

ARTIST AGREEMENT AND RELEASE

This Artist Agreement and Release (the "Agreement") is entered into as of the [REDACTED] December by and between VIVID ENTERTAINMENT, LLC, a California Limited Liability Company ("Vivid") and JASMINE WALTZ, an individual having an address at [REDACTED] ("Artist").

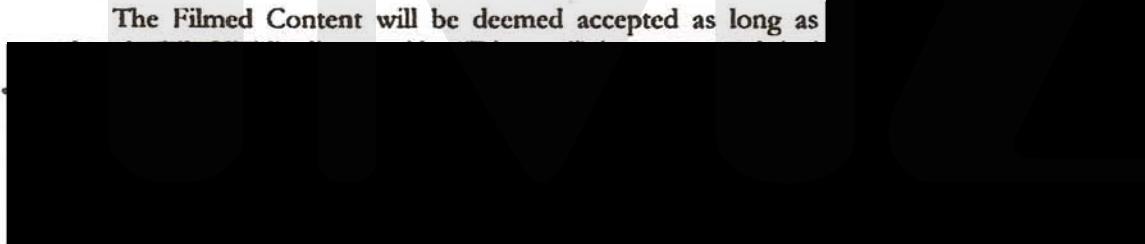
In consideration of the promises, terms and conditions contained herein and such other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Vivid and Artist hereby agree as follows:

1. SERVICES.

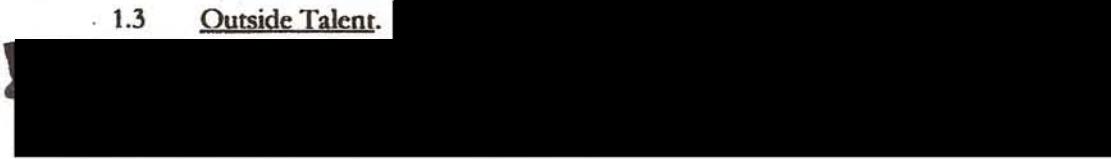
1.1 Delivery. On December 10, 2010, or such other date mutually agreed upon, Artist shall shoot and deliver to Vivid a high-quality reproducible original version of footage, four (4) hours in duration, and consisting of: (i) a minimum of Three (3) hours of footage depicting Artist engaged in sexual relations and (ii) One (1) hour of personalized sexy wrap-around footage depicting Artist (collectively the "Filmed Content").

1.2 Approval. Artist agrees to review the suggested filming criteria attached hereto as Exhibit "A", which should be used as guidelines only. The Filmed Content shall be subject to approval by Vivid in its sole discretion. If Vivid does not approve any Filmed Content, Artist shall take direction from Vivid and re-shoot the rejected Filmed Content until approved. If re-filming of the Filmed Content is not completed within thirty (30) days of the date of this Agreement, Vivid shall have the right to terminate this Agreement.

The Filmed Content will be deemed accepted as long as [REDACTED]



1.3 Outside Talent. [REDACTED]



1.4 Still Photographs. Artist shall provide Vivid with still photographs suitable, in Vivid's discretion, for box covers and promotional material. If the Director is present during filming the Filmed Content, Artist shall cooperate with the Director who shall take still photographs of Artist for box covers and promotional material.

1.5 Delivery Times. Artist shall render such services in good faith and to the best of Artist's ability and in a timely manner. Failure to furnish the Filmed Content within thirty (30) days of execution of this Agreement or failure to provide any other items required

under this Agreement required to be provided by Artist is deemed to be a material default and will allow Vivid to terminate this Agreement.

1.6 Text Messages – Not Applicable.

1.7 Results. Vivid is interested only in the results to be achieved and the conduct and control of the Artist services shall lie with Artist.

1.8 Definition of "xx" and "xxx" rated. For purposes of this Agreement, the term "xxx-rated" shall refer to the highest level of sexual explicitness featured in mainstream adult motion pictures produced in the United States, generally including penetration with ejaculation. The term "xx-rated" refers to that level of sexual explicitness second only to "xxx-rated", including penetration without ejaculation, masturbation (with or without toys), genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex PROVIDED the term "xx-rated" shall exclude kissing and nude images which do not include acts previously defined under "xx rated" and "xxx rated" and simulated sexual activity.

1.9 Publicity. Vivid shall establish the publicity date of the Filmed Content. Artist will not issue or authorize the issuance of any publicity regarding the Filmed Content or any elements thereof without the express written consent of Vivid in each instance.

