

**CONTRACT BETWEEN ADVERTISING AGENCY
AND LOAN-OUT COMPANY SUPPLYING AN ARTIST'S SERVICES**

[Agency Letterhead]

Date: _____

[Loan-Out Company]
[Address]

Ladies/Gentlemen:

This letter, when executed by you and by us, will constitute a valid and binding agreement between you and us with respect to your furnishing the services of _____ (hereinafter referred to as "Artist") to us on behalf of our client _____ (hereinafter referred to as "Client") to advertise and promote its _____ (hereinafter collectively referred to as the "Products/Services").

I. NATURE OF SERVICES

1. We hereby engage you and you agree to cause Artist to render services to us as a performer and participant in up to ____ (__) television commercials and up to ____ (__) radio commercials (hereinafter collectively referred to as the "commercials"), for use in all electronic media including, but not limited to, radio, free-tv, pay-tv, cable, closed circuit, in-store and theatrical television, supplemental media, videocassettes, the Internet, and on Client's Web site. Commercials may be on film, tape, disc and any other method of recording now or hereafter invented.

2. Alternate versions of a commercial to allow for lifts, tags or dealer versions as permitted by the applicable union collective bargaining agreement, or to account for differences in packaging, will not be considered separate commercials in calculating the number of commercials produced hereunder.

3. We shall also have the right to require Artist to sit for still photographs; the resulting photography may be used by us in all forms of advertising including, but not limited to, the commercials, consumer and trade print advertising, Web site, point of sale, outdoor, mailing inserts, catalogs, annual reports, counter cards, shopping bags, posters, banners, in-store promotion, light boxes, containers and brochures. ("Print photography," together with the commercials, will hereinafter collectively be referred to as the "materials").

4. The aggregate number of days during each year of the term hereof during which Artist may be required by us to render services for the production of commercials and for still photography sessions hereunder, which days need not be consecutive, will be _____ (___), exclusive of travel. We shall also have the option to require Artist's services for additional

days during the term hereof at the additional compensation provided in Paragraph III.1.(g) hereof.

5. We shall also have the right to require Artist to make up to ____ (__) personal appearances on behalf of Client. Each such appearance may be of up to ____ (__) hours' duration.

6. The materials to be produced hereunder and the rendition of Artist's services will be at such times and locations as we may determine, subject to reasonable prior notice to you and Artist's prior professional commitments.

7. Artist's services will be rendered in accordance with our reasonable instructions and under our control. Artist's services in the television commercials produced hereunder may be on or off-camera.

8. You will have a reasonable right of script approval insofar as the copy reflects on Artist personally, but not as to overall creative concept. Approval rights must be exercised within seventy-two (72) hours of your receipt of copy; otherwise it shall be deemed that approval has been given.

II. TERM AND AREA OF USE

1. The "initial term" of this agreement will commence on the date of first broadcast of the commercials or _____, whichever is sooner, and continue until _____.

2. We shall have _____ (_____) successive options to extend the term of this agreement for additional periods of one (1) year each (hereinafter referred to, respectively, as the "first option period," "second option period," etc.) We shall advise you in writing not later than thirty (30) days preceding the end of the initial term or the then current option period whether we wish to exercise an applicable option, which will be at our sole discretion. If we exercise an option, we shall have the right to require Artist to render all the same services with respect to the applicable option period as we had with respect to the initial term. Further, we shall have the right to continue to use all materials previously produced hereunder. The initial term, together with any option periods for which the option has been exercised, will hereinafter be referred to, collectively, as the "term."

3. During the term hereof, the materials produced hereunder may be used throughout the _____ ("Territory").

III. COMPENSATION

1. We agree to pay to you and you agree to accept, in consideration of all services rendered by you and Artist and the use of the results thereof, and all rights granted by you and Artist to us, the following compensation:

(a) With respect to the production of commercials hereunder, irrespective of the method of production, all compensation and fees provided for in the respective collective

bargaining agreements (“Codes”) of the Screen Actors Guild (“SAG”) and the American Federation of Television and Radio Artists (“AFTRA”), will be computed at _____ (___x) the minimum scale rates provided in the applicable Code.

(b) With respect to each day of still photography in which Artist participated, you will be entitled to the sum of \$ _____, payable within ten (10) days thereafter.

