

# **SPOKEN GIANTS, LLC AFFILIATION AGREEMENT**

Date: \_\_\_\_\_

Dear \_\_\_\_\_

The following terms and conditions shall constitute the agreement between Spoken Giants, LLC (“Spoken Giants”) and \_\_\_\_\_ (“You” or “Your”).

In consideration of the promises and mutual covenants herein, You agree that, during the term of this Agreement, Spoken Giants shall be the sole and exclusive rights administration organization to represent You with respect to the rights granted under this Agreement.

## **1. Term:**

The initial Term of this Agreement shall be two (2) years, beginning as of \_\_\_\_\_, and ending on \_\_\_\_\_.

## **2. Work or Works**

- i. The words “Work” or “Works” shall mean: The portions of your catalog of comedic literary copyrighted material as an author expressed in words WRITTEN AND/OR CO-WRITTEN BY YOU (which may include comedy segments, podcasts, and/or individual material containing jokes authored by You for a dramatic work and fixed in any tangible medium of expression) in whole or in part, as listed on the attached **Schedule A**. For purposes of clarity, for purposes of this Agreement, “Works” shall not include any rights in or to the master recordings contained in Your catalogue of comedic material performed by you as an artist, but instead “Works” are solely the underlying comedic material written or authored by You that is performed and is contained in Your catalogue, and is listed on the attached **Schedule A**. All Works subject to this Agreement shall be owned or controlled by You, or owned or controlled by an entity owned or controlled by You (i.e., Your loan out entity).
- ii. The Work(s) shall **not** include (i) any work(s) in which there is an outstanding grant of the rights to a third person or entity which conflict with the rights granted to Spoken Giants; and (ii) any work not explicitly listed on **Schedule A**, the rights to which are all hereby explicitly reserved by You (the “Excluded Works”).

## **3. Grant of Rights.**

- a. You herein appoint Spoken Giants to be the sole and exclusive rights administration organization for your Works listed on the attached **Schedule A** (as may be supplemented from time to time during the Term) and You grant to Spoken Giants, throughout the world (“Territory”) and during the Term of this Agreement (i) the right to issue licenses to Your rights of authorship in and to the Works to platforms now existing or to be developed such as but not limited to Facebook, terrestrial and digital radio, and the right to grant such

platforms the right to air (broadcast) or publicly perform (digitally and/or electronically) the Works; (ii) the right to issue licenses to Your rights of authorship for the recording, manufacture, reproduction, and distribution, digitally and electronically (i.e., digital downloads, interactive streams) of the Works on now existing or to be developed platforms, and Spoken Giants shall collect royalties resulting from such licenses from all such platforms as compensation for the airing (broadcast) or public performance, digitally and electronically, of said Works, which shall be distributed in accordance with the payment terms of this Agreement; and (iii) the right to issue blanket licenses in relation to Your rights of authorship for the use of Works, not to include the Excluded Works, in videos, “art tracks,” user-generated videos, and other audio-visual programs; and (iv) subject to Your approval in each instance, the right to issue licenses to Your rights of authorship for the synchronization of the Works to audio visual platforms now existing or to be developed such as but not limited to motion pictures, television programs, video games, advertisements and on-line video sites and services such as YouTube. In connection with YouTube, Spoken Giants’ rights shall include the right to identify, claim (on Your behalf), and monetize videos in regards to the written material authored by You by allowing the display of advertising. The rights granted to Spoken Giants herein shall **NOT** inhibit or interfere in any way the rights You, your employees, affiliates, or contractors have to license and collect your master rights holder or “artist” rights in the Works on any platforms now existing or to be developed which pay master rights holder or “artist” royalties directly to you (e.g., by YouTube, Sound Exchange, etc.). For purposes of clarity, You shall continue to collect **100%** of your master rights holder or “artist” share of royalties which have been and will be paid directly to You. **Spoken Giants will be representing solely Your royalties due as a “writer” or “author” of the Works and the royalties to be collected by Spoken Giants DO NOT include sound performance royalties that are typically collected for the master recording rights that come to You from Sound Exchange or from the label/distributor (e.g., 800 PGR, Tunecore, etc.).**

