

CO-EXISTENCE AGREEMENT

THIS AGREEMENT, executed as of the 19 day of July, 2013, is entered into by and between Animax Interactive LLC ("Interactive"), a Delaware limited liability company with offices at 6627 Valjean Avenue, Van Nuys, CA 91406, and Animation Investment, Inc. ("AII"), a California corporation with offices at 10202 W. Washington Blvd., Culver City, CA 90232.

WHEREAS, Interactive alleges that it has used the marks ANIMAX and various versions of the mark including but not limited to "Animax", "Animax Entertainment", "animax" and the "ANIMAX and Banana Design", and has applied to register such marks under Serial Nos. 77427664, 77427683, 77427709, 77427730, 77427749, 77426697, 77426722, 77427302, 77427337 and 77427388 on the Principal Register of the United States Patent and Trademark Office, for the following goods and services (the "Interactive Goods and Services"):

IC 009. Interactive multimedia video game programs, computer game programs and software, computer game cartridges, electronic game software, and electronic game programs, all for use with personal computers, home video game consoles used with televisions, hand-held devices including but not limited to mobile phones, PDAs and other portable electronic machines for playing video games and all downloadable from a global network on wired or wireless devices through the Internet, via CD-ROM, DVD-ROM, game cartridge or other media, and for arcade-based video game consoles; prerecorded CD's and DVD's featuring music, characters, and scene sequences in video game programs, television shows, motion picture films and music videos

IC 035. Development of marketing strategies and concepts; production of television commercials and public service announcements, including those on and through the Internet

IC 038. Broadcasting of audiovisual programming via stream, download or other means on wired or wireless devices through the Internet

IC 041. Entertainment services namely animated multimedia and audiovisual programming streamed, downloaded or otherwise exhibited on wired or wireless devices; Production and distribution of live action and animated entertainment programming, featuring live action and animation and animation themes, streamed, downloaded or otherwise exhibited on wired or wireless devices through the Internet, television and film; Production and distribution of television shows and movies; Production of DVDs, CD-ROMs, DVD-ROMs, videotapes and television programs featuring live action, animated and educational materials; Multimedia entertainment services in the nature of recording, production and post-production services in the fields of television, video, and films; Mobile media and entertainment services in the nature of content preparation, postproduction

IC042. Creation and maintenance of web sites, including the creation of web pages to and for third parties; Design of homepages and websites; Design, creation, hosting and maintenance of Internet sites for third parties, designing websites for advertising purposes; Hosting of websites; Website development

WHEREAS, AII alleges that it has used the mark ANIMAX in commerce in the United States, and owns registrations of its ANIMAX mark bearing Registration Nos. 3,795,143; 3,791,630 and 3,797,705 on the Principal Register of the United States Patent and Trademark Office, for the following services (the "AII Services"):

IC 038. Broadcasting of audiovisual programming via stream, download or other means on wired or wireless devices through the Internet

IC 038. Cable television broadcasting featuring animated programming

IC 041. Entertainment services, namely, animated audiovisual programming streamed, downloaded or otherwise exhibited on wireless devices

IC 041. Entertainment services in the nature of production and distribution of live and animated entertainment programming, featuring animation and animation themes, streamed, downloaded or otherwise exhibited on wired or wireless devices through the Internet

WHEREAS, the United States Patent and Trademark Office has cited AII's ANIMAX registrations against Interactive's applications; and

WHEREAS, the parties hereto recognize each other's rights in and to their respective marks for their respective goods and services, and wish to avoid any conflict with the other's use or registration of its marks; and

WHEREAS, the parties hereto have concluded that confusion is not likely to arise from their use and registration of their respective marks in connection with their respective goods and services above for the following reasons:

a) There are differences in the most significant uses made by Interactive and AII of their respective marks in that Interactive's primary business is the creation of animated or original content for others whereas AII's main business is the broadcast or transmission of audiovisual programs;

b) There are differences in the channels of trade in that Interactive primarily functions on a business-to-business level as it creates animated or original content mostly for third party clients, much of which does not display the "ANIMAX" mark, whereas AII's services are offered primarily to individual consumers who watch AII's ANIMAX network broadcasts on cable television or on wired or wireless devices.