1.10 Nature of Work. Artist understands that her services and appearance within the Filmed Content may be disparaging, embarrassing or of an otherwise unfavorable nature.

1.11 Supporting Items. Upon delivery of the Filmed Content, Artist shall provide Vivid with: (i) all documents required by law, including photo identification documents of Artist as required by 18 U.S.C. § 2257; (ii) executed model releases acceptable to Vivid from Artist granting Vivid all rights to use her name, image and performance, (iii) executed 18 U.S.C. § 2257 Disclosure Statements from Artist in a form acceptable to Vivid, (iv) releases acceptable to Vivid for any person procured by Artist rendering services in connection with the Filmed Content and (v) affirmation when the Filmed Content was produced.

2. FILMING DATE. The Filmed Content shall be shot on December 10, 2010 or such other date mutually agreed upon. The location of filming shall be determined by Artist. Artist agrees the time to perform the obligations hereunder may be extended, at Vivid's election, if Artist or the outside talent is unavailable to perform due to causes beyond their respective control.

3. COMPENSATION.

3.1 25% Royalty. As consideration for all rights granted herein and assigned to Vivid and for Artist's representations and warranties, Vivid shall pay Artist Twenty Five percent (25%) of Adjusted Gross Revenue (the "Royalty") received by Vivid from selling, licensing, exploiting and distributing the Filmed Content. All Royalty payments shall be delivered to Artist.

JUL

The term Adjusted Gross Revenue means [REDACTED]

If Vivid releases an audio visual work that contains both Filmed Content and other material, then Vivid will pay Artist an amount calculated as follows: 25% x (revenue received selling, licensing and distributing the audiovisual work [REDACTED]

[REDACTED] x number of minutes of Filmed Content/total minutes of the audiovisual work).

3.2 Advance. Vivid shall advance to Artist the sum of Sixty Thousand (\$60,000) Dollars (the "Advance") against Artist's share of Adjusted Gross Revenue. Provided Artist is not in material breach of this Agreement, the Advance shall be delivered to Artist upon delivery to and acceptance of the Filmed Content by Vivid along with the materials specified in Paragraph 1.4 and 1.11. In the event: (i) Artist is in material breach of her obligations hereunder, which breach has not been cured within the time specified in this Agreement or is no time is specified, within five (5) days following written notice from Vivid, or (ii) Vivid terminates the Agreement pursuant to Paragraph 1.2, the Advance shall be promptly delivered to Vivid. The parties understand that Vivid shall recoup the Advance from Artist's share of Adjusted Gross Revenue. Once the total advance is recouped, Vivid shall begin paying Artist her share of Adjusted Gross Revenue.

3.3 Payment of Royalties. All Royalties shall be paid quarterly within thirty (30) days following the end of each calendar quarter. Royalties shall be accompanied by documentation showing the Royalty calculation. Royalty payments shall be in April, July, October and January for each preceding three (3) months' sales. If Royalties fall below \$5,000, Vivid may pay the Royalty annually.

3.4 Audit. Vivid shall keep at its normal place of business commercially reasonable records of its sales and licenses of the Filmed Content. Upon reasonable written notice, Vivid shall make such records available for inspection once annually, during its normal business hours, by Artist or her duly authorized representative, for the purpose of verifying the accuracy of any royalty statement or the amount of royalties paid or payable. Artist shall be responsible for its costs in making such inspections unless deficiencies exceeding five percent (5%) in the Royalty payments due with respect to the Filmed Content are thereby discovered and verified, in which case such cost shall be borne by Vivid. All records may be held in physical and/or electronic format at Vivid's choice.

3.5 Offset. Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that Artist's share of Adjusted Gross Revenue shall be applied against the defense, payment and/or settlement of third party claims arising from a material breach or alleged material breach of Artist's representations and/or warranties under this Agreement.

(initials)

3.6 Right to Terminate. If Artist is in material breach of this Agreement and such breach is not cured (or outside materials delivered) within ten (10) days following written notice from Vivid, then Vivid shall have the right to terminate this Agreement.

