may be lawful for Company to require Artist to do so hereunder, Artist is or shall become and remain a member in good standing of SAG or otherwise eligible to perform services pursuant to the SAG Agreement and/or applicable laws. If Lender fails to be or remain a signatory, or if Artist fails, neglects or refuses to become and remain a member in good standing of SAG (or otherwise eligible to perform services pursuant to the SAG Agreement), Company shall have the right, at Company’s sole election (in addition to the exercise of Company’s other rights and remedies hereunder), to terminate this Agreement, or to pay on Lender’s and/or Artist’s behalf any required dues, fees or other payments to SAG to qualify Artist as a member in good standing (or to qualify Artist to be eligible to perform services pursuant to the SAG Agreement) and to deduct the amounts so paid by Company from any compensation otherwise payable to Lender hereunder. If the SAG Agreement requires the payment of compensation to Artist in addition to that provided for in this Agreement (including, without limitation, residuals), such additional compensation shall be paid at the minimum applicable rates specified in the SAG Agreement, and shall be based, where permitted by the SAG Agreement, upon the minimum applicable compensation (including, without limitation, contingent compensation), payable thereunder, and Company shall be entitled to credit and apply, or treat as an advance, any and all sums paid or payable under this Agreement against such additional compensation, and vice versa, to the full extent, if at all, permitted under the SAG Agreement. Lender and Artist shall cooperate with Company in requesting any waiver of the provisions of the SAG Agreement in connection with the Agreement. Except as may otherwise be expressly herein provided, all provisions of Schedule “F” of the SAG Agreement applicable to deal players shall apply to Artist’s services hereunder. Without limiting the foregoing, the Fixed Compensation payable to Lender hereunder shall include compensation for rehearsal time, travel time and intervening time.

12. **COMPANY PAYMENTS.** Company shall pay directly to the Screen Actors Guild Pension and Health and Welfare Plans on Lender’s behalf all applicable pension and welfare contributions based on the consideration paid to Lender pursuant to Section 4.1 (and, if and to the extent applicable, Section 4.2) for Artist’s services hereunder, provided that in no event shall any such contribution exceed any amount(s) which Company would have been required to pay had Artist been employed directly by Company.

13. **GENERAL CREDIT TERMS.** All references in this Agreement to the title of the Picture shall be deemed to mean the “regular” title unless reference is specifically made to the “artwork” title. With respect to any obligation to accord credit in Paid Ads, if the title of the Picture or the name(s) of one or more other person(s) engaged in connection with the Picture is used more than once in such Paid Ads, e.g., a so-called “regular” use and a so-called “artwork” use (such as, for
example, the weaving of the title and/or name(s) as part of the background of the advertisement, or a display use or a fanciful use), the references herein to the title of the Picture and/or the name(s) of any person shall be to the so-called “regular” use of the title or the name(s) as distinguished from the “artwork” use of the title or the name(s). All references to “size” however stated, whether as a percentage or otherwise, shall mean height and width of the lettering used in the credit. Subject to Artist’s right under the applicable collective bargaining agreement (if any), Artist shall be entitled to the credit provided in the Underlying Agreement only if Artist has performed all services called for hereunder and the results thereof are in the Picture.

14. MISCELLANEOUS.

14.1 Governing Law. THE INTERNAL SUBSTANTIATIVE LAWS (AS DISTINGUISHED FROM THE CHOICE OF LAW RULES) OF THE STATE OF CALIFORNIA AND THE UNITED STATES OF AMERICA APPLICABLE TO CONTRACTS MADE AND PERFORMED ENTIRELY IN CALIFORNIA SHALL GOVERN (i) THE VALIDITY AND INTERPRETATION OF THIS AGREEMENT, (ii) THE PERFORMANCE BY THE PARTIES OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER, AND (iii) ALL OTHER CAUSES OF ACTION (WHETHER SOUNDING IN CONTRACT OR IN TORT) ARISING OUT OF OR RELATING TO THIS AGREEMENT (OR LENDER’S ENGAGEMENT AND/OR ARTIST’S SERVICES HEREUNDER) OR THE TERMINATION OF THIS AGREEMENT (OR OF LENDER’S ENGAGEMENT AND/OR ARTIST’S SERVICES).

14.2 Legal Proceedings. The parties hereto agree that any dispute or controversy relating to any of the matters referred to in clauses (i), (ii) and/or (iii) of Paragraph 14.1, above, shall be decided by a Rent-A-Judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Los Angeles Superior Court) appointed in accordance with California Code of Civil Procedure Section 638, sitting without a jury, in Los Angeles County, California, and the parties hereby submit to the jurisdiction of such court. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed.

14.3 Non-Waiver; Effect of Termination; Entire Agreement; Severability. No waiver by Lender, Artist or Company of any failure by any other to keep or perform any covenant or condition of this Agreement shall constitute a waiver of any preceding or succeeding breach of the same or any other covenant or condition. Neither the expiration nor the termination of this Agreement for any reason whatsoever shall affect the rights granted hereunder by Lender and/or Artist or Company’s ownership thereof, and the representations and warranties of Lender and/or Artist hereunder shall survive any such expiration or termination. This Agreement constitutes the entire agreement between Company and Lender with respect to the subject matter hereof and may only be amended by a written instrument executed by Company and Lender. If one or more provisions of this Agreement are held to be illegal or unenforceable under applicable California law, such illegal or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required and the remaining portions of this Agreement shall be interpreted as if such portion(s) were so limited or excluded and shall be enforceable in accordance with its terms.
14.4 **Visas and Labor Permits.** Lender shall cause Artist to cooperate with Company and assist Company in securing such visas and labor permits as may be required by any governmental agency in connection with Artist’s rendition of services hereunder. If, in spite of such cooperation and assistance, Company is unable to secure such visas and labor permits within a reasonable time period prior to the Start Date, Company shall have the right to suspend Lender’s engagement and Artist’s services hereunder until a final determination concerning such visa or labor permit is made by the applicable authority, and Company shall have the right to terminate this Agreement, Lender’s engagement and Artist’s employment hereunder if such visas and labor permits cannot be secured.

14.5 **Company’s Remedies.** All remedies accorded herein or otherwise available to Company shall be cumulative and no one such remedy shall be exclusive of any other. Without waiving any rights or remedies under this Agreement or otherwise, Company may from time to time recover, by action at law, any damages arising out of any breach of this Agreement by Lender or Artist and may institute and maintain subsequent actions for additional damages which may arise from the same or other breaches. The commencement or maintaining of any such action or actions by Company shall not constitute an election on Company’s part to terminate this Agreement nor constitute or result in the termination of Lender’s engagement or Artist’s services hereunder unless Company shall expressly so elect by written notice to Lender. The pursuit by Company of any remedy under this Agreement or otherwise shall not be deemed a waiver of any other or different remedy which may be available under this Agreement or otherwise, either at law or in equity.

14.6 **Lender’s and Artist’s Remedies.** The rights and remedies of Lender and/or Artist in the event of any breach by Company of this Agreement or any of Company’s obligations hereunder shall be limited to Lender’s and/or Artist’s right to recover damages, if any, in action at law, and Lender and Artist each hereby waives any right or remedy in equity, including without limitation any right to terminate or rescind this Agreement or Company’s ownership of the Picture or the Results and Proceeds or any other right granted to Company hereunder and/or to seek injunctive or other equitable relief with respect to any breach of Company’s obligations hereunder and/or to enjoin or restrain or otherwise impair in any manner the production, distribution, exhibition or other exploitation of the Picture, or any parts or elements thereof, or the use, publication or dissemination of any advertising in connection therewith.

14.7 **Captions.** The captions used in connection with the paragraphs and subparagraphs of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify, or in any other manner affect the scope, meaning, or intent of the provisions of this Agreement or any part thereof; nor shall such captions otherwise be given any legal effect.

14.8 **Governmental Limitation.** If the compensation provided for by this Agreement shall exceed the amount permitted by any present or future law or governmental order or regulation, such compensation shall be reduced, while such limitation is in effect, to the amount which is so permitted, and the payment of such reduced compensation shall be deemed to constitute full performance by Company of its obligations respecting the payment of compensation hereunder.
14.9 Assignment. Company shall be free to assign this Agreement and its rights hereunder, and to delegate its duties at any time and from time to time, in whole or in part, to any person or entity and upon such assignment Company shall be released and discharged of and from any and all of its duties, obligations and liabilities arising under this Agreement only if such assignment is to: (i) a person or entity into which Company merges or is consolidated or (ii) a person or entity which acquires all or substantially all of Company’s business and assets or (iii) a person or entity which is controlled by, under common control with, or controls Company or (iv) any major or “mini-major” motion picture company, United States television network or (v) other financially responsible party, who assumes in writing the performance and obligations of Company hereunder to be performed from and after such assignment. Lender may not assign this Agreement or Lender’s rights hereunder, or delegate Lender’s or Artist’s duties under this Agreement in whole or in part.

15. SPECIAL/GENERAL EMPLOYER. Notwithstanding that Lender is furnishing Artist’s services to Company hereunder, it is acknowledged that for the purposes of any applicable Workers’ Compensation statutes, an employment relationship exists between Company and Artist, Company being Artist’s special employer hereunder and Lender being Artist’s general employer (as the terms “special employer” and “general employer” are understood for purposes of Workers’ Compensation statutes) and that as between Lender and Company, Company shall have the exclusive right to direct and control the performance of Artist’s services hereunder. It is agreed that the rights and remedies, if any, of Artist and/or Artist’s heirs, executors, administrators, successors and assigns against Company and/or Company’s agents and/or employees by reason of injury, illness, disability or death arising out of and occurring in the course of this employment shall be governed by and limited to those provided under such Workers’ Compensation statutes and neither Company, nor Company’s agents or employees, shall have any other obligation or liability by reason of any such injury, illness, disability or death. If the applicability of any Workers’ Compensation statute to the engagement of Artist’s services hereunder is dependent upon (or may be affected by) an election on the part of Lender, Artist and/or Company, such election is hereby made in favor of such application. Nothing contained in this section shall be deemed to waive the provisions of California Labor Code Section 3601, and where reference is made in the section to Worker’s Compensation statutes, it shall be deemed to include Section 3601. Except as otherwise provided by law or herein, Artist shall receive no less or more favorable benefits under the Workers’ Compensation statute than Artist would have received had Artist been employed directly by Company.

16. LOANOUT. Lender represents and warrants that: (a) Lender is, and has been for more than thirty (30) days prior to the date hereof, a corporation duly organized and existing under the laws of Lender’s state or country of incorporation; (b) that Lender is a bona fide corporate business entity established for a valid business purpose within the meaning of the tax laws of the United States and not a mere sham, conduit or agent for Artist; (c) that Artist is under an exclusive written contract of employment with Lender for a term extending at least until the completion of all services required of Artist hereunder, which contract gives Lender the right to loan or furnish the services of Artist to Company and to grant all rights to Company as herein provided and which provides for payment to Artist of an amount not less than the minimum compensation per year required under any applicable law as a requisite for injunctive relief; (d) that, if Lender was incorporated outside the United States of America, it is not engaged in any trade or business in the United States and does not have a “permanent establishment” in the
United States and the country of incorporation; and (e) that Lender does not have any agent in the United States who has such “permanent establishment” in the United States or such country of incorporation or habitually exercises, general authority to negotiate and conclude contracts on behalf of Lender. Lender further acknowledges that the foregoing representations and warranties will be relied upon by Company for the purpose of determining whether or not it is necessary to make withholdings for U.S. federal taxes from monies paid to Lender hereunder, and Lender agrees that if withholdings are not made from said payments and if thereafter it is determined that such withholdings were legally required, Lender and Artist will indemnify Company against all loss, costs, damages and expenses relating thereto. Notwithstanding the foregoing, Company may make U.S. federal tax withholdings if it deems it advisable to do so. If Lender or its successors in interest should be dissolved, or should otherwise cease to exist or for any reason whatsoever should fail, be unable, neglect or refuse to perform, observe or comply with the terms, covenants and/or conditions of this Agreement, Artist shall, at Company’s election, be employed directly by Company for the balance of the term of the Agreement upon the terms, covenants and conditions herein contained. All warranties and representations made by either Lender or Artist shall be deemed made by both parties, and at the election of Company, a breach of the Agreement by either Lender or Artist shall be deemed a breach by both.

17. FURTHER INSTRUMENTS. Lender and Artist shall duly execute, acknowledge and deliver to Company or cause to be executed, acknowledged and delivered to Company, any and all assignments or instruments consistent with the terms and conditions of this Agreement, which Company may deem necessary to carry out and effectuate the purposes and intent of this Agreement, including, without limitation, separate assignments of any rights granted by Lender or Artist in this Agreement. In the event Lender or Artist fails to execute any such instrument, Lender and Artist hereby irrevocably appoint Company as Lender’s and Artist’s attorney-in-fact, which appointment shall be deemed a power coupled with an interest, with full rights of substitution and delegation, to execute any such instruments in Lender’s and Artist’s name and on Lender’s and Artist’s behalf, copies of which shall be provided to Artist’s attorney.

END OF STANDARD TERMS

Ladies/Gentlemen:

Reference is made to the agreement (“Agreement”) dated concurrently herewith between you and [Lender] (“Lender”) for the services of [Actor], the undersigned, in connection with the above-referenced motion picture.

As a material inducement to you to enter into the Agreement, the undersigned hereby represents, warrants and agrees as follows:

1. I have heretofore entered into an agreement (the “Employment Agreement”) with Lender requiring me to render services exclusively to Lender for at least the full term of the Agreement and authorizing Lender to enter into the Agreement and to furnish my rights and services to you upon the terms, covenants and conditions thereof.

2. I am familiar with all of the terms, covenants and conditions of the Agreement and hereby consent to the execution thereof; I shall be bound by and will duly observe, perform and comply with all of the terms, covenants and conditions of the Agreement as if I had executed it directly as an individual, even if the Employment Agreement should hereafter expire or be terminated or suspended, or if Lender should be dissolved or should otherwise cease to exist; I hereby confirm that there have been granted to Lender all of the rights granted by Lender to you under the Agreement; and I hereby join in and confirm all grants, representations, warranties and agreements made by Lender under the Agreement.

3. I am under no legal or other obligation or disability that would prevent or restrict me from performing and complying with any of the terms, covenants and conditions of the Agreement to be performed or complied with by me.

4. Unless I am deemed substituted for Lender as a direct party to the Agreement pursuant to paragraph 7, below, I will look solely to Lender and not to you for compensation for the services and rights I may render and grant to you under the Agreement and for the discharge of all other obligations of my employer with respect to my services under the Agreement.

5. You shall have all rights and remedies against me that you would have if I were your direct employee under the Agreement and you shall not be required to first resort to or exhaust any rights or remedies that you may have against Lender before exercising your rights and remedies against me.
6. I will indemnify and hold you and your parents, affiliates, subsidiaries, employees, directors, officers, agents, successors, assigns and licensees, and each of them, harmless from and against any and all taxes which you may have to pay and any and all liabilities, judgments, losses, claims, demands, damages, penalties, interest, costs and expenses of every kind whatsoever (including, without limitation, reasonable outside attorneys’ and accountants’ fees and disbursements) which may be obtained against, imposed upon or suffered by you or any of the aforementioned parties or which you or any of such parties may incur by reason of your failure to deduct and withhold from the compensation payable under the Agreement any amount required or permitted to be deducted and withheld from the compensation of an employee under the provisions of any current state or federal statute and/or any amendments thereof and/or any statutes hereafter enacted requiring the withholding of any amount from the compensation of an employee. Inasmuch as you have the right to control my services and I am your “special employee” for purposes of all applicable workers’ compensation laws, the rights and remedies of the undersigned and/or my heirs, executors, administrators, successors, and assigns shall be governed by and limited to those provided under such workers’ compensation statutes if I should suffer or incur any injury, illness, disability or death arising out of or occurring in the course of my special employment pursuant to the Agreement.

7. If Lender or its successors in interest should be dissolved or should otherwise cease to exist, or for any reason should fail, refuse or neglect to perform, observe or comply with the terms, covenants and conditions of the Agreement, I shall, at your election, be deemed to be employed directly by you for the balance of the term of the Agreement upon the terms, covenants and conditions set forth therein.

8. If you serve Lender with any notices, demands or instruments relating to the Agreement or the rendition of my services thereunder, such service upon Lender shall constitute service upon me.

Very truly yours,

_________________________________

[Actor]

Execution Date: ________________, 2005
MOTION PICTURE WRITER AGREEMENT

Dated as of _____________

(Writer)
(Address)

Re: Name of Picture

Dear Sirs:

This will confirm the agreement between __________ (“Writer”) and __________ (“Producer”) regarding Writer’s services in connection with the proposed theatrical motion picture tentatively titled “____________________” (the “Picture”) as follows:

1. Employment:

1.1 Committed Services: Producer hereby employs Writer to prepare a first draft teleplay (the “First Draft”), and a first set of revisions (the “First Rewrite”) which together with any other writing performed hereunder by Writer are collectively referred to as the “Material”).

1.2 Optional Second Rewrite: Producer shall have the option to engage Writer to write a second rewrite (“Second Rewrite”).

1.3 Optional Polish: Producer shall have the further option to engage Writer to write a polish (“Polish”).

2. Writing Services:

2.1 Schedule:

(a) First Draft: Writing period of twelve weeks and reading period of four weeks.

(b) First Rewrite: Writing period of six weeks and reading period of four weeks.

(c) Second Rewrite: Writing period of six weeks and reading period of four weeks.

(d) Polish: Writing period of four weeks.

2.2 Other Terms: Writer shall deliver the Material to Producer at (address) or at such other location which Producer may designate). The person authorized to request rewrites of the Material is ________________. It is acknowledged that time is of the essence of this agreement. Writer shall render services instructed by Producer in all matters including those
involving artistic taste and judgment, whenever and wherever Producer may reasonably require, but there shall be no obligation on Producer to actually utilize Writer’s services or to include any of Writer’s work in the Picture or otherwise, or to produce, release or continue the distribution of the Picture; and, if, at any time, Producer elects not to use Writer’s services, Producer shall have satisfied its obligations hereunder by payment to Writer of the amounts provided in the following paragraphs, subject to and in accordance with the terms of this agreement. Writer’s services shall be exclusive to Producer during all writing periods and non-exclusive, but first priority, during all reading periods. Notwithstanding anything to the contrary contained herein, Producer shall have the right to postpone the writing of any portion of the Material to such time as Producer may designate; provided, however, that no such postponement shall affect Writer’s right to receive compensation as though such postponement had not taken place.

3. **Writing Fees**: Provided Writer is not in material breach hereunder and this agreement is executed, Producer agrees to pay to Writer, as full consideration for Writer’s services and the rights granted by Writer herein compensation of:

3.1 **For the First Draft and First Rewrite**: The sum of $________ accruing on delivery of all Material but payable:

   (a) $________ on commencement of Writer’s services on the First Draft

   (b) $________ on delivery of the First Draft

   (c) $________ on commencement of the First Rewrite

   (d) $________ on delivery of the First Rewrite.

