**In-Play Sports, Inc.**

**One Athletic Forum Drive**

**Indianapolis, Indiana 46235**

TO: Associate Legal Counsel

FROM: Cheryl Miller, In-Play Sports, Inc.

RE: Licensing Agreement with Paulo Pessoa

I have been meeting with the attorney for Paulo Pessoa, the soccer superstar, about giving In-Play Sports an exclusive license to use his name, likeness, or both, on soccer cleat shoes and soccer balls, as well as for advertising and promoting this merchandise in the United States and Canada. We haven’t finished negotiating the deal yet and probably won’t be able to do so for another 60 days. We understand that word of our negotiations has leaked to our main competitor, Nike. Nike wants to maintain its edge in the soccer market and will do almost anything to get Paulo. Fortunately, Paulo goes back a little way with our President, Bob Weiss, so we might be okay, at least for a short while. Even so, we want assurances that during negotiations Paulo won’t be using our discussions with him as a starting point for negotiations with Nike or another competitor. We’ve asked for a letter of intent, and Paulo is agreeable to signing one. We want to be careful, though, that this letter doesn’t bind us beyond the negotiations. I want you to draft the letter of intent and have it on my desk by Tuesday, XX, 20XX.

The following is list of the information and the agreed terms so far. Ensure that you draft the provisions so that they accurately and concisely state the agreed terms. Consider providing definitions for some terms. I have attached an old form for a letter of intent[[1]](#footnote-1). It’s a poor example, filled with legalese and confusing word choices, but it will give you a general idea about a letter of intent. Be aware, too, that some of the wording in the introduction and provisions in the form are specific as to that old deal and do not apply to the one we are working on with Paulo. Any other provisions that you decide to retain will need editing, so they are clearer and more precise.

1. In-Play Sports, Inc., is a Delaware corporation. Its principal office is One Athletic Forum Drive, Indianapolis, Indiana 46235. In-Play Sports is in the business of developing, producing, packaging, and marketing sports equipment and apparel. Robert C. Weiss, President, will sign the agreement on behalf of the corporation.

2. Paulo Pessoa is a resident of Los Angeles,

California. He wants all notices or statements under the agreement to be mailed to his attorney, Andre Alexander, 75 West Drive, Suite 4000, Los Angeles, California 90231.

3. In-Play Sports will have the exclusive right to use Paulo’s name and likeness in connection with the development, producing, marketing, and production of soccer cleat shoes and soccer balls.

4. The territory covered by the agreement will be the United States of America and Canada.

5. The period of the license: The first day of next month, ending in 5 years.

6. In-Play Sports agrees to pay a royalty of 10 percent on all net sales by In-Play Sports to its customers and distributors of the licensed merchandise. Payments are to be made in U.S. currency.

7. Royalty computations are to be made based on the net sales price of the merchandise. The net sales price is the invoiced billing price for the merchandise, less any returns for damaged goods.

8. When the agreement is executed, Paulo will receive a nonrefundable advance royalty of $100,000. This will be set off as a credit against the percentage royalties.

9. In-Play Sports will agree not to produce any products using the name or likeness of any professional soccer player for distribution in the United States and Canada during the term of the agreement or for two years thereafter.

10. The agreement does not prevent Paulo from granting other licenses for the use of his name and likeness, except Paulo cannot give a license for the use of his name and likeness in connection with soccer cleat shoes and soccer balls in the territory covered by this agreement while this agreement is in effect.

11. Paulo will state that he owns the rights to his name and likeness, that he has the right to grant the license to In-Play under the terms of this agreement, and that there are no other agreements with third parties that will conflict with the grant that he is making to In-Play Sports.

12. The parties want a confidentiality provision in order to evaluate the deal. The parties will need to agree to a confidentiality provision.

13. The parties will want to keep the terms of this agreement from the public. Parties can make a joint general announcement, but neither party will disclose any terms without the other party’s prior written consent.

14. The parties will give best efforts to negotiate and proceed in good faith to timely consummate the deal.

15. Each party is to pay its own fees, costs or expenses connected with the letter or while negotiating the definitive agreement.

16. The letter can be terminated by either party at any time by delivering notice to the other party. If a definitive agreement is not signed by XX, 20XX, the letter terminates. But a party’s breach of a binding provision of the letter will survive.

17. Indiana law governs.

18. Insert an exclusivity provision that restricts Paulo from engaging in discussions with third parties.

1. INSTRUCTOR’S NOTE: Attach a form of an LOI that contains some standard provisions that should be included to protect the parties during the continuing negotiation process. Also, instruct students to use the checklists in Chapter 15 to give them additional ideas of what should be included in the LOI. [↑](#footnote-ref-1)