- b. You further grant Spoken Giants the right to do all other things consistent herewith, as necessary or expedient to serve as the sole and exclusive rights administration organization for your Works and exercise and administer your rights of authorship in the Works granted herein, including the right (i) to negotiate and to enforce the provisions of rights licensing agreements with respect to the rights granted hereunder, or to withhold or restrict licensing of the rights granted hereunder in appropriate circumstances; (ii) to collect performing rights licensing income from any source, whether now known or hereafter identified and distribute such revenue in accordance with the payment terms of this Agreement; and (iii) to represent and to seek to advance your interests, along with the other affiliates of Spoken Giants, in connection with the rights granted herein, in appropriate forums, private or governmental, legislative, judicial, or administrative, foreign or domestic, to include the United States Copyright Office or any other agencies that may be established in royalty filing, rate adjustment, and fee distribution regarding your rights.

#### **4. Limitations on Grant of Rights**

- a. The rights granted to Spoken Giants under **Section 3** of this Agreement do not include:
  - i. The right to record and distribute for sale to the public, or to authorize others to record and distribute recordings of your Works, in any medium.
  - ii. The right to collect royalties due You as an Artist which stem from your rights in the recordings of your Works, in any medium.

5. Notwithstanding the provisions of **Section 3** of this Agreement, You retain the right to issue non-exclusive licenses of your rights of authorship directly to any third person (other than to another spoken word rights administration organization during the Term) for the public performance, in the United States, its territories and possessions, of any Work subject to this

Agreement, provided that any such direct license is memorialized in a writing, a copy of which is provided to Spoken Giants promptly following the execution thereof, and which identifies the Work(s) so licensed, the licensee, the time and the place of the performance(s), and any fee(s) paid therefor. An inadvertent failure by You to notify Spoken Giants of Your issuance directly of a public performance license shall not however be a breach hereof.

## **6. Registration of Works; Submission of Information**

You acknowledge that the registration of your Works with Spoken Giants and the submission of information to Spoken Giants as required under this Agreement is essential to Spoken Giants' ability to monitor and to pay You with respect to the administration of the Works. You also acknowledge and agree that Spoken Giants shall not be responsible for any lack of copyright protection with respect to the affected Work(s) that is the direct or indirect result of any such failure by you to register the Works with Spoken Giants. Therefore:

- i. Upon execution of this Agreement, You will submit or cause to be submitted to Spoken Giants, a Spoken Giants works-registration form, in hard copy or by electronic or other form of submission acceptable to Spoken Giants, for each existing Work subject to this Agreement. Thereafter, You will submit or cause to be submitted, in a timely manner, a Spoken Giants works-registration form for every additional Work that, during the Term, is, or You consider likely to be, published, recorded, synchronized commercially, or publicly performed; provided however, that Your inadvertent failure to submit a Work to Spoken Giants via a works-registration form shall not be deemed a material breach hereof, BUT Spoken Giants may not pay royalties to You with respect to any Work not so submitted by You.
- ii. Upon request by Spoken Giants, You agree to provide to Spoken Giants one or more copies of any of your Works, in such format(s) as Spoken Giants may reasonably require, in order to facilitate: (i) the copyrighting with the US Copyright office of any yet to be copyrighted Works; (ii) the monitoring of the Works; and (iii) the exploitation and administration of the rights granted herein.
- iii. Upon request by Spoken Giants, You agree to provide to Spoken Giants any information available to You respecting the copyright date, copyright registration number, and certificate and renewal number and certificate, if any, of any of your Works and respecting any agreements, assignments, or other instruments by which You have granted or obtained registered or recorded rights in any of your Works, as may be required by Spoken Giants to exercise and enforce the rights granted herein, or to prosecute or defend any actions, or to settle or resolve any disputes respecting such Works.