3.2 **For the Second Rewrite, if required**: The sum of $________ payable:

   (a) $________ on commencement of the Second Rewrite; and

   (b) $________ on delivery of the Second Rewrite

3.3 **For the Polish, if required**: The sum of $________ payable:

   (a) $________ on commencement of the Polish; and

   (b) $________ on delivery of the Polish

4. **Additional Consideration**:

4.1 **Studio Setup**: If Producer enters into a development agreement with a major studio which contemplates the studio’s financing and distributing the Picture, Writer shall receive a setup payment of $________ payable promptly following execution of Producer’s development agreement with the studio.
4.2 Sole Credit: Provided the Writer keeps and performs all of Writer’s material obligations and agreements hereunder, and satisfactorily renders and completes all services required by Producer hereunder, then if Producer produces the Picture and it is finally determined pursuant to the WGA Agreement, but not Paragraph 7 of Theatrical Schedule “A” thereto, that Writer is entitled to receive a sole “Screenplay By” or “Written By” credit for the Picture (“Sole Credit”), Writer shall be entitled to receive additional consideration as follows:

(a) **Bonus Compensation**: $_______ less the aggregate of all sums previously paid to Writer pursuant to paragraphs 3 and 4.1 above (“Sole Credit Bonus”).

(b) **Contingent Compensation**: An amount equal to ____ percent (___%) of one hundred percent (100%) of the “net profits”, if any, of the Picture.

4.3 Shared Credit: Provided that Writer keeps and performs all of Writer’s material obligations and agreements hereunder, and satisfactorily renders and completes all services required by Producer hereunder, then if Producer produces the Picture and it is finally determined pursuant to the WGA Agreement, but not Paragraph 7 of Theatrical Schedule “A” thereto, that Writer is entitled to receive shared “Screenplay By” or “Written By” credit for the Picture (“Shared Credit”), Writer shall be entitled to receive additional consideration as follows:

(a) **Bonus Compensation**: One-half of the Sole Credit Bonus

(b) **Contingent Compensation**: An amount equal to ½ of ____ percent (___%) of one hundred percent (100%) of the “net profits”, if any, of the Picture.

4.4 If it is finally determined pursuant to the WGA Agreement that Writer is not entitled to receive Sole Credit or Shared Credit for the Picture, no additional consideration shall be payable to Writer hereunder.

4.5 The Sole Credit Bonus or Shared Credit Bonus payable pursuant to this paragraph 4, if any, shall be payable to Writer within ten (10) business days following Producer’s receipt of the final WGA determination of credits.

4.6 For purposes of this Agreement, “net profits” shall be defined, computed, accounted for and paid as net profits are defined, computed, accounted for and paid pursuant to the provisions of the standard net profits or comparably similar definition of the production, financing and/or distribution entity with whom Producer enters into an agreement (“P/F/D Agreement”) with respect to the Picture. In the event that Producer does not enter into a P/F/D Agreement, Writer’s share of “net profits” shall be defined, computed, accounted for and paid in accordance with Producer’s standard definition of net profits. Writer acknowledges that Writer’s share of net profits, if any, provided hereunder shall not be a lien upon or claim against any of the rights granted herein, the Picture or any other exploitation of the rights granted herein.
5. **Subsequent Productions:**

5.1 **First Negotiation.** Provided Producer produces the Picture, Writer is not in material breach hereof, Writer receives sole “written by” credit and sole separation of rights on the Picture, Writer is then actively engaged as a writer in the motion picture industries and Writer is available to render writing services as, when and where required by Producer, then, if Producer desires to produce a sequel or remake (collectively, a “Subsequent Production”) within five years after the release of the Picture, Producer will negotiate in good faith for Writer’s services with respect to the first Subsequent Production on terms to be negotiated in good faith and in accordance with industry standards for comparable engagements; provided, however, that in no event shall the financial terms of Writer’s deal be less than those terms contained herein. If such negotiations do not result in an agreement within twenty (20) days from the commencement thereof, Producer shall have no further obligations to Writer under this subparagraph. The provisions of this subparagraph apply only to Writer personally and not to any heirs, executors, administrators, successors or assigns of Writer.

5.2 **Passive Payments.** In the event Producer produces the Picture, Writer is not in material breach hereof, Writer receives sole separation of rights or sole “written by” credit on the Picture upon final determination, and Writer does not render writing services on the Subsequent Production, then Writer shall be paid the following amounts, if any:

(a) If Producer produces a “sequel” (as such term is customarily understood in the television industry in Los Angeles), Fifty Percent (50%) of the Writing Fee and Sole Credit or Shared Credit Bonus (as applicable) for such sequel (payable promptly following the completion of principal photography thereof), plus a percentage of net profits equal to Fifty Percent (50%) of the percentage payable to Writer on the Picture (for this purpose net profits shall be defined, computed and accounted for as for the Picture).

(b) If Producer produces a “remake” (as such term is customarily understood in the television industry in Los Angeles), Thirty-Three and One-third Percent (33-1/3%) of the Writing Fee and Sole Credit or Shared Credit Bonus (as applicable) for such remake (payable promptly following the completion of principal photography thereof), plus a percentage of net profits equal to Thirty-Three and One-third Percent (33-1/3%) of the percentage payable to Writer on the Picture (for this purpose net profits shall be defined, computed and accounted for as for the Picture).

5.3 All sums paid to Writer pursuant to this paragraph for subsequent productions shall be credited against any corresponding sums required to be paid by the WGA Agreement in respect of any such rights or services, and any corresponding sums paid to Writer pursuant to such guild provisions shall be deducted from any amounts thereafter payable to Writer pursuant to the provisions hereof.
6. Rights: Writer acknowledges that the Material was created within the scope of Writer’s employment and, as such, is a “work-made-for-hire”. Accordingly, Producer shall be the sole and exclusive author and owner of the Material, the results and proceeds of Writer services hereunder and all rights of every kind and nature now known or hereunder created for all purposes throughout the universe in perpetuity. To the extent, if any, that ownership of the Material does not vest in Producer solely, exclusively and automatically by virtue of this agreement, Writer hereby assigns to Producer all rights (including without limitation, all rights of copyright and any so called “rental rights”) of every kind and character in and to the Material and the results and proceeds of Writer’s services. Producer and Writer acknowledge and agree that 3.8% of sums payable hereunder are in consideration of and are equitable remuneration for rental rights and that if under applicable law, any different form of compensation is required to satisfy the requirement of equitable remuneration then the grant to Producer of rental rights remains effective and Producer shall pay and Writer shall accept the minimum additional equitable remuneration permitted under applicable law. Writer hereby waives all “moral rights”. Producer shall have the right to make such changes in the Material or to combine the Material, or portions thereof, with other material, and to make any and all uses of the Material (including, but not limited to, ancillary, subsidiary and derivative uses), all as Producer may determine, without any further payment to Writer, except as may be required by the WGA Agreement.

7. Warranties and Indemnities:

7.1 Subject to Article 28 of the applicable WGA Agreement, and except to the extent based upon materials furnished to Writer by Producer, Writer represents and warrants that: Material shall be wholly original (or, in minor part, in the public domain) with Writer and that Writer shall be the sole author thereof; Writer has the full and sole right and authority to enter into this agreement and make the grant of rights made herein; Writer is, and throughout the term hereof shall remain, a member in good standing of the WGA; and, to the best of Writer’s knowledge (or that which Writer should have known in the exercise of prudence), the Material will not violate the rights of privacy of, or constitute a libel or slander against, or violate any common law or other rights of any person or entity. The approval by Producer of all or any part of the Material shall not constitute a waiver of such representations and warranties.

7.2 Producer warrants that it owns or controls (or will own or control) all rights necessary to develop, produce and exploit a motion picture based upon the Property, and that Producer is a signatory to the applicable WGA Agreement and the terms thereof shall be applicable hereto, except to the extent the terms hereof are more favorable to Writer and Producer shall pay any WGA pension; health and welfare contributions required of employers in connection with this agreement.

7.3 Writer shall indemnify Producer and its parents, subsidiaries, affiliates, successors, licensees, assigns, officers, agents and employees against all loss, cost, damages, liabilities and expenses (including reasonable outside attorneys’ fees) they may suffer in connection with any claim which arises out of any breach of any of Writer’s obligations, representations or warranties set forth herein.

7.4 Excepting any matters which are subject to Writer’s indemnification and excepting any matters arising out of Writer’s tortious acts or omissions or Writer’s breach of any
representation, warranty or agreement hereunder, Producer agrees to indemnify and hold Writer harmless from and against any claims, liability, loss and expense, including reasonable outside attorneys’ fees, Writer may suffer by reason of (a) any materials furnished by Producer hereunder, (b) any material breach of any representation, warranty or agreement made by Producer in this agreement, or (c) the development, production or distribution of the Picture.

7.5 Writer shall be added as an additional insured under Producer’s errors and omissions policy, if any, while Writer is rendering services for Producer within the scope of Writer’s employment hereunder, subject to the terms, conditions and limitations of such coverage. Writer acknowledges that if Producer elects to self-insure, then there shall be no obligation to obtain or maintain any coverage for Writer by a third party insurer. Writer further acknowledges that any such coverage shall not in any way limit or restrict Writer’s agreements, representations or warranties hereunder.

8. Writing Credit: Writer’s credit on the Picture, if any, on screen and in paid advertising, shall be in accordance with the applicable WGA Agreement. All other aspects of any such credit shall be at Producer’s sole discretion. No casual or inadvertent failure by Producer to comply with this paragraph, nor any failure by third parties, shall constitute a breach hereof. If Producer fails to accord Writer credit pursuant to the terms of this agreement, promptly following receipt of written notice setting forth in detail such failure, Producer agrees to use reasonable efforts to prospectively cure such failure, but nothing shall require Producer to cease using or to replace prints, negatives or other materials then in existence.

9. Annotation: If the Material is based in whole or in part on actual events or real people, Writer shall annotate the Material in accordance with the guidelines provided by Producer. Concurrent with delivery of each step of the writing services hereunder, Writer shall provide a full annotation identifying the source of all factual material contained in the Material which concerns any actual individual, whether living or dead, or any “real life” incident or place. Writer shall cooperate with Producer and with Producer’s counsel and insurance carrier, as may be reasonably necessary for the purpose of permitting Producer and its insurance carrier to evaluate and eliminate the risks involved in using the Material.

10. Suspension or Termination: Producer shall have the right to suspend Writer’s employment and compensation hereunder during all periods: (a) that Writer does not render services hereunder because of illness, incapacity, default or other similar matters; or (b) that development of the Picture is prevented because of force majeure events. Unless this agreement is terminated, the period of employment provided for above shall be deemed extended by a period equivalent to all such periods of suspension. If any matter referred to in (a) above other than default continues for longer than ten (10) business days, or if any matter referred to in (b) continues for more than five weeks, or in the event of a material default on the part of Writer, Producer may terminate this agreement. Notwithstanding anything to the contrary contained herein: (a) Writer shall not be in default hereunder unless Writer fails to cure any such default within three business days after Producer’s request (provided that there shall be no right to cure nor any cure period with respect to, any default which is incurable); and (b) in no event shall Producer be entitled to suspend this agreement more than once in connection with any particular event of force majeure. If, as a result of one or more events of force majeure, Producer suspends this agreement for a period of eight consecutive weeks or more, then Writer may terminate this
agreement by giving Producer written notice at any time during the continuation of such suspension; provided that if, within one week after Producer’s receipt of such notice, Producer elects to end such suspension, then such notice and such termination shall not be effective.

11. **Assignment:** This agreement will be binding upon and inure to the benefit of Writer’s and Producer’s respective licensees, successors and assigns. Producer may assign or transfer all or any part of Producer’s rights under this agreement to any person or entity; and, if and to the extent such assignee is a major studio, network, parent entity acquiring substantially all of Producer’s assets or a financially responsible party who assumes Producer’s obligations in writing, including by executing an assumption agreement in accordance with the applicable provisions of the WGA Agreement, Producer shall be relieved of its obligations hereunder.

12. **Services Unique:** It is mutually agreed that Writer’s services are special, unique, unusual, extraordinary, and of an intellectual character giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law and that Producer, in the event of any breach by Writer, shall be entitled to seek equitable relief by way of injunction or otherwise.

13. **Name and Likeness/Publicity:** Writer hereby grants to Producer the right to use Writer’s name and approved likeness in connection with the Material and the Picture and in advertising, exploiting and exhibiting same, but not as an endorsement of any product or service other than the picture. Writer shall not issue or permit the issuance of any publicity or make any public statements whatsoever concerning this employment, Producer the Picture; provided that Writer may make incidental, non-derogatory mention, of same in publicity primarily concerning Writer.

14. **Transportation, Accommodations and Per Diem:** If Producer requires Writer to render services on the Picture more than one hundred miles (100) away from Writer’s principal residence (a “Distant Location”), then Producer shall furnish Writer with first-class roundtrip transportation (if available and if used) and, while Writer is at such Distant Location at Producer’s request, reasonable hotel accommodations, ground transportation and a per diem to be negotiated in good faith within Producer’s customary parameters for comparable engagements.

15. **Miscellaneous:** No termination of this agreement or Writer’s employment shall extinguish, limit or curtail any of Producer’s right, title, interest or privilege in, to, or in connection with the Material or the results and proceeds of Writer’s services or Writer’s name and likeness. The rights and remedies of Writer in the event of any breach of the provisions of this agreement by Producer shall be limited to the rights, if any, to seek damages in an action at law, and in no event shall Writer be entitled, by reason of such breach, to rescind or terminate this agreement or to seek to enjoin or restrain the broadcast, exhibition, distribution, advertising, exploitation or marketing of the Picture or any other use of the Material or any part thereof. Producer and Writer agree to perform such other further and reasonable acts and to execute, acknowledge and deliver such other further and reasonable documents and instruments, including, without limitation, certificates of authorship with respect to all material furnished by Writer hereunder, as may be necessary or appropriate to carry out the intent hereof, and to evidence Producer’s ownership of the results and proceeds of all services rendered pursuant
hereto and a completed and certified Employment Eligibility Verification (I-9) in compliance with the Immigration Reform and Control Act of 1986. This agreement contains the full and complete understanding between the parties with reference to the within subject matter, supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and cannot be modified except by a written instrument signed by each party. Writer acknowledges that no representation or promise not expressly contained in this agreement has been made by Producer or any of its agents, employees or representatives. All notices which either party shall be required or desire to give to the other pursuant to this agreement shall be in writing addressed to the party receiving said notice at the addresses first set forth above for each party, or such other address which either party may hereafter give similar written notice. Three days after the date of mailing or the date of receipt of confirmation of facsimile transmission or the date of personal delivery, as the case may be, shall be deemed the date of service. Unless Producer receives written notice from the Writer to the contrary, all payments to Writer shall be made payable and delivered to Writer at the address set forth above. This agreement has been made in the State of California and shall be governed by and construed in accordance with the laws of the State of California.

Until and unless a more formal agreement containing customary terms and conditions relating to agreements of this nature in the motion picture industry consistent with the terms and conditions set forth herein is executed, this agreement will constitute a valid and binding agreement between the parties.

Please arrange to have four (4) copies of this letter agreement signed below where indicated and returned to me. I will provide you with a fully executed copy countersigned by our client

Very truly yours,

AGREED AND ACCEPTED:

By: ________________________________

Social Security # ____________________

By: ________________________________

Its: ________________________________
ANNOTATION GUIDE

Annotated scripts should contain for each script element (whether an individual, entity, event, setting or section of dialogue within a scene) notes in the margin which provide the following information:

1. Whether the element presents or portrays:
   
   A. Fact, in which case the note should indicate whether the individual’s or entity’s name is real, whether he or she is alive (or it is existing) and whether he, she or it, as the case may be has signed a release.

   B. Fiction, but a product of inference from fact; or

   C. Fiction, not based on fact.

2. How the element differs and/or is the same from fact (for example, describe in detail how a character is the same as and is different from the actual person upon whom such character is based).

3. Source material for each element whether book, newspaper or magazine article, recorded interview, trial or deposition transcript or other specified source. Source material identification should give the name of the source (i.e. New York Times article), page reference and date. To the extent possible, identify multiple sources for each element. Retain copies of all materials, preferably cross-referenced by reference to script pages and scene numbers. Coding may be useful to avoid repeated, lengthy references.
PRODUCER AGREEMENT

(Date)

(Name of Artist)
(Artist’s Address)

Re:  (Production Company)/("Picture")/(Artist)/(Capacity, e.g. Co-Producer)

Dear (Artist):

This agreement is made and entered into as of the date written above, by and between (Production Company) (“Producer”) and (Name of Artist) (“Artist”) concerning Artist’s services in connection with the project presently known as (“Name of Picture”) (the “Picture”). The parties hereto agree as follows:

1. Employment.

Provided Artist is available when and where reasonably required by Producer, Producer shall engage Artist as (capacity) for the Picture, and Artist accepts such employment, upon the terms and conditions herein contained.

2. Term.

Artist’s services hereunder shall be non-exclusive during development and first priority during production, provided, however, that any services which Artist may render for third parties or on Artist’s own account during non-exclusive periods shall not materially interfere with the timely performance of Artist’s services and obligations hereunder.

3. Compensation.

As full and complete consideration for all of the undertakings and services of Artist, and all rights and materials herein purchased, granted and agreed to be granted, and upon the condition Artist shall fully and faithfully complete all services that may be required hereunder, and provided that Artist is not in breach or default hereof, Producer agrees to pay to Artist, and Artist agrees to accept, the following:

3.1 A development fee of ______________ (“Development Fee”), payable promptly following execution hereof. Said Development Fee shall be fully applicable against the Production Fee as defined below.

3.2 Provided the Picture is produced, a fee of __________ (“Production Fee”) (less the Development Fee), payable promptly following the completion of principal photography of the Picture.

3.3 Producer shall have the unlimited right to rerun the Picture on television, make foreign telecasts thereof and release the Picture theatrically and in any and all supplemental
markets anywhere in the world and otherwise exploit the Picture in all media throughout the universe, and, in the event Producer exercises any such rights, Artist shall receive no additional compensation therefor, except as expressly set forth herein.

3.4 Nothing herein shall be deemed to obligate Producer to use Artist’s services, or the results of such services in the Picture, to produce, release or distribute the Picture, or to continue the release and distribution of the Picture if released, or to otherwise exploit any rights granted to Producer hereunder. Producer shall have fully discharged Producer’s obligations hereunder by payment to Artist of the Compensation set forth herein.

4. Credit.

In the event that the Picture is produced by Producer, and provided Artist performs all of Artist’s services hereunder, and on the condition that Artist is not in breach or default hereof, and subject to customary approvals of the studio, network and/or other similar parties, Producer shall accord Artist screen credit on positive prints of the Picture in substantially the form (credit). All other matters relating to credit shall be determined by Producer in its sole and exclusive discretion and subject to the standards and operating policies and practices as established and determined by the network, studio or similar party. No inadvertent or casual failure by Producer or any failure by a third party to accord the credit provided herein shall be deemed a breach of this Agreement.

5. Travel.

If Producer requires Artist to render services on the Picture more than one hundred (100) miles away from Artist’s principal residence (a “Distant Location”), Producer shall furnish Artist with roundtrip transportation and, while Artist is at such Distant Location at Producer’s request, reasonable hotel accommodations and ground transportation to be negotiated in good faith with Producer’s customary parameters for comparable engagements.

6. Miscellaneous.

The balance of this agreement shall be Producer’s Terms Of Personal Services Engagement (TOPSE 1.0), a copy of which are attached, subject to those changes, if any, mutually agreed in writing by the parties. This letter shall constitute a binding agreement between the parties, shall supersede any prior or contemporaneous agreements, and may not be waived or amended, except by a written instrument signed by the parties hereto.

