

ENDORSEMENT AGREEMENT

This Endorsement Agreement ("Agreement") is entered into between _____ (Talent) as an independent contractor and _____ ("Company"), a duly licensed _____, _____. The Effective Date of this agreement is _____.

1. Term.

- a. *Term.* The "Term" of this Agreement begins on _____, and expires on _____, unless earlier terminated as provided herein.
- b. *Use Beyond Term.* Except as otherwise provided in Section 5 below, Company's Usage Rights will automatically terminate upon the expiration or earlier termination of this Agreement with the following exceptions:
 - i. If any of the Materials (as defined in Section 4 below) are still available or on display in Company's locations beyond the expiration or earlier termination of this Agreement without authorization from Company, then such use will not be considered a breach of this Agreement, but Company agrees, upon notice of any such use, to notify the appropriate parties that Company's Usage Rights have expired and request that such Materials be removed.
 - ii. Talent acknowledges the "viral" nature of the Internet and New Media (as referenced below), and agrees that any use by third parties of Materials and Talent IP (as defined in Section 5.a(i) below) produced or furnished hereunder beyond the Term shall not constitute a breach or violation hereof by Company, provided that Company has used commercially reasonable efforts to not expressly authorize such usage beyond the Term.

2. Territory. The "Territory" is

3. Description of Services.

- a. *Production Day.* Talent will participate in _____ hour production days in order for Talent to adequately participate in the creation of the Materials. Company will determine the date and location for the production day, subject only to Talent's prior bona fide professional commitments. Company will give Talent reasonable advance notice of the date and location.
- b. *Professional Standards.* Talent will render the services in a competent and professional manner and to the best of Talent's abilities. Talent will comply with all reasonable directions of Company, its advertising, promotional and public relations agencies and/or producer in connection with Talent's services under this Agreement.
- c. *Group Use.* Talent acknowledges that Company may have talent agreements with others. Talent agrees that Company will have the right to utilize their likeness for the Materials in conjunction with others under contract with Company.
- d. *Endorsement.* Talent will act as directed by Company while performing the above-referenced services. If Company desires, the Talent will sign a Performer's Affidavit attesting to Talent's use of and preference for Company's services whenever appropriate and will not use in public or refer publicly to any Competitive Businesses (as defined in Section 8 below) during any public activities, interviews or performances during the Term.

4. Materials.

- a. *Talent IP.* Company and its subsidiaries, affiliates, partners and joint ventures have the right to utilize the Talent IP on the Materials described below. For purposes of this Agreement the "Talent IP" is defined as Talent's name, nickname(s), performance, voice, still or moving image, signature, likeness, avatar, personal information (including biographical information and preferences), and other artistic (including digital) renderings of Talent.
- b. *Description of Materials.* The services referenced in Section 3 above may be used by Company to create content for use in the following materials:
- c. *Work Made for Hire.* All of the results of Talent's services under this Agreement, including, but not limited to, everything described in Section 4.b of this Agreement created by Company or its agent (collectively, the "Materials"), will be deemed a "work made for hire" under the provisions of the United States Copyright Act (17 U.S.C. Sec.1 01) and will be owned by Company for all purposes. If any Materials created under this Agreement are not legally capable of being a work-made-for-hire under the applicable copyright laws, then all right, title and interest in those Materials is hereby assigned to Company, and Talent will execute any documents necessary to perfect that assignment.
- d. *Ownership.* Without limiting the generality of the foregoing, all writing, ideas, gags or dialogue composed or ad libbed by Talent in connection with the preparation or production of the Materials created under this Agreement will automatically become Company's property. Talent represents and warrants that Talent has not claimed, and agrees that Talent will not claim, either under this Agreement or otherwise, any right, title or interest of any kind or nature in or to the Materials, and Talent agrees that all rights in the Materials are owned by Company.
- e. *Company's Creative Control.* Company will submit concepts for the Materials, for review and comment prior to final production. Company, its advertising agency, and/or its producer will exercise good faith in soliciting Talent's comments. However, Company retains creative control over the advertising in its absolute discretion. Company's decisions will be final in all matters, including matters relating to artistic taste.

5. Usage Rights.

- a. *Description of Usage Rights.* Company and its subsidiaries, affiliates, partners and joint ventures have the right to unlimited use and reuse throughout the Territory and during the Term (subject to Section 1.b) of all of the Materials produced under this Agreement, in and on all media, including without limitation as follows:
- b. *Premiums.* Company also has the right to use the Materials and Talent IP on a royalty-free basis, including with

Company's trademarks, on premiums and promotional merchandise that are distributed by Company for use with customers.