4. GRANT OF RIGHTS. Artist grants to Vivid and its successors and assigns, all rights described in this Agreement of every kind whatsoever, whether now known or unknown, exclusively and perpetually, in and thereof. Without limiting the generality of the foregoing, and in part in addition thereto, Artist grants to Vivid, and its successors and assigns, the following perpetual, worldwide and exclusive rights: (1) to photograph, copy or otherwise reproduce, by any present or future methods or means, all of any part of Artist's acts, poses, plays and appearances of every kind and nature made or done by Artist in connection with the services rendered under this Agreement by any present or future method or means, and reproduce, issue, sell, and transmit the same, either separately or in conjunction with any performance or work (including advertisements and marketing); (2) to record or otherwise reproduce Artist's voice and all intonal, musical, instrumental or other sound effects generated by Artist, including dubbing Artist's voice to produce foreign language tracks (the "audio portion") by any present or future method or means, and reproduce, issue, sell, and transmit the same, either separately or in conjunction with any performance or work (including advertisements and marketing); (3) to exhibit, sell, assign, transmit, exploit, and reproduce, and license others to do so (whether by means of motion pictures, still camera photographs, radio, television, televised motion pictures, optical discs, video cassettes, video tapes, printing, computer, cd-rom, internet transmission or any other means now known or unknown) any or all of Artist's acts, poses, plays, appearances or other services under this Agreement (including the audio portion); (4) to use Artist's acts, poses, plays, appearances or other services under this Agreement (including the audio portion) in connection with the advertising and exploitation of the Filmed Content, including, without limitation, the creation of previews and trailers, one-sheet flyers, catalogues, and covers or wrappers of sound track recordings, discs, cd-roms, tapes, and/or cassettes, and in connection with the sale of by-products or merchandising relating to the Filmed Content, and any theme, plot or other elements or rights therein contained; (5) to use the Filmed Content, appearances or other services rendered under this Agreement (including the audio portion), or any parts thereof, as a portion of a compilation, and for the advertising thereof, and to reproduce and/or transmit the same by any and all means and in any media; (6) to cut, edit, add to, subtract from, arrange, rearrange, shorten, digitally alter and revise the Filmed Content, appearances or other services under this Agreement (including the audio portion) in any manner as Vivid may, in its sole and complete discretion, determine, and, from time to time, to change the title of any work thereof.

Artist further grants to Vivid, its successors and assigns, the perpetual worldwide but nonexclusive right to use Artist's name in conjunction with identification and age verification matters and the non-exclusive perpetual worldwide right to use and to license others to use Artist's name and stage name (if used), her biography, and reproductions of Artist's physical likeness and/or voice for the purpose of advertising and exploiting the Filmed Content, compilations and the personal appearances set forth in this Agreement.

Artist also grants Vivid and its successors and assigns, the worldwide, perpetual right and license to use Artist's name [including stage name if used] and physical likeness in

domain names, url's, banner ad's and links to advertise, market and exploit the Filmed Content.

Artist hereby assigns and grants to Vivid, and its successors and assigns, exclusively and perpetually, all now or hereafter existing rights of every kind or character whatsoever, whether or not such rights are now known, recognized or contemplated, and the complete unconditional and unencumbered title throughout the world in and to the results and proceeds of Artist's services and performances pursuant to this Agreement (hereinafter referred to as "material"). All said material, and the copyright therein, is hereby conveyed to Vivid.

Artist agrees that Filmed Content, the title of any work containing the Filmed Content and all material performed by Artist hereunder belong exclusively to Vivid and that Artist has no right, title, or interest whatsoever therein or thereto nor any right to make any use thereof without written authorization from Vivid. Artist will, at Vivid's reasonable request, execute such assignments, certificates or other instruments as Vivid may, from time to time, deem reasonably necessary or desirable to evidence, establish, maintain, protect, enforce, or defend its right or title in or to any such material provided same is not inconsistent with this Agreement.

5. CONFIDENTIALITY. Artist agrees:

(a) Vivid's production and business techniques, payments made to Artist and outside talent hereunder, and all other information regarding the creation, marketing, promotion or exploitation of the Filmed Content in which Artist appears belongs to Vivid; constitutes specialized and highly confidential information not generally known in the industry; and constitutes trade secrets of Vivid. Accordingly, Artist recognizes and acknowledges that it is essential to Vivid to protect the confidentiality of such trade information.

(b) Artist thus agrees to act as a trustee of such information and of any other confidential information she acquires in connection with her association with Vivid and to hold such information in trust and confidence for the use and benefit solely of Vivid.

(c) except with regard to her attorneys and other professional representatives who have a need to know such information and understand the confidential nature of such information, Artist shall not disclose such information to any person, firm, association, or other entity for any reason or purpose whatsoever, unless the Artist is required to disclose it by judicial process, with prior notice to Vivid.

6. EXCLUSIVE SERVICES. Artist agrees that her services regarding work in "xx"-rated and "xxx" rated motion pictures, video productions, audio visual works, exhibitions and/or performances are exclusive to Vivid for a period of three (3) years from the date of this Agreement (the "Exclusive Services Period").