Very truly yours,
AGREED AND ACCEPTED:

(Name of Artist)
Social Security No. ______________________
Date of Execution: ______________________

(Production Company)
By: ______________________________
Its: ____________________________
Terms of Personal Services Engagement (TOPSE 1.0)

1. General. These Terms of Personal Services Engagement (1.0) (“TOPSE” 1.0”) are incorporated into the principal agreement to which they are attached (“Agreement”). The individual rendering personal services pursuant to the Agreement is referred to herein as “Artist”. If Artist’s services are furnished by a corporation loaning services, that corporation is referred to herein as “Lender”. The entity engaging Artist’s services under the Agreement either directly or through Lender is referred to herein as “Producer”, and the television motion picture or pictures in connection with which Artist is engaged is referred to herein as the “Picture”. In the event of express inconsistency between the Agreement and TOPSE 1.0, the Agreement shall prevail.

2. Services. Artist shall render all services required hereunder at such place or places as required by Producer from time to time during the term thereof. Artist shall render all services under the supervision, direction and control of Producer, in a diligent and conscientious manner, and to the best of Artist’s ability, and comply with all of Producer’s instructions, directions, requests, rules and regulations (including those relating to matters of artistic taste and judgment). Except as otherwise expressly provided to the contrary in the Agreement, Artist shall render Artist’s services exclusively and solely for Producer during the entire term hereof. Artist agrees, if and when requested by Producer, to report to all development, pre-production, principal photography and post-production activities, publicity interviews, publicity photography, story conferences, song conferences, production conferences, making of stills, and the like, and for changes in and/or foreign versions of the Picture, and for no additional compensation therefor. If any such services would conflict with any of Artist’s existing professional commitments, then Artist shall give Producer timely notice of same, in which case Artist shall cooperate to the fullest extent with Producer in becoming available to render such services.

3. Services Unique. Artist acknowledges that rights granted to Producer and Artist’s services hereunder are of a special, unique, unusual, extraordinary and intellectual character giving them peculiar value, the loss of which cannot be reasonably or adequately compensated in damages, and that a breach by Artist may cause Producer irreparable injury and damage. Accordingly, without limiting or waiving any other rights or remedies of Producer, Producer shall be entitled to seek injunctive or other equitable relief to prevent such breach and to prevent Artist from performing services for himself, or any person other than Producer.

4. Results and Proceeds. Producer shall own, in perpetuity, throughout the universe, all right, title and interest in and to the Picture, the elements thereof, and the results and proceeds of Artist’s services hereunder and all materials produced thereby or furnished by Artist, of any kind and nature whatsoever, to the maximum extent permitted by any applicable guild or union agreement and free and clear of any and all claims for royalties and other compensation except as specifically set forth in the Agreement. Artist acknowledges that any and all results and proceeds of Artist’s services hereunder shall be a work-made-for-hire for Producer, specially commissioned for use as part of a motion picture or other audiovisual work. Producer shall have the right to adapt, change, revise, delete from, add to or rearrange the Picture, or any part thereof and Artist waives throughout the universe the benefit of any law, doctrine or principle known as “droit moral” or moral rights of authors or any similar law, doctrine or principle however denominated, to the maximum extent permitted in each applicable jurisdiction. Producer shall
own the Picture produced hereunder and all rights whatsoever therein, including, but not limited to, all copyrights, throughout the world and in perpetuity, and in all elements thereof, and shall have the right to sell, lease, license and otherwise exploit such rights and elements, as Producer may determine in its sole discretion. Artist’s grant includes all rights regarding the renting, lending, fixing, reproducing and other exploitation of the Picture conferred under any applicable laws, directions or regulations, including without limitation, those of the European Union (“EU”).

5. Representations and Warranties; Insurance; FCC; Indemnity. Artist hereby represents, warrants and agrees as follows:

(a) Artist is free to enter into the Agreement, and is not subject to any obligation or disability which will or might prevent Artist from keeping and performing all of the conditions, obligations, covenants and agreements to be kept or performed hereunder; and Artist has not made, and will not make, any agreement, commitment, grant or assignment, nor do any act or thing which might interfere or impair the complete enjoyment of the rights granted and the services to be rendered to Producer.

(b) All ideas, creations and literary, musical and artistic materials and intellectual properties (“materials”) furnished by Artist hereunder, shall be wholly original with Artist except materials in the public domain, and that neither the materials nor the use thereof will infringe upon or violate any right of privacy of or constitute a libel, slander, or any unfair competition against, or infringe upon or violate the copyright, common law rights, literary, dramatic, photoplay, right of publicity, or any other rights of any third party.

(c) If and only if expressly required by Producer in connection with the services to be performed by Artist hereunder, Artist will become, at Artist’s sole cost and expense, and will remain throughout the term hereof, a member in good standing of the properly designated labor organization or organizations (as defined and determined under applicable law) representing persons performing services of the type and character that are to be performed by Artist hereunder.

(d) Artist represents that Artist is aware that it is a criminal offense under the Federal Communications Act of 1934, as amended (“Communications Act”), for any person, in connection with the production or preparation of any television Picture to accept or pay money, service or other valuable consideration for the inclusion of any plug, reference or product identification or other matter as a part of such Picture unless such acceptance or payment is disclosed in the manner required by law. Artist further understands that it is Producer’s policy not to knowingly permit the acceptance or
payment of any such consideration and that any such acceptance or payment will be cause of immediate dismissal, it being Producer’s intention that the Picture shall be capable of being broadcast without the necessity of any disclosure or announcement which would otherwise be required by Section 317 or Section 507 of the Communications Act. Artist represents, warrants and agrees that Artist has not paid or accepted, and will not pay or accept any money, service or other valuable consideration for the inclusion of any plug, reference or product identification or any other matter in the Picture, and that Artist has no knowledge of any information relating to the Picture which is required to be disclosed by Artist under Section 507 of the Communications Act. Artist further agrees that Artist will promptly deliver to Producer, upon request, such affidavits and/or statements as Producer may require with respect to said Section 507.

(e) Artist shall indemnify and hold Producer, any licensee or distributor of the Picture, any station or network telecasting the Picture, each sponsor and its advertising agency, and the shareholders, directors, officers, agents, employees, successors, licensees and assigns of any of the foregoing, harmless from and against any and all liability, loss, damage, costs, charges, claims, actions, causes of action, recoveries, judgments, penalties and expenses, including attorneys’ fees, which they or any of them may suffer by reason of the services rendered or the use of any materials furnished by Artist hereunder, or any breach of any representation, warranty, or agreement made by Artist in the Agreement.

(f) Artist shall be added as an additional insured on Producer’s errors and omissions and general liability insurance policies, if any, subject to the terms and restrictions of such policies. Producer may secure any type of insurance covering Artist, insuring Producer or its designees. Artist will assist Producer prior to principal photography in procuring such insurance by submitting to customary examinations (with Artist to have the right to have Artist’s physician present at such exams) and by filling out required applications. If Producer is unable to procure such insurance covering Artist at normal rates and without special exclusions, Producer may terminate Artist’s services hereunder and be relieved of any further obligation to Artist hereunder. From the date three (3) weeks before the scheduled start of principal photography until completion of all services required of Artist hereunder, Artist will not ride in any aircraft, other than as a passenger on a scheduled flight of a United States or major international air carrier maintaining regularly published schedules,
or engage in any extrahazardous activity without Producer’s prior written consent in each case.

(g) Producer and Lender acknowledge and agree that the following sums are in consideration of, and constitute equitable remuneration for, the rental right included in the rights herein granted: (i) an agreed allocation to the rental right of 3.8% of the fixed compensation and, if applicable, 3.8% of the contingent compensation provided for in this agreement; and (ii) any sums payable to Lender with respect to the rental right under any applicable collective bargaining or other industry-wide agreement; and (iii) the residuals payable to Lender under any such collective bargaining or industry-wide agreement with respect to home video exploitation which are reasonably attributable to sale of home video devices for rental purposes in the territories or jurisdictions where the rental right is recognized. If under the applicable law of any territory or jurisdiction, any additional or different form of compensation is required to satisfy the requirement of equitable remuneration, then it is agreed that the grant to Producer of the rental right shall nevertheless be fully effective, and Producer shall pay Lender such compensation or, if necessary, the parties shall in good faith negotiate the amount and nature thereof in accordance with applicable law. Since Producer has paid or agreed to pay Artist equitable remuneration for the rental right, Artist hereby assigns to Producer, except to the extent specifically reserved to Artist under any applicable collective bargaining or other industry-wide agreement, all compensation for the rental right payable or which may become payable to Lender or Artist on account or in the nature of a tax or levy, through a collecting society or otherwise. Artist shall cooperate fully with Producer in the collection and payment to Producer of such compensation.

Further, since under this agreement Producer has paid or agreed to pay Artist full consideration for all services rendered and rights granted by Artist hereunder, Artist hereby assigns to Producer, except to the extent specifically reserved to Artist under any applicable collective bargaining or other industry-wide agreement, all other compensation payable or which may become payable to Artist on account or in the nature of a tax or levy, through a collecting society or otherwise, under the applicable law of any territory or jurisdiction, including by way of illustration only, so-called blank tape and similar levies. Artist shall cooperate fully with Producer in connection with the collection and payment to Producer of all such compensation.

6. **Producer’s Controls.** As between Artist and Producer, Producer shall have full and exclusive budgetary, financial creative and business control over the Picture. Artist shall not at any time without Producer’s prior written approval had and obtained in each case (whether
before, during or after the term hereof), make any public statements, release or authorize any information, advertising or publicity relating to the engagement hereunder, the Picture, or Producer or Producer’s personnel or operations, provided Artist can make incidental non-derogatory references in personal publicity.

7. **Name and Likeness.** Producer shall have the perpetual right, and may grant to others the right, to disseminate, display, reproduce, use, print, publish and make any other uses of Artist’s name, sobriquet, voice, signature and/or likeness (whether or not taken from the Picture), and biographical material concerning Artist as news or information matter in connection with advertising, publicizing and exploiting the Picture, Artist’s services hereunder, including but not limited to, the right to use and authorize others to use the same in the credits of the Picture, in trailers, in commercial tie-ups, and in all other forms and media of advertising and publicity and in connection with novelizations and other publications, and in connection with the advertising and/or merchandising of any product, commodity or service or series; provided that Artist shall not be represented as endorsing any products or services without Artist’s prior consent. Producer contemplates filming and exploiting films, including, without limitation, “behind-the-scenes” or “making-of” productions (jointly and severally, “Promotional Rights”) about the development and production of the Picture. Artist hereby agrees to participate in and consents to such filming and exploitation (including, without limitation, use of any film clip footage from such Picture and behind-the-scenes photography and filmed interviews with Artist (but excluding any depiction of Artist in the nude without Artist’s approval) and hereby grants to Producer, in perpetuity and throughout the universe, the right to use Artist’s name, voice and likeness in connection with such Promotional Rights for no additional consideration, inasmuch as the compensation payable to Artist under this Agreement for the Picture shall be deemed to include compensation for all rights granted pursuant to this paragraph.

8. **Producer’s Breach.** Notwithstanding any contrary provision hereof, or the operation of law, the Agreement shall not be terminated because of a breach by Producer of any of the terms, provisions or conditions contained herein unless and until Artist has given Producer written notice of any such breach and Producer has not within a period of ten (10) business days after receipt of such notice from Artist cured such breach. Artist’s rights and remedies in any event whatsoever shall be strictly limited, if otherwise available, to the recovery of damages in an action at law, and in no event shall Artist be entitled to rescind this Agreement, revoke any of the rights herein granted, or enjoin or restrain the production, broadcast, distribution or exhibition of the Picture, or any other motion picture, remake, sequel, television Picture or derivative production based thereon.

9. **No Obligation to Use.** Producer shall have no obligation to produce, release, broadcast or otherwise exploit the Picture, or to use Artist’s services or the rights granted hereunder in connection therewith or otherwise, and Producer shall be deemed to have fully satisfied its obligations by paying to Artist the fixed compensation due Artist pursuant to the terms of the Agreement.

10. **Credit.** Except as expressly provided to the contrary in the Agreement, Producer shall determine, in its sole discretion, the manner, form, size, style, nature and placement of any credit given to Artist, subject only to the provisions of applicable guild or union agreements. No inadvertent failure of Producer to comply with the provisions hereof with respect to credit, no
failure, error or omission in giving credit due to acts of third persons, nor the omission of credit where the exigencies of time make the giving of credit impracticable, shall constitute a breach of the Agreement. In the event of a breach of this paragraph, Artist’s remedies, if any, shall be limited to the right to recover damages in an action at law and in no event shall Artist be entitled to terminate or rescind the Agreement, revoke any of the rights herein granted or to enjoin or restrain the distribution or exhibition of the Picture.

11. Notices; Payments. All notices, accountings and payments (“notices”) which either Producer or Artist shall be required to give hereunder shall be in writing and shall be served by United States mail to the address specified in the Agreement or by facsimile or by personal delivery, or at such other address which either party may hereafter give by written notice. Service of any notice, statement or other paper upon either party shall be deemed complete if and when the same is personally delivered to such party, upon receipt by such party of a facsimile (with facsimile confirmation), or upon its deposit in the continental United States in the United States mail, postage or prepaid registered or certified mail, return receipt requested, and addressed, as the case may be, to the party which is the recipient at its address in the Agreement.

12. Suspension; Termination. If Artist fails, refuses or is unable for any reason whatsoever to render any of Artist’s services hereunder, or if Producer’s development and/or production of the Picture hereunder is interrupted or materially interfered with by reason of any governmental law, ordinance, order or regulation, or by reason of fire, flood, earthquake, labor dispute, lockout, strike, accident, act of God or public enemy or by reason of any other cause, thing or occurrence of the same or any other nature not within Producer’s control (“Force Majeure”), Producer shall have the right: (i) to terminate the Agreement (whether or not Producer has theretofore suspended the Agreement as hereinafter provided) and Producer shall have no further obligation to Artist hereunder (except to pay accrued but unpaid compensation in the event of Force Majeure), or (ii) at Producer’s option, to suspend the Agreement for a period equal to the duration of any such failure, refusal, or inability or the occurrence of any events of Force Majeure, and no compensation shall be paid or become due to Artist hereunder for such period. No suspension shall relieve Artist of Artist’s obligation to render services hereunder when and as required by Producer under the terms hereof, except during the continuance of a disability of Artist. Unless the Agreement shall have been previously terminated as provided herein above, any such suspension shall end promptly after the cause of such suspension ceases, and all time periods and dates hereunder shall be extended by a period equal to the period of such suspension.

13. (a) Waiver. No waiver by either party hereto of any failure by the other party to keep or perform any covenant or condition of the Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other covenant or condition. Neither the expiration nor any other termination of the Agreement shall affect the ownership by Producer of the results and proceeds of the services rendered by Artist hereunder, or any warranty or undertaking on the part of Artist in connection therewith. The remedies herein provided shall be deemed cumulative and the exercise of any one shall not preclude the exercise of or be deemed a waiver of any other remedy, nor shall the specification of any remedy hereunder exclude or be deemed a waiver of any rights or remedies at law, or in equity, which may be available to Producer, including any rights to damages or injunctive relief. All rights granted to Producer are
irrevocable and without right of rescission by Artist or reversion to Artist under any circumstances whatsoever, and Artist’s rights and remedies shall be limited to the recovery of damages. Artist shall not have the right to enjoin or restrain the production, distribution, exhibition or other exploitation and the elements thereof of the Picture.

(b) **Assignment.** Producer shall have the right to assign all or any part of its rights under the Agreement to any person, but no such assignment shall relieve Producer of its obligations hereunder unless the assignment is to a major or mini-major, a network, a Lender acquiring substantially all the assets of Producer, a parent of Producer or a financially responsible party who assumes Producer’s obligations in writing. Artist shall not have the right to assign the Agreement or any of Artist’s rights hereunder. This agreement will be binding upon and inure to the benefit of Producer’s respective licensees, successors and assigns. No additional compensation whatsoever shall accrue or be payable to Artist including without limitation to the generality of the foregoing, for any services rendered at night, on Sundays or holidays or after the expiration of any number of hours of services in any period.

(c) **Jurisdiction.** The laws of the State of California applicable to agreements executed and to be wholly performed within the State of California shall apply to the Agreement. The parties agree and consent to the jurisdiction of the courts of the State of California and agree to venue in courts located in Los Angeles County, California. In the event there shall be any conflict between any provision of the Agreement and any applicable law, or applicable guild or union agreement, the latter shall prevail, and the provision or provisions of the Agreement shall be modified only to the extent necessary to remove such conflict, and as so modified the Agreement shall continue in full force and effect.

(d) **Guild/Union.** Producer shall have the right to the maximum extent permissible under such applicable guild or union agreements, to apply all compensation paid to Artist on account of Artist’s services under the Agreement as a credit against any and all amounts which may be required under such collective bargaining agreements to be paid to Artist for Artist’s services, the results and proceeds thereof, the rights granted by Artist hereunder and the exercise thereof and for any other reasons whatsoever. If, pursuant to such collective bargaining agreements, Artist is entitled to any payment in addition to or greater than those set forth herein, then any such additional or greater payment made by Producer shall, except to the extent expressly prohibited by such collective bargaining agreements, be considered as an advance against and deducted from any such sum which may subsequently become
payable to Artist hereunder. If, in determining the payments to be made hereunder, there is required any allocation of the compensation paid to Artist as between Artist’s various services, Artist agrees to be bound by such allocation as may be made by Producer in good faith.

(e) **Withholdings.** Producer may deduct and withhold from the compensation payable to Artist hereunder any union dues and assessments to the extent permitted by law and any amounts required to be deducted and withheld under the provisions of any statute, regulation, ordinance, order and any and all amendments thereto heretofore or hereafter enacted requiring the withholding or deduction of compensation. If, pursuant to Artist’s request or authorization, Producer shall make any payments or incur any charges for Artist’s account, Producer shall have the right to deduct from any compensation payable to Artist hereunder any charges so paid or incurred, but such right of deduction shall not be deemed to limit or exclude any other rights of credit or recovery or any other remedies that Producer may have. Nothing herein above set forth shall be deemed to obligate Producer to make any such payments or incur any such charges.

(f) **Directed Withholdings.** If Producer is directed, by virtue of service of any garnishment, levy, execution or judicial order, to apply any amounts payable hereunder to any person, firm, corporation or other entity or judicial or governmental officer, Producer shall have the right to pay any such amounts in accordance with such directions, and Producer’s obligations to Artist shall be discharged to the extent of such payments. If because of conflicting claims to amounts payable hereunder, Producer becomes a party to any judicial proceeding affecting payment or ownership of such amounts, Artist shall reimburse Producer for all costs, including attorneys’ fees, incurred in connection therewith.

