

VENDOR:
AGREEMENT: STARZ -

[Shell Oil Products US][Date]

To Be Used For: Shell Trading and Retail Zone (STARZ)	
VENDOR:	
Address:	
Attn:	
Telephone:	
Fax:	
Internet:	

Notice: This form contains a Liability-Indemnity clause. Please read carefully.

This Agreement (“Agreement”) is between Shell Oil Products US, for itself and on behalf of Motiva Enterprises LLC (“COMPANY”) whose address is 910 Louisiana, Houston, TX 77002 and

(“VENDOR”),
having its principal office in

The effective date of this Agreement shall be the date of execution of this Agreement by the last party to execute (“Effective Date”).

Whereas, COMPANY operates a web site on the Internet (“Shell Source”) located at <http://www.shellsource.com> on and through which COMPANY’s wholesalers, dealers, operators and other customers (“Customers”) can access information, services and other assistance for business operation, access to certain sections of which web site is limited by password to the Customers; and

Whereas, VENDOR is in the business of selling or providing goods and services which may be desired by or of benefit to Customers; and

Whereas, a portion of the Shell Source site is segregated as the Shell Trading and Retail Zone (“STARZ”), which contains advertisements of various suppliers of goods and services and other learning or best practice information; and

Whereas, VENDOR desires to advertise on the STARZ site;

Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

SERVICES:

Subject to the terms and conditions of this Agreement, VENDOR shall purchase from COMPANY a STARZ Platinum Advertising Package (the “Services”). The Services shall consist of COMPANY’s provision to VENDOR during the term of this Agreement of the non-exclusive storage, presentation, copying, transmission, performance and display, on and via the STARZ site to Customers, of graphical image files, text, animation, software, links, product or service names, or trade or service marks or names provided by VENDOR (the “Posting”). The Posting shall contain any or all of the following, at VENDOR’s election: (a) VENDOR’s name and address; (b) VENDOR contact name, telephone number and electronic mail address; (c) link to VENDOR’s web site (to be governed by the requirements and procedures contained in Attachment A hereto, as they may be amended by COMPANY from time to time); and (d) information about VENDOR and its products, within such space and content limitations as established by COMPANY. In addition, during each yearly term of this Agreement, VENDOR shall receive from COMPANY the initiation of five (5) group electronic mail messages to be sent to the Customers, in the form of inclusion in STARZ electronic newsletters. These newsletters will be sent periodically to the Customers, unless COMPANY is notified by a Customer that it chooses not to receive them, in which case circulation to that Customer will be suspended. The content and timing of these electronic mail messages shall be mutually agreed by COMPANY and VENDOR.

Within thirty (30) days of the Effective Date, VENDOR shall deliver the Posting to COMPANY by completing and submitting the On-

boarding Process Form (Attachment B hereto). VENDOR shall be solely responsible for providing the Posting in the format required for display on and via STARZ. Within fourteen (14) days of VENDOR's delivery of a properly submitted Posting to COMPANY, COMPANY shall place the Posting on STARZ and make it available for access by Customers.

FEE AND PAYMENT:

VENDOR shall pay COMPANY the sum of \$10,000.00 (the "Fee") annually for the Services.

The initial Fee shall be paid in full by VENDOR to COMPANY within thirty (30) days of the date of VENDOR's execution of this Agreement, and thereafter the annual Fee shall be paid on or before the anniversary of the Effective Date. Payment shall be made by means of check payable to COMPANY, and sent to:

Shell Oil Products US - STARZ
PO Box 7247-6193
Philadelphia, PA 19170-6193

Until payment of the Fee is received in full as due, COMPANY shall have no obligation to display the Posting on STARZ, and may, at its discretion, remove any Posting previously displayed under the terms of this or a previous agreement, until full payment is received.

VENDOR shall be solely responsible for and shall pay all sales, use, service or other taxes, duties or levies of any governmental entity (exclusive of taxes on COMPANY's net income), including interest and penalties thereon, if any, relating to the Services.