During the Exclusive Services Period, Artist may only appear in "xx" or "xxx" rated motion pictures, video productions, audio visual works and/or exhibitions for Vivid. Any additional

[Signature]

scenes to be performed by Artist during the Exclusive Services Period shall be on mutually agreeable terms acceptable to both Artist and Vivid.

Except for rendering services for Vivid, Artist covenants and agrees that during the Exclusive Services Period he will not: (a) appear in any "xx" or "xxx" rated motion pictures, video productions, audio visual works and/or exhibitions; (b) promote, exploit or market any "xx" or "xxx" rated motion pictures, video productions, audio visual works and/or exhibitions in which artist appears, except the Filmed Content; or (c) authorize the release of "xx" or "xxx" rated motion pictures, video productions, audio visual works and/or exhibitions in which Artist appears. Should Artist breach any of the foregoing covenants or the warranties set forth in Sections 7.1(b) and/or 7.1(f), the parties agree that as liquidated damages and not as a penalty, (i) Artist shall pay Vivid the sum of [REDACTED] for each breach and (ii) Artist's right to Royalties under Paragraph 3.1 shall terminate. The foregoing sum represents a reasonable endeavor by the parties to estimate a fair compensation for any loss that may be sustained by Vivid in the event of such breach.

Artist agrees the exclusive services restriction is limited and at least part of the adult oriented job market and all of the mainstream job market is available to Artist.

The parties acknowledge that they have attempted to limit the Artist's right to compete and perform as an actor only to the extent necessary to protect Vivid. The parties hereby agree that, if the scope or enforceability of the restrictive covenant is in any way disputed at any time, an arbitrator or other trier of fact may modify and enforce the covenant to the extent that it believes the covenant to be reasonable under the circumstances existing at that time.

Artist further acknowledges that: (1) in the event her engagement with Vivid terminates because of Artist's default, she will be able to earn a livelihood without violating the foregoing restrictions; and (2) that her ability to earn a livelihood without violating such restrictions is a material condition to engagement of artist hereunder by Vivid.

7. WARRANTIES.

7.1 Artist warrants, represents and agrees as follows:

- (a) Artist has the right to enter into this agreement with Vivid and to perform the services and grant Vivid the rights herein granted by Artist;
- (b) The Filmed Content will be Artist's first release of an "xx" and/or "xxx"-rated work. Artist has not and will not, directly or indirectly, participate in, authorize the release of, promote or exploit of any "xx" and/or "xxx"-rated work during the Exclusive Services Period except for the Filmed Content as authorized by Vivid.
- (c) Artist warrants that she has read and understood the terms hereof prior to signing and has been offered the opportunity to have this agreement reviewed by an attorney of her own choosing prior to signing.



(d) Artist is not a party to any agreement containing a valid, enforceable non-competition clause or other restriction with respect to: (i) the services which she is required to perform hereunder; or (ii) the use or disclosure of any information directly or indirectly related to the artist's business, or to the services she is required to render pursuant hereto.

(e) Artist is eighteen (18) years of age or older and has supplied valid photographic proof of identity and age to Vivid and such photographic proof was issued by a governmental subdivision or agency.

(f) Artist has not previously participated in the filming of any "xx" and/or "xxx"-rated work [including motion pictures, video productions, audio visual works and/or exhibitions] prior to the date of this Agreement.

7.2 Vivid warrants, represents and agrees as follows:

(a) Vivid has the right to enter into this agreement and to perform its obligations hereunder.

(b) The male talent selection provided by Vivid and selected by Artist is at least eighteen (18) years of age.

(c) Vivid has obtained and shall maintain copies of photo identification reflecting the age of each individual appearing in the Filmed Content to the extent required by law, and all related documentation required by 18 U.S.C. § 2257 and talent releases containing all customary consents.

8. WAIVERS. Artist understands and agrees that:

(a) Artist's services and/or audio portion may be utilized in conjunction with sexually graphic or explicit material.

(b) except as otherwise set forth in this Agreement; Artist shall not have approval rights for any finished product containing her services.

(c) Artist hereby acknowledges, accepts and assumes any and all risks associated with sexual activity, including, but not limited to, sexually transmitted diseases such as, by way of illustration but not limitation, venereal diseases, acquired immune deficiency syndrome (aids), herpes, hepatitis and other related diseases.