## **7. Payments on Most Favored Nations Basis Among All Affiliates**

- a. During the Term, Spoken Giants shall collect all Gross Receipts earned by the Works, including any monies earned by the Works prior to the commencement of the Term but not yet collected. After the expiration of the Term, Spoken Giants shall have the right to: collect any Gross Receipts earned during the Term and collected within six (6) months (for exploitation the United States) or twelve (12) months (for exploitation in any other territory in the world, excluding the United States) after the expiration of the Term, and (ii) issue any option, extension, or renewal of any license issued by Spoken Giants during the Term when such license is due to lapse or expire during the Term.
- b. "Gross Receipts" is defined in this agreement as all revenue derived from exploitation of the Works (and audio recordings, if applicable, in connection with synchronization licensing) and received by or credited to Spoken Giants, solely allowing for (i) arrangers',

adaptors', and translators' fees and royalties (subject always to local collection society rules and practices) actually paid, (ii) any tax deductions, and/or (iii) standard commissions deducted by bona fide collection agencies and/or third parties operating at arm's length, (iv) sub-publishers and/or administrators fees and/or commissions, and/or (v) any fees charged by third-party synchronization licensing agents used in any part of the Territory. In any event, the definition of Gross Receipts hereunder shall be no less favorable than the definition accorded to any other individual or entity with whom Spoken Giants enters into an agreement of this nature with.

- c. One Hundred Percent (100%) of Gross Receipts derived from the exploitation of the Works in the Territory, including but not limited to: (i) mechanical royalties, (ii) print income, (iii) the synchronization of the Works (and audio recordings, if applicable) with films, videos, tapes, or other permanent visual images, and (iv) public performance income, shall be credited to your Spoken Giants account, except as set forth below. **Spoken Giants shall be permitted to retain eighteen percent (18%) of Gross Receipts and Spoken Giants assures You that no more than 18% of Gross Receipts shall be Spoken Giant's compensation on a most favored nations basis across all affiliate agreements. Notwithstanding, Spoken Giants agrees that its 18% compensation shall decrease on a most favored nations basis as follows: at such time during the Term as Your cumulative Gross Receipts exceed Five Hundred Thousand Dollars (\$500,000), You shall thereafter, in each subsequent quarterly accounting be entitled to ninety percent (90%) of the Gross Receipts retroactive to dollar one received of Gross Receipts by Spoken Giants for the remainder of the Term. If in any instance, Spoken Giants agrees to take a lesser percentage of Gross Receipts from any affiliate not in accordance with this Section C, Your percentage of Gross Receipts shall increase accordingly.**
- d. You shall receive statements as to your share of Gross Receipts, and any such monies to be remitted to You by Spoken Giants account within forty-five (45) days after the end of each calendar quarter for each such preceding quarterly period. Each remittance by Spoken Giants to You shall be accompanied by a statement identifying, in reasonable detail, the source and nature of the income received, the amounts payable to You, and for which Work(s) the payments are made. You acknowledge and agree that, in the case of monies received from a foreign rights administration organization, Spoken Giants will include on your statement only such information as is made available to Spoken Giants by any such foreign administration organizations. You shall have the right at Your sole cost and expense to appoint a Certified Public Accountant to examine Spoken Giant's books and records as same pertain Gross Receipts which have been collected hereunder, provided that any such examination shall be for a reasonable duration, shall take place at Spoken Giant's offices or such other place as Spoken Giant's books and records are maintained, during normal business hours on reasonable prior written notice and shall not occur more than once in any calendar year. You may examine such books and records with respect to a particular statement only once, and only within three (3) years after the date on which the applicable statement is rendered to You. If You have any objections to a statement, You will give Spoken Giants specific notice of that objection and Your reasons for it within three (3) years after the date on which the applicable statement is rendered to You. Each statement will become conclusively binding on You at the end of that three (3) year period unless you have remitted objections to Spoken Giants in writing during the three (3) year period following receipt of the applicable statement. If no objections are made during such three (3) year period as regards any applicable statement, You will no longer have any right to make any other objections to it having waived any longer statute of limitations that may be permitted by law. If You commence any such suit, the scope of the proceeding will be limited to determination of the amount of the Gross Receipts due for the accounting periods concerned, and the court will have no authority to consider any other issues or award any relief except recovery of any revenues found owing. Your recovery of any such Gross Receipts will be the sole remedy available to You by reason of any claim

related to Spoken Giant's accountings and statements. If a discrepancy in the amount of Gross Receipts payable to You hereunder of Five Percent (5%) or more is found in favor of You, Spoken Giants shall cover the cost of Your audit. You will not have the right to seek termination of this Agreement or avoid the performance of Your obligations under it by reason of any such audit.

