**In-Play Sports, Inc.**

**One Athletic Forum Drive**

**Boulder, Colorado**

TO: Associate Legal Counsel

FROM: Chief Legal Counsel, In-Play Sports, Inc.

RE: Licensing Agreement with Paulo Pessoa

I have been meeting with the attorney for Paulo Pessoa, an international soccer superstar, about giving In-Play Sports, Inc., a Delaware corporation with its principal office in Boulder, Colorado, an exclusive license to use his name, likeness, or both, on soccer shoes and soccer balls, as well as for advertising and promoting this merchandise in the United States. Please draft the licensing agreement between Paulo and the corporation. The parties agreed to include the following terms in the contract. The agreed terms below are not listed in any particular order. You must determine how to group these terms into provisions and in what order the provisions will appear in the contract. Ensure that you draft the provisions so that they accurately and concisely state the agreed terms. Consider providing definitions for some terms and tabulating some provisions if it will make the agreed terms clearer.

1. In-Play Sports, Inc., is a Delaware corporation. Its principal office is One Athletic Forum Drive, Boulder, Colorado 98743, U.S.A. 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 Monterey, California. He wants all notices or statements under the agreement to be mailed to his attorney, Andre Alexander, 75 West Drive, Suite 4000, San Francisco, California 90231.

3. In-Play Sports has the exclusive right to use Paulo’s name and likeness in connection with the development, production, marketing, and distribution of soccer boots and soccer balls.

4. The territory covered by the agreement is the United States.

5. The period of the license: The first day of month following the date the last party signs the agreement, ending in five years. In-Play Sports wants to retain the right to renew the agreement for one successive five-year renewal period. The corporation’s election to extend the license must be given in writing to Paulo prior to the expiration of the agreement’s initial term.

6. In-Play Sports agrees to comply with all recording requirements and any other provisions of the intellectual property laws of the countries covered by this agreement.

7. Breach will occur if In-Play Sports violates any of the terms and provisions of the agreement which it is to perform. Paulo wants the right to notify In-Play Sports in writing of his intention to terminate if there is a breach. If Paulo gives notice, In-Play Sports has thirty days to remedy its breach. If In-Play Sports fails to remedy the same, the agreement and the license granted cease and terminate. Notwithstanding termination, Paulo’s rights arising out of the agreement or in connection therewith or existing prior thereto shall nevertheless continue in full force and effect, including his rights to receive earned but unpaid royalties.

8. If In-Play Sports becomes insolvent or if a petition for bankruptcy or for reorganization is filed by or against it, or if it discontinues its business, the license granted automatically terminates without any notice required by Paulo. If this occurs, In-Play Sports, its receivers, representatives, trustees, agents, administrators, successors, or assigns, have no right to sell, exploit, or in any way deal with or in any of the merchandise, without the written consent of Paulo.

9. Upon expiration of the license or termination of the agreement, all rights granted to In-Play Sports will revert to Paulo, who then can license his name and likeness to others. In-Play Sports will have the right to dispose of all inventory upon expiration of the agreement for a period of two hundred days thereafter. In case of termination, except in a case of bankruptcy: In-Play Sports can dispose of merchandise for a period of sixty days after notice of termination, but only if royalties related to that time period are paid and statements are furnished to Paulo as provided under the agreement.

10. All notices and any statements to be provided under the agreement must be in writing and sent to the parties’ addresses, unless a party notifies the other in writing of a change. Notice is deemed given as of the date of mailing by overnight courier.

11. In-Play Sports agrees to pay a royalty of ten percent on all net sales by In-Play Sports to its customers and distributors.

12. Royalty computations are to be made on the basis of the net sales price of the merchandise. The net sales price is the invoiced billing price to customers or distributors for the merchandise, less any returns for damaged goods.

13. Royalties are to accrue when the merchandise is sold by In-Play Sports. This occurs on the date when the merchandise is billed, invoiced, shipped, or paid for, whichever occurs first.

14. Royalties for any calendar quarter will be paid within thirty days following the end of the calendar quarter.

15. At the same time as payment of royalties, In-Play Sports promises to provide a statement, certified to be accurate by an authorized officer of the corporation. The statement must show the number of each type of merchandise sold during the quarter and the net sales price for each type of merchandise sold.