- c. *Use with Customers and Marketing Partners.* Talent agrees that Company will have the right to the unlimited use and reuse of the Talent IP, the Materials, the Premiums and autographed items, if applicable, in third-party tie-ins involving Company's customers and marketing partners, provided that Company will not use its rights to hold out any Company customer or marketing partner as having received an endorsement by Talent or as being a sponsor of Talent, unless such Company customer or marketing partner has in fact received such an endorsement or is such a sponsor. Talent has not and will not convey rights to anyone that will preclude Talent from being able to grant approval of Company's third party tie-ins with any of its customers. A "Third Party Tie-In" is any marketing, advertising, or promotional material and/or activity related to Company's products and services and including the trademarks, logos, and/or branded products and services of Company's customers or sponsored properties. Talent will have the right to approve Company's use of Talent IP in all Third Party Tie-Ins, which approval shall not be unreasonably withheld.
- d. *Internal Use.* Company, its subsidiaries, affiliates, partners and joint ventures also have the right throughout the Territory to the unlimited use and reuse in perpetuity of the Materials for internal purposes.
- e. *Similar Facilities.* Company, its subsidiaries, affiliates, partners and joint ventures also have the right throughout the Territory to the unlimited use and reuse in perpetuity of the Materials for historical, archival and/or documentary purposes in any public facility or any event owned or operated by Company.
- f. *Pay or Play.* Company is under no obligation to use Talent's services in any way or to cause the Materials to be produced, broadcast, or in any other way displayed, published, aired, or exploited, it being understood that Company's only obligation is to make such payments as are required under this Agreement.

6. Compensation.

- a. *Fee.* Company will pay Talent (either directly or through a payroll service) \$_____ (the "Fee"). Payment will be made as follows:
 - i. *First Payment.* \$_____ is due and payable once both Parties sign this Agreement AND Company receives a completed W9 plus all documentation that is reasonably and timely requested by Company to establish Talent as a vendor in Company's payment system;
- b. *Additional Service Rate.* Should Company elect to utilize Talent for Additional Service Time, Talent will be paid at the rate of \$65 per hour increment for such Additional Service Time.
- c. *Payment Addressed To.* Company will make payments payable to the order of: _____
- d. *Talent Responsibility.* Talent is responsible for all payments owed to anyone else (including any agent(s)) with respect to Talent's services under this Agreement.
- e. *Not Employee.* For purposes of Talent's services under this Agreement, Talent will not be considered Company's employee and will not, by way of example and not by way of limitation, be entitled to any disability benefits (other than workers compensation, if required by state law or an applicable collective bargaining agreement), or benefits from health, medical or life insurance programs, pension, profit-sharing or other employee-benefit plans or programs maintained by Company.
- f. *Allocation Pursuant to Collective Bargaining.* Should Company wish to use Talent in a television or radio commercial or in any other manner that would be governed by a collective bargaining agreement to which Company is bound, then Company will allocate an appropriate percentage of the Compensation against which such usage will be applied, will make appropriate Pension and Health contributions on such percentage, and will credit usage fees against such allocation at two times the minimum scale rates.

7. Travel and Accommodations.

- a. *Transportation.*
- b. *Accommodation and Living Expenses.*

8. Exclusivity.

- a. *Non-Competition.* Talent will not authorize the use of Talent IP nor will Talent render services or participate in any way in any commercial or other advertising, publicity or marketing activity in the Territory for:
 - 1. any _____ (as defined below) other than Company's _____;
 - 2. any products or services of any _____ other than Company's _____, or its subsidiaries, affiliates, joint ventures, or related companies, or
 - 3. any products or services, whether or not _____-related, that are marketed under trademarks primarily known as _____ trademarks.
- b. *Competitive Businesses.* Products and services described in clauses 8.a.i, ii, and iii are referred to collectively as "Competitive Businesses." Competitive Businesses means any entity engaged in business, whether for profit, or not for profit, as _____.

9. Conduct and Reputation.

- a. *Negative Behavior.* "Negative Behavior" means any action or statement by Talent that brings Talent into public disrepute, contempt, scandal or ridicule, or that shocks or offends the community or any group or class thereof, or that reflects unfavorably on Company or that reduces the commercial value of the Company's association with Talent.
- b. *Termination for Behavior.* Company may, at its option, deem Talent to be in material breach of this Agreement and

immediately terminate this Agreement if:

- i. Talent engages in Negative Behavior during the Term;
 - ii. Talent is publicly alleged to have engaged in Negative Behavior via a report during the Term in a reputable local or national media outlet (e.g., the New York Times, the Los Angeles Times, Newsweek, major broadcast cable networks, etc.);
 - iii. Talent has, prior to the Term, engaged in Negative Behavior and information about past Negative Behavior becomes public during the Term;
 - iv. Talent is indicted with a misdemeanor involving acts of moral turpitude or any felony;
 - v. There is significant negative publicity concerning Talent;
- C. *Termination for Disparagement.* Company may also, at its option, deem Talent to be in material breach of this Agreement and immediately terminate this Agreement if Talent takes or authorizes any action against Company (other than legal action in connection with enforcement of this Agreement) or makes or authorizes any statements in derogation of Company or its products or services, and such actions or statements are made known to the general public or become a matter of public knowledge during the Term.