ADDITIONAL OPPORTUNITIES:

At any time during the term of this Agreement, VENDOR may request to purchase additional advertising opportunities under the terms and conditions of this Agreement. If available and agreed to by COMPANY, these additional opportunities shall be purchased for the then-current fee or rate for the opportunity and shall be paid for with a check as outlined in the above article "Fee and Payment".

TERM AND TERMINATION:

The term of this Agreement shall commence on the Effective Date and shall continue for an initial one (1) year term from the earlier of the date the Posting is first displayed on the STARZ site or thirty (30) days after the Effective Date, and thereafter for additional successive terms of one (1) year each, unless and until terminated as provided in this Agreement.

This Agreement may be terminated: (i) immediately by either party in the event of a material breach of this Agreement by the other party which remains uncured after ten (10) days of notice of default being given; or (ii) by either party, at any time and for any reason, upon giving the other thirty (30) days prior written notice. In the event of any termination of this Agreement hereunder, VENDOR shall not be entitled to any refund of all or any portion of the Fee paid for the Services, unless COMPANY terminates this Agreement under the provisions of (ii) hereof, in which case COMPANY shall refund to VENDOR a proportionate amount of the annual Fee paid for the remaining months of the then-current yearly term of this Agreement.

Upon any termination of this Agreement, COMPANY shall remove the Posting from Shell Source and use reasonable efforts to erase and remove copies of the Posting and portions thereof from any advertising media in COMPANY's possession, custody and control; provided, however, that COMPANY may retain the original or copies of the Posting for dispute resolution purposes or in the event of any claim or dispute concerning the Posting or Shell Source/STARZ.

LICENSE:

In consideration of COMPANY's performance of the obligations of this Agreement and solely in connection with COMPANY's performance of this Agreement, VENDOR grants to COMPANY a limited, non-transferable, non-exclusive, worldwide license, for the term of this Agreement and only on and via the STARZ site and in connection with computer hardware and software used to maintain, backup and mirror the STARZ site, to (a) reproduce, distribute via the Internet, modify as necessary to conform to the STARZ site, copy, use, store, publicly display, publicly perform and transmit the Posting; (b) incorporate any hypertext reference links of the Posting; (c) display VENDOR's trade names, trademarks or service marks in or of the Posting; and (d) modify or remove the Posting as COMPANY may deem necessary to respond to allegations of infringement.

OWNERSHIP RIGHTS:

VENDOR shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in the Posting, VENDOR's trade names, trademarks and service marks therein and all legally protectable elements, derivative works, modifications and enhancements thereto, whether or not developed by VENDOR or any contractor, subcontractor or agent for VENDOR.

Except as provided in the above paragraph of this article, VENDOR acknowledges that Shell Source and STARZ, including without limitation all trade names, trademarks, service marks, content, text, images, software, media and other materials therein, is a work or

collective work, proprietary to or licensed by COMPANY, protected under copyright, trademark and other intellectual property laws, whether or not developed by COMPANY or any other person.

POSTING CONTENT:

COMPANY reserves the right, at any time and in COMPANY's sole discretion, to refuse to perform the Services with respect to the Posting or any portion thereof that: (a) fails to conform to the format and technical specifications prescribed by COMPANY; (b) may constitute or is the subject of a notice or claim of any Lanham Act violation, false designation or origin, false advertising or unfair competition under the law of any jurisdiction; (c) contains or is alleged to contain any content, work, name, mark, designation, materials or link that actually or potentially violates any applicable law or regulation or infringes any proprietary, intellectual property, contract or tort right of any person; (d) contains any content, work, name, mark, designation, materials or link that, in COMPANY's sole opinion, may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, malicious, libelous or defamatory, bigoted, hateful or racially offensive; (e) adversely affects performance of the Shell Source or STARZ site; (f) does not conform to or is in conflict with COMPANY's brand standards; or (g) creates a security risk or contains a virus.

AVAILABILITY AND SECURITY:

COMPANY shall use commercially reasonable efforts to provide the Services twenty-four (24) hours a day, seven days (7) a week, throughout the term of this Agreement, unless otherwise provided. VENDOR acknowledges and agrees that from time to time the Services may not display the Posting as scheduled or may be inaccessible or inoperable for any reason, including without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which COMPANY may undertake from time to time; (iii) causes beyond the control of COMPANY and which are not reasonably foreseeable by COMPANY, including without limitation interruption or failure of telecommunication or digital transmission links, hostile network attacks and network congestion or other failures.