(c) With respect to each personal appearance by Artist, you will be entitled to the sum of \$ _____, payable within ten (10) days thereafter.

(d) We agree, however, that your minimum aggregate compensation (“Guarantee”) pursuant to (a), (b) and (c) above, during the initial term hereof, will be the sum of _____ (\$) Dollars.

(e) If we exercise any of our options pursuant to Paragraph II.2. hereof, we agree that your Guarantee applicable to the respective option periods will be the following:

First Option Period: \$ _____

Second Option Period: \$ _____

Third Option Period: \$ _____

(f) Your Guarantees pursuant to Paragraph III.1.(d) and (e) shall be payable on the following schedule:

(g) In the event we require additional days of Artist’s services beyond those provided in Paragraph I.4. hereof, we agree to pay you the sum of _____ (\$____) Dollars per day of additional services, payable within ten (10) days following Artist’s rendition of such services.

2. We shall make any SAG or AFTRA Pension and Health Fund (“P&H”) payments applicable to Artist’s services in connection with the production of the commercials. For the purpose of such P&H payments, the Guarantees provided in Paragraphs III.1.(d) and (e) hereof will be allocated ____% to broadcast services.

3. If the amounts to which you become entitled pursuant to Paragraphs III.1.(a), (b) and (c) above exceed the applicable Guarantee, payment of such excess will be made promptly. Our failure to pay such excess on a timely basis in accordance with the applicable collective bargaining agreement will not constitute a breach of this agreement or otherwise affect our or Client’s rights hereunder, provided we cure such late payment within thirty (30) days of receiving written notice from you of the delinquency.

4. We shall provide Artist with lodging, ground transportation, first class air transportation and _____ (\$_____) Dollars per diem in travelling to and from, and while present at, all locations at which we request Artist's services, unless Artist is already required or is planning to be present at such locations for other business or personal reasons.

5. Payments to be made hereunder will not be subject to any deductions. You agree to indemnify us with respect to any claim if you fail to pay any assessments or taxes due on your compensation hereunder. You warrant that you will pay Artist the minimum required compensation provided in the collective bargaining agreements applicable to Artist's services for the production and use of the materials and that you will otherwise comply with all obligations imposed upon an employer of performers under such applicable collective bargaining agreements. You will be responsible for all payments to be made to any agent or other representative with respect to Artist's services hereunder. You acknowledge that for the purposes of retaining Artist's services hereunder, Artist will not be considered our employee or an employee of Client and will not, by way of example and not be way of limitation, be entitled to any benefits from workers compensation, disability benefits, health, medical or life insurance programs, pension, profit sharing or other employee-benefit plans or programs maintained by us or Client.

IV. EXCLUSIVITY AND ENDORSEMENTS

1. You warrant and represent that you and Artist have not authorized, which authorization is still in effect, and you and Artist will not authorize or permit the use of Artist's performance, name, voice, signature, photograph or other likeness, nor will Artist render services in connection with any radio or television commercial or participate in any other advertising or promotion activity, for any products or services in competition or incompatible with Client's Products/Services.

2. You warrant, represent and agree that at no time will you or Artist disparage Artist's association with the Products/Services and Client or its advertising or public relations agencies, or our or their officers and employees..

3. You agree that we may utilize the results of Artist's services to endorse Client's Products/Services and in that connection, Artist have simultaneously executed the letter attached hereto as Exhibit A.

V. USE OF NAME AND LIKENESS

1. Subject to and in accordance with the limitations provided in Paragraphs I. and II. hereof, you hereby grant to us the right to use Artist's name, performance, voice, signature, photograph and likeness in connection with the materials produced hereunder.

2. You also hereby grant us the right to publicize Artist's association with Client and its Products/Services.

3. Upon the termination of this agreement, no materials produced hereunder will be disseminated by us beyond a run-off period of _____ (__) months following termination, it

being understood, however, that subsequent use by others, including wholesalers and retailers, of material theretofore disseminated will not constitute a breach by us hereunder. Upon termination, we agree to notify third parties improperly using any of the materials produced hereunder when such use is brought to our attention, but their failure to discontinue such use shall not constitute a breach by us of this agreement.