10. **Confidentiality and Non-Disparagement.** Talent will not authorize or release information in any form concerning the existence or details of this Agreement without Company's prior written approval. Nevertheless, after Company has announced the association between Talent and Company or the association otherwise becomes public, Talent may respond, discuss and comment that Talent is associated with Company in a favorable, positive and non-disparaging manner during any public events and/or interviews. It is specifically acknowledged and agreed that the amount of compensation paid to Talent hereunder must be held in strict confidence and under no circumstances be released publicly by Talent or Talent's agent or representatives, unless required by law. Such confidentiality is the essence of this Agreement. During the Term and for a period of one year thereafter, Talent will not make or authorize any statements in derogation of Company or its products or services.

11. **Representations and Warranties.** Talent hereby represents and warrants as follows:

- a. Talent is authorized and empowered to enter into this Agreement;
- b. The services and materials provided under this Agreement do not and will not violate the rights of any third party;
- c. Talent is responsible for and will make all necessary commissions and other payments to third parties, including but not limited to agents;
- d. Talent has not made and will not make any other agreement, grant or assignment that would or might conflict with or impair the complete enjoyment of the rights granted to Company under this Agreement;
- e. Talent is an independent contractor having no authority to bind Company;
- f. Talent will perform and discharge all obligations imposed by this Agreement and by all federal, state or local laws and regulations.

12. **Remedies (including Termination).**

a. *Circumstances Outside of Talent's or Company's Reasonable Control.*

- i. *Force Majeure.* If for any reason such as strikes, boycotts, war, acts of God, labor troubles, riots, delays of commercial carriers, restraints of public authority, or for any other reason, similar or dissimilar, beyond Talent's or Company's reasonable control (a "Force Majeure Event"), Company is unable to produce, use and/or reuse the services or Materials contemplated under this Agreement, then Company, in its sole discretion, will have the right to extend the Term for a time period equivalent to the delay, without any additional compensation to Talent. If a Force Majeure Event extends beyond 30 days, Company may terminate this Agreement by notice to Talent.
- ii. *Death.* If Talent dies during the Term, Company has the option, in its sole discretion, to either terminate this Agreement or to continue to use the Materials in which Talent participated, so long as Company pays all compensation to Talent's estate for such Materials when due under this Agreement.
- iii. *Disability.* If Talent suffers any illness, accident or other physical or mental impairment that renders Talent incapable of performing, or unqualified to perform, services whenever required under this Agreement, then Company may, in its sole discretion, either extend the Term by the number of days that Talent fails to provide Talent's services, or terminate this Agreement.

b. *Effect of Termination Due to Circumstances Outside of Talent's or Company's Reasonable Control.* If Company terminates this Agreement pursuant to this Section 12.a, then the Fee will be allocated on an equal daily basis throughout the Term and prorated to the effective date of termination. Promptly thereafter, Company will make payment of any applicable shortfall in the prorated Fee to Talent. If Company has made payments in excess of the prorated Fee, then Talent will promptly refund the excess to Company.

c. *Circumstances within Talent's Reasonable Control.*

1. Breach of "Exclusivity" (Section 8), "Conduct and Reputation" (Section 9), or "Confidentiality and Non-Disparagement" (Section 10): In addition to any other rights Company may have at law or in equity and without prejudice to those rights, Company may immediately terminate this Agreement upon any material breach by Talent of Sections 8, 9, or 10 hereof.
2. *Other Breaches.* If Talent at any time commits a material breach of any provision of this Agreement not referenced in Section 12.c(i) or at any time fails or refuses to fulfill Talent's obligations hereunder, then

Company may terminate this Agreement. Company must give written notice of the breach to Talent, and Talent will then have _____ days in which to cure the breach, if it is curable. If the breach is not curable, or if Talent fails to cure within that period, termination will be effective on the date Talent originally received notice. Without otherwise limiting the foregoing, Talent's failure to commence performance of services that have been booked or confirmed, or Talent's discontinuance of those services, except due to injury, illness or unforeseeable emergency situations, is considered a material breach incapable of cure.