(g) **Entire Agreement.** These terms of Personal Services Engagement (TOPSE 1.0) and the principal agreement to which they are attached constitutes the entire Agreement between the parties, supercedes all prior agreements and understandings, whether written or oral, pertaining thereto, and cannot be modified except by a written instrument signed by Artist and an authorized officer of Producer. No officer, employee or representative of Producer has any authority to make any representation or promise in connection with the Agreement or the subject matter hereof which is not contained herein, and Artist agrees that Artist has not executed the Agreement in reliance upon any such representation or promise.
(h) **Lender’s Obligations, Representations and Warranties, and Dissolution.** If the Agreement is entered between Producer and a corporation (“Lender”) which furnishes the services of Artist, Lender represents and warrants that it is duly organized and presently in good standing in its state of incorporation; has a valid agreement with Artist under which Lender has the right to enter the agreement and grant Producer any and all of the services and rights granted hereunder and make all of the representations, warranties and agreements made by Artist. Producer shall pay Lender all compensation that would have been payable to Artist hereunder if Producer had directly employed Artist and Producer shall not be obligated to make any payments whatsoever to Artist. Artist’s services shall be rendered as Lender’s employee and Lender agrees to fully perform all such obligations and indemnifies Producer from all claims, liabilities and expense (including, without limitation, attorneys’ fees) for or in connection with withholding and/or payment of any sums required to be paid by an employer to any governmental authority or pursuant to any guild or union health, welfare or pension plan, or on account of any other so-called fringe benefits, or workers’ compensation premiums. Artist represents and warrants that Artist is familiar with the terms hereof and agrees to be bound by same and agrees to look solely to Lender for all compensation or other consideration in connection with the rights granted and services to be rendered hereunder. If Lender or Lender’s successors in interest should be dissolved or otherwise cease to exist or for any reason whatsoever fail, be unable, neglect or refuse to perform, observe or comply with any or all of the terms and conditions of the Agreement and/or this Agreement, Artist may, at Producer’s election, be deemed a direct party to the Agreement until completion of the services required of Artist thereunder, upon the terms and conditions set forth therein. In the event of a breach or a threatened breach of this Agreement or the Agreement by Lender and/or Artist, Producer shall be entitled to seek legal, equitable and other relief against Lender and/or Artist, in Producer’s sole discretion. Producer shall have all rights and remedies against Artist that Producer would have if Artist were a direct party to the Agreement. Producer shall not be required to resort first to or exhaust any rights or remedies Producer has against Lender before exercising Producer’s rights and remedies against Artist.

(i) **IRCA.** All of Producer’s obligations hereunder are conditioned upon and subject to Artist’s delivery to Producer of a completed and certified Employment Eligibility Verification (Form I-9) in compliance with the Immigration Reform and Control Act of 1986.
(j) **Further Documents.** Artist agrees to perform such other further acts and to execute, acknowledge and deliver such other further documents and instruments, including, without limitation, certificates of authorship and certificates of engagement with respect to all material furnished by Artist hereunder, as may be necessary or appropriate to carry out the intent hereof, and to evidence Producer’s ownership of the results and proceeds of all services rendered pursuant hereto, and Artist hereby appoints Producer as Artist’s attorney-in-fact, which appointment is irrevocable and coupled with an interest, with full power of substitution and delegation, to execute any and all such documents which Artist fails to execute within five business days after Producer’s request therefor, and to do any and all such other acts that Artist fails to do after Producer’s request therefor.

14. **Worker’s Compensation.** For the purpose only of determining the applicability of Workers’ Compensation statutes to Artist’s services under the Agreement if the Agreement is entered between Producer and Lender, an employment relationship exists between Producer and Artist, Producer being Artist’s “special employer” and Lender being Artist’s “general employer”. In this regard, Lender agrees (a) that the rights and remedies of Artist and Artist’s heirs, executors, administrators, successors, licensees and assigns against Producer, its officers, agents and employees (including any persons whose services are furnished to Producer by any corporation or other entity under an agreement granting Producer the right to supervise, control and direct such person’s services [“other special employees”]) by reason of any injury, illness, disability or death of Artist which falls within the purview of applicable Workers’ Compensation statutes and which arises out of and in the course of Artist’s services under the Agreement will be limited to the rights or remedies provided under such Workers’ Compensation statutes; (b) that Producer, its officers, agents and employees will have no obligation or liability to Lender or Artist by reason of any such injury, illness, disability or death; (c) that neither Lender nor Artist, nor any of Artist’s heirs, executors, administrators, licensees, successors or assigns will assert any claim by reason of any such injury, illness, disability or death against any other corporation or entity which furnishes to Producer services of any other special employee; and (d) that to the extent required by law, Lender has and, at all times during the term of Artist’s engagement and services hereunder, shall maintain workers’ compensation insurance covering Artist. Lender and Artist hereby agree to defend, indemnify and hold Producer, and any person or entity claiming under or through Producer, harmless from and against all claims, demands, liabilities, losses, costs (including reasonable attorneys’ fees), and expenses (other than any claims, demands, etc. under applicable Workers’ Compensation statutes) arising in connection with any such injury, illness, disability or death. Lender, Artist and Producer hereby make any election necessary to render Workers’ Compensation statutes applicable to Lender’s engagement to furnish the services of Artist hereunder.
PRODUCT/BRAND INTEGRATION AGREEMENT

[FORM INTEGRATION AGREEMENT ENTERED INTO BY AGENCY ON BEHALF OF THE CLIENT WITH THE PRODUCER OF A TELEVISION PROGRAM]

This agreement (the “Agreement”), effective as of July ____, 200 __, between _______ Productions [PROVIDE FULL NAME] (“Producer”), on the one hand, and _______ (“Agency”), on behalf of its client _______ Corporation (the “Client”), on the other, sets forth the terms and conditions on which Producer will integrate Client’s _______ brand (the “Brand”) into the television series entitled “_______ Show” (the “____ Show”) featuring _______ (the “Artist”). In consideration of the promises and covenants set forth herein, the parties hereby agree as follows:

1. **Term; Territory.** The term of this Agreement shall be the period commencing upon the date hereof and continuing through _______ 20____ (the “Term”). The territory of this Agreement shall be _______ (the “Territory”).

2. **Brand Integration; Producer’s Responsibilities.**

   (a) Producer will integrate the Brand into _____ (__) original episodes of the ____ Show (the “Episodes”). X Number of Episodes will have their initial public exhibition via national television syndication during the ____ calendar year and X Number of the Episodes will have their initial public exhibition via national television syndication during the ____ calendar year.

   (b) The specific content of each integration of the Brand in an Episode (each an “Integration”) will be mutually agreed to by the parties in advance of production. Without limitation of the foregoing, the Brand will be prominently featured in each Episode. For the purposes hereof, “prominently featured” shall mean that a product marketed by the Client under the Brand (a “Branded Product”) is clearly visible to the casual observer and is on screen for at least five consecutive seconds and/or that the Brand name and/or the name of a Branded Product is clearly mentioned in dialogue.

      (i) To the extent an Integration is scripted, the script will be subject to the Client’s prior written approval. The Client shall advise Producer of its approval or disapproval of any script within five (5) business days of its receipt of the script. The Client shall have the right to have one or more representatives present during the taping of the Episodes.

      (ii) By way of example only, the parties agree that the Integrations may include one or more of the following:

         (1) [in this situation the Artist is separately a spokesperson for the Client’s products] In connection with the launch of the Client’s marketing campaign featuring the Artist (currently expected to take place in or about _______), the Integration may consist of …
(2) Additional Examples if Applicable.

(c) Immediately upon completion of production of each Episode, Producer will supply to the Client still photographs and video footage (in an agreed-upon format) of the scenes of the Episode containing the integration.

(d) Producer will ensure that (i) the _____ Show will not contain any derogatory references to the Client, the Brand or any Branded Product, (ii) the Integrations shall occur in a manner that creates a positive impression of the Brand, and at all times portray the Brand and the Client in a positive fashion, (iii) any Branded Products depicted in any Episode will not be altered or modified, including with respect to their visual appearance, and the logos, trademarks and/or trade names appearing on the Branded Products will not be obscured or removed.

(e) All costs in connection with the production of the Episodes and the Integrations shall be the responsibility solely of Producer. To the extent the consent and/or cooperation of any third party is required for the production and/or exhibition of the Integrations (including, without limitation, the consent and/or cooperation of any television network or other distribution outlet), Producer shall timely obtain such consent and/or cooperation. Producer is responsible for all persons employed or engaged by Producer, including, without limitation, responsibility for all compensation, withholding taxes, worker’s compensation insurance and other required payments in connection with such employees.

(f) In the event that after the initial telecast of any Episode the Episode is edited, re-formatted or otherwise altered (including, without limitation, in connection with exploitation of the Episode in another format or medium), the Integration shall not be edited or deleted without the prior written consent of the Client.

3. Payment. In full consideration of the rights granted and services to be provided by Producer hereunder, Client agrees to pay to Producer a fee in the amount of _____ Dollars ($500,000) to be paid as follows: (a) $____ dollars within thirty (30) days of full execution of this Agreement; (b) $____ within thirty (30) days of the initial telecast of the first Episode; (c) $____ within thirty (30) days of the initial telecast of the second Episode; (d) etc.

4. Exclusivity. Producer will ensure that no product or service (a) that is competitive with those of the Client, including ___________ products (such as, by way of example only, ___________ ) manufactured or distributed by any third party other than a [client]-controlled company, or (b) that is manufactured or distributed under the brand names ___________ (whether or not directly competitive), will be mentioned, featured or depicted in any way in any of the Episodes, and that no advertisements for any such products will be aired during the exhibition of the Episodes.

5. Client’s Publicity. The Client shall have the right to refer to its affiliation with the _____ Show in advertising, marketing and promotional materials, in all media and formats whether now known or later developed, in such manner as Client may deem appropriate, and to use the title of the _____ Show in connection therewith. Producer shall provide to Client still photographs and footage from the Episodes for Client to use in connection with such advertising and promotion of the Brand. To the extent that any photographs or footage supplied to Client for such purposes contain the names, likenesses or images of any persons other than the Artist, or
any intellectual property, Producer warrants that Producer shall have obtained all necessary permissions for Client to use such materials as permitted herein without any payment to any person or entity.

6. **Warranties, Representations and Covenants.** Producer warrants, represents and covenants as follows:

   (a) Producer has the full right and authority to enter into this Agreement and comply fully with its obligations hereunder, and no consent from any third party is necessary for Producer to enter into and perform this Agreement;

   (b) Producer will comply with all laws, ordinances, rules, regulations and orders applicable to the production of the Episodes and the Integrations and/or Producer’s performance hereunder;

   (c) Producer has not done and will not do any act and has not made and will not make any grant, assignment or agreement which will or might conflict or interfere with the complete enjoyment of all of the Client’s rights hereunder; and

   (d) The Episodes and Integrations will not (i) violate, infringe upon or give rise to any adverse claim with respect to any intellectual property right or other personal or proprietary right (including, without limitation, any copyright, trademark right, right of privacy or right of publicity) of any third party, (ii) violate any applicable law, or (iii) contain any language, images or other tangible or intangible material that is defamatory, obscene, reasonably likely to be construed as offensive, or reasonably likely to bring Artist, the Brand and/or the Client into public disrepute, contempt, scandal or ridicule.

7. **Confidentiality.** Producer shall hold in strictest confidence and shall not disclose to any third party (i) the fact or content of this Agreement, or (ii) any information of a confidential and/or competitively sensitive nature concerning the Client or the Brand disclosed to or obtained by Producer prior to or during the production of the Episodes and/or Integrations, including without limitation any information about the Client’s products and services, marketing strategies or business plans. Producer also agrees to cause any persons and/or entities engaged in connection with the production of the Episodes to comply with the foregoing restrictions.

8. **Termination.** Either party may terminate this Agreement upon written notice to the other party in the event the other party materially breaches this Agreement or any of its representations or warranties herein and fails to cure the breach within fifteen (15) days after receipt of written notice thereof.

9. **Indemnity.**

   (a) Producer shall indemnify, defend and hold harmless the Client and its parent, subsidiary and affiliated companies, distributors, agents, assigns and licensees and the respective shareholders, directors, officers, employees and agents of each of the foregoing (“the Client Indemnified Parties”) from and against any and all claims, actions, or demands asserted by any third party (each a “Claim”) arising out of (i) any breach by Producer of any representation, warranty or covenant made, or obligation assumed, by Producer herein, or (ii) the Integrations or the Episodes, including without limitation any Claim that any Integration, Episode or component
thereof infringes upon or violates any copyright, trademark, or other intellectual property right or proprietary interest of any third party or defames or violate the rights of publicity or privacy or any other rights of any third party, and any and all losses, penalties, expenses or damages (including, without limitation, reasonable outside legal fees and expenses) ("Losses") imposed on, incurred by or asserted against any of the Client Indemnified Parties in connection with any such Claim.

(b) The Client shall indemnify, defend and hold harmless Producer and its parent, subsidiary and affiliated companies, and the respective shareholders, directors, officers, and employees of the foregoing ("Producer Indemnified Parties") from and against any and all Claims arising out of any breach by the Client of any representation, warranty or covenant made, or obligation assumed, by the Client herein, and any and all Losses imposed on, incurred by or asserted against any of the Producer Indemnified Parties in connection with any such Claim.

10. **Notices.** All notices shall be in writing and shall be deemed received when delivered in person, by courier service (e.g., Federal Express) or by facsimile, or three (3) days after deposited in the mail, postage prepaid, certified or registered mail addressed to the other party at the address set forth below, or at such other address as such party may supply by written notice; provided, however, that a notice of change of address shall not be effective until received.

To Producer:


To the Agency or Client:

Att’n: ____________

with a copy to:

11. **Miscellaneous.**

(a) Producer and the Client are independent contractors with respect to each other. Nothing herein creates any partnership, joint venture or agency relationship between them.

(b) Producer may not assign or delegate this Agreement or any of its rights or obligations hereunder to any third party.

(c) Captions are used herein solely for convenience and shall not be deemed to affect in any manner the meaning or intent of this agreement or any provision hereof.

(d) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings
between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified except by an instrument in writing signed by both parties hereto. No waiver of any term or condition of this Agreement shall be construed as a waiver of any other term or condition, nor shall any waiver of any default under this Agreement be construed as a waiver of any other default. In the event that there is a conflict between any provision of this Agreement and any statute, law or regulation, the latter shall prevail; provided, however, that in such event, the provision of this Agreement so affected shall be curtailed and limited only to the minimum extent necessary to permit compliance with the minimum requirement; no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

(e) The internal substantive laws (without application of choice of law rules) of the State of New York applicable to contracts made and performed entirely in New York shall govern (a) the validity and interpretation of this agreement, (b) the performance by the parties of their respective obligations hereunder, and (c) all other causes of action arising out of or relating to this agreement or the termination of this agreement. Producer and the Client hereby consent to the jurisdiction of the Federal and State courts located within the County of New York in the State of New York with respect to any matter arising out of or relating to this agreement and agree that venue is proper in such courts.

(f) This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Counterparts may be exchanged by facsimile.

(g) The provisions of Sections 2(f), 5, 7, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

PRODUCTIONS

[As agent for _____]

By: ________________________
Title: ________________________

By: ________________________
Title: ________________________
PRODUCT PLACEMENT AGREEMENT

THIS PRODUCT PLACEMENT AGREEMENT is made effective as of ______, 2005 by and between ("Retailer"), a California corporation, with offices located at ________ and __________, a _____ corporation with offices located at __________________ ("Producer").

1. Integration in the Film.
   
   (a) The Film. Producer is currently overseeing the production of a motion picture tentatively entitled [_______] (the "Film"). The film is scheduled to be released to the public in approximately _______, 2005.

   (b) Exclusivity. Producer hereby grants to Retailer the right for Brand (the "Brand") to be the exclusive wine featured in the Film. Producer agrees that it shall not grant any rights of any nature whatsoever in or to the Film to or on behalf of any other manufacturer, retailer or distributor of any wine product.

   (c) Brand Integration. Producer hereby agrees to integrate the Brand into the Film as follows:

      (i) The Product shall be prominently depicted into a minimum of two (2) scenes in the Film including the scene featuring the initial meeting between the advertising agency and the character known as [name]. For the purposes hereof, the term “prominently depicted” shall mean that the Product is clearly visible to the casual observer and is on screen for at least three consecutive seconds;

      (ii) Posters featuring the Brand shall be prominently depicted during those scenes which take place in the advertising agency

      (iii) Retailer shall have the right to have its [name], cast in a secondary role to appear in those scenes in which the _________ character is featured in meetings with the advertising agency. Retailer shall be responsible for any fees to be paid to _________ in connection with his participation in the Film and for obtaining all releases from _________ for his participation in the Film. In the event that _________ is unable to personally appear in the film, Producer shall incorporate references to _________ and prominently depict photographs of _________ into such scenes.

      (iv) Producer shall use its best efforts to integrate the Brand into other scenes in the Film such as those occurring in bars or restaurants when such integration is, in the reasonable discretion of Producer, appropriate. In no event shall any wine other than the Brand be featured in any scenes in the film.

2. Retailer’s Rights and Obligations.

   (a) Approval Rights. Producer shall provide to Retailer a script of the Film for its review. Retailer shall have a right or prior approval over all scenes in which the Brand and/or _________ are featured or depicted. Producer agrees that a Retailer representative shall
have the right to be present during the filming of the scenes featuring Retailer, the Brand and/or
__________. Retailer shall advise Producer of its approval or disapproval of any materials
within five (5) business days following its receipt from Producer of the script. Producer shall
furnish to Retailer a copy of the final edited version of the Film prior to distribution. In the event
that there are any material changes in the final edited version from the Retailer approved script
which in the reasonable discretion of Retailer negatively impact upon the depiction of the Brand,
Retailer shall have the right to require Producer to re-edit the Film to conform to the approved
script. Notwithstanding anything herein contained to the contrary, in the event that upon its
review of the script, Retailer determines in its reasonable discretion that the overall content
and/or theme of the Film is not consistent with the Brand’s image or reputation, Retailer shall
have the right, exercisable within five (5) business days following its receipt from Producer of
the script, to terminate this Agreement and to obtain a refund of any amount previously paid to
Producer.

(b) Product and Materials. Retailer shall provide sufficient quantities of the
Product to be used hereunder to Producer at no cost to Producer.

(c) Promotion of the Placement. Retailer shall have the right to mention its
affiliation with the Film in its advertising and promotion of the Brand in such manner as Retailer
may deem appropriate and to use the title of the Film in connection therewith. Producer shall
also provide to Retailer still photographs and footage from the Film for Retailer to use in
connection with such advertising and promotion of the Brand. To the extent that any
photographs or footage supplied to Retailer for such purposes contain the names, likenesses or
images of any persons or any intellectual property, Producer warrants that Producer shall have
obtained all necessary permissions for Retailer to use such materials without any additional
payment to any person or entity.

3. Producer Obligations.

(a) Depiction of the Brand. Producer agrees that the placement of the Brand
shall occur in a manner that creates a positive impression of the Brand and it shall at all times
portray the Brand and __________ in a positive fashion.

(b) Film Rating. Producer warrants that the content of the Film shall be
suitable for a PG-13 rating.

(c) Costs. Producer agrees that unless otherwise expressly stated herein, all
other costs in connection with the production of the Film shall be its sole responsibility.

4. Fee. In consideration of the rights granted hereunder, Retailer agrees to pay to
Producer a fee in the amount of [__________] Dollars to be paid as follows:

(a) [_________] Dollars due upon execution of this Agreement.

(b) [_________] Dollars due within thirty (30) days of Retailer’s approval of
the final edited version of the Film. [______________]
5. **Retailer Trademarks** Retailer hereby grants to the Producer a non-exclusive, non-transferable, non-assignable, royalty-free license to use Retailer’s name, logos, service marks and trademarks as provided by Retailer to Producer hereunder (the “Retailer Trademarks”) in the Film and for purposes of advertising and promoting the Film. Producer agrees that all use of the Retailer Trademarks shall be of the high standard and of such style, appearance and quality as is consistent with the image of Retailer’s use of the Retailer Trademarks generally. All use of the Retailer Trademarks and the goodwill generated thereby shall inure to the benefit of Retailer.

6. **Representations.**

Each party represents that it has the full right and power to enter into this Agreement, grant the rights hereunder, and fully perform its obligations hereunder.

7. **Indemnification.**

(a) **By Both Parties.** Each party agrees to indemnify, defend and hold the other party and its parent, subsidiaries and affiliated companies and their respective officers, directors, agents and employees harmless from and against any and all third-party expenses, liabilities, damages, claims, suits, actions, judgments and costs (including reasonable attorneys' fees) arising from or relating to (i) the indemnifying party’s material breach of its obligations under this Agreement; and (ii) the negligent acts or omissions of the indemnifying party, its employees and agents.