c) The different logos used by the parties serve to further differentiate their marks. Copies of the parties' respective logos are attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. To better reflect the primary focus of its business activities, Interactive agrees to seek amendment of the specifications of goods and services in its pending applications to read as follows:

IC 009. Interactive multimedia video game programs, computer game programs and software, computer game cartridges, electronic game software, and electronic game programs, all for use with personal computers, home video game consoles used with televisions, hand-held devices including but not limited to mobile phones, PDAs and other portable electronic machines for playing video games and all downloadable from a global network on wired or wireless devices through the Internet, via CD-ROM, DVD-ROM, game cartridge or other media, and for arcade-based video game consoles; Prerecorded CD's and DVD's featuring music, characters, and scene sequences in video game programs, television shows, motion picture films and music videos

IC 035. Development of marketing strategies and concepts; Production of television commercials and public service announcements, including those on and through the Internet

IC 038. Transmission or streaming of audiovisual programming owned, created or produced by mark owner on wired or wireless devices through the Internet

IC 041. Production of live action and animated multimedia and audiovisual programming streamed, downloaded or otherwise exhibited on wired or wireless devices; Production of DVDs, CD-ROMS, DVD-ROMS, videotapes and television programs featuring live action, animated and educational materials; Recording, production and post-production in the fields of television, video, films, mobile media and Internet

IC042. Creation and maintenance of web sites, including the creation of web pages to and for third parties; Design of homepages and websites; Design, creation, hosting and maintenance of Internet sites for third parties, designing websites for advertising purposes; Hosting of websites; Website development

(the "Amended Interactive Goods and Services").

2. To better reflect the primary focus of its business activities, AII agrees to seek amendment of the specification of services in its registrations to read as follows:

IC 038. Broadcasting of audiovisual programming via stream, download or other means on wired or wireless devices through the Internet

IC 038. Cable television broadcasting featuring animated programming

IC 041. Entertainment services, namely, animated audiovisual programming streamed, downloaded or otherwise exhibited on wireless devices

IC 041. Entertainment services in the nature of distribution of live and animated entertainment programming, featuring animation and animation themes, streamed, downloaded or otherwise exhibited on wired or wireless devices through the Internet

(the "Amended AII Services").

3. Subject to paragraph 9 below, AII hereby consents to, and agrees that it will not take any action to interfere with or prevent Interactive's use of the mark ANIMAX in the United States or Canada or Interactive's registration of the Amended Interactive Services in the United States or Canada so long as Interactive does not seek to use or register the mark ANIMAX as the name of a broadcast cable television channel.

4. Subject to paragraph 9 below, Interactive hereby consents to, and agrees that it will not take any action to interfere with or prevent AII's use of the mark ANIMAX in the United States or Canada or AII's registration of the Amended AII Services in the United States or Canada.

5. Neither party shall oppose or assist others in opposing any application for registration of ANIMAX marks owned by the other party in the United States or Canada which is consistent with the terms and conditions of this Agreement. Interactive agrees to dismiss with prejudice its pending cancellation petition against AII brought before the Trademark Trial and Appeal Board, No. 92056031. If the U.S. Patent and Trademark Office does not accept the amendments described in paragraphs 1 and 2 above or does not accept this Agreement and pass Interactive's marks for publication, this Agreement nevertheless will remain in full force and effect.

6. Interactive represents and warrants to AII that (i) it has the right to enter into this Agreement and perform its obligations hereunder; and (ii) this Agreement does not conflict with any other agreements.

7. AII represents and warrants to Interactive that (i) it has the right to enter into this Agreement and perform its obligations hereunder; and (ii) this Agreement does not conflict with any other agreements.