- d. *Effect of Termination Due to Circumstances Within Talent's Reasonable Control.* If Company terminates this Agreement pursuant to this Section 12.c, then Company will make no further payments to Talent, and Talent will promptly refund to Company the unearned portion of the Fee paid for Talent's services. For purposes of this provision, if the Materials in Section 4 have been created, the unearned portion of the total Fee (not just the amount the Talent has received up to that point) will be the proportional equivalent of the percentage of time remaining in the term of the endorsement. If the Materials in Section 4 have not been completed, the unearned portion of the Fee that must be returned will be the entire amount initially received. Failure to complete the Materials in section 4 must be due to the Talent and may not be the fault of the Company. If the Company purposefully delays the completion of Materials and terminates the Agreement pursuant to Section 12.c before the Materials can be completed, the Talent may keep the unearned Fee that they have already received.

13. **Services Unique.** It is expressly understood and agreed that the services to be performed by Talent and the rights and privileges granted to Company under this Agreement are special, unique, extraordinary and impossible to replace, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in an action at law. Talent's failure or refusal to perform their obligations under this Agreement would cause irreparable harm or damage to Company. If Talent breaches this Agreement, then in addition to any other legal remedies Company may have (including rights and remedies available under any applicable collective bargaining agreement), Company will be entitled to ex parte injunctive or other equitable relief against Talent to prevent the continuance of such failure or refusal to perform, or to prevent Talent from performing services or granting rights to others in violation of this Agreement. Company's exercise of its rights or failure to exercise its rights does not constitute a waiver of any other or additional rights at law or pursuant to this Agreement that Company may have against Talent as a result of a specific breach or any other breach.

14. **Indemnification.**

- a. Talent agrees to indemnify and to hold Company harmless from and against any and all losses and expenses resulting from any claims, proceedings or actions (whether or not finally adjudicated, and including any settlement thereof) arising out of, in connection with, or on account of (i) any breach or alleged breach of any warranty, representation or covenant made by Talent in this Agreement, or (ii) the exercise by Company of any of the rights granted to Company by Talent under this Agreement. Company agrees to give Talent prompt written notice of any claim or litigation subject to indemnification.
- b. Company agrees to indemnify and hold Talent harmless from and against any and all losses and expenses resulting from any claims, proceedings or actions (whether or not finally adjudicated, and including any settlement thereof) arising out of, in connection with or on account of (i) any breach or alleged breach of any warranty, representation or covenant made by Company in this Agreement, or (ii) Company's use of the Materials produced under this Agreement and/or the products and services advertised therein. Talent agrees to give Company prompt written notice of any claim or litigation subject to indemnification.
- c. No party's indemnification obligations apply to any losses or expenses to the extent caused by the negligent or willful acts or omissions of, or breaches by, the party seeking indemnification.

15. **Notices.** All notices that a party gives to another must be delivered or sent by mail (postage prepaid) or by overnight delivery at the addresses set forth below, with a copy sent by email:

If to Company:

_____, _____, _____
Attn: _____

If to Talent:

_____, _____, _____

16. **No Assignment.** Company may assign this Agreement or any of Company's rights under this Agreement to any of its subsidiaries, operating divisions, joint ventures or other affiliated parties, so long as that party agrees to assume all of Company's obligations (or the pertinent portions of those obligations) under this Agreement. This Agreement inures to the benefit of Company and its successors and assigns. Talent may not assign any of Talent's rights or delegate any obligations under this Agreement without the prior written consent of Company.

17. **Miscellaneous.** This Agreement is being entered into in the State of _____ and will be construed and interpreted in accordance with the laws of the State of _____ as if negotiated, executed and fully to be performed there, without regard to its conflicts of laws provisions. The captions of the sections and subsections of this Agreement are for convenience only and must not be used in construing the contents of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that determination will not affect the validity or enforceability of any other provision in this Agreement. This Agreement includes the entire understanding between Talent and Company with respect to the subject matter hereof, and all prior and concurrent oral agreements and all prior written agreements with respect to that subject matter have been merged into this Agreement. Any waiver, modification or addition to this Agreement will not be valid unless in writing and signed by all parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

COMPANY

TALENT

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____ for _____

Title: Talent

Date:

Date:

Celebrity Endorsement Agreement

Instruction Sheet

What is it?

An agreement in which a celebrity allows a company to use their name, likeness and reputation to promote goods or services.

Why would I use it?

Partnering up with a celebrity for marketing and promotional efforts may help to expand your goods and services to new markets, or strengthen your brand's identity. This agreement contains the general terms regarding the arrangement, including the compensation the celebrity will receive, the number of production days required, and the term the endorsement will last.

What Do I Do with this Agreement?*

1) Review

- Review the agreement to make sure everything contained within is correct.

2) Execute

- Both a representative of the company and the celebrity must sign the agreement for it to become effective

3) Post-Execution

- After execution, each party should retain a copy of the agreement for their personal records. If either party breaches the agreement, the parties can either try to reach a resolution or pursue legal action.

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