(b) **Notification.** Any party seeking indemnification hereunder (an “Indemnified Party”) shall give the party from whom indemnification is sought (the “Indemnifying Party”): (i) reasonably prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure, (ii) reasonable cooperation, at the Indemnifying Party’s expense, in the defense of such claim; and (iii) the right to participate in the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party (which shall not be unreasonably withheld or delayed), settle or dispose of any claim of which it has agreed to accept the defense.

8. **Miscellaneous.**

(a) **Independent Parties.** Nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating, an agency, a partnership, a joint venture or any other relationship between Producer and Retailer except as expressly set forth herein, and both parties understand that, except as otherwise expressly agreed to herein, each party shall be responsible for its own separate debts, obligations and other liabilities.

(b) **Notices.** All notices provided for or permitted under this Agreement shall be in writing and shall be (i) delivered personally; (ii) sent by facsimile with transmittal confirmation; (iii) sent by commercial overnight courier with written verification of receipt; or (iv) sent by certified or registered U.S. mail, postage prepaid and return receipt requested, to the
party to be notified, at the address for such party set forth below, or at such other address of
which such party has provided notice in:

If to Retailer: If to Producer:

_________________ ________________
_________________  ________________
_________________ ________________
________________
Attention:  __________ Attention: ________
Tel:  ________________ Tel.: ________________
Fax: ________________ Fax: _______________

All notices shall be deemed effective upon receipt.

(c) Governing Law. This Agreement shall be construed and governed
according to the substantive laws of the State of California.

(d) Entire Agreement. This Agreement constitutes the entire Agreement
between the parties regarding the subject matter discussed herein and supersedes all prior or
contemporaneous discussions, representations, correspondence and agreements, whether oral or
written, pertaining thereto. This Agreement may be amended or modified only by a writing duly
executed by both parties.

(e) Waiver. The failure of either party at any time or times to demand strict
performance by the other of any of the terms, covenants or conditions set forth herein will not be
construed as a continuing waiver or relinquishment thereof and each may at any time demand
strict and complete performance by the other of said terms, covenants and conditions.

(f) Confidentiality. Producer and Retailer agree not to divulge or permit or
cause their officers, directors, employees or agents to divulge the substance of this Agreement or
other confidential information divulged to or learned by either party about the other in the course
of this Agreement, except to their representatives and attorneys in the course of any legal
proceedings to which either of the parties hereto is a party for the purpose of securing
compliance with this Agreement or as may otherwise be required by law in the opinion of
counsel for the party required to make such disclosure. The foregoing confidentiality restrictions
shall not apply to such information that has generally become available to the public from
sources other than the other party.

(g) Survival of Representations. The representations, warranties,
indemnification, and confidentiality provisions set forth in this Agreement shall be continuing
and shall survive the termination of this Agreement.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date as first appears above.

By: ____________________________  
Title: __________________________

______________________________

By: ____________________________  
Title: __________________________

80331950.3
SHORT-FORM CONCERT TOUR SPONSORSHIP AGREEMENT

As of ____________, 200__

_______________, Inc.
f/s/o ________________
c/o ________________
____________________
____________________
Att’n: ________________

Dear ________________:

This letter, when executed by each of us, sets forth the terms of the agreement between ________________, Inc. a ________________ corporation (the “Company”), f/s/o ________________ (the “Artist”), and ________________ (“Sponsor”), pursuant to which the Company will provide Artist’s personal services and grant certain rights in connection with the promotion of Sponsor’s “______________” product (the “Product”), upon the following terms and conditions:

1. Services and Grant of Rights. Sponsor shall have the right to utilize the Artist’s services in connection with the promotion of the Product as follows:

   (a) Sponsor will be permitted to serve as a sponsor of the Artist’s upcoming concert tour (the “Tour”), which will consist of at least ________________ headlining concert
performances (each a “Sponsored Concert”) by the Artist between ______________ and ______________ at the venues listed on the Tour schedule annexed hereto as Exhibit A. Any changes in the Tour schedule or venues must be approved by Sponsor, such approval not to be unreasonably withheld or delayed. Company will notify Sponsor of dates and venues of Sponsored Concerts as they are confirmed. Sponsor will receive the following in connection with the Tour:

(i) The Artist will appear personally at ______________ “meet and greet” events with local retailers, Sponsor executives and/or other individuals designated by Sponsor in Tour markets specified by Sponsor. Each “meet and greet” event will take place immediately before or after a Sponsored Concert in the backstage area of the venue.

(ii) Subject to any restrictions imposed by venues, Sponsor will be permitted to display Product signage and/or video displays prominently throughout each Sponsored Concert venue, including without limitation the sides of the stage, lobby, concourse, parking lots and private boxes.

(iii) Sponsor will be given access to all public areas at each Sponsored Concert venue for product demonstrations, product sampling and similar marketing activities.

(iv) Sponsor will receive, free of charge, ______________ prime location tickets to each Sponsored Concert. Sponsor may distribute such tickets as it determines
in its sole discretion, including but not limited to use in radio promotions and retailer promotions/incentives, and use by retailers and Sponsor executives.

(v) The Company will designate a member of the Artist’s touring crew to serve as liaison with Sponsor’s road crew in order to coordinate and facilitate Sponsor’s promotional activities at each local venue and to ensure receipt by Sponsor of the sponsorship benefits described herein.

(vi) The Company will organize a Tour of the highest quality and will cause the Artist to perform to the best of his ability. The Company will cause tour riders and/or other agreements with venues and local promoters to include such provisions as are necessary to ensure that Sponsor receives all of the rights, privileges and benefits granted in this Agreement.

(vii) The Company will use best efforts to cause all tickets, flyers, posters, programs, public relations materials, advertising materials, promotional and press materials and merchandise for the Tour and/or individual Sponsored Concerts to prominently include the Product name or approved logos and references to the Product as a Tour sponsor. No other sponsor of the Tour will receive billing or ranking that is more prominent than the billing or ranking accorded to Sponsor. Any use by the Company of the Product name, trademarks, logos or other intellectual property in connection with the foregoing will be subject to Sponsor’s prior approval.
(b) At the request of Sponsor, Company will cause the Artist to appear at
______________ public relations events arranged by Sponsor, such as retailer sales
presentations, in-store autograph sessions or internal Sponsor meetings, at which the Artist’s
performance will not be required (the “Personal Appearances”). Each Personal Appearance will
be no more than one (1) hour in length, exclusive of any travel or preparation time. The Personal
Appearances will take place on dates designated by Sponsor, subject only to the Artist’s prior
contractual commitments. Sponsor will be responsible for all production costs deemed necessary
by Sponsor in connection with the Personal Appearances.

(c) Sponsor will have the right, during the Term, to use the Artist’s name,
likeness, approved voice and/or recorded performance, and/or b-roll or other video footage, in
connection with the promotion of the Product and Sponsor’s sponsorship of the Tour, including
without limitation in or on approved Product packaging and approved advertisements for the
Product, in all media whether now known or later developed, throughout the United States
(except as to Internet use, which is permitted worldwide).

2. **Consideration.** In full consideration for the services provided and rights granted
hereunder, and provided Company and Artist have fully performed their obligations hereunder,
Sponsor shall compensate Company as follows:

(a) Sponsor agrees to pay, and Company agrees to accept, the total sum of
__________________ ($____,000) (the “Fee”). The Fee shall be paid as follows:
__________________ Dollars ($____,000) within ______ days of full execution of
this Agreement, and ____________________ Dollars ($____,000) by no later than
__________________________.

(b) The parties acknowledge that the compensation described in this Section 2
constitutes Sponsor’s entire payment obligation to Company and Artist in connection with the
use by Sponsor of the services and the rights granted hereunder.

3. **Term.** The Agreement shall commence on the date hereof and shall continue
thereafter in full force and effect through ________________ (the “Term”).

4. **Exclusivity.**

(a) Company represents and warrants that within the twelve months preceding
the Effective Date, neither Company nor Artist has authorized or permitted the use of Artist’s
name, photograph, likeness, performance, endorsement, voice or biographical information, or
rendered any services or provided any testimonials or endorsements, on behalf of or in
connection with any Competitive Products or Services (as defined in the following sentence).
“Competitive Products or Services” means any [____________________] products or services.

(b) During the Term and for [__________] months thereafter, Artist will not
authorize or permit the use of Artist’s name, photograph, likeness, performance, endorsement,
voice or biographical information, or render any services or provide any testimonials or
endorsements, on behalf of or in connection with any Competitive Products or Service in the
Territory, or in connection with advertising, marketing or promotional materials incorporating copy or other elements that name or otherwise identify Sponsor or Sponsor’s Products.

(c) No manufacturer of ____________ products other than Sponsor will be permitted to serve as a sponsor or presenter of the Tour or any of the Sponsored Concerts.

5. **Insurance.** The Company will obtain and maintain, at its sole expense, commencing at least five (5) days prior to the commencement of the Tour, general and public liability insurance, naming Sponsor as an additional insured party, from a qualified U.S. insurance carrier that is licensed to do business in each of the states in which Sponsored Concerts will take place, in the amount of at least Three Million Dollars ($3,000,000) for personal injury and Three Million Dollars ($3,000,000) for property damage. Such insurance will be noncancellable during the term of this Agreement. The Company will provide Sponsor with a copy of each such insurance policy upon request by Sponsor.

6. **Indemnity.**

(a) Sponsor will at all times defend, indemnify and hold Company and Artist harmless from and against any and all third-party claims, suits or demands, and any damages, liabilities, costs and expenses resulting therefrom, including reasonable counsel fees, (i) arising out of or relating to any material breach by Sponsor of this Agreement or any representation, warranty or undertaking made by it herein, or (ii) based upon the nature of Sponsor’s products;
provided, however, that Company and Artist will give prompt notice, cooperation and assistance to Sponsor relative to any such claim or suit.

(b) Company and Artist will at all times defend (at Sponsor’s option), indemnify and hold harmless Sponsor, Agency and each of their parent companies, affiliates and subsidiaries, and the officers, directors and employees of each of the foregoing, from and against any and all third-party claims, suits or demands, and any damages, liabilities, costs and expenses resulting therefrom, including reasonable counsel fees, arising out of or relating to any material breach by Company or Artist of this Agreement or any representation, warranty or undertaking made by it or her herein or any acts or omissions of Artist or Company in connection with the Tour; provided, however, that Sponsor will give prompt notice, cooperation and assistance to Company and Artist relative to any such claim or suit. Sponsor will have the right, if it so elects, to conduct or participate in such litigation at its own expense by counsel of its own choosing. Company and Artist will not enter into any settlement that would impose any obligations or restrictions on Sponsor without the prior written consent of Sponsor.

7. **Representations and Warranties.**

(a) Company represents and warrants that (i) it possesses the full right, power and authority to enter into and fully perform this Agreement and to cause Artist to perform all of the obligations to be performed by Artist and abide by all of the restrictions imposed on Artist hereunder, (ii) it and Artist both are free of any contractual obligation that would prevent either of them from entering into or performing their obligations under this Agreement or that would
interfere with the full use by Sponsor of the rights granted and service to be provided to it hereunder, (iii) it will comply and cause Artist to comply with all applicable laws and regulations in fulfilling its obligations hereunder, and (iv) neither it nor Artist will act in a manner or enter into any oral or written agreements inconsistent with this Agreement.

(b) Sponsor represents and warrants that (i) it possesses the full right, power and authority to enter into and fully perform this Agreement, (ii) it is free of any contractual obligation that would prevent it from entering into or performing its obligations under this Agreement, (iii) it will comply with all applicable laws and regulations in fulfilling its obligations hereunder, and (iv) it will not act in a manner or enter into any oral or written agreements inconsistent with this Agreement.

8. **Termination.**

(a) **Force Majeure.** If as a result of any Act of God, war, accident, fire, strike, lock-out or other labor controversy, riot, civil disturbance, act of public enemy, law, enactment, rule, restraint, order or act of any governmental instrumentality or military authority, failure or inability to obtain any necessary permit or license, failure of technical facilities, or other cause not reasonably within Company’s or Artist’s control or which Company or Artist could not by reasonable diligence have avoided (a “Force Majeure Event”), or Artist’s illness, injury, mental, death or physical disability, Artist will fail or be unable to render Artist’s services hereunder, then Sponsor will have the right, at its sole option, to extend the Term for the period of time equivalent to the number of days during which Artist was unable to render services, with no additional payment owing to Artist for the extended period of time; provided, however, that if
the Force Majeure Event, illness, injury or disability will continue for a period longer than one (1) week, then Sponsor will have the right at its option to terminate this Agreement upon written notice to Artist, and the compensation due to Company hereunder will be adjusted as described in subsection (c) below.

(b) **Breach.** If Company materially breaches the terms and conditions of this Agreement or its representations and warranties hereunder or if Artist fails to perform any of Artist’s obligations hereunder, or if Artist does anything that is or will be an offense involving moral turpitude under federal, state or local laws or which may bring Company, Artist or Sponsor into public disrepute, contempt, scandal, or ridicule, or which insults or offends the community or any substantial organized group thereof, then Sponsor will have the right at its option to terminate this Agreement by written notice to Company to that effect, and the compensation due to Company hereunder will be adjusted as described in subsection (c) below. Sponsor’s decision on all matters arising under this Section will be conclusive.

(c) **Compensation Adjustments.** If Sponsor should terminate this Agreement pursuant to subsection (a) or (b) of this Section 8, the total amount due hereunder to Company will be an amount calculated by multiplying the Fee by a fraction, the numerator of which is the number of Sponsored Concerts at which Artist performed and Sponsor received the benefits described in Section 1(a) prior to termination, and the denominator of which is ________ (____); provided that, notwithstanding anything herein to the contrary, in the event the number of Sponsored Concerts at which Artist performed and Sponsor received the benefits described in Section 1(a) is less than ________ (____), Sponsor will not be required to pay any Sponsorship
Fee whatsoever. The Company will promptly remit any payments in excess of the amount due under this Section 8, if any, to Sponsor.

(d) **Reservation of Rights.** Nothing contained in this Section will affect or limit any other right or remedy, at law or in equity, which may otherwise be available to Sponsor.

9. **Independent Contractor.** Company’s relationship to Sponsor is that of an independent contractor. Company shall be responsible for payment of all taxes and insurance required under existing laws, including without limitation social security taxes and federal, state and city income taxes. Company covenants that it will make all payments to appropriate governmental entities necessary to comply with the foregoing and shall indemnify Sponsor against any third-party claims, liabilities, or expenses that may arise out of any breach of the foregoing.

10. **Notices.** Notices hereunder will be given in writing and sent (a) by registered or certified mail, return receipt requested, or (b) by nationally recognized express carrier, or (c) by facsimile with a confirmation copy sent by registered or certified mail, return receipt requested, or by nationally recognized express carrier, or as follows:

If to Company: 

________________________

________________________

________________________

________________________
If to Sponsor:

with a copy to:

Alternatively, such notices may be made to such other addresses as the parties may designate by written notice. Any notice hereunder will be deemed to have been given on the day it is received.

11. **General Provisions.**

(a) **No Commissions.** Sponsor will be under no obligation for the payment of any commissions or fees to any representative or agent of Artist on account of this Agreement.
(b) **Use of Materials.** Sponsor will not be under any obligation to use Artist’s services, exercise the rights granted to it hereunder or cause the materials permitted to be produced hereunder to be disseminated, it being understood that the Sponsor’s obligations to Artist hereunder will be fully discharged by making the payments to Artist required hereunder. Neither Company nor Artist will be entitled to any compensation or benefits other than as specifically set forth herein or will assert any claim, including, without limitation, any claim based upon invasion of privacy, defamation or right of publicity, arising out of any use of the materials produced hereunder in accordance with the terms of this Agreement.

(c) **Nature of Services.** It is expressly understood and agreed that the services to be performed by Artist and the rights and privileges granted to Sponsor hereunder are special, unique, extraordinary and impossible of replacement, which gives them a peculiar value, the loss of which could not be reasonably or adequately compensated in damages in an action of law, and that Artist’s failure or refusal to perform Artist’s material obligations hereunder would cause Sponsor to suffer irreparable loss and damage. Accordingly, Company agrees that, should Artist fail or refuse to perform such material obligations, Sponsor will be entitled to injunctive or other equitable relief against Company and Artist to prevent the continuance of such failure or refusal or to prevent Artist from performing services for, or granting rights to others, in violation of this Agreement. Neither the right to resort to injunctive or other equitable relief, nor the exercise of such right, will constitute a waiver of any other or additional rights at law or pursuant to the terms of this Agreement that Sponsor may have against Artist as a result of such failure or refusal.
(d) **Interviews.** Artist will not authorize or release advertising or publicity materials, nor will Artist give interviews, which make reference to the details of Artist’s engagement hereunder, such as Artist’s compensation, or otherwise disclose such details without Sponsor’s prior written approval. Artist will, where appropriate during interviews and appearances, respond, discuss and comment in a favorable manner on the fact that Artist is associated with Sponsor.

(e) **Time Of the Essence.** Time is of the essence with regard to Artist’s performance of the services described herein.

(f) **No Derogation of Rights.** Nothing contained in this Agreement will derogate from or be prejudicial to any rights, licenses, privileges or property that Sponsor now or at anytime hereafter may be entitled to as a member of the public if this Agreement were not in existence.

(g) **Confidential Information.** During the Term of this Agreement and thereafter, Company and Artist will not disclose to any party the terms of this Agreement, or disclose to any party or utilize any confidential, non-public or proprietary information obtained hereunder regarding Sponsor or its products or services.

(h) **No Waiver.** Any failure by either party to exercise any right granted herein upon the occurrence of any contingency set forth in this Agreement will not in any event constitute a waiver of any such right upon the occurrence of any such contingency.
(i) **Captions; Severability; Binding Nature; Complete Agreement;**

**Amendments.** The captions in this Agreement are inserted solely for purposes of facilitating easy reference and will not be construed in any way as a part of the text, or as altering the substantive provisions of this Agreement. This Agreement will be binding upon Company, Artist and Sponsor and their respective successors-in-interest, heirs, guardians, representatives and executors. This document is a complete and exclusive statement of the terms of this Agreement and may not be changed orally but only by a writing signed by both parties hereto.

(j) **Assignment.** This Agreement may not be assigned by Company without Sponsor’s prior written consent.

(k) **Governing Law and Jurisdiction.** Each of the parties hereto irrevocably (i) agrees that this Agreement and all questions arising hereunder will be governed by, and construed in accordance with, the laws of State of New York, without reference to conflict of laws principles, and that the federal and state courts located in New York County, New York will have sole and exclusive jurisdiction over any suit or other proceeding arising out of or based upon this Agreement, (ii) submits to the venue and jurisdiction of such courts, and (iii) consents to the exercise of personal jurisdiction over such party by such courts.

(l) **Survival.** Sections ________ will survive the expiration or termination of this Agreement.
Kindly confirm your agreement to the foregoing terms by signing a copy of this letter agreement and returning it to us at your earliest convenience.