8. The parties agree to execute and file with the United States Patent and Trademark Office any and all documents which may be necessary or proper to effectuate the terms of this Agreement, including the registration of the parties' respective marks.

9. The parties agree to continue to take reasonable action to prevent any confusion due to the coexistence and registration of their respective marks and to notify each other of any instances of confusion. The parties recognize that the logos currently used and shown on Exhibit A serve to further differentiate the parties' respective goods and services and agree that any future modification or change of logos will be done in a manner to retain this differentiation. In

furtherance on this goal of preventing confusion, each party will designate an individual to deal with questions of avoidance of confusion.

10. This Agreement shall apply to use and registration of the respective marks only in the United States and Canada. This Agreement and its provisions apply only in and to the Territory and may not be cited or relied upon for any purpose in any jurisdiction outside of the Territory.

11. All notices and other communications which are required in this Agreement shall be in writing and delivered personally or via certified mail, return receipt requested, to the addresses set forth in the Agreement, or to such other addresses as either party shall have specified by notice in writing to the other party. Notices shall be given to the parties' respective addresses provided herein, with a copy to Jacobson, Russell, Saltz, Nassim & de la Torre LLP, 10866 Wilshire Boulevard, Suite 1550, Los Angeles, CA 90024, Att Sunny S. Nassim, Esq, on behalf of Interactive, and with a copy to Lynn S. Fruchter, Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036 on behalf of All.

12. This Agreement will have perpetual duration unless either party abandons its mark, in which case this Agreement will become null and void.

13. The failure by either party to perform any of its material obligations hereunder shall not be deemed a breach of this Agreement unless the party alleged to be in default is given written notice of such failure to perform and such failure is not corrected within thirty (30) days of receipt of such notice.

14. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to the choice of law principles thereof. All actions or proceedings arising in connection with, touching upon or relating to this Agreement, the breach thereof and/or the scope of the provisions of this paragraph (a "Proceeding") shall be submitted to JAMS ("JAMS") for binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less (as applicable, the "Rules") to be held solely in Los Angeles, California, U.S.A., in the English language in accordance with the provisions below.

a) Each arbitration shall be conducted by an arbitral tribunal (the "Arbitral Board") consisting of a single arbitrator. The arbitrator shall be mutually agreed upon by the parties. If the parties are unable to agree on an arbitrator, the arbitrator shall be appointed by JAMS. The arbitrator shall be a retired judge with at least ten (10) years experience in commercial matters. The Arbitral Board shall assess the cost, fees and expenses of the arbitration against the losing party, and the prevailing party in any arbitration or legal proceeding relating to the Agreement shall be entitled to all reasonable expenses (including, without limitation, reasonable outside attorney's fees and costs). The parties shall be entitled to conduct discovery in accordance with Section 1283.05 of the California Code of Civil Procedure, provided that (a) the Arbitral Board must authorize all such discovery in advance based on findings that the material sought is relevant to the issues in dispute and that the nature and scope of such discovery is reasonable under the circumstances, and (b) discovery shall be limited to

depositions and production of documents unless the Arbitral Board finds that another method of discovery (e.g., interrogatories) is the most reasonable and cost efficient method of obtaining the information sought.

