

Content Deal Memorandum

This content deal memorandum (“Deal Memo”), dated as of March [___], 2010, is entered into by and between **Hulu, LLC** (“Hulu”) and the [_____] (“Licensor”), and sets forth the terms and conditions between the parties in connection with the license of certain content described in Exhibit A hereto (the “Licensed Content”) for display using Hulu’s proprietary video player.

WHEREAS, Licensor is an entity of the U.S. Government with responsibility for the licensing of photos, audio, video and other content that appears on the official website of the Licensor (_____);

WHEREAS, Hulu is an online video service that offers TV shows, movies and clips at Hulu.com and other online destination sites;

WHEREAS, in furtherance of its public outreach responsibilities and the policies on communications with the public outlined in the Open Government Directive on transparency, participation, and collaboration in government, Licensor desires to make certain Licensed Content (as defined below) available to Hulu for distribution on the Hulu Service (as defined below); and

WHEREAS, in recognition of the public interest in open government that benefits all individuals and businesses, including Hulu, Hulu desires to make the Licensed Content available to end users at no cost and has agreed to forego advertising revenue on the web pages that are dedicated exclusively to the Licensed Content.

NOW, THEREFORE, in consideration of the above mentioned premises, the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. License Grants.

- (a) Subject to the limitations set forth below, Licensor grants to Hulu a non-exclusive, non-transferable license to display, reproduce, and distribute the Licensed Content using the Hulu proprietary video player on an on-demand basis and free of charge to the end user (the “Hulu Service”) worldwide (the “Territory”). For the purposes of clarification, Licensor and Hulu agree that the Licensed Content provided under this Deal Memo is free (i.e. with no advertising served against the Licensed Content within the Hulu video player) to Hulu’s end users and the obligations arising from this Deal Memo are not contingent upon the payment of fees by one party to the other. Nothing in this Deal Memo obligates the Licensor to expend appropriations or incur financial obligations. Notwithstanding the foregoing or anything to the contrary, Licensor acknowledges and agrees that Hulu does not control its Distribution Partners’ websites or businesses (defined below), therefore to the extent any financial arrangement occurs within such Distribution Partners’ websites in connection with the Licensed Content, Hulu shall not be deemed to be in breach of the Deal Memo. Hulu shall deliver the Licensed Content on a “streaming” basis only. Hulu may exercise the license rights granted herein in connection with the following properties: (i) www.hulu.com and any other Hulu-branded URL’s, features and applications (including any subdomains and any successor websites); (ii) any third party website, application, or other place into which the Hulu video player may be embedded; and (iii) each website or other place authorized by Hulu to display the Licensed Content in connection with the Hulu Service as part of any application or feature made available to users of such website, feature, or application (e.g., Facebook platform) or pursuant to a distribution agreement (each, a

“Distribution Partner”). From time to time, the parties may agree to expand the scope of license rights, including additional methods of delivering the Licensed Content, additional properties on which the Licensed Content may be displayed, reproduced or distributed, and additional territories in which the license rights may be exercised. The terms and conditions of any such additional or expanded license will be set forth on an exhibit and incorporated into this Deal Memo upon execution thereof by the parties. In the event of a conflict between the terms of any such exhibit and the main body of this Deal Memo, the exhibit will govern.

(b) Licensor further grants to Hulu:

- (i) the right to promote the Licensed Content in connection with the Hulu Service in any media;
- (ii) a non-exclusive, non-transferable license to use, display and reproduce Licensor’s logos, trade names, trademarks, and service marks (collectively, “Licensor Marks”) in any media for the sole purpose of promoting the Licensed Content in connection with the Hulu Service; and
- (iii) a non-exclusive, non-transferable license to utilize Promotional Materials (defined below) and any metadata associated with the Licensed Content, in connection with the display, distribution, and promotion of the Licensed Content in connection with the Hulu Service. “Promotional Materials” shall mean any promotional materials, including clips and thumbnail images, made available by Licensor to Hulu (or as may be generated by Hulu in accordance with Licensor’s authorization) for the purpose of promoting the Licensed Content in connection with the Hulu Service.

