**Sample Contract**

***Do not share with students.***

**LICENSING AGREEMENT**

**THIS LICENSING AGREEMENT** (“Agreement”), dated \_\_\_ May 20\_\_, is between In-Play Sports, Inc., a United States corporation incorporated under Delaware law (“In-Play Sports”), and Paulo Pessoa, a resident of Rio de Janeiro, Brazil (“Pessoa”).

**Background**

A. In-Play Sports is engaged in the business of developing, manufacturing, packaging, and marketing soccer shoes, soccer balls, and soccer apparel in Canada and the United States.

B. Pessoa is a Brazilian international soccer superstar and was a member of the Brazilian national soccer team when it won its most recent World Cup.

C. In-Play Sports desires to use Pessoa’s name and likeness on its soccer shoes, soccer balls, and soccer apparel (the “Licensed Products”) for marketing and sale in Canada and the United States (the “Sales Territory”).

Accordingly, the parties agree as follows:

**Article 1. Definitions**

**Definitions**. Terms defined in the introductory clause and the background section of this Agreement have their assigned meanings, and the following terms have the meanings assigned to them:

**“Advance Royalty”** means the nonrefundable royalty of US$100,000.

**“Confidential Information”** has the meaning given to it under the provisions of Article 12.

**“License”** means the name, likeness, or both of Pessoa.

**“Mediation”** means the structured negotiation conducted by a Mediator to resolve the dispute between the parties.

**“Mediator”** means the specially trained expert to conduct the Mediation.

**“Net Sales Price”** means the invoiced billing price for the Licensed Products that In-Play Sports has marketed and distributed to its customers and distributors in the Sales Territory, less any returns for damaged Licensed Products.

**“Percentage Royalty”** means the royalty of ten percent on the Net Sales Price.

**“Records”** means the books of accounts and records that show all transactions related to the Licensed Products.

**“Sample”** means the sample of each type of the Licensed Products, including but not limited to any packaging or wrapping material that In-Play Sports intends to begin to market and distribute in the Sales Territory.

**“Statement”** means the statement made by In-Play Sports that shows all of the following:

1. The number of each type of the Licensed Products marketed and distributed during the preceding calendar quarter.
2. The amount of the Net Sales Price stated in U.S. currency for each type of the Licensed Products marketed and distributed during the preceding calendar quarter.

**“US”**, **“U.S.”, or “U.S.A.”** means the United States of America.

**Article 2. Grant of License**

By signing this Agreement, Pessoa grants In-Play Sports the exclusive right to use the License in connection with the development, manufacture, marketing, and distribution of the Licensed Products in the Sales Territory.

**Article 3. Compensation**

**3.1 Advance Royalty.** Upon the execution of this Agreement, In**-**Play Sports shall pay to Pessoa the Advance Royalty. In-Play Sports is to set off the Advance Royalty as a credit against the Percentage Royalty provided for in Section 3.2.

**3.2 Percentage Royalty.**

**3.2.1 Payment and Accrual.** In-Play Sports shall pay to Pessoa the Percentage Royalty in U.S. currency. The Percentage Royalty accrues on the date when the Licensed Products are billed, invoiced, shipped, or paid for, whichever occurs first.

**3.2.2 Conversion into U.S. Currency.** In-Play Sports shall convert into U.S. currency all of the Percentage Royalty computed in other currencies

1. at the selling rate for bank transfers from other currencies to U.S. currency as quoted in New York, New York, and
2. at the close of business
3. on the last day of each calendar quarter, or
4. on the next business day if the last day is not a business day.

**3.2.3 Payment of the Percentage Royalty.** In-Play Sports shall pay to Pessoa the Percentage Royalty in U.S. currency for each calendar quarter no later than thirty calendar days after the end of that calendar quarter.

**3.2.4 Statement of the Percentage Royalty.** Upon the payment as provided for in Section 3.2.3, In-Play Sports shall provide Pessoa with the Statement. In-Play Sports shall have its authorized officer certify the Statement to be accurate.

