MEDIA BARTER AGREEMENT TERMS AND CONDITIONS

1. **License Grant and IP Rights.** Solely for purposes of displaying and advertising each other’s brands, each other’s promotions, and each other’s sweepstakes, as contemplated on the face of the Media Barter Agreement and in these Media Barter Agreement Terms (“Terms,” or together with the Media Barter Agreement, “Agreement”), the Parties hereby grant each other a nonexclusive, worldwide, royalty-free license to use, reproduce and display all or a part of each other’s artwork, logos, trade names, trademarks, service marks, brand names, text, graphics, images and other materials as approved by the granting Party (“Intellectual Property” or “IP”) on the other Party’s company website(s), and in the receiving Party’s advertisements and communications. In addition, the Parties hereby grant each other permission to alter Intellectual Property, or any portion thereof, by formatting it for consistency with the form and style of the displaying Party’s Website. Each Party may sublicense the foregoing rights to third parties who exercise such rights for affiliate referral and other marketing activities designed to bring traffic to and publicize the Party’s website. Nothing in these Terms limits or alters any fair use or other rights in Intellectual Property that do not require a license or permission from Fandango or Partner, as applicable.

Third parties could violate a Party’s Intellectual Property rights without either Party’s permission, and each Party acknowledges and agrees that neither Party is responsible for, nor can control, the acts of third parties on the internet or elsewhere. The Parties acknowledge and agree that neither has any rights in or to the other’s Intellectual Property except as specifically granted in this Agreement.

2. **Warranty.** Each Party hereby represents and warrants that the performance of its obligations hereunder shall comply with all applicable laws, rules and regulations, including but not limited to the CAN SPAM Act of 2003, and that the websites where it will display the other Party’s IP do not infringe the trademark, copyright, patent or any other right of any third party. Each Party hereby represents and warrants that it possesses the necessary rights to any images it provides to the other Party. Each Party represents and warrants that it has the right to permit the other Party to use and display the name or likeness of any person or entity (such as endorsers) mentioned in any material that it provides to the other Party.

3. **Indemnification.** Each Party (“Indemnifying Party”) shall indemnify, defend, and hold harmless the other Party (“Indemnified Party”) and its parent, subsidiaries, affiliates, officers, directors, agencies and employees (collectively, the “Indemnitees”) from and against any damages, claims, allegations, losses, charges, actions, suits, proceedings, judgments, interest, penalties, amounts paid in settlement, costs and expenses (including reasonable and verifiable attorney’s fees) including, but not limited to, those related to direct, indirect, liquidated, punitive, incidental and consequential damages, which are imposed on, sustained, paid by, incurred or suffered by or asserted against any of the Indemnitees directly or indirectly related to, arising out of, or resulting from third party claims relating to: (i) Indemnifying Party’s breach of any representation, warranty, or covenant of this Agreement; (ii) the acts, omissions or breach of Indemnifying Party, its agents or representatives in connection with the performance of its obligations under this Agreement; (iii) any claim that the Indemnifying Party’s IP infringes or violates any third party’s IP rights; or (iv) the use of the Indemnifying Party’s marks, by the Indemnified Party in accordance with the terms herein.

Any Party seeking indemnification pursuant to this Agreement must give prompt notice to the Party from whom indemnity is sought; provided, however, that failure to give prompt notice will not relieve the Indemnifying Party of any liability hereunder except to the extent the Indemnifying Party has suffered actual material prejudice by such failure. The Indemnifying Party shall have the right to assume and control the defense and settlement of any such third party claims, and the Indemnitees will reasonably cooperate at their own expense in the defense or prosecution thereof.
4. **Insurance.** Each Party agrees to carry and maintain insurance coverage, with minimum policy limits of $2,000,000.00 for Commercial General Liability insurance written on an occurrence basis, and other insurance as required by applicable law. Such insurance shall be at each Party’s own expense and be in full force and effect at all times during the term of this Agreement.

5. **Term and Termination.** This Agreement shall be effective once both Parties have fully executed this Agreement, and shall continue until the date set forth on the face of the Barter Agreement, or until either Party provides seven (7) days written notice of its intent to terminate, except that either Party may terminate immediately if the other has materially breached any provision of this Agreement and has not cured such breach within seven (7) days of receiving written notice of the breach. All terms and conditions of this Agreement that, by their sense and content, are intended to survive the expiration or termination of this Agreement, shall so survive, regardless of the reason of such expiration or termination.

6. **EXCEPT AS REQUIRED UNDER EACH PARTY’S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR A PARTY’S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NEITHER PARTY WARRANTS THAT ITS RESPECTIVE WEB SITES WILL OPERATE ERROR-FREE, CONTINUOUSLY OR WITHOUT INTERRUPTION.

7. **Relationship Between the Parties.** Nothing in this Agreement nor any promotion will create or be deemed to create any agency, partnership, joint venture or employee relationship between Fandango and Partner. Each Party will act as an independent contractor. Neither Party has the right or authority to create any obligation or responsibility on behalf of the other.

8. **Confidentiality.** Each Party shall treat the terms of this Agreement as confidential, and shall not disclose this Agreement or its terms to any third party without prior written consent. Parent companies and other corporate affiliates shall not be considered third parties for purposes of this provision. Neither Party will issue any press release regarding this Agreement, each other’s Websites, or the relationship between the Parties without the prior written consent of the other Party.

9. **Force Majeure.** If either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the Party invoking this provision, including, without limitation, acts of god, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes, fires, interruptions in telecommunications or internet services or network provider services (each, a “Force Majeure Event”), such Party’s performance shall be excused and the time for performance shall be extended accordingly, provided that the Party immediately takes a reasonably necessary steps to resume full performance.

10. **Notices.** Any notices or demands which are required to be given under this Agreement shall be in writing and shall be sent via confirmed facsimile, PDF, or by overnight courier to the address indicated in the signature block below, or to such other address as the Parties may specify from time to time.

11. **Miscellaneous.** This Agreement may be executed by facsimile and/or PDF, may be executed in counterparts, and shall be governed by California law, without regard to its conflict of laws principles. This Agreement is intended as a final and complete expression of the Parties’ mutual agreement, and supersedes any
and all prior and contemporaneous understandings and agreements relating to it. Neither Party may transfer or assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement to an unaffiliated entity pursuant to a merger or consolidation of such Party, or of any parent of such Party, with or into any other entity. The failure to enforce the performance of any provision of this Agreement does not waive the right to later enforce that or any other provision. Headings in this Agreement are used for reference and do not affect the meaning of any terms or restrict the application of any section. The terms of this Agreement may not be modified except by a signed writing between the Parties. If any portions of this Agreement are declared invalid or unenforceable by a court of competent jurisdiction, it does not affect the validity of the remaining provisions herein.