(c) Hulu grants to Licensor a non-exclusive, non-transferable license to use, display and reproduce the Hulu trademark on the Licensor’s website for the sole purpose of promoting the Licensed Content in connection with the Hulu Service. Licensor agrees to use and display such trademark in the form of a button appearing in the “Stay Connected” box on the Licensor’s website. Licensor further agrees that the Hulu trademark will be given a position and prominence on the Licensor’s website that is no less favorable to Hulu than that provided to the trademark of any other video service provider.

(d) Hulu agrees that Licensor’s trademark, logos, service marks, trade names, and the fact that Licensor has a presence on the Hulu Service, shall not be used by Hulu to imply an endorsement, sponsorship or recommendation of Hulu or its services by Licensor or the Federal Government. Hulu agrees not to display any Licensor or government seals or logos on the Hulu Service unless (i) permission to do so has been granted by the Licensor or (ii) it is otherwise set forth in Section 1. Hulu may list the Licensor’s name in a publicly available customer list so long as the name is not displayed in a more prominent fashion than that of any other content partner.

2. Hulu’s Display Obligations and Rights.

(a) Except as otherwise set forth herein, Hulu shall not modify or authorize third parties to modify the Licensed Content without Licensor’s consent. For the purpose of clarification, the foregoing shall not preclude (i) clipping of the Licensed Content, subject to guidelines (*e.g.*, regarding music and guest performers), if any, provided by Licensor in writing; and (ii) formatting the Licensed Content for display on the Hulu Service..

(b) Hulu shall abide by any limitations on the availability of the Licensed Content communicated by Licensor to Hulu in the associated metadata or otherwise in writing, if any, to the extent applied

to Licensor's network of distributors of such content on a non-discriminatory basis.

- (c) Subject to the limitation on availability pursuant to subsection (b) above, if any, Hulu shall have the sole right to determine if and when all or any of the Licensed Content is distributed or promoted, and shall have the sole right to determine the packaging and programming of the related to the distribution thereof (e.g., groupings by genre and other categories). Hulu may elect, in the exercise of its sole discretion, not to display or promote any or all of the Licensed Content. Without limitation of the foregoing, Hulu may decline to display or promote any or all of the Licensed Content if Hulu determines, in its sole discretion, that any of the Licensed Content is or may be the subject of a legal issue or claim, or is otherwise inconsistent with Hulu's brand, standards, or practices.

3. **Withdrawal of Content by Licensor.**

- (a) Licensor shall have the right to withdraw a particular piece of Licensed Content in the event that Licensor in good faith determines there is a bona fide rights or other legal issue. In the event of such withdrawal, Licensor shall provide a comparable replacement if such replacement is available.
- (b) Licensor shall have the right to request that Hulu block the display of some or all of the Licensed Content on a specific third-party website or other place in which the Hulu video player has been embedded in the event that Licensor in good faith determines there is a bona fide rights or other legal issue, or that the display of such Licensed Content on such third-party website or other place is likely to cause material damage to Licensor's brand.
- (c) Hulu shall make available to Licensor via Hulu's content partner portal a current list of distributors currently authorized by Hulu to exhibit the Licensed Content via the Hulu video player and such other information as Hulu generally makes available to its content licensors. Hulu shall block the display of some or all of the Licensed Content on any distributor's website that interferes with a bona fide commercial opportunity for Licensor as soon as practicable following its receipt of written notice of Licensor's objection.
- (d) Hulu shall make available to Licensor Hulu's content partner portal, which shall contain such information, such as page views, that Hulu generally makes available to its other content licensors. In the event of a termination of this Deal Memo, Hulu agrees to provide Licensor with access to its account on the content partner portal for thirty (30) days after the effect date of termination.
- (e) If the withdrawal or blockage of Licensed Content pursuant to this paragraph renders the catalog of Licensed Content provided to Hulu for display hereunder too limited such that the operational costs and resource requirements are greater than those projected by Hulu, as determined in Hulu's discretion, Hulu shall have the right to terminate this Deal Memo effective upon written notice to Licensor.

- 4. **Tune-In Information.** Licensor may provide tune-in information or e-commerce promotion to the extent required by third party obligations such as guild or union rules, via metadata, which will appear along with the Licensed Content. No additional promotional messaging shall be permitted within the video, including, bumpers, end cards, or any other messages that promote the Licensed Content, any other content, Licensor's website, or any other online property; this restriction shall not apply so long as the promotional messaging relates to the government entity's public mission.