**3.3 Tax.** Pessoa shall pay all applicable U.S. taxes imposed on the Advance Royalty and Percentage Royalty paid by In-Play Sports.

**Article 4. Term**

This Agreement begins on the date stated in the preamble and ends on 25 May 2015, unless otherwise sooner terminated under the terms of this Agreement. It renews for one successive two-year period if In-Play Sports gives written notice to Pessoa no later than thirty calendar days before the expiration of the initial term stated in the preceding sentence.

**Article 5. Marketing Plan**

**5.1 Marketing Plan.** In-Play Sports shall provide Pessoa with a written marketing plan of the Licensed Products

1. no later than sixty calendar days after the execution of this Agreement and
2. no later than sixty calendar days before each one-year anniversary of this Agreement.

**5.2 Items in the Marketing Plan.** In-Play Sports shall include all of the following items in the marketing plan provided for in Section 5.1:

1. Sales projection of each type of the Licensed Products.
2. Methods of distribution of the Licensed Products.
3. The expenditures for advertising of the Licensed Products.
4. Any other information that Pessoa may reasonably ask In-Play Sports to include.

**5.3 Information in Each Item.** In-Play Sports shall include all of the following information with regard to each item in the marketing plan provided for in Section 5.2:

1. Specific information with respect to the following one-year period.
2. General estimates and projections for subsequent periods during which this Agreement remains in effect.

**Article 6. Manufacture and Promotion of the Licensed Products**

**6.1 Manufacture of the Licensed Products.** In-Play Sports shall, at its own expense, manufacture Licensed Products that are of good quality, consistent with the reputation and accomplishments of Pessoa and in sufficient quantities to meet reasonably anticipated demand.

**6.2 Promotion of the Licensed Products.** In-Play Sports shall exercise reasonable efforts to advertise and promote the Licensed Products at its own expense and shall use its reasonable efforts to market and distribute the Licensed Products in the Sales Territory.

**Article 7. Sample Approval**

**7.1 Submission of the Sample.** To ensure that the Licensed Products are of high quality, In-Play Sports must

1. submit to Pessoa, free of cost, the Sample and
2. obtain written approval of the Sample from Pessoa.

**7.2 Pessoa’s Approval.** If Pessoa receives a Sample as provided under Section 7.1, then Pessoa shall give to In-Play Sports written notice of either his approval or refusal. Pessoa shall not unreasonably withhold his approval. If Pessoa fails to give the notice on or before thirty calendar days after Pessoa receives the Sample, then his approval is deemed given to In-Play Sports.

**7.3 Resubmission of the Sample.** If Pessoa rejects the Sample under Section 7.2, then In-Play Sports may redesign and resubmit the Sample to obtain his approval under Section 7.2.

**7.4 No Change of the Approved Licensed Products.** In-Play Sports shall not market or distribute the Licensed Products that are different from the Sample approved by Pessoa under Section 7.2 without Pessoa’s prior written consent.

**Article 8. Law Compliance**

In-Play Sports shall comply with all recording requirements and any other provisions of the Sales Territory’s intellectual property laws.

**Article 9. Records**

In-Play Sports shall keep the Records accurate. Pessoa may examine or have his authorized representative examine the Records at any time at the office of In-Play Sports.

**Article 10. Pessoa’s Representations and Warranties**

Pessoa represents and warrants to In-Play Sports all of the following:

1. Pessoa owns the rights to the License.
2. Pessoa has the right to grant In-Play Sports the license provided for in Section 2.1.
3. There are no other agreements between Pessoa and any third party that conflict with License granted to In-Play Sports in Section 2.1.

**Article 11. Non-Competition**

**11.1 Non-Competition by In-Play Sports.** In-Play Sports shall not manufacture any products that use the name, likeness, or both of any professional soccer player other than Pessoa for distribution in the Sales Territory during the term of this Agreement and for two years after the expiration of this Agreement.