- e. In the event Spoken Giants is presented with a claim of infringement of copyright, trademark, right, or publicity or other intellectual property right, or failure to comply with any third-party license requirement or any other claim in relation to a specific Work listed on **Schedule A** that, if true, would constitute your breach of, or non-compliance with, any of your representations, warranties, and agreements hereunder, You agree that Spoken Giants may upon written notice to You discontinue the posting of your share of Gross Receipts with respect to such Work to your Spoken Giants account and block your ability to otherwise withdraw funds therefrom until satisfactory resolution of the matter is obtained. Furthermore, You agree that You will forfeit such revenues if it is determined that they are the result of infringement or fraud in relation to the Specific Work.
- f. You expressly acknowledge and agree that:
  - i. This Agreement represents and sets forth the full scope of consideration (including all monies) due to You by Spoken Giants; and
  - ii. Notwithstanding the provisions of subsections 6(a), (b), and (c) Spoken Giants shall have no obligation to make payment hereunder with respect to (i) any performance, sale, or other exploitation of a Work that occurs prior to the date on which Spoken Giants has received from You all of the information and material with respect to such Work that is referred to in **Section 5**, or (ii) any performance, sale, or other exploitation of a Work as to which a direct license as described in subsection 4 (a)(ii) has been granted by You, your co-writers, if any, to a third party, or (iii) any performance, sale, or other exploitation for which no license fee shall be collected by Spoken Giants, or (iv) any performance, sale or other exploitation of a Work that You claim was either omitted from or miscalculated on a statement and for which we shall not have received written notice from You of such claimed omission or miscalculation within three (3) of the date of the distribution seeking to be adjusted, or (v) any performance, sale, or other exploitation of the Excluded Works; and
  - iii. Any assignment by You of any monies due, or that may become due, to You hereunder shall not be valid without the express written consent of Spoken Giants prior to the assignment, which consent shall not be unreasonably withheld; and Spoken Giants shall not be obligated to make payments to any third-party assignee in the absence of such written consent by Spoken Giants. Neither Party may assign their rights and obligations under this Agreement without the express written consent of the other.

## **8. Warranties and Representations**

- a. You warrant and represent that You are at least eighteen (18) years of age and that all of the Works, including, without limitation, any interpolated third-party material embodied therein, metadata, and any other materials furnished by You to Spoken Giants or relating to the Works are owned or controlled by You, and the use thereof as described or contemplated herein, to the best of Your knowledge, shall not infringe on the copyrights, trademark rights, publicity rights, or other rights of any person or entity; are not, to the best of Your knowledge, defamatory nor criminally obscene; and that Spoken Giants shall have the right to exploit same in any manner hereunder free from adverse claim and without any

obligation to make any payment of any nature to any person or entity other than the amounts payable to You hereunder.

- b. All domestic and international copyright or other legal formalities applicable to each of your Works have been, or will be, during the Term, complied with.
- c. To the best of your knowledge, all of the information provided by You to Spoken Giants pursuant to this Agreement and in the Spoken Giants Online Application Form is and shall be true, correct, current, and complete, and You will promptly notify Spoken Giants of any material change in information previously submitted to keep it true, correct, current, and complete.
- d. To the extent applicable, all of the warranties and representations made by You herein shall remain effective beyond the termination of this Agreement.