VI. MISCELLANEOUS PROVISIONS

1. Services Unique

It is expressly understood and agreed that the services to be performed by Artist and the rights and privileges granted to us hereunder are special, unique, extraordinary and impossible of replacement, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in an action at law and that your and Artist's failure or refusal to perform your obligations hereunder would cause irreparable harm or damage. Should you or Artist fail or refuse to perform such obligations, we shall be entitled to *ex parte* injunctive or other equitable relief against you and Artist to prevent the continuance of such failure or refusal or to prevent Artist from performing services or granting rights to others in violation of this agreement.

2. Pay or Play

The payment to you of the required compensation provided in Paragraph III hereof, will fully discharge all our obligations hereunder and we shall not be obligated to produce, broadcast, telecast, or publish any of the materials or to utilize Artist's services hereunder.

3. Union Membership

You warrant and represent that Artist is a member of SAG and AFTRA and will remain a member in good standing thereof during the term of this agreement. In the event that we incur any expenses, including any fine or penalty, as a result of Artist's failure to remain a member in good standing of any such union, you and Artist will be responsible for and shall reimburse us any such expenses, fines or penalties incurred or paid by us as a result thereof. In the event any payment is still due you at the time we incur any fine or penalty, we shall have the right to deduct such fine or penalty from any amount due you.

4. Indemnities

(a) You will at all times indemnify and hold us and Client and our respective directors, officers, employees, licensees, agents and assigns harmless from and against any and all claims, damages, liabilities, expenses, non-cancellable production costs and/or media expenditures and any other costs and expenses, including counsel fees, arising out of any breach by you of any warranty or agreement made by you or Artist herein or in the performance of your respective obligations hereunder or arising out of any acts committed by you or Artist which were not authorized by us.

(b) We shall indemnify you and hold you and Artist harmless, with respect to any claims, damages, liabilities, costs and expenses, including counsel fees, arising out of materials prepared by us or Client concerning the advertising, distribution, exploitation or usage of Client's Products/Services.

(c) Any party hereto seeking indemnification agrees to notify the party from whom indemnification is sought as soon as possible after a claim has been made. The party from whom indemnification is sought may then elect to defend; otherwise, such party will reimburse the other party for its costs of defense.

5. Ownership of Materials

(a) You acknowledge that neither you nor Artist have any right, title or interest, and agree that you will not claim any, in or to the materials produced hereunder, or in or to any of our or our Client's trademarks, service marks, trade names or copyrights.

(b) Any character that we may create which we cause Artist to portray in any materials will be our sole and exclusive property and neither you nor Artist will claim any right of any nature to such character. To the extent required under the applicable copyright laws regarding ownership of any materials produced hereunder or the content or use thereof, the product of Artist's services hereunder will be considered works made for hire or, if not legally capable of being considered as such, then and in such event you and Artist hereby assign to us any rights or title you may have in or to such materials.

6. Professional Behavior

If Artist has committed or commits any act or become involved in any situation or occurrence which brings Artist into public disrepute, contempt, scandal or ridicule or which shocks, insults or offends the people of this nation or any class or group thereof or reflects unfavorably upon us, Client or its Products/Services, we shall have the right to immediately terminate this agreement. Our decision on all matters arising under this paragraph will be conclusive, provided that our decision to terminate hereunder must be exercised, if at all, not later than forty-five (45) days after the facts giving rise to such right under this paragraph are brought to our attention.

7. 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 our control, we or Client shall be unable to use and/or reuse the materials produced hereunder or Artist is unable to render services as required by us during any period of the term hereof, then we shall have the right to extend the term hereof for an equivalent period, without any additional compensation to you or Artist. Without limiting the foregoing, if, as a result of a strike by SAG or AFTRA, you or Artist refuse to provide services to us or we are prevented from utilizing the materials produced hereunder, we shall have the right to either terminate this agreement or extend the then current year of the term hereof for a period equivalent to the duration of such strike. In the event of any such extension hereunder, the option periods and payment schedule(s), if any are provided herein, will be adjusted accordingly.

8. Death

In the event of Artist's death during the term hereof, we shall have the right, in our sole discretion, to either terminate this agreement or continue to use the materials in which Artist participated upon payment of the required compensation to you hereunder.

9. Disability

If Artist should fail to fulfill Artist's obligations hereunder due to any illness, accident or other physical or mental impairment which renders Artist incapable of performing or unqualified to perform services whenever required under this agreement, then we may, in our sole discretion, either extend the term by such number of days that you failed to provide Artist's services or terminate this agreement.