**11.2 Non-Competition by Pessoa.** During the term of this Agreement, Pessoa shall not give any license for the use of the License to any third party in connection with the manufacture, marketing, or sale of soccer shoes, soccer balls, and soccer apparel in the Sales Territory.

**Article 12. Confidentiality**

Pessoa recognizes that In-Play Sports has a proprietary interest in any information provided to Pessoa by In-Play Sports, whether in connection with this Agreement or otherwise, whether in written or oral form, that is

(i) confidential information,

(ii) not publicly known, and

(iii) annotated by a legend, stamp or other written identification as confidential information

**("Confidential Information")**. For these purposes, information regarding the manufacture, design, pricing, marketing and other aspects of the Licensed Products and the manner in which In-Play Sports conducts its business will be deemed Confidential Information whether or not stamped, legended, or otherwise identified as Confidential Information.

Pessoa shall disclose the Confidential Information only to those of his agents to whom it is necessary in order properly to carry out his duties as limited by the terms and conditions of this Agreement. Both during and for two years after the term of this Agreement all disclosures by Pessoa to his agents will be held in strict confidence by his agents. During and for two years after the term of this Agreement, Pessoa and his agents shall not use the Confidential Information for any purpose other than in connection with carrying out his duties pursuant to this Agreement. Pessoa shall, at his expense, return to In-Play Sports the Confidential Information as soon as practicable upon In-Play Sports’s request during the term of this Agreement and upon termination or expiration of this Agreement. All Confidential Information remains the exclusive property of In-Play Sports during the term of this Agreement and after the termination or expiration of this Agreement. This section also will apply to any consultants or subcontractors that Pessoa may engage in connection with his obligations under this Agreement.

Notwithstanding anything to the contrary this Section 12.1, Pessoa will not be liable for a disclosure of the Confidential Information, if the information disclosed

(i) was in the public domain at the time of disclosure without breach of this Agreement;

(ii) was known to or contained in the records of Pessoa from a source other than In-Play Sports at the time of disclosure by In-Play Sports to Pessoa and can be so demonstrated,

(iii) was independently developed and is so demonstrated promptly upon receipt of the documentation and technology by Pessoa,

(iv) becomes known to Pessoa from a source other than In-Play Sports without breach of this Agreement by Pessoa and can be so demonstrated, or

(v) was disclosed pursuant to court order or as otherwise compelled by law.

**Article 13. Indemnifications**

**13.1 In-Play Sports’ Indemnification.** In-Play Sports shall indemnify and defend Pessoa against any claims, suits, losses, costs, and expenses, including but not limited to reasonable attorney’s fees and court costs, that it incurs arising out of or related to any or all of the following:

1. In-Play Sports’ breach of any of its covenants under this Agreement.
2. Defects in the Licensed Products.

**13.2 Pessoa’s Indemnification.** Pessoa shall indemnify and defend In-Play Sports, its officers, directors, employees, and agents against any claims, suits, losses, costs, and expenses, including but not limited to reasonable attorney’s fees and court costs, that it incurs arising out of or related to any or all of the following:

(1) Pessoa’s misrepresentation or breach of warranty of any of its representations or

warranties in this Agreement.

(2) Pessoa’s breach of any of its covenants in this Agreement.

**Article 14. Insurance**

**14.1 Product Liability Insurance.** During the term of this Agreement, In-Play Sports shall obtain and maintain, at its own expense, product liability insurance that provides protection at a minimum in the amount of US$4 million for each single occurrence for any claims, suits, losses, costs, or expenses arising out of any of the following:

1. In-Play Sports’ breach or alleged breach of any of its obligations under this Agreement.
2. Defects or alleged defects in the Licensed Products.

**14.2 Certificate of Insurance.** No later than thirty calendar days after the execution of this Agreement, In-Play Sports shall provide to Pessoa a fully paid certificate of insurance. The certificate of insurance

1. will state that Pessoa is the insured party,
2. will confirm that the policy has been issued and is in effect,
3. will confirm that the police provides coverage of Pessoa as required by Section 14.1, and
4. will provide that before any cancellation, modification, or reduction in coverage of the policy, the insurance company is to give Pessoa thirty calendar days prior written notice of the proposed cancellation, modification, or reduction.