## **9. Breaches of Warranties and Representations**

- a. If Spoken Giants provides You with written notice of Your material breach any of the warranties, representations, covenants, or undertakings contained in this Agreement and you fail to cure such material breach within ten (10) days of receipt of such written notice, then Spoken Giants shall, in addition to any other legal or equitable remedies, have the right to terminate this Agreement by written notice to You, subject to payment of all outstanding Gross Receipts owed to You as SG receives such payments; or (ii) to exclude from this Agreement any of your Works which are the subject of the breach, in which event Spoken Giants shall be entitled to withhold any or all payments due to You under this Agreement in relation to such Work(s) until Spoken Giants receives written notice which, in Spoken Giants' sole judgment, is satisfactory evidence of a cure of the breach.
- b. In the event of a claim or action involving any of your Works being in breach of any warranty or representation by You hereunder, Spoken Giants shall be entitled to exclude any such Work(s) from this Agreement and to withhold any or all payments due to You under this Agreement until Spoken Giants receives written notice which, in Spoken Giants' reasonable judgment, is satisfactory evidence of a final resolution of the claim or action in relation to such Work(s), binding on all parties.
- c. In the event Spoken Giants has withheld payments under subsections 8(a) or 8(b) of this Agreement, Spoken Giants shall pay to You all monies withheld no later than the calendar quarter following the quarter in which Spoken Giants receives satisfactory notice of a cure of the breach, or a final resolution of the claim or action, after deducting all costs or other loss or damages, including outside attorneys fees, incurred by Spoken Giants as a result of each such breach, claim, or action.
- d. Spoken Giants shall have the right, upon written notice to You, to exclude from this Agreement any of your Works which, in Spoken Giants' sole judgment, may (i) infringe upon any copyright; (ii) be substantially or confusingly similar to any other copyrighted work; or (iii) violate any other right of any third party.
- e. If, in Spoken Giants' sole judgment, any of your Works is based on a work in the public domain, Spoken Giants shall have the right, upon written notice to You, to exclude any such Work from this Agreement.

## **10. Third Party Obligations**

You shall be solely responsible for the payment of all compensation, if any, to and any permissions required from, co-authors, licensors, income participants, and other third parties to whom You are obligated

to pay a portion of the income derived from any of the written material encompassed in the Works. You hereby agree to indemnify Spoken Giants and hold Spoken Giants harmless from and against any and all claims, demands, or actions by any such other creators, licensors, income participants, and other third parties for any such payments in accordance with the indemnification provisions set forth in **Section 10**.

## **11. Indemnity**

- a. You shall indemnify Spoken Giants, its licensees, and their respective officers, directors, agents, and employees, and hold them harmless from all loss, damage, cost, or expense, including reasonable outside attorneys' fees due to a breach of your warranties, representations, undertakings, or covenants herein or due to Spoken Giants' reliance on any information provided by You during the application process or subsequently thereafter, or any activity (including updates to your account profile) on your Spoken Giants account.
- b. Spoken Giants shall give You prompt notice of any third-party claim subject to your indemnity under this Agreement. You shall cooperate fully with Spoken Giants in connection with any such claim and shall make available all records or other information, and do all other acts, as Spoken Giants may reasonably require in defense of the claim. You shall have the right to participate in the defense or disposition of any claim to which your indemnity applies, and Spoken Giants, in its sole discretion, may at your request permit You to assume the defense of any claim (provided that Spoken Giants shall have the right to continue to participate in the defense); and, in either case, You shall exclusively bear all costs, including reasonable outside attorneys fees, of any such assumed defense.
- c. Spoken Giants shall indemnify and defend You and Your wholly owned entities, their respective officers, directors, agents, and employees from any third-party claims, loss, damage, cost or expenses, including reasonable outside attorneys' fees due to a breach of Spoken Giants warranties, representations, undertakings or covenants herein or directly related to Spoken Giants administration of your rights hereunder to the extent not subject to Your indemnity obligations set forth in **Section A** above.
- d. This indemnity shall survive the termination, for any reason, of this Agreement.

## **12. Actions**

Spoken Giants shall have the right to institute or to decline to institute any action or proceeding to defend or to decline to defend any legal claim as Spoken Giants may, in its sole judgment, deems necessary or desirable to protect or defend the rights granted by You herein, including action to restrain, and to seek damages respecting any infringing performance of your Works. Spoken Giants may take such actions against any third party, in Spoken Giants' name and/or in your name, and may join others in such actions, provided that any action or proceeding instituted by Spoken Giants under this Section shall be at Spoken Giants' sole expense and for Spoken Giants' sole benefit. You will, at Spoken Giants' request, cooperate as reasonably required in the prosecution of any action with respect to the infringement or other alleged violation of the rights granted herein. Spoken Giants may in its sole discretion settle, compromise, discontinue, or in any other manner dispose of any action instituted under this Section, and may enforce or satisfy any judgment that may be rendered therein.