10. Breach

(a) Except with respect to the application of our rights under Paragraphs 6., 7., 8., and 9. above, if you or Artist at any time commit a breach of any provision of this agreement or at any time fail or refuse to fulfill your respective obligations hereunder, then we may terminate this agreement, provided, however, that written notice of such breach must be served upon you, and you will thereupon have fifteen (15) days in which to cure such breach, if it is curable. If not or upon your failure to cure within such period, termination will be deemed effective on the date you originally received notice.

(b) Without limiting the foregoing, it is expressly understood that Artist's failure to commence performance of services which have been booked and confirmed, or having commenced performance Artist's discontinuance of such performance, except due to illness or emergency situations beyond your or Artist's control, will be considered a breach incapable of cure.

11. Rights Upon Breach

In the event of a breach of this agreement by you or Artist, in addition to any other legal remedies we may have, we shall have the right to resort to injunctive or other equitable relief, and the exercise of such right shall not constitute a waiver of any other or additional rights at law or pursuant to the terms of this agreement which we may have against you as a result of such breach.

12. Pro-Rated Compensation

In addition to such other rights as we or Client may have at law or in equity and without prejudice to any such rights, in the event of any termination pursuant to Paragraphs 6. or 10. above, we shall be entitled to a refund of any Guarantee payments under Paragraphs III.1.(d) or (e) in excess of amounts due under Paragraphs III.1.(a), (b) and (c). In the event of termination pursuant to Paragraphs 7., 8., or 9. above or 25.(b) below, the Guarantee will be prorated to the effective date of termination and any applicable additional payment by us or refund by you (or your estate) will be made promptly thereafter.

13. Full Power

You represent and warrant that:

- (a) Artist is employed by you;
- (b) You and Artist have the full right and power to enter into and fully perform this agreement in accordance with its terms; and
- (c) The execution, delivery, and performance of this agreement will not infringe upon the rights of any third party or violate the provisions of any agreement to which you or Artist are a party; and
- (d) Artist has read and executed the letter attached hereto as Exhibit B simultaneously with your execution of this agreement.

14. Notices

Service of all notice under this agreement will be sufficient if given personally, mailed or telefaxed to you at:

[CORPORATION'S ADDRESS]

and to us at:

[AGENCY'S ADDRESS]

with a copy to:

Manatt, Phelps & Phillips, LLP
1675 Broadway
New York, NY 10019
Attention: Felix H. Kent, Esq.
Phone: (212) 373-5208
Fax: (212) 373-1793

Any notice shall be deemed to have been given on the day it is mailed or telefaxed or, if delivered in person by hand, on the day it is delivered.

15. Fan Mail

Any and all fan mail received by you or Artist in connection with the rendition of Artist's services provided herein will be forwarded to us for our use, if we so desire.

16. Waiver

The failure by us to exercise rights granted to us hereunder upon the occurrence of any of the contingencies set forth in this agreement will not constitute a waiver of such rights upon the recurrence of such contingency.

17. Entire Understanding

This agreement constitutes the entire understanding between you, Artist and us with respect to the subject matter of this agreement and supersedes all prior agreements. No waiver, modification or addition to this agreement will be valid unless in writing and signed by the parties hereto.

18. Law Governing

This agreement will be construed in accordance with the laws of the State of _____ pertaining to contracts made and performed entirely therein and you agree and consent that jurisdiction and venue of all matters relating to this agreement will be vested exclusively in the federal, state and local courts within the State of unless superseded by the arbitration provisions contained in any applicable collective bargaining agreement to which we are signatories.

19. Interviews, Advertising and Publicity

Neither you nor Artist will authorize or release advertising matter or publicity, or give interviews which make reference to the details of Artist's engagement hereunder, without our prior written approval, although during interviews Artist may respond, discuss and comment in a favorable and positive and nondisparaging manner that Artist is associated with the Client. It is specifically acknowledged and agreed that the amount of compensation paid to you hereunder must be held by you and Artist in strict confidence and will under no circumstances be released publicly by you, Artist or any of your representatives. Such confidentiality is of the essence to this agreement.

20. Citizenship and Immigration

It is understood and agreed to that you will provide us with all necessary work permits or certification or proof of citizenship of Artist and you hereby represent and warrant that Artist is legally permitted to perform the services provided hereunder and our use of such services will not violate any laws or regulations pertaining to the employment of individuals.