b) There shall be a record of the proceedings at the arbitration hearing and the Arbitral Board shall issue a Statement of Decision setting forth the factual and legal basis for the Arbitral Board's decision. If neither party gives written notice requesting an appeal within ten (10) business days after the issuance of the Statement of Decision, the Arbitral Board's decision shall be final and binding as to all matters of substance and procedure, and may be enforced by a petition to the Los Angeles County Superior Court or, in the case of Interactive, such other court having jurisdiction over Interactive, which may be made ex parte, for confirmation and enforcement of the award. If either party gives written notice requesting an appeal within ten (10) business days after the issuance of the Statement of Decision, the award of the Arbitral Board shall be appealed to three (3) neutral arbitrators (the "Appellate Arbitrators"), each of whom shall have the same qualifications and be selected through the same procedure as the Arbitral Board. The appealing party shall file its appellate brief within thirty (30) days after its written notice requesting the appeal and the other party shall file its brief within thirty (30) days thereafter. The Appellate Arbitrators shall thereupon review the decision of the Arbitral Board applying the same standards of review and all of the same presumptions as if the Appellate Arbitrators were a California Court of Appeals reviewing a judgment of the Los Angeles County Superior Court, except that the Appellate Arbitrators shall in all cases issue a final award and shall not remand the matter to the Arbitral Board. The decision of the Appellate Arbitrators shall be final and binding as to all matters of substance and procedure, and may be enforced by a petition to the Los Angeles County Superior Court or, in the case of Interactive, such other court having jurisdiction over Interactive, which may be made ex parte, for confirmation and enforcement of the award. The Appellate Arbitrators shall assess the costs, fees and expenses of the appeal against the losing party, and the prevailing party in any such appeal shall be entitled to all reasonable expenses (including, without limitation, reasonable outside attorney's fees and costs).

c) Subject to a party's right to appeal pursuant to the above, neither party shall challenge or resist any enforcement action taken by the party in whose favor the Arbitral Board, or if appealed, the Appellate Arbitrators, decided. Each party acknowledges that it is giving up the right to a trial by jury or court. The Arbitral Board shall have the power to enter temporary restraining orders, preliminary and permanent injunctions. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the Arbitral Board's award; provided, however, that prior to the appointment of the Arbitral Board or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief in a court of competent jurisdiction in Los Angeles County, California or, if sought by AII, such other court that may have jurisdiction over Interactive, without thereby waiving its right to arbitration of the dispute or controversy under this section. All arbitration proceedings (including proceedings before the Appellate Arbitrators) shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. Notwithstanding anything to the contrary herein, Interactive hereby irrevocably waives any right or remedy to seek and/or obtain injunctive or other equitable relief or any order with respect to,

and/or to enjoin or restrain or otherwise impair in any manner, the production, distribution, exhibition or other exploitation of any motion picture, production or project related to AII, its parents, subsidiaries and affiliates, or the use, publication or dissemination of any advertising in connection with such motion picture, production or project. The provisions of this paragraph shall supersede any inconsistent provisions of any prior agreement between the parties.

15. This Agreement may only be amended or supplemented in a writing signed by both parties.


16. This Agreement shall be binding upon and shall inure to the benefit of all the parties hereto, their parents, subsidiaries, affiliates, successors and assigns.

This Agreement may be executed in one or more counterparts but all of the counterparts shall constitute one agreement; provided, however, this Agreement shall not be effective and enforceable unless and until it is executed by each of the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto enter into this Agreement on the date set forth above.

ANIMAX INTERACTIVE, LLC

ANIMATION INVESTMENT, INC.

By: 
Name: Michael Bellaniz
Title: President

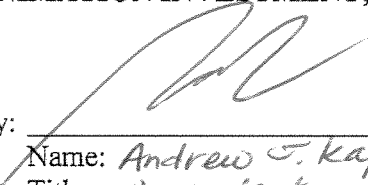
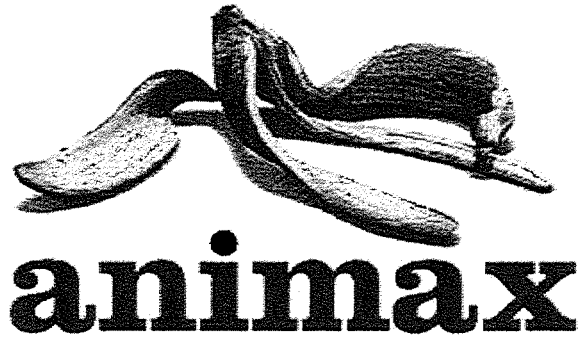
By: 
Name: Andrew J. Kaplan
Title: President

EXHIBIT A TO CO-EXISTENCE AGREEMENT

Animax Interactive LLC logo



Animation Investment, Inc. logo

