

## 12<sup>TH</sup> MAN TRADEMARK LICENSE AGREEMENT

This License Agreement (“License Agreement”) is entered between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

### 1. PARTIES

1.1 Texas A&M University (hereinafter “LICENSOR”) is an institution of higher education existing under the laws of the State of Texas, having an address of 1180 TAMU, College Station, Texas 78743-1180.

1.2 Buffalo Bills Football Club (hereinafter “LICENSEE”) having an address of One Bills Drive, Orchard Park, New York 14127.

1.3 The LICENSOR and LICENSEE are the parties to this License Agreement.

### 2. BACKGROUND

2.1 LICENSOR represents that it owns trademark rights in and to the mark 12<sup>TH</sup> MAN (the “LICENSED MARK”).

2.5 LICENSEE recognizes the goodwill appurtenant to use and/or ownership of the LICENSED MARK and desires to obtain a license to utilize it. LICENSOR is willing to grant such a license under the terms and conditions of this License Agreement.

### 3. DEFINITIONS

3.1 MARKS includes trademarks and service marks.

3.2 LICENSE means the license set forth in this License Agreement.

3.3 LICENSED MARK means the mark 12<sup>TH</sup> MAN.

3.4 LICENSED USE means use of the mark 12<sup>TH</sup> MAN on the side of Ralph Wilson Stadium in Orchard Park, New York, the home of the Buffalo Bills professional football team.

3.5 EFFECTIVE DATE means the last date on which both parties have signed this License Agreement or March 30, 2007, whichever date is earlier.

3.6 LICENSED SERVICES means National Football League professional football entertainment services with which the specified LICENSED MARK is used pursuant to this License Agreement.

3.7 TERM means the effective period of this License Agreement, which shall commence on the EFFECTIVE DATE and which shall terminate, unless sooner terminated as

described in this Agreement, if and when the Buffalo Bills move out of Ralph Wilson Stadium, currently located in Orchard Park, New York.

3.8 LICENSOR shall give notice of any perceived default by LICENSEE within thirty (30) days of the alleged default and specify reasonable means for curing such perceived default. Failure to give notice of a default shall not constitute waiver of that default unless LICENSOR has actual knowledge of the perceived default. Moreover, waiver of a default shall not constitute waiver of subsequent or future defaults. Following receipt of such notice, LICENSEE shall use its best efforts to cure the perceived default as soon as possible, but will, in any event, commence cure of the default within no more than (20) twenty days and complete such cure within no more than thirty-five (35) days. In the event that circumstances outside of the control of LICENSEE preclude completing cure within thirty-five (35) days, LICENSEE may request additional time to complete such cure and LICENSOR agrees that it will not unreasonably withhold approval of a properly founded request.

#### 4. LICENSE GRANT

Subject to the terms and conditions of this License Agreement, LICENSOR grants to LICENSEE the non-exclusive right and license to utilize the LICENSED MARK on the side of the Ralph Wilson Stadium, in Orchard Park, New York.

#### 5. PAYMENTS TO LICENSOR

LICENSEE shall pay to LICENSOR a one time fee of \$5,000 within ten (10) business days after the EFFECTIVE DATE of this License Agreement.

#### 6. DEFAULT, TERMINATION

6.1 In the event that LICENSEE fails to submit a timely payment to LICENSOR as provided in this License Agreement, or in the event that the Buffalo Bills football team moves from the Ralph Wilson Stadium, or in the event that either party fails to comply with any of its material obligations under this License Agreement, the other party may serve on the defaulting party a notice of default specifying the nature of the default and specifying reasonable means for curing the default. If a default relates to financial considerations such as payment of the royalty, and the default is not cured within twenty (20) days from service of the notice of default, LICENSOR may then serve its Notice of Termination, and the license granted under this

agreement shall be automatically terminated upon receipt of said Notice of Termination. There shall be no refund of any pre-paid royalties. If the alleged default is based upon grounds other than financial grounds, then cure and termination shall be resolved pursuant to the terms provided for addressing non-financial defaults or violations in Paragraph 13 herein.

6.3 Unless sooner terminated pursuant to the provisions of this License Agreement, the LICENSE granted under this License Agreement shall remain in effect throughout the TERM.

## 7. EFFECT OF EXPIRATION OR TERMINATION

7.1 Upon expiration of this License Agreement or termination pursuant to Section 6 above, all licensed rights granted to LICENSEE hereunder shall cease, and LICENSEE will refrain from further use of the LICENSED MARK, or any mark or name confusingly similar to the LICENSED MARK, in connection with the manufacture, sale, distribution, or promotion of goods or services.