Very truly yours,

[SPONSOR]

By: __________________________

Agreed to and Accepted:

[LOAN-OUT COMPANY]

By: __________________________
EXHIBIT A

[Tour schedule]
EXHIBIT B

To whom it may concern:

To induce ______________ to enter into the foregoing agreement with
_______________ and for other good and valuable consideration, receipt of which is
hereby acknowledged, I hereby agree as follows: I hereby confirm and ratify the foregoing
agreement insofar as I am concerned, and the grant of all rights granted therein, and confirm the
authority and right of ______________ to enter into the foregoing agreement. I agree to
perform all services required of me and comply with all obligations applicable to me as specified
in such agreement and agree that all payments to _______________ as set forth therein
shall discharge any obligations of Sponsor, Inc. to me in connection with the rights granted and
services to be performed pursuant to the foregoing agreement.
SHORT FORM TELEVISION WRITER AGREEMENT

Dated as of _______________, 2005

[Insert name of Writer]
[Insert Writer’s address]

Re:  [Insert name of project]

Dear ________________:

This letter confirms the agreement between you (“Writer”) and ______________________________ (“Producer”) in connection with Writer’s writing services on the television production presently entitled “______________” (the “Production”) as follows:

1. Conditions Precedent: All of Producer’s obligations hereunder are subject to the satisfaction of all of the following conditions precedent:

   1.1 Writer’s delivery of an executed copy of this agreement to Producer; and

   1.2 Producer’s receipt of all documents which may be required by any government agency or otherwise for Writer to render services hereunder and to enable Producer to effect payment to Writer hereunder, including, without limitation, a completed and certified Employment Eligibility Verification (Form I-9) in compliance with the Immigration Reform and Control Act of 1986, and any tax and corporation identification forms.

2. Employment: Producer hereby employs Writer to perform the following writing services for the Production: ____________________________________. The results and proceeds of all writing services performed hereunder by Writer shall be collectively referred to as the “Material.”

3. Writing Services: Writer’s services hereunder shall commence upon such date as Producer may designate in writing (the “Start Date”). Writer shall deliver the completed Material to ____________ at __________________________________________________ (or such other locations which Producer may designate) no later than _________ [days/weeks] after the Start Date. The only person authorized to request rewrites of the Material is _____________. It is acknowledged that time is of the essence of this agreement. Writer shall render services as instructed by Producer in all matters including those involving artistic taste and judgment, whenever and wherever Producer may require, but there shall be no obligation on Producer to actually utilize Writer’s services or to include any of Writer’s work in the Production or otherwise, or to produce, release or continue the distribution of the Production; and, if, at any time, Producer elects not to use Writer’s services, Producer shall have satisfied its obligations hereunder by payment to Writer of the amounts provided in paragraph 4 below, subject to and in accordance with the terms of this agreement. Writer’s services shall be exclusive to Producer during all writing periods.
4. **Compensation:** Provided Writer is not in breach of any provision hereof, Producer agrees to pay to Writer, as full consideration for Writer’s services and the rights granted by Writer herein, compensation in the amount of $__________, payable fifty percent (50%) upon the Start Date, and fifty percent (50%) upon Writer’s completion and delivery of the Material in accordance with the terms hereof.

5. **Rights:** Writer acknowledges that the Material was created within the scope of Writer’s employment and/or as a work specially ordered or commissioned for use as part of a motion picture or other audio-visual work and, as such, is a “work-made-for-hire.” Accordingly, Producer shall be the sole and exclusive author and owner of the Material, the results and proceeds of Writer services hereunder and all rights of every kind and nature now known or hereunder created from the moment of their inception for all purposes throughout the universe in perpetuity. To the extent, if any, that ownership of the Material does not vest in Producer solely, exclusively and automatically by virtue of this agreement, Writer hereby assigns to Producer all rights (including without limitation, all rights of copyright and any so called “rental rights”) of every kind and character in and to the Material and the results and proceeds of Writer’s services. Producer and Writer acknowledge and agree that 3.8% of sums payable hereunder are in consideration of and are equitable remuneration for rental rights and that if under applicable law, any different form of compensation is required to satisfy the requirement of equitable remuneration then the grant to Producer of rental rights remains effective and Producer shall pay and Writer shall accept the minimum additional equitable remuneration permitted under applicable law. Writer hereby waives all “moral rights.” Producer shall have the right to make such changes in the Material or to combine the Material, or portions thereof, with other material, and to make any and all uses of the Material (including, but not limited to, ancillary, subsidiary and derivative uses), all as Producer may determine, without any further payment to Writer.

6. **Warranties and Indemnities:**

6.1 Writer represents and warrants that: except with respect to materials supplied to Writer by Producer and materials in the public domain (which shall not be a material or substantial part of the results, proceeds and product of Writer’s services), the Material shall be wholly original with Writer and that Writer shall be the sole author thereof; Writer has the full and sole right and authority to enter into this agreement and make the grant of rights made herein and is not subject to any conflicting obligation or any disability which may prevent or materially interfere with the execution and performance of this agreement; and the Material will not violate the rights of privacy of, or constitute a libel or slander against, or violate any common law or other rights of any person or entity. The approval by Producer of all or any part of the Material shall not constitute a waiver of such representations and warranties.

6.2 Writer shall defend, indemnify and hold Producer and its parents, subsidiaries, affiliates, successors, licensees, members, assigns, officers, agents and employees harmless against any and all losses, costs, damages, liabilities and expenses (including reasonable attorneys’ fees) they may suffer arising out of or otherwise in connection with any claim which arises out of any breach of any of Writer’s obligations, representations or warranties set forth herein.
6.3 Excepting any matters which are subject to Writer’s indemnification and excepting any matters arising out of Writer’s tortious acts or omissions or Writer’s breach of any representation, warranty or agreement hereunder, Producer agrees to indemnify and hold Writer harmless from and against any claims, liability, loss and expense, including reasonable outside attorneys’ fees, Writer may suffer by reason of (a) any materials furnished by Producer hereunder, or (b) any material breach of any representation, warranty or agreement made by Producer in this agreement.

7. Annotation: If the Material is based in whole or in part on actual events or real people, concurrent with delivery of the Material, Writer shall provide Producer with written notice thereof as well as an annotation of the Material in accordance with the guidelines provided by Producer, identifying the source of all factual material contained in the Material which concerns any actual individual, whether living or dead, or any “real life” incident or place. Writer shall cooperate with Producer and with Producer’s counsel and insurance carrier, as may be reasonably necessary for the purpose of permitting Producer and its insurance carrier to evaluate and eliminate the risks involved in using the Material.

8. Suspension or Termination: Producer shall have the right to suspend Writer’s employment and compensation hereunder during all periods: (a) that Writer does not render services hereunder because of illness, incapacity, default or other similar matters; or (b) that development of the Production is prevented because of force majeure events. Unless this agreement is terminated, the period of employment provided for above shall be deemed extended by a period equivalent to all such periods of suspension. If any matter referred to in (a) above other than default continues for longer than seven (7) days, or if any matter referred to in (b) continues for more than four (4) weeks, or in the event of a material default on the part of Writer, Producer may terminate this agreement. Notwithstanding anything to the contrary contained herein: (i) Writer shall not be in material default hereunder unless Writer fails to cure any such material default on a one time basis within forty-eight (48) hours after Producer’s request (provided that there shall be no right to cure nor any cure period with respect to, any material default which is incurable); and (ii) in no event shall Producer be entitled to suspend this agreement more than once in connection with any particular event of force majeure. If, as a result of one or more events of force majeure, Producer suspends this agreement for a period of eight (8) consecutive weeks or more, then Writer may terminate this agreement by giving Producer written notice at any time during the continuation of such suspension; provided that if, within one (1) week after Producer’s receipt of such notice, Producer elects to end such suspension, then such notice and such termination shall not be effective.

9. Assignment: This agreement will be binding upon and inure to the benefit of Writer’s and Producer’s respective licensees, successors and permitted assigns. Producer may assign or transfer all or any part of Producer’s rights under this agreement to any person or entity; and, if and to the extent such assignee is a major studio, network, parent entity acquiring substantially all of Producer’s assets or a financially responsible party who assumes Producer’s obligations in writing, Producer shall be relieved of its obligations hereunder. Writer shall not be entitled to assign this agreement to any third party in whole or in part.

10. Services Unique: It is mutually agreed that Writer’s services are special, unique, unusual, extraordinary, and of an intellectual character giving them a peculiar value, the loss of
which would not be reasonably or adequately compensated in damages in an action at law and that Producer, in the event of any breach by Writer, shall be entitled to equitable relief by way of injunction or otherwise.

11. **Name and Likeness; Publicity:** Writer hereby grants to Producer the right to use Writer’s name and likeness in connection with the Material and the Production and in advertising, exploiting and exhibiting same, but not as an endorsement of any product or service other than the Production. Writer shall not issue or permit the issuance of any publicity or make any public statements whatsoever concerning this employment, Producer or the Production; provided that Writer may make incidental, non-derogatory mention, of the same in publicity primarily concerning Writer.

12. **Miscellaneous:**

12.1 The termination of this agreement or Writer’s employment hereunder shall not extinguish, limit or curtail any of Producer’s right, title, interest or privilege in, to, or in connection with the Material or the results and proceeds of Writer’s services, Writer’s name and likeness, or Writer’s representation and warranties, or either party’s indemnification rights and/or obligations hereunder.

12.2 The rights and remedies of Writer in the event of any breach of the provisions of this agreement by Producer shall be limited to the rights, if any, to seek damages in an action at law, and in no event shall Writer be entitled, by reason of such breach, to rescind or terminate this agreement or to seek to enjoin or restrain the broadcast, exhibition, distribution, advertising, exploitation or marketing of the Production or any other use of the Material or any part thereof.

12.3 Producer and Writer agree to perform such other further and reasonable acts and to execute, acknowledge and deliver such other further and reasonable documents and instruments, including, without limitation, certificates of authorship with respect to all Material furnished by Writer hereunder, as may be necessary or appropriate to carry out the intent hereof, and to evidence Producer’s ownership of the results and proceeds of all services rendered pursuant hereto. Writer hereby irrevocably appoints Producer as Writer’s attorney-in-fact (which appointment is coupled with an interest) with full power of substitution to execute, verify, acknowledge and deliver any documents or other instruments that Writer may fail to promptly execute, verify, acknowledge and/or deliver within five (5) business days (unless exigent circumstances as determined by Producer require a shorter period) after Producer’s request therefor.

12.4 This agreement and the Certificate of Authorship attached hereto contain the full and complete understanding between the parties with reference to the within subject matter, supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and cannot be modified except by a written instrument signed by each party. Writer acknowledges that no representation or promise not expressly contained in this agreement has been made by Producer or any of its agents, employees or representatives.
12.5 All notices which either party shall be required or desire to give to the other pursuant to this agreement shall be in writing addressed to the party receiving said notice at the addresses first set forth above for each party, or such other address which either party may hereafter give similar written notice. Three (3) days after the date of mailing or the date of receipt of confirmation of facsimile transmission (if faxed during the normal business hours of the recipient) or the date of personal delivery, as the case may be, shall be deemed the date of service. Unless Producer receives written notice from the Writer to the contrary, all payments to Writer shall be made payable and delivered to Writer at the address set forth above.

12.6 This agreement has been made in the State of California and shall be governed by and construed in accordance with the laws of the State of California. If one or more provisions of this agreement are held to be illegal or unenforceable under applicable California law, such illegal or unenforceable portion(s) shall be limited or excluded from this agreement to the minimum extent required and the remaining portions of this agreement shall be interpreted as if such portion(s) were so limited or excluded and shall be enforceable in accordance with its terms.

12.7 The relationship between Producer and Writer is solely that of employer and employee in the ordinary course of business and is not an agency or partnership relationship.

Until and unless a more formal agreement containing customary terms and conditions relating to agreements of this nature in the television industry consistent with the terms and conditions set forth herein is executed, this agreement will constitute a valid and binding agreement between the parties.

Please arrange to have four (4) copies of this agreement signed below where indicated and returned to me. I will provide you with a fully executed copy countersigned thereafter.

Very truly yours,

[Producer]

AGREED AND ACCEPTED:

By: ____________________________

Social Security # _________________
ANNOTATION GUIDE

Annotated scripts should contain for each script element (whether an individual, entity, event, setting or section of dialogue within a scene) notes in the margin which provide the following information:

1. Whether the element presents or portrays:

   A. Fact, in which case the note should indicate whether the individual’s or entity’s name is real, whether he or she is alive (or it is existing) and whether he, she or it, as the case may be has signed a release.

   B. Fiction, but a product of inference from fact; or

   C. Fiction, not based on fact.

2. How the element differs and/or is the same from fact (for example, describe in detail how a character is the same as and is different from the actual person upon whom such character is based).

3. Source material for each element whether book, newspaper or magazine article, recorded interview, trial or deposition transcript or other specified source. Source material identification should give the name of the source (i.e. New York Times article), page reference and date. To the extent possible, identify multiple sources for each element. Retain copies of all materials, preferably cross-referenced by reference to script pages and scene numbers. Coding may be useful to avoid repeated, lengthy references. Descriptive annotation notes are helpful (e.g. the setting is a hotel suite because John Doe usually had business meetings in his hotel suite when visiting Las Vegas- New York Times; April 1, 1991; page 8).
CERTIFICATE OF AUTHORSHIP

The undersigned ("Writer") hereby certifies that Writer has rendered and will continue to render services in connection with the animated television production currently entitled "______________" ("Production") pursuant and subject to all of the terms and conditions of that certain agreement between Writer and __________________________ ("Producer"), entered into as of ___________________, 2005 ("Agreement"). In connection therewith, Writer hereby represent, warrants and agrees that (a) Writer’s services are rendered for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; (b) the results, proceeds and product of such services are being specially ordered by Producer for use as part of a motion picture or other audio visual work; (c) such results, proceeds and product shall be considered a “work made for hire” for Producer; and (d) Producer shall be considered, forever and for all purposes throughout the universe, the author thereof and the sole copyright owner thereof and the owner of all rights therein and of all proceeds derived therefrom and in connection therewith, with the right to make such changes therein and such uses and disposition thereof, in whole or in part, as Producer may from time to time determine as the author and owner thereof, together with all neighboring rights, trademarks and any and all other ownership and exploitation rights now or hereafter recognized in any territory, including all rental, lending, fixation, reproduction, broadcasting (including satellite transmission), distribution and all other rights of communication by any and all means, media, devices, processes and technology, and all rights generally known as the “moral rights of authors.”

Writer further represents and warrants that, except with respect to materials supplied to Writer by Producer and materials in the public domain (which shall not be a material or substantial part of the results, proceeds and product of Writer’s services), (i) the results, proceeds and product of services hereunder are and will be original with Writer and (ii) the results, proceeds and product of Writer’s services hereunder do not and will not defame, infringe or violate the rights of privacy or any other rights of any third party and are not the subject of any actual or threatened litigation or claim. Writer shall indemnify Producer, its affiliated entities, assigns and licensees against any loss, cost or damage (including reasonable attorneys’ fees) arising out of or in connection with any breach of any of the aforesaid representations, warranties or agreements, and Writer shall sign such documents and do such other acts and deeds as may be reasonably necessary to further evidence or effectuate Producer’s rights hereunder. Producer may assign or transfer all or any part of Producer’s rights under the Agreement to any person or entity; and, if and to the extent such assignee is a major studio, network, parent entity acquiring substantially all of Producer’s assets or a financially responsible party who assumes Producer’s obligations in writing, Producer shall be relieved of its obligations thereunder.
IN WITNESS WHEREOF, this document has been signed this ________________, 2005.

______________________________
“Writer”

AGREED TO:
[PRODUCER] (“Producer”)

By: ______________________________
Its: Authorized Signatory
AFFIDAVIT AND RELEASE
(Declining Prize Winner)

I, ____________________________, hereby confirm that I have declined to accept the prize (the “Prize”) I won in the “_______________” Sweepstakes (the “Sweepstakes”) sponsored by ________________ (“Sponsor”), and acknowledge that I have forfeited any and all rights I may have had to receive the Prize and that I will not receive any alternate or substitute prize as a result of my declination of the Prize.

I affirm and represent that my decision to decline acceptance of the Prize was entirely voluntary, and I submit this Affidavit and Release with the understanding that it is being relied upon by the Sponsor and that an alternate winner will be selected.

I understand and acknowledge and hereby, for myself, my heirs, executors, and administrators, do waive and release any and all rights, claims, and causes of action whatsoever I may have against the above-named companies, and/or their respective officers, employees, agents, affiliates, and assigns for any loss, cost, injury, harm, matters, cause, or things whatsoever arising from or in connection with the Sweepstakes or the Prize.

I understand that the Prize I have declined to accept is [Describe Prize], with an approximate retail value of $__________.

Signature
AFFIDAVIT OF ELIGIBILITY AND RELEASE

Please complete and return this Affidavit of Eligibility and Release no later than fifteen (15) days from date of notification.

STATE OF

COUNTY OF

I, ___________________________ , being duly sworn, depose and say:

I am _______ years of age. My Social Security Number is ___________________________.

I reside at ____________________________________________________________.

I am submitting this Affidavit to ___________________________ with the understanding that it will be relied upon to determine whether I am entitled to receive the prize for which my entry has been drawn in the ____________________ (the "Promotion").

As stated, I understand that the prize I won is ________________________________

__________________________________________

I represent that I have fully complied with all of the Official Rules of the Promotion. I have committed no fraud or deception in entering the Promotion or claiming my prize.

I further represent that as of the date I entered this Promotion and date of this Affidavit, I was and am not an employee or a member of the immediate family of ________________________________.

As provided in the Official Rules of the Promotion, I hereby agree to be responsible for all federal, state and local taxes on my prize.

I hereby grant ___________________________ and its agents and assigns, without limitation, the right to use my name and likeness for any publicity without further compensation or permission.

If any statement made by me in this Affidavit is false, then, in addition to any other remedies that may be taken against me, I agree to return to the sponsor any prize awarded to me.

I hereby release, discharge and absolve ___________________________ and their successors, assigns, officers and employees, from any and all actions, suits, claims and demands of any kind whatsoever, which I, my heirs, executors, administrators and assigns, had, now have or hereafter may have, by reason of any matter connected in any way with the Promotion, including, but not limited to the operation of the Promotion, the awarding of prizes, any loss or damage to any prize, and any action, claim or suit for personal injury or loss or damage to property in connection with the receipt and use of the prize.

_________________________          ___________________________

Date                                            Signature

Sworn to and subscribed before me this _____ day of ____________________________, ________.

_________________________          ___________________________

NOTARY PUBLIC
NOTE: This form has been prepared by Joseph Lewczak of Davis & Gilbert. This form is not a substitute for legal advice and may not be suitable in a particular situation. For further information please contact Joseph Lewczak at (212) 468-4909 or jlewczak@dglaw.com. Consult your attorney for legal advice.]

[NAME] SWEEPSTAKES

Official Rules

NO PURCHASE OR PAYMENT OF ANY KIND IS NECESSARY TO ENTER OR WIN THIS SWEEPSTAKES.

A PURCHASE DOES NOT IMPROVE CHANCES OF WINNING.

CONSUMER DISCLOSURE

You have not yet won. No purchase or payment of any kind is necessary to enter or win this sweepstakes. A total of [number] (__) prizes will be awarded consisting of [describe prize 1] (ARV $_____), [describe prize 2] (ARV $______). Total ARV of all prizes: $______.

[Describe any material prize restrictions]. Odds: [number] (__) winners will be chosen with [number] (__) prize notices distributed. Restrictions apply. [Describe any material restrictions on prizes here.] The Sweepstakes commences on [DATE] and ends on [DATE]. All entries must be received no later than [DATE]. Limit one (1) entry per person and email address.

Sponsor: [Full Sponsor name, principal place of business and address where sponsor may be contacted].