COMPANY shall undertake commercially reasonable security measures to prevent unauthorized use and ensure the security, confidentiality and integrity of the Posting.

WARRANTIES:

VENDOR represents and warrants to COMPANY that it owns the Posting and all intellectual property rights therein, or has the right to grant the license to COMPANY herein and authorize the worldwide copying, display and transmission on/through the STARZ site.

COMPANY'S SERVICES AND THE SHELL SOURCE/STARZ SITE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. PROVISION AND/OR USE OF THE SERVICES OR SHELL SOURCE/STARZ ARE AT VENDOR'S SOLE RISK. COMPANY DOES NOT WARRANT THAT THE SERVICES OR SHELL SOURCE/STARZ WILL BE AVAILABLE ALL OF THE TIME, UNINTERRUPTED OR ERROR FREE, NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE PERFORMANCE OR ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICES OR SHELL SOURCE/STARZ. COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT.

INDEMNIFICATION:

TO THE EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY AND DEFEND COMPANY, ITS MEMBERS, SUBSIDIARIES, AFFILIATES AND JOINT VENTURE PARTNERS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS ("INDEMNIFIED PARTIES") AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DAMAGES, JUDGMENTS, LIENS, PENALTIES AND EXPENSES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND LITIGATION COSTS, WHETHER INCURRED FOR AN INDEMNIFIED PARTY'S PRIMARY DEFENSE OR FOR ENFORCEMENT OF ITS INDEMNIFICATION RIGHTS (COLLECTIVELY, "CLAIM"), INCLUDING WITHOUT LIMITATION ANY CLAIM FOR HARM, INJURY, OR DEATH TO ANY PERSON, OR DAMAGE TO PROPERTY OR TO THE ENVIRONMENT, ARISING OUT OF OR IN CONNECTION WITH THE FOLLOWING: (i) ANY NEGLIGENCE OR WILLFUL MISCONDUCT OF VENDOR; (ii) ANY SALE OF ANY GOOD OR SERVICE BY VENDOR TO ANY CUSTOMER, OR ANY USE OR RESALE BY ANY CUSTOMER OF ANY GOOD OR SERVICE PURCHASED FROM VENDOR; OR (iii) ANY ALLEGATION THAT THE POSTING INFRINGES ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY OR VIOLATES ANY PROVISION OF LAW UNDER ANY JURISDICTION. VENDOR'S OBLIGATION TO INDEMNIFY AND DEFEND EXTENDS TO ANY CLAIM CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OR FAULT OF AN INDEMNIFIED PARTY BUT NOT TO ANY CLAIM SHOWN BY FINAL NONAPPEALABLE JUDGMENT TO HAVE BEEN CAUSED BY THE INDEMNIFIED PARTY'S SOLE NEGLIGENCE. COMPANY SHALL HAVE THE RIGHT, BUT NOT THE DUTY, TO PARTICIPATE IN THE DEFENSE AND SETTLEMENT OF ANY CLAIM OR LITIGATION WITH ATTORNEYS OF COMPANY'S SELECTION WITHOUT RELIEVING VENDOR OF ANY OBLIGATIONS UNDER THIS AGREEMENT. VENDOR SHALL COOPERATE WITH COMPANY IN COMPANY'S INVESTIGATION AND DEFENSE OF ANY CLAIM OR SUIT. VENDOR'S OBLIGATIONS UNDER THIS ARTICLE SURVIVE TERMINATION OF THIS AGREEMENT.

LIMITATION OF LIABILITY:

IN NO EVENT SHALL COMPANY BE LIABLE TO VENDOR OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY TO VENDOR FOR ANY DIRECT DAMAGES EXCEED THE TOTAL FEES PAID BY VENDOR TO COMPANY HEREUNDER.

