

# RENTRAK AGREEMENT

This AGREEMENT is between Rentrak Corporation ("Rentrak", "we" or "us") and \_\_\_\_\_ ("Retailer" or "you").

All prerecorded video programming, whether or not available from Rentrak and whether on videocassettes or other media is referred to as "Cassettes". Rentrak distributes Cassettes to Retailers pursuant to a lease arrangement named Pay-Per-Transaction<sup>SM</sup> ("PPT" or the "PPT System"). Cassettes leased from us via the PPT System are referred to as "PPT Cassettes". Retailer operates one or more establishments ("Store(s)") which rent Cassettes to the public. All Stores owned, operated, managed or controlled by you now and in the future shall be subject to and shall comply with the terms of this Agreement. In consideration of the mutual promises and agreements contained herein, Retailer and Rentrak agree as follows:

## 1. The PPT System.

1.1 Rentrak has established a system for retailers such as you to report Cassette rental and sales information to us. This system is referred to as the "Reporting System". Upon becoming a participant in the PPT System, we will provide you with information about PPT Cassettes. You agree to comply with the Reporting System and meet our standards, including the following:

1.1.1 Use the computer hardware and point-of-sale ("POS") system software we have approved.

1.1.2 Prior to ordering PPT Cassettes, successfully complete our tests of your computer system and communication ability.

1.1.3 Install and continuously maintain, on your computer system, our proprietary software (the Rentrak Profit Maker or RPM). The RPM belongs to Rentrak but during the term of this Agreement we grant you a non-transferable, non-exclusive limited use license to use it solely for the purpose of ordering Cassettes from and reporting information to us. In this Agreement we refer to your computer system, POS software and the RPM as your "POS System".

1.1.4 Implement all changes we make in the Reporting System.

1.1.5 Process, through your POS System, at the time of each transaction and report to us all rentals (including zero dollar rentals and late fees) and sales of all Cassettes. It is imperative that you report to us accurate, verifiable data with regard to the rentals and sales of Cassettes. Incorrect or inaccurate reporting by you to us will cause substantial damage to us and is a material breach of this Agreement.

1.1.6 Enter PPT Cassettes into your POS System before they are rented or sold and make them available for rent to customers within one day of receipt.

1.1.7 Not establish an electronic link with another person or company from which you obtain Cassettes. (You may provide information on Cassettes to others on magnetic tape, print-outs and/or diskettes.)

1.1.8 Not make any modifications or changes to your POS System that would in our reasonable judgment impair, alter or interfere with the reporting of rental and sale transactions to us.

1.2 If you fail to provide the required reporting described in this Section 1 to us within five (5) days, we may cancel existing orders, refuse to accept new orders and/or pursue other legal remedies.

1.3 You agree to immediately notify Rentrak in writing whenever you acquire (by ownership, control or operation) a Store, open a new Store, or cease ownership, control or operation of a Store.

## 2. The PPT Cassettes.

2.1 You agree to pay all amounts owed to us when due. You will also pay any sales, use, goods and services, property or other taxes of any kind due with respect to PPT Cassettes, excluding Rentrak's income taxes.

2.2 You will keep the PPT Cassettes at the Store to which the PPT Cassettes were originally shipped and prominently display them. You will use your best efforts to rent these Cassettes as often as possible and will not rent them in a single transaction for longer than seven days or such lesser time as established by Rentrak or the supplier. You will not rent them to other video retailers. PPT Cassettes may not be removed from your rental inventory or purchased for use as rental inventory prior to the end of the Cassettes' lease term.

2.3 You agree not to sell any of the PPT Cassettes prior to the date specified among the lease terms of particular PPT Cassette titles at the time of ordering through the PPT System, known as the "Sell Through Date." You may not purchase a PPT Cassette and use it as rental inventory, remove the title from rental availability except as provided herein, or take any other steps to deprive us of all available revenue under the established lease terms for the particular title. Once "used sell-through" is permitted for a particular title and if you operate more than one store, you may remove Cassettes no longer required for rental use in a particular Store to your Warehouse for subsequent sale in one of your other Store(s) by recording the same as a sale at the time of removal from the original store and making the required remittance to us.