1. How to Enter. On the Official Entry Form, fill in your ________, ________, ________, ________, ________, and ________ [CONFIRM CATEGORIES OF INFORMATION TO BE COLLECTED]. You may also enter by [describe alternate
method of entry]. The Sweepstakes begins on [DATE] and ends on [DATE]. All entries must be received no later than [DATE]. Sponsor is not responsible for any lost, late, delayed, illegible, mutilated, damaged, electronically corrupted or impaired, postage-due, incomplete or misdirected entries/requests or prize claims.

2. **Eligibility.** Sweepstakes is open to all legal U.S. residents, 18 or older at the time of entry. Limit one (1) entry per person. Employees of Sponsor and its affiliates, its dealers, its advertising and promotional agencies, its judging organization, manufacturers or distributors of Sweepstakes materials and their immediate families in the same household are not eligible. This promotion is intended for viewing in the United States only and shall only be construed and evaluated according to United States law. You are not authorized to participate in the Sweepstakes if you are not located within the United States.

3. **Random Drawing.** Winners will be selected from among all eligible entries received in a random drawing. The drawing will be conducted on or about [DATE] by ____________, an independent judging organization whose decisions on all matters relating to this sweepstakes are final. [Number] (__ ) winners will be randomly chosen from a pool of all eligible entries received. Odds: Odds: [number] (__ ) winners will be chosen with [number] (__ ) prize notices distributed. Winners will be notified by overnight mail delivery/email/telephone on or about [DATE]. If the prize winning notification letter/email/phonecall or the prize is returned as undeliverable, the prize will be forfeited and may be awarded to an alternate winner in a random drawing. All prizes will be awarded.
4. **Prizes.** A total of [number] (__) prizes will be awarded consisting of [describe prizes] (ARV $______), [describe prize] (ARV $______). Total ARV of all prizes: $______. [Describe all restrictions on prizes]. Winners are solely responsible for any and all federal, state, and local taxes and fees that may apply.

5. **General.** VOID WHERE PROHIBITED BY LAW. SUBJECT TO ALL FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS. Prizes are non-transferable; no substitutions, exchanges, or cash redemptions except by Sponsor due to unavailability in which case a prize of equal or greater value will be awarded. All expenses on receipt and use of prize and any federal, state and local taxes on the prize are the responsibility of the winners. Winners will be required by Sponsor to execute an Affidavit of Eligibility and Liability Release and where lawful, a Publicity Release within [number] (__) days of notification. Non-compliance shall result in disqualification and award of prize to an alternate prize winner. By entering Sweepstakes, entrants agree to release and hold the Sponsor and its subsidiaries, affiliates, and agencies harmless from any and all losses, damages, rights, claims, and actions of any kind in connection with the sweepstakes. By participating in this program, entrants agree to abide by and be bound by these Official Rules, and understand that the results are final in all respects. By accepting the prize, winners grants to Sponsor the right to use their company names, their personal names, likeness, hometown and biographical information, for any lawful purpose, without further permission or compensation, except where prohibited by law. By accepting prize, winners release Sponsor and its subsidiaries, affiliates, and agencies from any and all liability for any loss, harm, damages, costs or expenses, including without limitation property damages, personal injury and/or death, arising out of participating in this
program, or the acceptance, possession, use or misuse of any prize and claims based on publicity rights, defamation or invasion of privacy and merchandise delivery. Sponsor reserves the right, in its sole discretion, to cancel or suspend part or all of this Sweepstakes should virus, bugs, non-authorized human intervention or other causes beyond the control of sponsor corrupt or impair the administration, security, fairness or proper play of the Sweepstakes. In such event, Sponsor may award prizes in a random drawing from all eligible entries received up to the date of cancellation or suspension.

Sponsor may prohibit an entrant from participating in the Sweepstakes or winning a prize if, in its sole discretion, it determines that said entrant is attempting to undermine the legitimate operation of the Sweepstakes by cheating, hacking, deception, or other unfair playing practices (including the use of automated quick entry programs) or intending to annoy, abuse, threaten or harass any other entrants or Sponsor representatives.

6. **Name of Winner.** To obtain a list of the winners (available after [DATE]), send a stamped, self-addressed envelope to: [NAME/ADDRESS]. Requests must be received no later than [DATE].

7. **Sponsor.** [Full Sponsor name and main address].

**Name Removal**

To have your name removed from this mailing list, and to prevent future promotional mailings, please call 1-800-XXX-XXXX [or write to [ADDRESS]].
FORM GAME PIECE RULES

OFFICIAL RULES

1. **NO PURCHASE NECESSARY.** Game begins XX/XX/XX and ends XX/XX/XX or while supplies last of specially marked game pieces. Obtain an official game piece without purchase (while supplies last) or request Official Rules by sending a SASE to: [contact information]. (VT residents may omit return postage). Requests must be postmarked by XX/XX/XX and received by XX/XX/XX. Limit one request per outer envelope. No mechanically reproduced/photocopied requests accepted. Sponsor is not responsible for lost, late, incomplete, incorrect, damaged, misdirected, illegible, postage due mail/requests or prize claims. All requests/claims/submissions are Sponsor’s property and will not be returned.

2. **HOW TO PLAY:** [Peel sticker from top of cap of/scratch off game card obtained from] specially marked packages or open game piece received by mail. If game piece indicates you are an instant winner or discount recipient, you win/receive the prize or discount indicated, subject to verification.

3. **PRIZES AND DISCOUNTS:** [Describe prizes, quantity, approximate retail value and any restrictions]. See below for redemption information. No prize substitution or cash redemption, except at Sponsor’s sole discretion or as otherwise provided herein. Sponsor reserves the right to substitute a prize of equal or greater value if advertised prize becomes unavailable. Prizes are not transferable. Any taxes are the responsibility of winner recipient.

4. **PRIZE CLAIMS:** To claim prize, mail the original, complete winning [game cap/game card] (no copies or mechanical reproductions accepted) and a 3x5 card, hand printed with your name, address, daytime phone and age, to: [contact information]. (Minors must also include name and address of parent/legal guardian). Prize claims must be postmarked by XX/XX/XX and received by X/XX/XX. You may wish to send your winning game piece registered mail, return receipt requested, but it is not required. It is recommended that you retain a photocopy of the winning game piece for your records. Following verification of winning game pieces, winners will be notified by mail. All prize claims are subject to verification by an independent judging organization whose decisions are final. Winners may be required to execute an affidavit of eligibility and a liability/publicity release, to be returned within 14 days of date notice is sent or prize will be forfeited and may be awarded to an alternate winner. If prize or prize notification is returned as undeliverable, prize will be forfeited and may be awarded to an alternate winner. All claimed prizes will be awarded. If by reason of a printing or other error, more prizes are claimed than the number set forth in these rules, all persons making purportedly valid claims will be included in a random drawing to award the advertised number of prizes available in the prize category in question. No more than the advertised number of prizes will be awarded.

5. **SECOND CHANCE DRAWING:** All [list the higher level prizes] will be awarded. Any [higher level] prize not claimed by [date] will not be awarded [or] will be awarded in a second chance random drawing to be conducted on or about [date] by [agency], an independent judging organization. To enter, send any non-winning [game cap/game card], or a plain 3 X 5 inch card, hand printed with your name, complete street address and phone number to Second Chance Sweepstakes, [address]. Each entry must be mailed separately and postmarked by [date]. No photocopied or mechanically reproduced entries will be accepted. Odds of winning the second chance random drawing depend upon the number of eligible entries received and unawarded prizes.

6. **ODDS:** [include odds of each prize]
7. **ELIGIBILITY:** Open to legal U.S. residents of the fifty United States and Washington D.C. Sponsor’s employees and their respective parent companies, affiliates, contractors, subsidiaries, distributors, sales representatives, retailers, advertising and promotion agencies, and any others engaged in the development, production or distribution of sweepstakes materials, and the immediate families and household members of each of the above, are ineligible.

8. **GENERAL RULES OF PARTICIPATION:** By participating in this sweepstakes, participant agrees to these rules and the decisions of the judges, which are final and legal binding in all matters relating to this promotion. All game pieces are subject to verification and are void if (a) not obtained in accordance with these Official Rules and through legitimate channels, (b) any part is counterfeit, altered, defective, illegible, reproduced, tampered with, mutilated or irregular in any way or (c) contain printing, typographical, mechanical, seeding or other errors. Sponsor’s liability for game pieces containing printing or other errors is limited to replacement of such game pieces with another eligible game piece, while supplies last. Participants assume all risk of loss, damage, destruction, delay or misdirection of sweepstakes materials/mail submitted to Sponsor. Sponsor and its affiliated companies and agencies are not responsible for printing, distribution or production errors and may rescind, cancel or revoke this sweepstakes based upon any such error without liability and at their sole discretion. All federal, state and local laws apply. Sweepstakes void where prohibited. Entry constitutes permission to use winner’s name/likeness for advertising/publicity purposes without further compensation (except where prohibited by law). By accepting prize, participants (and parent/legal guardian if participant is a minor) agree that Sponsor and its promotional partners, their parents, subsidiaries, affiliates, advertising or promotion agencies and each of their respective agents, employees, directors, representatives and officers of any of the above shall have no liability whatsoever and shall be held harmless for any injuries, losses, or damages of any kind to persons, including death and property damages sustained, in whole or in part, directly or indirectly, in connection with or resulting from acceptance, possession or use/misuse of any prize, or participation in this promotion. As a condition of entering sweepstakes, participant (and parent/legal guardian if participant is a minor) agrees that (1) under no circumstances will participant be permitted to obtain awards for, and participant hereby waives all rights to claim punitive, incidental, consequential or any other damages, other than for actual out-of-pocket expenses, (2) all causes of action arising out of or connected with this sweepstakes, or any prizes/discounts awarded, shall be resolved individually, without resort to any form of class action and shall be resolved exclusively by arbitration under the rules of the American Arbitration Association; and (3) any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this sweepstakes, but in no event attorney’s fees.

9. **WINNER’S LIST REQUEST:** To receive a list of Grand Prize winners send a SASE (business size envelope) by XX/XX/XX to: [contact information]. DO NOT SEND ANY OTHER CORRESPONDENCE OR PRIZE CLAIMS TO THIS BOX.

10. **SPONSOR:** [Sponsor name and contact information.]
FORM INTERNET SWEEPSTAKES RULES

OFFICIAL RULES

NO PURCHASE NECESSARY.

1. **To Enter.** To enter, go to www.xxxx.com and complete the official entry form and click “enter.” No mechanically reproduced entries will be accepted. All entries must be received between 12:00 AM (CST) on [date] and 12:00 AM (CST) on [date]. Limit one entry per person and per e-mail address per day. Sponsor will not verify receipt of entries. In case of dispute, entries will be declared made by the authorized account holder of the e-mail address submitted at the time of entry. “Authorized account holder” is defined as the natural person who is assigned to an e-mail address by an Internet Access Provider, on-line service provider, or other organization (e.g., business, educational institution, etc.) that is responsible for assigning e-mail addresses for the domain associated with the submitted e-mail address. Entries become property of Sponsor and will not be returned. Automated entries are prohibited, and any use of such automated devices will cause disqualification. Sponsor and its advertising and promotions agencies are not responsible for lost, late, illegible, misdirected or stolen entries or transmissions, or problems of any kind whether mechanical, human or electronic. Sweepstakes entries are the property of Sponsor and will not be returned.

2. **Eligibility.** Only open to residents of the 50 United States, [who have had Internet access prior to the first date of this promotion] (while not necessarily required, a conservative practice may be too provide this language where there is no off-line, free method of entry), age XX and older [at least 13 unless you obtain parental consent]. Void where prohibited or restricted by law. Employees of Sponsor and its affiliates, its dealers, its advertising and promotional agencies, its judging organization, manufacturers or distributors of Sweepstakes materials and their immediate families in the same household are not eligible. All federal, state and local laws and regulations apply. This promotion is intended for viewing in the United States only and shall only be construed and evaluated according to United States law. You are not authorized to participate in the Sweepstakes if you are not located within the United States.

3. **Prize Details.** Grand Prize: [Prize Description] (approximate retail value $XX). All prizes claimed will be awarded. Prize cannot be transferred, substituted or redeemed for cash except at Sponsor’s sole discretion. Prize is not transferable. Federal, state and local taxes are the responsibility of the winner. Sponsor reserves the right to substitute a prize with a prize of equal or greater value. Only one prize per family or household. If winner is deemed a minor in his/her state of residence, prize will be awarded in the name of a parent or legal guardian.

4. **Drawing and Awarding of Prizes.** Winner of prize will be determined in a random drawing from all entries received. Drawing will be held on or about [date] by [name of judging organization], an independent judging organization whose decisions are final on all matters relating to this Sweepstakes. Odds of winning are determined upon
the number of entries received. Winners of the Sweepstakes will be notified by phone, email or mail no later than [date]. If potential winner cannot be reached within five (5) calendar days from the first notification attempt, then such person shall be disqualified and an alternate winner will be selected. Winner will be required to sign an affidavit of eligibility and liability/publicity release within 14 days after notification is mailed, or prize will be forfeited and awarded to an alternate winner.

5. Limitation of Liability. Winners agree that (except where prohibited) Sponsor may use winner's name, picture, portrait, likeness and voice for advertising and promotional purposes without further compensation. Sponsor, its promotional and advertising agencies, and all respective officers directors, employees, representatives and agents shall have no liability and shall be held harmless by winners for any damage, loss or liability to person or property, due in whole or part, directly or indirectly, by reason of the acceptance, possession, use or misuse of prize or participation in this Sweepstakes. Any and all disputes, claims and causes of action arising out of or connected with this Sweepstakes, or any prizes awarded, shall be resolved individually, without resort to any form of class action, and exclusively by arbitration. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Sweepstakes, but in no event attorney's fees. Sponsor reserves the right, in its sole discretion, to cancel or suspend part or all of this Sweepstakes should virus, bugs, non-authorized human intervention or other causes beyond the control of sponsor corrupt or impair the administration, security, fairness or proper play of the Sweepstakes. In such event, Sponsor may award prizes in a random drawing from all eligible entries received up to the date of cancellation or suspension. Sponsor and its promotion and advertising agencies are not responsible for technical, hardware, software or telephone failures of any kind, lost or unavailable network connections, fraud, incomplete, garbled or delayed computer transmissions, whether caused by the sponsor, users or by any of the equipment or programming associated with or utilized in the promotion or by any technical or human error which may occur in the processing of submissions which may damage a user's system or limit a participant's ability to participate in the promotion. Sponsor may prohibit an entrant from participating in the Sweepstakes or winning a prize if, in its sole discretion, it determines that said entrant is attempting to undermine the legitimate operation of the Sweepstakes by cheating, hacking, deception, or other unfair playing practices (including the use of automated quick entry programs) or intending to annoy, abuse, threaten or harass any other entrants or Sponsor representatives. Offer void where prohibited and subject to federal, state and local laws.

CAUTION: ANY ATTEMPT BY AN ENTRANT TO DELIBERATELY DAMAGE THE WEBSITE OR UNDERMINE THE LEGITIMATE OPERATION OF THE SWEEPSTAKES MAY BE IN VIOLATION OF CRIMINAL AND CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, SPONSOR RESERVES THE RIGHT TO SEEK REMEDIES AND DAMAGES (INCLUDING ATTORNEY’S FEES) FROM ANY SUCH ENTRANT TO THE FULLEST EXTENT OF THE LAW, INCLUDING CRIMINAL PROSECUTION.
6. **Winners List/Rules.** For a winners’ list or a copy of the Official Rules, send a stamped, self-addressed envelope for receipt by [date], to Sponsor, [name/address]. Please specify rules or winner information. VT residents may omit return postage. You may also review the rules at www.XXX.com.

7. **Sponsored:** Name and address.

8. **Sweepstakes Administrator:** [Name and address]
FORM RANDOM DRAW RULES

OFFICIAL RULES

1. NO PURCHASE NECESSARY.

2. To Enter: Complete this official entry form or, on a 3.5” X 5” piece of paper, hand print your name, age (optional), address, city, state, zip code and daytime telephone number. Mail entries to: [NAME/ADDRESS]. Entries must be received by XX/XX/XX. Enter as often as you wish, but each entry must be mailed separately. No mechanically reproduced or photocopied entries will be accepted. Sponsor is not responsible for lost, late, misdirected, damaged, illegible, incomplete, incorrect or postage due entries/mail. Entries become the property of sponsor and will not be returned. For a copy of the official rules, send a self-addressed stamped envelope to “RULES” [NAME/ADDRESS] by XX/XX/XX (VT residents may omit return postage).

3. Prize Details: [INSERT DETAILS DESCRIBING NUMBER OF PRIZES, DESCRIPTION OF PRIZES AND PRIZE VALUES]. No prize substitution or cash redemption allowed by winner. Prize is not transferable. All taxes on prize are the sole responsibility of the winner. Sponsor reserves the right to substitute a prize of equal or greater value of featured prize becomes unavailable.

4. Drawing and Awarding of Prize(s): Winners will be selected in a random drawing from among all eligible entries received. Drawing will take place on or about XX/XX/XX. Drawing and awarding of prizes will be conducted by [INSERT NAME OF ORGANIZATION OR IF APPLICABLE, THE WORDS “AN INDEPENDENT JUDGING ORGANIZATION”] whose decisions on all matters relating to this sweepstakes are final. Prize winners will be notified by mail following the drawing and may be required to execute and return an Affidavit of Eligibility and Liability/Publicity Release within 14 days of the date notice is sent or such other date set by sponsor. Failure to respond with in the applicable time period will result in forfeiture of prize and Sponsor shall have the option to award the prize to an alternate winner. In the liability release, winner will agree to release Sponsor and its agencies from any injuries, damages or losses which may be sustained in connection with ownership, use or misuse of the prize. If prize is won by a minor, it will be awarded in the name of a parent/legal guardian who must sign and return all required documents. If prize or prize notification letter is returned as undeliverable, prize will be forfeited. Unclaimed prizes may not be awarded. Winners agree that sponsor may use their names or likeness for advertising and publicity purposes without additional compensation (except where prohibited). Limit one prize per person or household.

5. Odds: Odds of winning depend on the number of qualified entries received.

6. Eligibility: Sweepstakes open to legal U.S. residents age 18 or older. Employees of Sponsor, its parent and affiliated companies, advertising and promotion agencies, and the immediate family and household members of each are not eligible. All federal, state
and local laws apply. Void where prohibited. Sponsor and its affiliated and parent company, advertising and promotion agencies, are not responsible for printing, distribution or production errors and may rescind, cancel or revoke this drawing based upon any such error without liability and at its sole discretion. By participating in this sweepstakes, entrants waive all right to, and hold harmless, Sponsor and its advertising and promotions agencies from any loss, damage or expense arising out of or in connection with participation in this sweepstakes or the acceptance, use or misuse of any prize.

7. **List of Winner(s):** For a list of winner(s), send a self-addressed, stamped envelope to: “WINNERS” [NAME/ADDRESS] by XX/XX/XX.

8. **Sponsor:** [SPONSOR NAME/ADDRESS]
NO PURCHASE NECESSARY.

1. **TO ENTER** the Contest, complete the official entry form or on a 3” x 5” piece of paper, hand print your complete name, address, telephone number and date of birth. IMPORTANT: Participant must include their birth date and signature on entry form certifying that he/she is, [insert age] years of age or older. Send with the fully completed entry form along with a type-written essay ([insert number of words] words or less, no exceptions) explaining: [describe essay topic in detail]. Include complete name and address for the individual submitting the essay on the essay. Mail entry form and essay to: [contact information]. **All contest entries/essays must be postmarked by XX/XX/XX, the date the contest ends and received by XX/XX/XX.** LIMIT: One entry per person. Incomplete or illegible entries, entries without a signature or not including birth date will not be honored. No mechanically reproduced or photocopied entries permitted. Sponsor not responsible for lost, late, misdirected, damaged, illegible, incomplete, incorrect, misrouted or postage due entries/mail. Entries/essays become the property of Sponsor and will not be returned.