7.2 Upon expiration of this License Agreement or termination pursuant to Section 6, LICENSEE shall not operate its business in any manner which would falsely suggest to the public that this License Agreement is still in force.

7.3 Expiration or termination of this agreement shall not relieve LICENSEE from the obligation to pay LICENSOR any payments due and owing at the time of termination.

## 8. PERSONAL LICENSE

8.1 The LICENSE granted to LICENSEE is personal, and no rights hereunder may be transferred by LICENSEE without the express written approval of LICENSOR; provided, however, that such rights may be transferred to a successor-in-interest entity of the business of the "Buffalo Bills" that is doing business as the Buffalo Bills, without prior consent of LICENSOR. LICENSEE shall immediately notify LICENSOR of any change or proposed change in ownership or control of LICENSEE during the TERM hereof.

8.2 LICENSEE shall grant no sublicenses under this License Agreement.

## 9. GOODWILL IN LICENSED MARK

9.1 LICENSEE agrees that the LICENSED MARK has goodwill in the minds of the consuming public. LICENSEE agrees that such goodwill should be protected and enhanced and, toward this end, LICENSEE shall not during the TERM or thereafter:

- (a) attack LICENSOR's ownership of the LICENSED MARK;
- (b) offer for sale any merchandise bearing the mark "12th Man;"
- (c) encourage non-associated 3<sup>rd</sup> party media outlets such as local radio or television stations, or national TV broadcasts to use the term "12th Man;"
- (d) use the term "12th Man" in conjunction with the color maroon or any color of red derivatives;
- (e) establish or endorse any organization with "12th Man" in its name; or
- (f) apply to register or maintain any application or registration of the LICENSED MARK.

9.2 All use by LICENSEE of the LICENSED MARK inures to the benefit of LICENSOR.

#### 10. QUALITY CONTROL

All LICENSED SERVICES shall be QUALITY services. LICENSEE acknowledges that if LICENSED SERVICES offered by it were of inferior quality, the substantial goodwill which LICENSOR possesses in the MARK would be impaired. Accordingly, LICENSEE agrees that all LICENSED SERVICES shall be of QUALITY. LICENSOR acknowledges that the level of quality of the professional football entertainment services and fan base relations currently offered by LICENSEE pursuant to the oversight of the National Football League ("NFL") is an acceptable level of QUALITY, and agrees that it will not prescribe a level of quality greater than the quality represented by substantial compliance with current NFL standards.

#### 11. MARKING

LICENSEE agrees that it will designate the LICENSED SERVICES in a manner as specified from time to time in writing by LICENSOR to indicate the rights of LICENSOR in the LICENSED MARK, including registration status of the LICENSED MARK and that LICENSEE'S use of the LICENSED MARK is pursuant to license from LICENSOR. Unless otherwise specified in writing and agreed upon by the parties, when giving attribution to the LICENSOR'S rights in the LICENSED MARK, LICENSEE shall state the following: "The term '12<sup>th</sup> Man' is a trademark of Texas A&M University and its use is pursuant to a license agreement with the university" (the "Attribution Statement"). LICENSEE will provide the Attribution Statement to game commentators for broadcasts owned or controlled by LICENSEE and have it read during the broadcast at the same time as other, similar proprietary notice announcements of LICENSEE or the National Football League are made. For broadcasts of

Buffalo Bills games for which LICENSEE does not own or control the broadcasts, LICENSOR shall be free, as the trademark owner, to request those who own or control the broadcasts to make a statement consistent with the statement referenced above with relation to the mark. LICENSEE shall not oppose such announcements by the networks.

12. INDEMNITY/HOLD HARMLESS

12.1 LICENSEE agrees that it is wholly responsible for all goods and services offered or sold by it, including all LICENSED SERVICES, and that LICENSOR shall have no liability for any items or services, including any LICENSED SERVICES offered or sold by LICENSEE.

12.2 LICENSEE indemnifies and holds harmless LICENSOR and the officers, directors, employees, heirs, attorneys, and agents thereof, from any claims, demands, causes of action, and damages, including reasonable attorney's fees, caused by or arising out of use by LICENSEE of any LICENSED MARK or workmanship, material or design of any good offered or sold by LICENSEE, including without limitation, claims or actions for product liability and patent or copyright infringement.

12.3 LICENSOR agrees that it is wholly responsible for all goods and services offered or sold by it and that LICENSEE shall have no liability for any items or services offered or sold by LICENSOR.