2.4 If a PPT Cassette is "defective" and you return it, freight prepaid, we will ship you a new PPT Cassette, if available, or issue you a credit for the Order Processing Fee. Defective means the problem with the PPT Cassette was not caused by you or your customer and that it was returned to us within thirty (30) days of shipment. We will not owe you anything for any other problems caused by defective PPT Cassettes. During a title's lease term, you will display and make available for rental at each of your Stores at least one PPT Cassette of that title or, if more, the number designated by the supplier. Cassettes discovered missing in the ordinary course of business (prior to discovery by audit) are to be recorded and paid for when discovered as if they had been sold to the public. You agree to maintain property damage or loss insurance on all PPT Cassettes while they are in your possession in an amount equal to at least fifty-five (\$55) dollars per PPT Cassette. At the end of a title's lease term, you agree to return all PPT Cassettes which you have not sold as permitted in this Agreement, already returned to us, or, if permitted to, decided to keep. All returned PPT Cassettes must be in good condition, normal wear and tear excepted, and in their original packaging.

## 3. Reporting Requirements.

3.1 You agree to keep certain records and to make certain information regarding your video business available to us. The information collected and processed by us belongs to us and may be used by us for ordering and audit purposes. It may also be used or sold by us as long as the information is used in the aggregate with information from other retailers such that you are not identified.

## 4. Ordering Cassettes.

4.1 You are not required to lease any Cassettes from us. Likewise, we are not promising to lease a Cassette to you even if we offer it to other retailers. In addition, the companies from which we obtain Cassettes ("Program Suppliers") may for any reason decide not to allow us to make a particular title(s) available to you. PPT Cassettes will be shipped at our cost to the address you give us for your Store. We will use our best efforts to assure the PPT Cassettes arrive on or before their street date. If your order, or any portion of it, cannot be shipped, you or we may cancel the unfilled order (or the portion remaining unfilled) upon notice and without any further obligation to each other. If you lease Cassettes from us and obtain Cassettes of the same title from any other source, then all rentals or sales of Cassettes of that title will be treated as if the Cassettes were leased from us and you will owe the applicable fees.

## 5. PPT Fees.

5.1 When we offer you a title through the PPT System, we will inform you of the lease terms that apply to that title, such as the length of the lease, applicable fees, sell through date, etc. Upon placing the order, all of such terms will be deemed accepted by you. Generally, the lease terms include the following fees:

5.1.1 An "Order Processing Fee" consisting of an initial payment which may include sales, use, excise, goods and services or other taxes.

5.1.2 A "Transaction Fee", due for each rental (or extended viewing/late fee) of a PPT Cassette which includes a minimum charge regardless of whether any revenue is generated.

5.1.3 A "Sell-Through Fee" for each PPT Cassette sold by you. When ordering PPT Cassettes, we will inform you through the PPT System if you will be allowed to sell any copies of PPT Cassettes and the date after which you can sell them.

5.1.4 A "Buy-Out Fee" which will be charged if you are allowed to keep a PPT Cassette and not return it at the end of the lease term.

5.2 In addition, you will pay a monthly "Access/User Fee" (currently \$46 per Store) and a monthly "Processing Fee" (currently \$7 per Store). These fees are subject to change without notice.

## 6. Audits.

6.1 We and the Program Suppliers have the right to use "shopping services" and, without letting you know ahead of time, conduct on-site audits of your business operations and records during normal business hours. Our auditors may make copies of such records at our expense.

6.2 Within twenty-four (24) hours of our request, you will deliver to our on-site auditors a list of all PPT Cassettes, the number of PPT Cassettes of each title, the location of each PPT Cassette, including a list of the customers to whom PPT Cassettes are then on rental, and the Store from which each PPT Cassette was rented.

6.3 In addition, and not in lieu of any other damages to which we may be entitled, consequential or otherwise, you agree to pay us for each PPT Cassette that is missing (regardless of the reason) from Store inventory and not properly accounted for through the PPT System ("Missing Cassettes") \$90 per Missing Cassette if it is discovered missing within ninety (90) days of such title's street date and \$55 per Missing Cassette if it is discovered missing more than ninety (90) days of such title's street date. We both

acknowledge and agree that it would be impractical and extremely difficult to accurately estimate the damages Rentrak would suffer as a result of Missing Cassettes and that the amounts contained in this paragraph as liquidated damages for Missing Cassettes are a reasonable estimate of the damages suffered. Your payment of the amount stated in this paragraph is intended to be full, agreed to, and liquidated damages to Rentrak only for Missing Cassettes and is not intended as a penalty.

## 7. Term of Agreement.

7.1 The term of this Agreement shall commence after it is signed by you and on the earlier of the date Rentrak signs it or first ships PPT Cassettes to you. The Agreement shall continue until terminated by either of us in accordance with this Section 7.1. Upon receiving written notice of termination, this Agreement will terminate after (i) all of your obligations under this Agreement are satisfied, and (ii) ninety (90) days after the last day of the last lease term of the PPT Cassettes ordered by you.

7.2 Upon termination of a title's lease period, you shall cause to be delivered to us within fifteen (15) days, all PPT Cassettes not validly purchased or otherwise properly disposed as provided herein. The returned PPT Cassettes shall be in good condition (normal wear and tear excepted) and shipped in their original packaging. You shall ship the PPT Cassettes with all shipping and postage prepaid.

## 8. Default.

8.1 You will be in default (or breach) of your obligations under this Agreement if any of the following occur:

8.1.1 You fail to pay when due any amounts owed under this Agreement.

8.1.2 You close your store(s) or do not conduct business for seven (7) or more consecutive days.

8.1.3 You fail to comply with any of your obligations under this Agreement or any other Agreement between us.

8.2 If you default, we shall be entitled to take one or more of the following steps in addition to all other remedies available at law or equity (including consequential damages):

8.2.1 Terminate our Agreement with you. If we terminate this Agreement you will pay all amounts owed to us and return at your expense all PPT Cassettes in your possession within ten (10) days.

8.2.2 Suspend your rights under this Agreement, require you to pay all amounts you owe us within ten (10) days and/or require you to return at your expense all PPT Cassettes in your possession within ten (10) days.

8.2.3 All PPT Cassettes returned to us will be in good condition (normal wear and tear accepted) and shipped in their original packaging. If you do not return PPT Cassettes or the PPT Cassettes are not returned in good condition, then you will be required to pay us \$90 per PPT Cassette if we requested return of the Cassette within ninety days of the title's street date and \$40 per PPT Cassette if the request is made more than ninety days after the title's street date.

8.2.4 If your default consists of failure to report rental or sale transactions, you will be required to pay Rentrak \$55 per PPT Cassette if the reporting failure occurs within sixty days of the PPT Cassette's street date and \$30 per PPT Cassette if the failure to report occurs more than sixty days after the PPT Cassette's street date.

## 9. Miscellaneous.

9.1 You agree not to assign, by operation of law or otherwise, or to transfer this Agreement and any of your obligations under this Agreement without our prior written consent (an "Improper Transfer"), which shall not be unreasonably withheld. In this Agreement the merger or consolidation of Retailer with or into any other entity, the sale by you of all or substantially all your property or assets, or any change in control of Retailer (which shall mean any transfer by a sole proprietor, or of a majority voting interest in the stock of Retailer, if Retailer is a corporation, or in the partnership interest or membership interest of Retailer, if Retailer is a partnership, shall constitute an assignment of rights in violation of this paragraph. If you assign your rights in this Agreement without our prior written approval, you agree to pay us \$55 per PPT Cassette if the assignment occurs within sixty days of the PPT Cassette's street date and \$30 per PPT Cassette if the assignment occurs more than sixty days after the PPT Cassette's street date. We both acknowledge and agree that it would be impractical and extremely difficult to accurately estimate the damages Rentrak would suffer as a result of an Improper Transfer and that the amounts contained in this paragraph as liquidated damages for an Improper Transfer are a reasonable estimate of the damages suffered. The payment of the amounts set forth in this paragraph is intended to be full, agreed to, and liquidated damages to Rentrak only for the Improper Transfer and is not intended as a penalty.

9.2 Any consent, approval or notice that one of us gives to the other will be in writing. The writing will be deemed delivered ten days after it is sent by certified mail or one day after being faxed, to the authorized address. Your authorized address will be the most current correspondence address on file with us. Our authorized address is One Airport Center, 7700 NE Ambassador Place, Portland, Oregon 97220, attention: Legal Department. Telephone calls with us may be recorded. Our telephone number is (503) 284-7581. Our fax number is (503) 331-2734.

9.3 If a court decides that some part of this Agreement cannot be enforced then that part of the Agreement will be treated as if it were severed from the rest of this Agreement and the rights and obligations of each of us will be determined as if the Agreement did not contain the severed part. This Agreement may be modified from time to time by authorized Rentrak materials and contains all the agreements between us regarding the PPT System.

9.4 If any obligation under this Agreement is not fully and adequately secured by collateral pledged by you, Guarantor forever waives and relinquishes any claim or right to payment Guarantor has by subrogation or otherwise. The intent of this provision is to insure that Guarantor is not a creditor of Retailer within the meaning of 11 U.S.C. 547(b) or any provision of the Canadian *Bankruptcy and Insolvency Act*.

9.5 If any fees or costs are incurred to enforce this Agreement, or if any suit or action is brought to enforce any provision of this Agreement, or for damages for the breach of any of the terms of this Agreement, the prevailing party shall be entitled, at trial and on appeal, if any, to reasonable attorney fees and costs as awarded by the court. This Agreement is and shall be deemed accepted in Oregon and interpreted and enforced in accordance with the laws of the State of Oregon applicable to contracts to be made and to be performed entirely within this state. Retailer agrees that the Circuit Court of the County of Multnomah, State of Oregon, or the Federal Court for the District of Oregon shall have jurisdiction over all disputes which may arise hereunder, provided that nothing herein shall prevent Rentrak at its election from proceeding against Retailer in the courts of any province, state or country. Retailer waives any right it may have to assert the doctrine of forum non conveniens or to object to such venue and hereby consents to any court-ordered relief.

9.6 We and you intend that this Agreement shall constitute a true lease of Cassettes between you as lessee and us as lessor. Ownership and legal title to the Cassettes shall not transfer or otherwise pass from Rentrak to you during or following the lease term unless you have properly accounted for the purchase of the Cassettes in accordance with the terms hereof and paid Rentrak all fees due including the applicable sell-through or end-of-term buyout fee. You have a fiduciary duty to us to hold and remit all fees and charges to us and to report to Rentrak in accordance with the terms of this Agreement. You agree to hold in trust for us our share of the rental and sales proceeds you receive

9.7 RENTRAK MAKES NO WARRANTY WITH RESPECT TO THE PPT CASSETTES, EXPRESS OR IMPLIED, AND RENTRAK EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OR INABILITY TO USE THE PPT CASSETTES.

## RETAILER SIGNATURE

By \_\_\_\_\_

Print Name \_\_\_\_\_ Date \_\_\_\_\_

### CHECK ONE OF THE FOLLOWING:

I am the sole owner of my video business and it is not a partnership or corporation.

My video business is a partnership and I am the general partner.  
The partnership name is \_\_\_\_\_

My video business is a corporation and I am an officer of the corporation. The name of the corporation is \_\_\_\_\_, the province of incorporation is \_\_\_\_\_, and the date of incorporation is \_\_\_\_\_.  
My title is \_\_\_\_\_.

**IF YOU SIGNED EITHER THE PARTNERSHIP OR THE CORPORATE SIGNATURE BLOCK, YOU MUST COMPLETE THE GUARANTEE AT THE RIGHT.**



Rentrak Corporation, P.O. Box 18888, Portland, OR 97218-0888 • One Airport Center, 7700 NE Ambassador Place, Portland, Oregon 97220 • (800) 929-0070, fax (503) 331-2734  
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## GUARANTEE

The undersigned individual(s), in order to induce Rentrak to enter into with Retailer the attached Agreement do jointly and severally unconditionally and irrevocably guarantee to Rentrak, its successors and assigns, full and complete payment and performance by Retailer of all of the provisions, conditions, covenants, and agreements contained in the Agreement, do jointly and severally agree to the terms of the Agreement, expressly including the terms set forth in paragraph 9.5, and do waive all notice of default by Retailer, notice of the acceptance of this guarantee by Rentrak and consent to any extension of time which may be given by Rentrak to Retailer of time for payment or performance of any of Retailer's obligations hereunder. Without exonerating in whole or in part the undersigned, Rentrak may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from the release or discharge any or all present or future securities, may abstain from taking securities from or from perfecting, registering, renewing or realizing upon securities of, may accept composition from and may otherwise deal with the Retailer and all other persons (including the undersigned and any other guarantor) and securities as Rentrak may see fit.

By \_\_\_\_\_

Print Name \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_ Date \_\_\_\_\_

DO NOT COMPLETE

RENTRAK SIGNATURE Agreement accepted by: \_\_\_\_\_

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