16. 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.

17. No later than sixty days after the execution of the agreement but before each one-year anniversary of the agreement a written marketing plan regarding the merchandise will be provided by In-Play Sports to Paulo. The marketing plan is to include for each type of merchandise a marketing timetable, sales projections, channels and methods of distribution, nature and amount of advertising expenditures, and any other information that Paulo may reasonably ask In-Play Sports to include. Each market plan must include specific information for the following one-year period and include general estimates and projections for subsequent periods during which the agreement remains in effect.

18. Accurate books of accounts and records showing all transactions related to the merchandise will be kept by In-Play Sports. Paulo or his authorized representative can examine these books at any time at the offices of In-Play Sports.

19. 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 during the term of the agreement or for two years thereafter.

20. 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.

21. In-Play Sports agrees to manufacture the merchandise at its own expense in sufficient quantities to meet reasonably anticipated demand. The merchandise must be of good quality, consistent with the reputation and accomplishments of Paulo. In-Play Sports agrees to exercise reasonable efforts to advertise and promote the merchandise at its own expense and to use its best efforts to sell the merchandise in the United States.

22. Paulo is concerned about the quality of the merchandise. He wants it to be of superior quality in design, material, and workmanship to ensure that the good will of his name and likeness, which he has so carefully fostered through the years, is not adversely affected. To ensure that the merchandise is of high quality In-Play Sports agrees to furnish to Paulo, free of cost, for his written approval, a sample of each piece of merchandise, including any packaging or wrapping material. Paulo agrees not to unreasonably withhold his approval. If he doesn’t give notice of his approval within thirty days of the date of submission, his approval is assumed to have been given. In-Play Sports will not change approved merchandise without Paulo’s prior written consent. If he rejects any merchandise, In-Play Sports can elect to redesign and resubmit said merchandise for his approval in accordance with the foregoing.

23. Paulo will represent that he owns the rights to his name and likeness, 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.

24. The agreement shall bind and inure to the benefit of Paulo’s successors and assigns.

25. Amendments aren’t valid unless in writing and signed by both parties. Failure by a party to enforce rights under the agreement is considered a waiver of these rights. A waiver by either party of a default in one or more instances will not be considered a continuing waiver or a waiver in other instances.

26. Colorado law will govern the agreement. Disputes will be resolved in the applicable state or federal court in Colorado.

27. In-Play Sports will agree to indemnify Paulo, defend him against, and hold him harmless against any claims, suits, losses, costs, and expenses (including reasonably attorneys’ fees and costs) arising out of claims of third parties against In-Play Sports regarding any violations of the agreement by In-Play Sports or defects in the merchandise.

28. Paulo agrees to indemnify In-Play Sports, defend it against, and hold harmless In-Play Sports, its officers, directors, employees, and agents, against any claims, suits, losses, costs and expenses (including reasonable attorneys’ fees and costs) arising from a breach by Paulo of representations and warranties he made in this agreement.

29. In-Play promises to obtain and maintain during the term of the agreement, at its own expense, product liability insurance providing protection at a minimum in the amount of $4 million for each single occurrence for any claims, suits, losses, costs, or expenses arising out of any violations or alleged violations of the agreement by In-Play Sports or defects or alleged defects in the merchandise.

Within thirty days after execution of the agreement, In-Play Sports agrees to submit to Paulo a fully paid certificate of insurance naming Paulo as an insured party, confirming the policy has been issued and is in full force and effect, providing coverage of Paulo as required by the agreement. The certificate will provide that before any cancellation, modification, or reduction in coverage of the policy, the insurance company will give Paulo thirty days prior written notice of the proposed cancellation, modification, or reduction.

30. Include a merger clause.

31. Include an anti-assignment/anti-delegation clause that prevents In-Play Sports from assigning its rights or delegating its duties.

32. Insert a counterpart clause; also, let’s make the agreement effective when the last party signs the agreement.

33. Consider other general provisions that might be necessary for this contract. Discuss these additional provisions with me before drafting them into the document.