**Article 15. Disposal of Inventory upon Expiration**

If In-Play Sports pays the Percentage Royalties and provides Pessoa with a Statement, then In-Play Sports may dispose of all inventory of the Licensed Products for one hundred twenty calendar days after the expiration of this Agreement.

**Article 16. Termination**

**16.1 Termination by Impracticability.** This Agreement automatically terminates without any notice required by Pessoa if

1. In-Play Sports becomes insolvent,
2. a petition for bankruptcy or for reorganization is filed by or against In-Play Sports, or
3. In-Play Sports discontinues its business.

If this Agreement terminates under this section, then In-Play Sports, its receivers, representatives, trustees, agents, administrators, successors, or assigns shall not market or distribute the Licensed Products on and after the date of termination without Pessoa’s written consent.

**16.2 Termination by In-Play Sports’ Breach.** To terminate this Agreement in the event In-Play Sports breaches any of its obligations under this Agreement, Pessoa must first notify In-Play Sports in writing of his intent to terminate this Agreement that includes a description of the breach. In-Play Sports may remedy the breach no later than thirty calendar days after receipt of Pessoa’s notice of intent to terminate. If In-Play Sports fails to remedy the breach within this thirty-day period, then this Agreement automatically terminates. Despite Pessoa’s termination of this Agreement under this Section, Pessoa may exercise any or all of his rights arising out of or related to this Agreement, including, but not limited to, his rights to receive earned but unpaid Percentage Royalty.

**16.3 Termination by Pessoa’s Breach.** In-Play Sports may terminate this Agreement upon notice to Pessoa or his representative if

(1) Pessoa’s breaches any of the terms of this Agreement,

(2) Pessoa’s death,

(3) Pessoa’s permanent retirement from professional soccer,

(4) Pessoa’s injury or illness that makes him permanently unable to play

professional soccer,

(5)Pessoa engages in any illegal or immoral conduct or otherwise engages in any act that brings disrepute upon himself, or

(6) Pessoa engages in conduct contrary to the best interests of In-Play Sports.

Termination of this Agreement becomes effective upon Pessoa’s receipt of In-Play Sports’ notice of termination.

**Article 17. License after Expiration or Termination**

When this Agreement expires or terminates under the terms of this Agreement, then

1. all rights granted to In-Play Sports under this Agreement terminate on the date of expiration or termination, and
2. Pessoa may license the License to any third party on and after the date of expiration or termination.

**Article 18. Dispute Resolution**

**18.1 Negotiation.** The parties shall attempt to amicably resolve by negotiation any dispute with regard to all matters arising out of or related to this Agreement. Either party may initiate the negotiation by giving written notice to the other party. The negotiation period will not last longer than thirty calendar days after its initiation.If the parties agree to a resolution of the dispute, then the parties shall execute the agreement in writing.

**18.2 Mediation.** If the parties fail to agree in the negotiation provided for in Section 18.1, then the parties shall resolve the dispute by Mediation. The Parties shall choose and designate a Mediator by their agreement. The place of Mediation is Boulder, Colorado. The parties shall participate in three sessions for Mediation, but in no event will the Mediation last longer than ninety calendar days after the initiation. The parties shall equally bear the costs of the Mediation, except that the parties shall, at their own expense, pay for their own travel fees and their own attorney’s fees and expenses. If the parties agree in the Mediation, then the parties shall execute the agreement in writing.

**18.3 Arbitration.** If the parties fail to agree in the Mediation provided for in Section 18.2, then the parties shall resolve the dispute by arbitration. The parties shall select three arbitrators for the arbitration. Each party shall select one arbitrator, and both parties shall select a third arbitrator from the American Arbitration Association list of arbitrators by their agreement. The place of arbitration is New York, New York. The parties shall conduct and have the arbitrators conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties shall equally bear the costs of the arbitration, except that the parties shall, at their own expense, pay for their own travel fees and their own attorney’s fees and expenses.