5. **Content Protection and Geofiltering.** Hulu will use industry standard content protection and geofiltering technologies designed to limit unauthorized display and distribution of the Licensed Content.
6. **Delivery.** Promptly following execution of this Deal Memo, Licensor shall deliver at no cost to Hulu the Licensed Content per the specifications set forth in the content partner guidebook (that has been provided to Licensor, and as may be updated from time-to-time by Hulu) and all Promotional Materials and metadata associated with the Licensed Content in accordance with the encoding and other specifications provided by Hulu. All Licensed Content shall be delivered to Hulu free of any: (a) advertising, including any “call outs” to Licensor’s or any third party’s websites; and (b) bugs, burn-ins, crawls, or other on-screen identifiers except only as related to the original exhibition of video content.
7. **Third Party Payments.**
 - (a) As between Hulu and Licensor, and to the extent applicable, Hulu shall be responsible for making payments for music publishing public performance rights royalties or music publishing public performance rights license fees for the musical compositions in the Licensed Content for which the public performing rights are controlled by BMI, ASCAP, SESAC, or any other public performing rights society having jurisdiction in the Territory, provided that Licensor provides Hulu with cue sheets in a timely manner as necessary for Hulu to comply with the terms of this paragraph. Notwithstanding the foregoing, Hulu and Licensor acknowledge that nothing in this Deal Memo shall be interpreted as an admission, acknowledgement, or belief that a public performance license is required with respect to Hulu’s activities pursuant to this Deal Memo.
 - (b) Licensor shall be responsible, at its sole costs and expense, for obtaining all other rights related to any musical compositions and/or sound recordings in the Licensed Content, including all so-called synchronization rights and mechanical rights. As between Hulu and Licensor, Licensor shall be responsible, at its sole costs and expense, for accounting for and/or making any payments to third party participants and to persons appearing in or rendering services in connection therewith. Licensor also shall be responsible for all guild payments or residuals payable with respect to the Licensed Content.
8. **Term.** This Deal Memo shall be effective as of the date first set forth above and shall continue for a period of three (3) years (the “Term”).
 - (a) Renewals. Following the Term, this Deal Memo shall automatically be renewed for additional one-year terms (each a “Renewal Term”), unless either party elects to terminate the Deal Memo at the end of the Term or any Renewal Term, by such party giving written notice to the other party at least thirty (30) days prior to the expiration of the Term or Renewal Term of its intent to let the Deal Memo expire.
 - (b) Termination Rights. A party may terminate this Deal Memo in the event of a material breach by the other party if the breaching party has not cured such breach within thirty (30) days following written notice of the breach by the non-breaching party.
9. **Representations and Warranties.**
 - (a) Licensor represents and warrants to Hulu that:
 - (i) with respect to each musical composition in the Licensed Content, the musical performance

- rights are: (A) controlled by BMI, ASCAP, SESAC, or a performing rights society having jurisdiction in the Territory; (B) owned by or licensed to Licensor so that no additional clearance of, or payment with respect to, such rights is required by Hulu for the exercise of the rights licensed to Hulu hereunder; or (C) in the public domain;
- (ii) Licensor has and will have all necessary rights to grant all licenses and rights granted by Licensor herein free and clear of all liens or encumbrances;
 - (iii) Licensor has the power and authority to enter into and perform Licensor's obligations under this Deal Memo;
 - (iv) Licensor is under no obligation, contractual or otherwise, which might in any way interfere with its full and complete performance of this Deal Memo; and
 - (v) the Licensed Content, Promotional Materials, Licensor Marks, and metadata supplied by Licensor, when used in accordance with the terms of this Deal Memo, will not violate or infringe upon the rights of any third party, regardless of the form of action, whether in contract, tort, warranty, or strict liability and whether in respect of copyright infringement or any manner of intellectual property claims, defamation claims, privacy or publicity claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, or claims of infringement of data protection legislation.
- (b) Hulu represents and warrants to Licensor that:
- (i) Hulu has and will have all necessary rights to grant all licenses and rights granted by Hulu herein free and clear of all liens or encumbrances;
 - (ii) Hulu has the power and authority to enter into and perform Hulu's obligations under this Deal Memo;
 - (iii) Hulu is under no obligation, contractual or otherwise, which might in any way interfere with its full and complete performance of this Deal Memo; and
 - (iv) neither the Hulu video player nor any technology owned by Hulu, when used in accordance with the terms of this Deal Memo, will infringe upon the intellectual property rights of any third party (including any copyright, trademark, or patent rights).
- (c) HULU DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE HULU SERVICE.