2. **JUDGING:** Each essay will be ranked in the following criteria: [insert criteria, for example:] (a) Originality/Creativity (65%), (b) Appropriateness to Subject Matter (25%) and (c) Sincerity (10%). Entrant whose essay earns the highest overall score will win. In the event of a tie, winner will be selected based on the Originality/Creativity criterion. Essay must be original, of entrant’s own writing style and creation. Essay must not have been entered in any other competition or violate the rights of other parties. Essay may not be offensive or defamatory, as determined by the judges. Participant assigns and transfers to Sponsor all rights, title and interest to the essay. Winner selection conducted by independent judges, whose decisions are final. **Judging will be conducted on or about XX/XX/XX.**

3. **PRIZE(S):** [insert number] Grand Prizes: [insert prize description] (Approximate Retail Value (“ARV”): $X,XXX.00. No prize substitution or cash redemption allowed by winner(s). Prize(s) are not transferable. Taxes are the sole responsibility of each winner. Sponsor reserves the right to substitute prize with similar prize of equal or greater value due to prize unavailability. Sponsor shall have all rights to copy, edit, broadcast, publish and use, in whole or in part, any essay, copyrighted or copyrightable materials, in any manner without further compensation (except where prohibited by law). Prize winner(s) will be notified by mail or phone and will be required to execute an Affidavit and Publicity/Liability Release within [insert number of days] days of date notice sent or prize will be forfeited. If prize, prize notification or attempted notification is returned undeliverable, prize will be forfeited and may be awarded to an alternate winner. Unclaimed prizes may not be awarded. One prize per person.

3. **ELIGIBILITY:** Open only to legal residents of the United States, [insert age] years of age or older as of participation date. Contest open to amateur writers only. Professional writers (persons who have been paid for their writing in the past one year) are not eligible. All employees of Sponsor, its parent, affiliates and subsidiaries, and the immediate families and household members of each, are not eligible to win. By submitting an entry and essay, participant agrees to be bound by these Official Rules. Entry constitutes permission to use winners’ names and likeness for publicity purposes without further compensation (except where prohibited by law). Sponsor and their promotional and advertising agencies shall have no liability and shall be released and held harmless by participant(s) for any damage, loss or liability to person or property, due in whole or part, directly or indirectly, by reason of the acceptance, possession, use or misuse of prize or participation. Any and all disputes, claims and causes of action arising out of or connected with this contest, or any prize awarded, shall be resolved individually, without resort to any form of class action, and exclusively by arbitration. Claims, judgments and awards shall be limited to actual out-of-pocket costs
incurred, including costs associated with entering this contest, but in no event attorney's fees. Offer void where prohibited and subject to federal, state and local laws.

4. **WINNER(S) LIST:** Send a self-addressed, stamped, business size (#10) envelope to: [insert address] Requests must be received by XX/XX/XX. **DO NOT SEND ANY OTHER CORRESPONDENCE OR ENTRIES/ESSAYS TO THIS P.O. BOX.**

5. **SPONSOR:** [insert name and address]
Sample Social Media Policy

The public nature of online communication presents a range of challenges to the Company in safeguarding our commercial activities, our reputation, our customers, and, more importantly, the security and safety of our employees. This document sets forth a policy for when you engage in online forums, including social networking sites, blogs, wikis, chat rooms and content sharing sites, so you can avoid anything that would jeopardize the Company’s reputation for independence and freedom from bias.

Social media blurs the lines between your personal life and professional life. Communications made on social media sites are public. Assume that anything you put on a social media site (text, photos, or video) may be viewed by anyone in the world and could be distorted or quoted out of context by those who want to damage your reputation, the Company’s reputation or use the information for their own purposes (commercial, political or otherwise). Also, assume these posts will remain forever.

This policy applies to your personal use of social media services, and it applies to all Company employees. If you work with social media as part of your job, see your manager for more information about our policies for official social media use.

Dos and Don’ts of Social Media Usage:

1. Do disclose your affiliation: If you talk about work related matters that are within your area of job responsibility, you must disclose your affiliation with the Company.

2. Do state that it’s YOUR opinion: Unless authorized to speak on behalf of the Company, you must state that the views expressed are your own if you are commenting on business.

3. Do protect yourself: Be careful about what personal information you share online.

4. Do act responsibly and ethically: When participating in online communities, always honestly represent who you are. If you are not a vice president, don’t say you are.

5. Do not harass, slander or defame the Company, its customers, employees or contractors (including supporting those who do this by associating with them online): All Company employees must follow all Company harassment, discrimination and ethics policies at all times, including while utilizing social media.

6. Do not post or disclose confidential or proprietary information belonging to the Company: This includes any information relating to customers, employees or any business related information which is not otherwise publically available.

7. Do not disclose non-public financial or operational information: This includes strategies, forecasts and most anything with a dollar-figure attached to it. If it’s not already public information, it’s not your job to make it so.
8. Do not use the Company to promote personal causes: If you’re using Facebook, Twitter, or another social network to raise funds for a charity or another cause, do not make it appear that the Company endorses this effort.

9. Do not disclose personal information: Never share personal information regarding other employees or customers.

10. Do not disclose legal information: This includes anything relating to a legal issue, legal case, or outside or in house counsel.

11. Do not post any data related to other employees: This includes, but is not limited to, personal details and pictures, without that party’s consent.

When in doubt, do not post. You must always exercise sound judgment and common sense and if there is any doubt about whether a post complies with this policy DO NOT POST IT. In any circumstance in which you are uncertain about whether or not to post, contact the Human Resources Department and they will advise you.

Violation of this policy is grounds for disciplinary action, up to and including termination of employment.
RE: The "____________ " Sweepstakes

Dear [NAME]:

Congratulations! You have been selected as the Grand Prize winner, pending verification, of the [NAME OF SWEEPSTAKES]. If verified as a winner, you will receive a [SHORT DESCRIPTION OF PRIZE]. We will soon be contacting you with the full details of how you can claim your prize, but before we do so, we need to certify that you are eligible for the prize, and that you fully understand the terms and conditions of acceptance.

Provided that you are verified as the winner, your prize will be a [INSERT PRIZE DESCRIPTION LANGUAGE FROM THE OFFICIAL RULES].

In order to ensure you are eligible to receive this prize according to the Official Rules, please read the enclosed Official Rules and the Affidavit of Eligibility and Release (the "Affidavit & Release") carefully, as they contain all terms and conditions of eligibility and prize acceptance. Please complete and sign the Affidavit and Release, and have it notarized. The completed, signed and notarized Affidavit & Release must be returned to our office within __________ (___) days from the date of this letter, or you will automatically forfeit your prize.

Please be advised that once you are confirmed as a winner, you will be responsible for all federal, state and local taxes. You may wish to seek independent counsel to determine the full extent of your tax liability under federal, state and local laws and regulations. As required by law, an IRS 1099 Form will be prepared in your name and submitted to the IRS for the value of your prize. You will receive a copy of the 1099 Form. Again, please note that your prize will consist of a [SHORT DESCRIPTION OF PRIZE]. Your prize will not include any additional items or expenses, which will be your sole responsibility.

Please feel free to call me at the number below with any questions, and we look forward to receiving your paperwork!

Sincerely,

[NAME]

[PHONE NUMBER]
FORM WIRELESS RULES

OFFICIAL RULES

NO PURCHASE NECESSARY. This sweepstakes is open to legal residents of the United States, 18 years of age or older as of [DATE].

Sweepstakes begins 9:00 AM PST on [DATE] and ends at 11:59 PM PST on [DATE] (the "Sweepstakes Period").

1. To Enter: You may enter the “[NAME OF SWEEPSTAKES]” (this "Sweepstakes") two ways during the Sweepstakes Period. (a) To enter the Sweepstakes by using text messaging, simply visit [URL] and sign up for the wireless sweepstakes offering, marked “[NAME OF SWEEPSTAKES]”, to receive one trivia question or poll per week via text message to either a text message capable wireless phone or alphanumeric pager. You have up to eight (8) hours to reply by text message with your answer. Each poll or quiz will be sent on Tuesdays from [DATE] through [DATE] for a total of ten (10) questionnaires. You may respond to each trivia question or poll as many times as you like during the eight (8) hour reply period, but all text message entries must be received by the end of such eight (8) hour period in order to be eligible to win that week’s prize. Each reply (right or wrong) will count as a separate entry to be placed in a random drawing for a chance to win. Entrants will be charged for receiving and responding to trivia questions according to their carriers’ rate plan(s). (b) Alternative Method of Entry: To enter the Sweepstakes without using text messaging, send a 3 x 5 post card with your name, address, daytime telephone number with area code to: [ADDRESS]. All mailed entries must be received Saturday of each week of the Sweepstakes Period in order to be eligible to win that week’s prize. Any error or omission in the information on the card will void the entry. No mechanically reproduced entries will be accepted. You can enter as many times as you like but each entry must be on a separate post card. Mail-in entrants do not need to answer the polls or trivia questions.

All entries must be received by 11:59 p.m. PST on [DATE] to be eligible for any prize.

All entries become the sole property of Sponsor and receipt of entries will not be acknowledged or returned. Any individual who attempts or otherwise encourages, directly or indirectly, the entry of multiple or false contact information under multiple identities or uses any device or artifice to enter or encourage, directly or indirectly, multiple or false entries, as determined by the Sponsor, will be disqualified. Mutilated, lost, postage due, illegible, or incomplete entries will be deemed ineligible and
disqualified. In the event of a dispute, entry information will be declared made by the authorized account holder of the telephone number, pager number or e-mail address submitted at the time of entry. "Authorized account holder" is defined as the natural person who is assigned to a telephone number, pager number or email address by a telephone company, wireless service provider, Internet access provider, Internet service provider or other organization (e.g. business, educational, institution, etc.) that is responsible for assigning telephone numbers, wireless phone numbers, or e-mail addresses for the telephone exchange associated with the submitted telephone or pager number or the domain associated with the submitted telephone, pager number or email address, as applicable. [SPONSOR NAME] (“Sponsor”) and its agencies are not responsible for late, lost, misdirected, or damaged entries or for technical, hardware, software or telephone malfunctions of any kind, lost or unavailable network connections, or failed, incorrect, incomplete, inaccurate, garbled or delayed electronic communications caused by the sender, or by any of the equipment or programming associated with or utilized in this Sweepstakes which may limit the ability to play or participate, or by any human error that may occur in the processing of the entries in this Sweepstakes. Sponsor shall not be responsible for lost, delayed or misdirected entries by the U.S. Postal Service or other delivery service. If for any reason, (including infection by computer virus, bugs, worms, tampering, unauthorized intervention, fraud, technical failures, or any other cause beyond the control of Sponsor, that corrupts or affects the administration, security, fairness, integrity, or proper conduct of this Sweepstakes), and this Sweepstakes is not capable of being conducted as described in these Official Rules, Sponsor shall have the right, at its sole discretion, to cancel, terminate, modify or suspend this Sweepstakes, and select the prize winners from eligible entries received prior to action taken, or as otherwise deemed fair and appropriate by Sponsor. Sponsor reserves the right to prosecute any fraudulent entries to the fullest extent of the law.

2. Random Drawing: [INDICATE NUMBER] Grand Prize winners and [INDICATE NUMBER] First Prize Winner will be randomly selected on or about the Monday of each week during the Sweepstakes Period. Non-winning entries from one week’s drawing will not be rolled over to the next week’s drawing. Each drawing will be conducted by [NAME OF JUDGING ORGANIZATION], whose decisions shall be final and binding, as the judge of this Sweepstakes. Winners will be notified by text message, telephone, or email. Winners must respond to such notification within two (2) days after notification or an alternate winner will be selected from the remaining eligible entries. If winner is a minor in his/her jurisdiction of residence, prize may be awarded in the name of, or to, winner’s parent/legal guardian who must execute all documents and agree to all obligations and undertakings of winner, both on behalf of himself/herself and winner, or prize may be forfeited and awarded to an alternate winner.

3. Prizes: [INDICATE NUMBER] Grand Prizes ([INDICATE NUMBER] prizes for each week of the Sweepstakes Period). Each Grand Prize consists of [DESCRIBE PRIZE]. Approximate Retail Value of each Grand Prize is [AMOUNT]. [INDICATE NUMBER] First Prizes ([INDICATE NUMBER] prize for each week of the Sweepstakes Period). Each First Prize consists of [DESCRIBE PRIZE]. Approximate Retail Value of each First Prize is [AMOUNT]. No prize substitution or cash equivalent
permitted. Total retail value of all prizes is [AMOUNT]. Each prize is non-transferable. Sponsor, in its sole discretion, may substitute a prize (or prize component) of equal or greater value due to unavailability of prize (or prize component) for any reason. Odds of winning depend upon the number of eligible entries received. Delivery of prizes requires a street address (No P.O. boxes).

4. **Eligibility:** Employees and their immediate family members of [INDICATE NON-ELIGIBLE ENTITIES], any of their respective parent and affiliated companies, subsidiaries, advertising and promotional agencies and any and all other companies associated with this Sweepstakes (“Sweepstakes Entities”) and the employees, agents, officers, directors, and their immediate families (parent, siblings, children and spouse) and persons residing in the same household (whether related or not) of such employees are not eligible to enter or win. Void in Puerto Rico, the U.S. Virgin Islands, U.S. Military installations in foreign countries, anywhere outside of the U.S and where prohibited, taxed or restricted by law.

5. **General:** By entering, all entrants agree to be bound by these Official Rules and by the decisions of the Sponsor, which shall be final and binding. By accepting prize, each winner grants to Sponsor the right to use his/her name, likeness, image, voice, hometown, and biographical information in advertising, trade and promotion, including on the Internet or via wireless application protocol, without further compensation or permission, except where prohibited by law. Winners will be required to complete, sign and return an Affidavit of Eligibility and Publicity/Liability Release within seven (7) days after notification attempt or prize may be forfeited and awarded to an alternate winner. All taxes and any other expenses on the receipt and use of prize are solely the responsibility of the winner. By participating, entrants and winners agree to release and hold harmless Sponsor, their parent company, subsidiaries, affiliates, subsidiaries, suppliers, and the employees and agents of each from any and all liability for any loss, harm, damage, injury, cost or expense, whatsoever including without limitation, property damage, personal injury and/or death, arising out of participation in this Sweepstakes and/or the acceptance, use or misuse of the prize. Any personal information supplied by any entrant will be subject to [SPONSOR NAME]’s privacy policy and terms of service posted at [URL]. Personal information supplied by entrants will be shared by [SWEEPSTAKES ADMINISTRATOR] with [SPONSOR] for marketing purposes only if the entrant has opted-in to receive more information from specified company on the entry form by checking the box next to the corresponding copy. Your personal information will be handled in accordance with each company’s respective privacy policy and terms of service. Entrants who do not comply with these Official Rules, or attempt to interfere with this Sweepstakes in any way shall be disqualified. The use of automated entry devices or any other conduct that impedes the integrity of the Sweepstakes is prohibited. Sweepstakes is subject to all U.S federal, state and local laws and regulations.

6. **Winners’ List:** You may request the names of winners by sending a self-addressed, stamped envelope by [DATE] to: [ADDRESS].

7. **Sponsor:** [NAME AND ADDRESS]
8. Administrator: [NAME AND ADDRESS]
Influencer Social Media Guidelines

The document is intended to provide general information and guidelines only and is not a substitute for legal advice. Since all promotional campaigns must be analyzed on a case-by-case basis for legal compliance, checking with counsel well in advance of the campaign launch date is always recommended.

Agency believes in full, fair and effective disclosures of material facts relating to Influencer’s relationship with Agency and its clients (“Clients”) in accordance with the Federal Trade Commission’s Guides Concerning Endorsements and Testimonials (http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf). As such, Agency requires that all Influencers adhere to the following guidelines (the “Guidelines”) when blogging, tweeting, posting on social media or otherwise publishing content about its Clients or any of its Clients’ products or services.

1. **Disclose Connection to Client** – When blogging about Client or Client’s products or services, Influencer must clearly disclose his/her “material connection” with the Client, including the fact that Influencer was afforded any consideration, was provided with certain experiences or is being paid for a particular service. “Material connections” may be defined as any connection between an Influencer and a marketer that could affect the credibility consumers give to that Influencer’s statements. Important examples of “material connections” include benefits or incentives, such as monetary compensation, loaner products, free products or services, in-kind gifts, or special access privileges provided by a marketer to an Influencer.

2. **Maintain Clear and Prominent Disclosure** – The above disclosure should be made in close proximity to any statements that Influencer makes about Client or Client’s products or services. This disclosure should be clear and prominent enough for consumers to view it when they are reading Influencer’s posts. This means that the disclosure should not be buried behind links or in the Terms and Conditions (or in similar documents). In addition, the consumer should not be required to click on, scroll down or mouse over a link in order to view the disclosure. Please note that this disclosure is required regardless of any space limitations of the medium (e.g., Twitter), where the disclosure can be made via hashtags, such as #sponsored, #paid or #ad (the latter of which preferably at the beginning of the tweet).

3. **Give Your Honest and Truthful Opinions** – Influencer’s statements should always reflect Influencer’s honest and truthful opinions and actual experiences. However, we do ask that all blog entries, Facebook posts, tweets, and/or comments be in good taste and free of inappropriate language and/or any content that promotes bigotry, racism or discrimination against an individual based on race, gender, religion, nationality, disability sexual orientation or age.

4. **Only Make Factual Statements That Are Truthful and Can Be Verified** – In an effort to accurately relay brand names, product attributes and program information, please refer to all Client-provided materials, if available, when developing content pertaining to Client or Client’s products. Most importantly, Influencer should only make factual statements about
Client or Client’s product’s characteristics or quality which Influencer knows for certain are true and can be verified. For example, Influencer should not make statements about the performance of a product unless Influencer has support for such claims.

5. **Respect Intellectual Property Rights** – Intellectual Property is the group of legal rights to works that people create or invent. Intellectual property rights typically include copyright, trademark, and trade secret rights, as well as the right to use someone's name, likeness or voice. Examples include photographs, videos, music, trademarks/logos, personal names/likenesses (including celebrities’ names/likenesses), and writings. Influencer should never post or share any content that violates or infringes the intellectual property rights of any third party. If Influencer is unsure about a work, particularly in instances where a work includes a third-party's trademark/logo, or music, film or television clips, or a celebrity’s name, photo or image, Influencer should check with Agency or Client before using the work. A good rule of thumb is, if in doubt, do not post it.

6. **Comply with other policies and laws** – Influencer should comply with all applicable laws, rules and regulations, as well as the terms, conditions, guidelines and policies of any social media platform or service that Influencer uses in connection with the services provided by Influencer.

If Influencer is in agreement with the terms and conditions of these Guidelines, then Influencer should sign below and send back to Agency.

**PLEASE NOTE THAT AGENCY RESERVES THE RIGHT TO MONITOR INFLUENCER’S COMPLIANCE WITH THESE GUIDELINES AND TO TERMINATE INFLUENCER’S PARTICIPATION IN ANY APPLICABLE CAMPAIGN IN THE EVENT OF ANY NONCOMPLIANCE.**

[INFLUENCER NAME]

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