## **13. Notices and Electronic Communications**

- a. All notices required under this Agreement shall be transmitted in writing; however, either party may communicate with the other regarding any matter related to this Agreement and your Spoken Giants account, including, without limitation, your account information, royalty statements, and notices required under this Agreement, by electronic communications (e.g., by e-mail and/or postings on the password-protected area of the Spoken Giants website available to You). The Parties agree that all electronic communications between

the Parties shall be deemed to be communications "in writing" and deemed delivered to the receiving Party no later than the earlier of the date actually received or five (5) days from the date of posting or transmission.

- b. You may update your contact information, upon Spoken Giants' approval of your application, by logging in on the Spoken Giants website ([www.SpokenGiants.com](http://www.SpokenGiants.com)).

#### **14. Bankruptcy**

If at any time during the Term of this Agreement You shall file, or be the subject of, a petition in bankruptcy, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver or trustee for all or part of your property, or shall institute, or be the subject of, any other insolvency proceeding, then, in such event, You acknowledge and agree that Spoken Giants shall continue to hold title to all rights in your Works granted herein, and Spoken Giants shall subrogate your rights to the payment of any monies hereunder to your trustee in bankruptcy, or receiver, or any successor to such rights.

#### **15. Privacy Policy**

Both Parties shall be subject to, and be bound by, the Spoken Giants Privacy Policy available on the Spoken Giants website and incorporated by reference into and made a part this Agreement.

#### **16. Password Security**

You are solely responsible for maintaining the confidentiality and security of your password necessary for accessing your Spoken Giants account, and are fully responsible for all activities that occur on such account, whether authorized or unauthorized. Except as otherwise agreed to by the parties in writing, no other individual shall be permitted to perform any acts on behalf of You under this Agreement or act as your representative.

#### **17. Miscellaneous**

- a. This Agreement sets forth the entire agreement of the parties regarding the subject matter hereof and may not be modified or amended except by written agreement signed by the parties hereto.
- b. Any and all disputes or controversies of any nature between the Parties arising at any time out of this Agreement (whether sounding in contract or tort or based on statute) shall be exclusively determined by binding, confidential, non-public arbitration in accordance with the Comprehensive Commercial Arbitration Rules of JAMS (JAMS Streamlined (for claims under \$250,000) or the JAMS Comprehensive (for claims over \$250,000) Arbitration Rules and Procedures, except as modified herein, at the Los Angeles office of JAMS, or its successor ("**JAMS**") in effect at the time the request for arbitration is made (the "**Rules**") before a single neutral arbitrator (the "**Arbitrator**"), to be administered and conducted in Los Angeles, California. The arbitrator shall: (i) be selected from the panel of neutrals from the Los Angeles office of JAMS; and (ii) be a retired judge with substantial experience in disputes concerning entertainment law and the exploitation of intellectual property rights. The arbitrator shall be selected in accordance with the Rules. JAMS' fees, including fees for the arbitrator, shall be borne equally by the parties. There shall be a stenographic record of the proceedings at the arbitration hearing and the arbitrator shall issue a Statement of Award setting forth the factual and legal basis for the arbitrator's award, within twenty (20) days of completion of the hearing. In all their substantive (as opposed to procedural or discovery-related) rulings, the arbitrator and Appeal Panel shall apply the laws of the State of California. If any Party refuses to perform any or all of its obligations under the final arbitration award within thirty (30) days of such award being rendered, then the other



Parties may enforce the final award in any court of competent jurisdiction in Los Angeles County, California. The prevailing part(y/ies) of any such dispute shall be entitled to the reimbursement of their attorney fees. In addition to any action for monetary damages, the Parties are entitled to seek and/or obtain any form of injunctive relief. This Section shall survive termination of this Agreement.

- c. In the event any provision of this Agreement shall, for any reason, be held invalid or unenforceable, all other provisions hereof shall continue in full force and effect.

This agreement supersedes all previous agreements, oral or written.

## SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed on the date set forth below.

**AFFILIATE (“You”):**

**SPOKEN GIANTS, LLC:**

**Signature:** \_\_\_\_\_ **By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_