The arbitrators will apply the laws of New York to the dispute. The arbitration proceedings will be conducted in English.

**18.4 Litigation.** If either party breaches any of its obligations under Section 18.1, 18.2, or 18.3, then the other party may resort to litigation in a federal court or state court of appropriate jurisdiction in the State of New York. The party failing to comply with Section 18.1, 18.2, or 18.3 shall pay for all costs and expenses, including, but not limited to, attorneys’ fees and court costs of both parties that arise out of or are related to the litigation.

**Article 19. General Provisions**

**19.1 Force Majeure.** Neither In-Play Sports or Pessoa will be liable if there is a delay in performing any obligation under this Agreement, if the delay is due to a cause beyond the reasonable control of the party. Causes considered to be beyond the reasonable control of a party and impedes the performance of obligations under this Agreement by In-Play or Pessoa, including acts of nature such as tornado, tsunamis, hurricane, earthquake, or other

destructive natural force, the act of any government or other authority or statutory undertaking, fire, power failure, labor dispute, social unrest, or declared or undeclared war.

In order for a failure to perform to be excused under this paragraph, the non-performing party shall give notice within a reasonable time to the other party of the occurrence or cause, stating its nature and expected duration. Additionally, the non-performing party shall give notice to the other party that the cause or occurrence giving rise to non-performance has ended within fifteen calendar days after that cause or occurrence no longer impedes performance. When the performance-impeding occurrence has ended, all obligations of the parties will return to full effect. If a performance-impeding occurrence persists for ninety days after the date upon which notice of it was given, either party may terminate this Agreement by giving notice of termination to the other party

**19.2 Notice.**

**19.2.1 Notice.** The parties shall send all notices and statements provided under this Agreement in writing and by overnight courier

1. to the following attention and at the following address for each party
2. if to In-Play Sports:

In-Play Sports, Inc.

One Athletic Forum Drive, Boulder, Colorado 98743, U.S.A.

1. if to Pessoa:

Mr. Andre Silva

Avenida Rio Branco 23, Rio de Janeiro, Brazil

or

1. to another attention or at another address designated by each party by giving written notice under this Section 19.2.1 to the other party.

**19.2.2 Effectiveness.** All notices and statements sent under Section 19.2.1 are deemed given on the date of mailing by overnight courier.

**19.3 Governing Law.** The laws of New York govern this Agreement, including all matters arising out of or related to this Agreement.

**19.4 Language.** English is the controlling language of this Agreement and will govern any interpretation of or dispute regarding the terms of this Agreement.

**19.5 Assignment and Delegation.** Neither party shall assign any of its rights under this Agreement without the prior written consent of the other party. Neither party shall delegate any performance under this Agreement without the prior written consent of the other party. Any purported assignment of rights or delegation of performance in violation of this Section 19.5 is void.

**19.6 Successors and Assigns.** This Agreement binds and benefits the parties permitted successors and assigns.

**19.7 Severability.** If any nonessential provision of this Agreement is found invalid or illegal, then the other provisions remain in force only if the essential provisions of this Agreement for each party remain valid and enforceable. If any essential provision of this Agreement for each party is found invalid or illegal, then this Agreement terminates.

**19.8 Waiver.** No waiver of any provision under this Agreement is effective unless it is in writing and signed by the party against whom waiver is sought to be enforced. Any attempt to waive any provision of this Agreement in a manner other than provided for in the preceding sentence is void.

**19.9 Amendment.** To amend this Agreement, both parties must sign the written amendment that identifies itself as an amendment to this Agreement. Any attempt to amend this Agreement in a manner other than provided for in the preceding sentence is void.

**19.10 Merger.** This Agreement constitutes the full, final, and exclusive agreement between the parties on the matters contained in this Agreement and supersedes all prior agreements and understandings.

The parties are signing this Agreement on the date stated in the preamble.

IN-PLAY SPORTS, INC.

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Robert C. Weiss, President

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Paulo Pessoa