9. SEVERABILITY. Any alleged uncertainty or ambiguity in this Agreement shall not be construed for or against a party based on attribution of drafting to said party. If any clause, sentence, paragraph, provision, or part of this Agreement violates or conflicts with any law, governmental rule or regulation or judicial decree, including any requirements for judicial approval, or shall be adjudged invalid by a court of competent jurisdiction, such provision or provisions shall be deemed amended to the minimum extent necessary to effect compliance with such law, rule, regulation or decree, provided such provision continues to reflect the intent of the parties, and as so amended shall remain in full force and effect. Such

JW

judgment shall not affect the remainder of this Agreement, which shall continue in full force and effect.

10. **REMEDY.** Artist and Vivid agree that the services to be rendered by the Artist under the terms hereof, and the rights and privileges granted to Vivid by Artist under the terms hereof are of an extraordinary character which gives them a unique value. Artist hereby expressly agrees that Vivid shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by the Artist. Resort to injunctive and other equitable relief, however, shall not be construed as a waiver of any other rights or remedies which Vivid may have for damages or otherwise, nor shall the seeking of damages or other relief be construed to be a waiver of any other rights or remedies, which Vivid may have in equity or otherwise. Without waiving any such other rights or remedies, Vivid may commence any legal proceeding for damages for breaches of this Agreement and the institution or maintenance of any such action or proceeding or proceedings shall not constitute or result in a termination or breach of this Agreement by Vivid, and shall be without prejudice to any right of Vivid to terminate this Agreement. Any remedy that Artist shall have against Vivid in connection with the services /performances shall be limited to the right to recover damages in an action at law, and Artist hereby waives any right or remedy in equity, including the right to a) terminate this Agreement; b) to rescind Vivid's right, title and interest in and to the Filmed Content and/or c) to enjoin, restrain or otherwise impair in any manner the production distribution, advertising or exploitation of the services/performances or any parts or elements of either thereof.

11. **GOVERNING LAW**

This Agreement shall be governed by and construed under the laws and judicial decisions of the State of California and the United States as applied to agreements between California state residents entered into and to be performed within the State of California, except as governed by Federal law.

Jurisdiction and venue of any dispute or court action arising from or related to this Agreement shall lie exclusively in or be transferred to the Superior Court of California, County of Los Angeles.

12. **ASSIGNMENT.** Vivid may transfer or assign this agreement to an entity acquiring a majority or all of Vivid's stock or assets. Artist agrees that Vivid shall have the right at its discretion to contract with an affiliated company to produce the Filmed Content. Artist may not assign this Agreement without the prior written consent of Vivid.

13. **HEADINGS.** The descriptive headings contained in this agreement are for reference purposes only and are not to be construed in any way as a part of this Agreement.

14. **BINDING EFFECT.** This Agreement, and all rights and obligations hereunder, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, legal and personal representatives, successors, licensees and assigns.

15. **SURVIVAL.** The provisions of paragraphs 1.7 – 1.11, 3 – 14 and 16 - 18 shall survive termination or expiration of this Agreement.

JW

16. INDEPENDENT CONTRACTOR. It is the parties' intention that Artist shall be an independent contractor and not Vivid's employee, and in conformity therewith, Vivid will not withhold any taxes of any kind or nature from the payments made to Artist. Vivid shall issue Artist an IRS Form 1099 reflecting payments to Artist hereunder. Artist shall pay and be solely responsible for any and all city, state and/or federal taxes which may be due on monies paid by Vivid to Artist.

17. ENTIRE AGREEMENT. This agreement represents the entire agreement between the parties hereto and supersedes all prior representations, negotiations, promises, understandings or agreements, whether oral or written, between the parties with respect to the subject matter hereof. The parties agree that Artist shall be required to execute additional documents, including but not limited to model releases, to confirm the understandings related to this Agreement, and such agreement(s) shall supplement, but not supersede, the terms of this agreement.

18. NOTICES. All notices or reports and payments, as applicable which either party may wish to serve or may be required to serve on the other under this Agreement shall be in writing and shall be served by personal delivery thereof, or by prepaid certified mail, return receipt requested or by prepaid nationally recognized delivery service, addressed to the respective parties at the following addresses:

VIVID ENTERTAINMENT, LLC
Attn: Steven Hirsch
3599 Cahuenga Boulevard West
4th floor
Los Angeles, CA 90068

Jasmine Waltz [REDACTED]

Notices shall be deemed effective on the date of receipt by recipient if by personal delivery, the next business day following delivery by a nationally recognized delivery service or three (3) business days following the mailing by prepaid certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto their respective signature on the date first set forth above.

Vivid Entertainment, LLC

Signature: 

Its: _____

Jasmine Waltz

Signature: 

Print: 