10. **Confidentiality.** Hulu and Licensor agree this Deal Memo contains no confidential information and Licensor may release it to the public upon request, and to other government entities interested in using Hulu Service under a similar Deal Memo. Hulu will have the right to issue a press release announcing its partnership with Licensor, subject to Licensor's approval (which shall not be unreasonably withheld).

11. **Indemnification.** Liability for any breach of this Deal Memo shall be determined under the Tucker Act, Federal Tort Claims Act, or other governing authority.

12. **Limitation of Liability.** Except for obligations related to confidentiality and indemnification, neither party, in connection with or related to this Deal Memo, shall be liable to the other party for any indirect, incidental, consequential, special, reliance, or punitive damages (including loss of business, revenue, profits, use, data, or other economic advantage), however caused and regardless of theory of liability, even if such party is informed in advance of the possibility of such damages. The foregoing limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction. The parties agree that nothing in this paragraph or elsewhere in this Deal Memo in any way grants Hulu a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.
13. **Assignment.** This Deal Memo may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that Hulu may assign this Deal Memo (a) to an affiliate; (b) to an acquirer in connection with any merger, consolidation, or sale of all or substantially all of Hulu's assets; or (c) in connection with any transaction or series of transactions resulting in a change of control.
14. **Notices.** All notices, requests or demands given under this Deal Memo shall be in writing and delivered by email, facsimile, certified or registered mail with return receipt requested and postage/charges prepaid, or courier, at the addresses listed below.

Notices to Licensor shall be directed to:

[_____

 _____]

Notices to Hulu shall be directed to:

Hulu, LLC
 Attn: SVP, Content & Distribution
 cc: General Counsel
 12312 W. Olympic Blvd
 Los Angeles, CA 90064
 Facsimile: (310) 571-4883
 Email: Content@hulu.com
legal@hulu.com

15. **Governing Law.** This Deal Memo shall be governed, interpreted and enforced in accordance with the federal laws of the United State of America. To the extent permitted by federal law, the laws of the State of California will apply in the absence of federal law.
16. **Entire Understanding; Amendment; Construction.** This Deal Memo, together with all exhibits referenced herein and attached hereto, embodies the entire and exclusive understanding of the parties with respect to the subject matter hereof, constitute a binding agreement of the parties upon the execution hereof, and supersedes all prior written or oral commitments, arrangements, or understandings with respect thereto. No party has relied on any statement, representation, warranty, or promise not expressly contained in this Deal Memo. No change, amendment, or modification of any provision of this Deal Memo shall be valid unless set forth in a written instrument signed by the party subject to enforcement of such amendment. The failure of one party to enforce any of the

provisions of this Deal Memo, or the failure to require at any time the performance of the other party of any of the provisions of this Deal Memo, will in no way be construed to be a present or future waiver of such provisions (or any other provision), nor in any way affect the ability of a party to enforce each and every provision thereafter. If any provision of this Deal Memo is found unenforceable, invalid, or otherwise contrary to law, it and any related provisions shall be interpreted to best accomplish the unenforceable provision's essential purpose, and all other provision hereof shall continue in full force. The parties are independent contractors, and this Deal Memo does not create an agency, partnership or joint venture. There are no third-party beneficiaries to this Deal Memo. The headings and titles of the provisions of this Deal Memo are inserted for convenience of the parties hereto only and shall not affect the construction or interpretation of any provision hereof.

17. **Counterparts and Execution.** This Deal Memo may be executed in counterparts, each of which will be deemed an original and all of which together constitute one agreement. Signatures delivered via facsimile or other electronic delivery (*e.g.*, PDF) shall be deemed original signatures.

[Signature Page Follows]

IN WITNESS HEREOF, the parties, intending to be bound hereby, have agreed to the terms and conditions of this Deal Memo as of the date first set forth above.

[_____]

HULU, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

Licensed Content

[Insert titles of Licensed Content]

The parties may mutually agree to add to the Licensed Content from time to time. Any such mutually agreed Licensed Content shall be deemed a part of this list and shall be subject to the terms and conditions of this Deal Memo.