12.4 LICENSOR indemnifies and holds harmless LICENSEE and the officers, directors, employees, heirs, attorneys, and agents thereof, from any claims, demands, causes of action, and damages, including reasonable attorney's fees, caused by or arising out of use by LICENSOR of the LICENSED MARK, including without limitation, claims or actions for product liability and patent or copyright infringement.

13. NOTICES/ OPPORTUNITY FOR CURE

13.1 All notices or demands required to be made or permitted under this agreement shall be in writing or via email and shall be deemed served when received by the following individuals:

**On behalf of LICENSEE:**  
Buffalo Bills Football Club  
One Bills Drive  
Orchard Park, New York 14127

-and-

Michael Schiavone, Esq.  
42 Delaware Ave., Suite 120  
Buffalo, New York 14202-3924  
Fax: 716-854-3013  
mschiavone@lglaw.com

**On behalf of LICENSOR:**

William D. Raman, Esq.  
Wong, Cabello, Lutsch, Rutherford & Brucculeri, LLP  
P.O. Box 685108  
Austin, Texas 78768  
wctrademarkaustin@Counselip.com

-and-

Scott A. Kelly, Esq.  
Office of General Counsel, Texas A&M University  
Texas A&M System Building, Suite 2079  
200 Technology Way  
College Station, Texas 77840

or to such other address as either party may from time to time designate in writing.

13.2 Opportunity for Cure/Mediation. If either party believes that the other party is in default or material violation of this License Agreement that does not relate to payment of monies or financial condition, such party shall provide notice in writing to the other party specifying the alleged violation within thirty days of gaining actual knowledge of the alleged violation and specify reasonable means for curing such violation. Failure to give notice of an alleged violation shall not constitute waiver of that violation unless the offended party has actual knowledge of the alleged violation. Moreover, waiver with regard to one violation shall not constitute waiver of subsequent violations.

13.3 The offending party shall use its best efforts to cure the perceived violation as soon as possible, but will, in any event, commence cure of the violation within no more than twenty (20) days and complete cure of the violation within no more than thirty-five (35) days. In the event that circumstances outside of the control of LICENSEE precludes LICENSEE from completing cure within thirty-five (35) days, LICENSEE may request additional time to complete the cure, and LICENSOR agrees that it will not unreasonably withhold approval of a properly founded request.

14. STATUS OF PARTIES

This License Agreement is not intended to create, and shall not be interpreted or construed as creating, a partnership, joint venture, franchise, agency, employment, master and servant, or similar relationship between LICENSOR and LICENSEE, and no representation to the contrary shall be binding upon LICENSOR.

15. BINDING EFFECT

This License Agreement shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and, subject to paragraph 8.1 above, their respective successors, assigns, executors, heirs, and personal representatives.

16. LAW GOVERNING

THIS LICENSE AGREEMENT SHALL FOR ALL PURPOSES BE GOVERNED BY AND INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

17. MISCELLANEOUS

17.1 The provisions of this License Agreement are severable, and if any provision shall be held illegal, invalid, or unenforceable, such holding shall not affect the legality, validity, or enforceability of any other provision. Any such illegal, invalid, or unenforceable provision shall be deemed stricken herefrom as if it had never been contained herein, but all other provisions shall continue in full force and effect.

17.2 Failure of either party to insist upon strict performance of the terms, conditions, and provisions of this License Agreement shall not be deemed a waiver of such terms, conditions, or provisions or a waiver of future compliance with them. No waiver of any terms, conditions, or provisions shall be deemed to have been made unless expressed in writing and signed by the waiving party.

17.3 As used herein, the term LICENSEE shall include the plural as well as the singular, the masculine and feminine genders, and corporations, partnerships, and other business entities as well as individuals.

17.4 Each party to this License Agreement acknowledges that it has been represented by or as had the opportunity to consult independent counsel in connection with the negotiation and drafting of this License Agreement. Neither this License Agreement nor specific language contained herein shall be construed against the party preparing it, but shall be construed as if


both parties, and each of them, jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party.

17.5 This License Agreement may not be amended, modified, or rescinded except by a written agreement executed by LICENSOR and LICENSEE.

17.6 This License Agreement may be executed in multiple counterparts (including facsimile), each of which, when so executed, shall be deemed to be an original copy hereof, and all such counterparts together shall constitute one single agreement.

EXECUTED by LICENSOR and LICENSEE in duplicate copies, each of which shall be deemed an original.

**TEXAS A&M UNIVERSITY**

By:   
Name: STEVEN B. MOORE  
Date: 3/28

**BUFFALO BILLS FOOTBALL CLUB**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_