DISPUTE RESOLUTION

Any controversy or claim ("Claim"), whether based on contract, tort, statute or other legal or equitable theory (including but not limited to any claim of fraud, misrepresentation or fraudulent inducement or any question of validity or effect of this Agreement including this clause) arising out of or related to this Agreement (including any amendments, annexations and extensions) or the breach thereof shall be settled by consultation between the parties. In the event of failure of such consultations within sixty (60) days (unless otherwise extended by mutual agreement of the parties) after receipt of the written notice of such Claim, then any such Claim shall be settled by binding arbitration in accordance with the then current CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration of Business Disputes and this provision. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16, to the exclusion of any provision of state law inconsistent therewith or which would produce a different result. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. The arbitration shall be held in Houston, Texas or such other location as may be convenient and agreed to in writing by the parties. There shall be one arbitrator. The arbitration shall determine the Claim of the parties and render a final award in accordance with the substantive law of the State of Texas, excluding the conflicts provisions of such law, unless otherwise agreed to in writing by the parties. The arbitrator shall set forth the reasons for the award in writing. The terms hereof shall not limit any obligation of a party to defend, indemnify or hold harmless another party against court proceedings or other claims, losses, damages, or expenses and in such event an ancillary dispute between the parties which arises out of the claim may be resolved in such forum.

GENERAL PROVISIONS:

The parties and their respective personnel are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

VENDOR may not transfer or assign its interest in this Agreement, in whole or in part, whether voluntarily, involuntarily or by operation of law, without the prior written consent of COMPANY, which consent shall not be unreasonably withheld. COMPANY may sell, transfer or assign its interest in this Agreement, in whole or in part. Any assignment in violation of this article is null and void.

Except as otherwise specified in this Agreement, all notices must be in writing. Any notice may be given by personal service, certified mail, regular mail, telegram, facsimile, mailgram, electronic mail, or overnight or local courier. Notice will be deemed given when: (i) deposited in the U.S. Mail, postage or charges pre-paid and directed to the party for whom intended at the address in this Agreement or such other address as directed by the party upon written notice to the other if given by certified mail or regular mail; (ii) deposited with the dispatching agency, postage or charges pre-paid and directed to the party for whom intended at the address in this Agreement or such other address as directed by the party upon written notice to the other if given by telegram, mailgram or overnight or local courier; (iii) confirmation is received by the sending party if given by facsimile; or (iv) the sending party is electronically notified by its electronic mail provider or program of delivery to the receiving party if given by electronic mail. For purposes of notice hereunder, the addresses to be used for COMPANY and VENDOR shall be:

To: Shell Oil Products US
Attn:
One Shell Plaza
910 Louisiana
Houston, TX 77002
713-241-8176 (Phone)
713-241-0138 (FAX)
Karen.A.Wisdom@Shell.com

To:
Attn:
Street address:
City, State, Zip:
Phone:
Fax:
Email Address:

This Agreement, as of the Effective Date hereof, cancels and supersedes all prior and contemporaneous representations, inducements, agreements, commitments, and undertakings with respect to the subject matter of this Agreement, except those written agreements relating to any indemnification, reimbursement, indebtedness or debt security obligations.

Except as expressly provided under this Agreement, this Agreement may be amended or supplemented only in writing signed by both parties.

Any waiver of any provision of this Agreement must be in writing signed by the parties. Either party's delay or failure to enforce any provision of this Agreement or any course of dealing or trade custom or usage will not operate as a waiver of compliance with that provision or a waiver or estoppel of the party's right to enforce any other provision of this Agreement.

The provisions of this Agreement are severable. If any provision of this Agreement is, for any reason, invalid or unenforceable, the remaining provisions of this Agreement are valid and enforceable if the basic intent of the parties is still capable of being achieved.

This Agreement is binding upon and enforceable against the parties' respective successors, permitted assignees, legal representatives, executors, administrators, heirs and legatees.

Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement is binding unless a duly authorized representative of COMPANY signs the Agreement, amendment or supplement.

Authorized COMPANY Representative

Signature: _____ Date: _____

Name: _____ Title: _____

Telephone: _____ Fax: _____

Authorized VENDOR Representative

Signature: _____ Date: _____

Name: _____ Title: _____

Telephone: _____ Fax: _____

Attachment A Shell Source "Big Rules" for Linking to External Sites
Attachment B Onboarding Process Form