21. Professional Rendition of Services

Artist will attend and participate in all rehearsals, filming or taping and photography sessions required and will render his/her services hereunder in accordance with the scripts or other materials which we shall furnish to Artist for such purposes. Artist agrees to render his/her services in a competent and artistic manner to the best of his/her ability, and that all Artist's services will be subject to our approval, direction and reasonable control at all times;

Artist will promptly comply with whatever reasonable instructions, suggestions and recommendations we may give his/her in connection with the rendition of such services.

22. Paragraph Headings

Paragraph headings are for reference purposes only and are not intended to create substantive rights or obligations.

23. Severability

In the event any provision of this agreement is determined to be invalid by a court of competent jurisdiction, such determination shall in no way affect the validity or enforceability of any other provision herein.

24. Principal/Agent Status

We are acting as agent for Client for the purpose of this agreement. All rights, benefits, privileges and properties vested in us pursuant to this agreement are vested in us for the benefit of Client and may be exercised by either us or Client. All liabilities, obligations and duties imposed upon us pursuant to this agreement are owed by us as agent for a disclosed principal and not as principal.

25. Assignment

(a) This agreement, including the right to receive compensation, may not be assigned by you.

(b) In the event that Client is acquired by or merged into another entity so that neither Client's corporate identity nor its Products/ Services under their respective trade names or trademarks are intended to survive such acquisition or merger, this agreement may be transferred and/or assigned to another entity only if both you and such other entity consent in writing. If either does not consent, then this agreement will be deemed terminated as of the closing date for such acquisition or merger and compensation will be prorated to the date of such closing, as provided in Paragraph 12. above.

26. Independent Contractor

You will discharge all your obligations imposed by any federal, state or local law, regulation or order now or hereafter in force including, but not limited to, the filing of all returns and reports required and the payment of assessments, taxes, contributions and other sums required of you, and you will indemnify and hold harmless us and the Client against all claims and demands resulting from your failure to comply with the provisions of this paragraph.

27. Use of Counsel

You and Artist represent that you have consulted with legal counsel of your own choosing in connection with the negotiation and execution of this agreement or have knowingly chosen not to do so.

Please confirm your acceptance of, and agreement to the foregoing by affixing your signature in the place indicated below.

Very truly yours,

[AGENCY NAME]
as agent for
[CLIENT'S NAME]

By: _____

ACCEPTED AND AGREED:
[LOAN-OUT CORPORATION]

By _____

Title: _____

Federal I.D. Number: _____

EXHIBIT A

Date:_____

[AGENCY’S ADDRESS]

Gentlemen:

Pursuant to a separate agreement (“Agreement”), you have retained my services in connection with the production of various materials in which I may deliver testimonials for various products and services of [CLIENT’S NAME] (hereinafter referred to as the “Products/Services”).

I hereby certify to you that except as I may otherwise promptly advise you in writing, any statements attributed to me are or will be true and an expression of my personal experience and belief. I have used the Products/ Services and promise that I shall continue to purchase and use said Products/Services for so long as you have the right to use the materials produced pursuant to the Agreement.

Nothing contained in this letter shall constitute an amendment or addition to the Agreement, the terms and conditions of which shall remain in full force and effect.

Very truly yours,

[Artist’s Signature]

Witness:

EXHIBIT B

Date: _____

[AGENCY'S ADDRESS]

Gentlemen:

Reference is made to an Agreement dated _____, 20__, between you and behalf of your client, _____ [Client's name] ("Client") and _____ [Corporation]..

In consideration of your entering into the Agreement with [Corporation], and in order to induce your execution hereof, I hereby confirm that I have read said Agreement and that I agree to perform all of the obligations and undertakings required of me thereunder and to abide by all the restrictions contained therein as they are applicable to me, regardless of whether [Corporation] continues throughout the term of the Agreement to be my employer in connection with such services.

I acknowledge that payment by you or Client to [Corporation] as set forth in said Agreement shall fully discharge your and Client's obligation to me.

I warrant and represent that [Corporation] is authorized by me to contract for my services as set forth in said Agreement and represent that I am not obligated to any third parties in any manner that would interfere with my ability to perform as required under said Agreement.

Very truly yours,

[Artist's Signature]

Witness:
