

SEPARATION AGREEMENT & MUTUAL RELEASE

This Separation Agreement & Mutual Release (hereinafter "Agreement") is entered into between Gary Beer (hereinafter "Mr. Beer") and the Smithsonian Institution, 1000 Jefferson Drive, S.W., Washington, D.C. 20560 (hereinafter "the Institution"), on the following terms:

STATEMENTS BY MR. BEER & THE INSTITUTION

1. WHEREAS, Mr. Beer was engaged by the Institution as the CEO of Smithsonian Business Ventures (SBV) and was employed under an employment agreement whose term concluded on September 30, 2007;
2. WHEREAS, during his employment with the Institution, the Office of the Inspector General ("OIG") investigated Mr. Beer's business-related expenses and issued a report that stated that the OIG "did not see any expenditures that violated the law;"
3. WHEREAS the Institution likewise was and is not aware of any evidence either that Mr. Beer unlawfully used Institution funds for his personal gain or that he engaged in conduct that would have amounted to 'cause' as that term is defined under his employment agreement;
4. WHEREAS, Mr. Beer and the Institution mutually agreed in July 2007 that it was in the best interests of the Institution to initiate a change in leadership in SBV;
5. WHEREAS, under his employment agreement with the Institution, had Mr. Beer been involuntarily terminated, without cause, at that time, he would have been entitled to receive twelve (12) months of compensation as severance benefits at his then current salary or \$350,000;
6. WHEREAS, Mr. Beer has sought indemnification for substantial attorneys' fees incurred in connection with the OIG's review of his fiscal year 2001-2005 business expense reports;
7. WHEREAS, Mr. Beer agreed to resign his employment irrevocably with the Institution effective July 31, 2007, and the Institution accepted Mr. Beer's resignation;
8. WHEREAS, Mr. Beer and the Institution agree that it is the best interest of both parties to resolve any and all differences between them in connection with Mr. Beer's employment and resignation of employment.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

RELEASE OF CLAIMS BY MR. BEER

9. Mr. Beer hereby releases any and all claims of any kind that he has or might have against the Institution and against its Regents, officers, employees, and agents (hereinafter collectively "the Released Parties") that arise from any events occurring on or before the date on which he

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signs this Agreement. Mr. Beer waives any and all rights that he has or might have to bring any suit, charge, or demand of any kind against the Institution or the Released Parties. The claims that Mr. Beer is releasing include, but are not limited to, (i) all claims arising under federal, state, District of Columbia, or local laws prohibiting discrimination based upon age, race, color, sex, religion, disability, national origin, or any other basis including, but not limited to, the Age Discrimination in Employment Act (ADEA); (ii) any claims for "wrongful discharge," breach of contract, retaliation or other legal restrictions on the Institution's right to control or terminate the employment of its employees; (iii) any claims under any tort, or public policy, contract theory, including but not limited to infliction of emotional distress, harassment, defamation, fraud, misrepresentation, or invasion of privacy; (iv) all claims arising under common law or any state, District of Columbia, federal, or local statute, ordinance, or regulation; and (v) all claims for attorneys' fees and costs.

10. Mr. Beer waives any right to indemnification with respect to the legal fees incurred for the review of Mr. Beer's reimbursable expenses by the OIG for Fiscal Years '01 - '05, and any Internal Revenue Service proceedings arising out of those reviews by the OIG. However, the parties recognize that the right to a defense provided in the Institution's Revised Indemnification Policy is in the interest of both the Institution and those employed by the Institution. Accordingly, notwithstanding the release of claims in the preceding paragraph 9 and except as otherwise specifically provided herein, Mr. Beer does not waive his right to assert any other claim for indemnification as a "covered person" under the Revised Indemnification Policy and nothing in this Agreement is intended to waive such indemnification rights. This includes the right to seek indemnification for the legal expenses incurred in connection with the review of his expenses by the OIG for Fiscal Year's 2006 and 2007. However, he agrees not to use in any manner the payment or allocation of any such referenced attorneys' fees in paragraphs 15 and 15.1 below as evidence or an argument in support of the appropriateness of potential future claims for indemnification.

11. This Agreement will not have any effect upon Mr. Beer's rights under any qualified retirement plan or any COBRA continuation coverage rights he may have.

12. If Mr. Beer individually or through a third party files a lawsuit, complaint, charge, cause of action, or makes a demand against the Institution or any of the Released Parties that is found to be based on claims that are released by this Agreement, he will be obligated to pay all costs incurred by the adverse party, including reasonable attorneys' fees, in defending against or participating in such proceeding and he agrees that he will not be entitled to any legal or equitable relief or damages personal to him as a consequence of such a proceeding. This Agreement does not waive rights or claims based upon or arising from events occurring after Mr. Beer's signing of this Agreement or his right to enforce this Agreement. It does waive claims concerning the future consequences of events that occurred before Mr. Beer's signing of this Agreement. The general release of claims in this Agreement includes all possible claims by Mr. Beer against the Institution or any of the Released Parties, including those that Mr. Beer is not currently aware of or that Mr. Beer does not now suspect to exist.

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RELEASE OF CLAIMS BY THE INSTITUTION

13. Except as otherwise set forth herein, the Institution hereby releases any and all claims of any kind that it has or might have against Mr. Beer based on or arising from any events occurring on or before the date on which it signs this Agreement. Except as otherwise set forth herein, the Institution waives any and all rights that it has or might have to bring any suit, charge, or demand of any kind against Mr. Beer. The claims that the Institution is releasing include, but are not limited to, (i) any claims for breach of contract; (ii) any claims for reimbursement of business expenses, but only for periods prior to October 1, 2005, (iii) all claims under any tort or contract theory, including but not limited to infliction of emotional distress, harassment, defamation, fraud, misrepresentation, or invasion of privacy; and (iv) all claims arising under common law or any state, District of Columbia, federal, or local statute, ordinance, or regulation. The Institution does not release Mr. Beer from any claims for reimbursement of business expenses paid or incurred on or after October 1, 2005 or from his agreement to repay the Institution up to \$28,707 as set forth in paragraph 15 below.

14. The Institution covenants that it will not file or initiate any suits, complaints, charges, causes of action, claims, or demands against Mr. Beer based upon or arising from events occurring prior to the time it signs this Agreement and covered by the release set forth in paragraph 13 above. If the Institution files a lawsuit, complaint, charge, cause of action, or makes a demand against Mr. Beer that is found to be based on claims that are released by this Agreement, it will be obligated to pay all costs incurred by Mr. Beer, including reasonable attorneys' fees, in defending against or participating in such proceeding. This Agreement does not waive rights or claims relating to the enforcement of this Agreement or claims based upon or arising from events occurring after the Institution's signing of this Agreement. It does waive claims concerning the future consequences of events that occurred before the Institution's signing of this Agreement. The general release of claims in this Agreement includes all possible claims by the Institution against Mr. Beer, including those that the Institution is not currently aware of or that the Institution does not now suspect to exist.

COMMITMENTS BY THE INSTITUTION & MR. BEER

15. Within three (3) days after expiration of the seven-day revocation period specified in paragraph 25(h), the Institution will pay the gross sum of One Hundred Eighty Thousand Dollars (\$180,000) ["settlement sum"] to Mr. Beer or his designee (which may include his counsel). Mr. Beer agrees to repay to the Institution, consistent with the OIG's recommendation, the sum of \$28,707, subject to possible further reductions as provided in paragraph 20 below. The payment of such settlement sum is for the release of claims herein by Mr. Beer and in full satisfaction of any sums remaining due to Mr. Beer under his Fourth Employment Agreement (and any prior Employment Agreements between Mr. Beer and the Institution), including but not limited to salary (not including any payments for accrued and unused annual leave payments), bonuses, and long-term incentive payments.

15.1 If Mr. Beer decides to allocate any portion of the settlement sum to his counsel for attorneys' fees, he agrees to provide the Institution signed statements(s) from his attorneys

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certifying that their fees for services on or before the date of this agreement were at least the sum specified.

16. Mr. Beer will be reimbursed for any outstanding unreimbursed business expenses incurred between October 1, 2005 and July 31, 2007 if appropriate substantiation is provided in accordance with SBV policy is submitted within 45 days of the signing of this Agreement and approved by the Acting Secretary. Mr. Beer will also be paid the sum of \$29,000, representing payment for the approximate balance of accrued but unused vacation due to Mr. Beer upon his resignation, within three (3) days after expiration of the seven-day revocation period specified in paragraph 25(h).

16.1 Within three (3) days after the expiration of the seven-day revocation period specified in paragraph 25(h) Acting Secretary Cristián Samper will provide a signed original statement concerning Mr. Beer in the form attached to this Agreement as Appendix A.

16.2 In order that Mr. Beer may provide the responses specified in paragraph 18 below and in order that Mr. Beer will be able to make appropriate presentations to the IRS as specified in paragraph 22 below, the Smithsonian agrees to promptly provide Mr. Beer with all information in its possession requested by Mr. Beer that is relevant to any issues concerning his business expenses in fiscal years 2006 and 2007, at no cost to Mr. Beer. The Smithsonian further agrees to preserve all documents in its possession relating to Mr. Beer's business expenses in 2003, 2004, and 2005, including but not limited to, all of Mr. Beer's emails and his calendars, for a period of at least five years from the date of this Agreement. The Smithsonian further agrees that, subject to his confidentiality obligations as set forth in paragraph 16.3, Mr. Beer may retain documents in his possession that are relevant to any potential presentation to the IRS and use those documents in the course of any IRS review. Mr. Beer agrees to provide the Smithsonian with a copy of all the referenced documents in his possession (or make them available for copying by the Institution) within forty-five (45) days of the closing of this Agreement.

16.3 Mr. Beer agrees not to take any actions that would tortiously interfere with any contractual relationships between the Smithsonian and its vendors or customers. Mr. Beer agrees to be bound by the Smithsonian Standards of Conduct that apply to post-employment conduct, specifically Section 8 to the extent applicable under federal law. Mr. Beer agrees to abide by the non-disclosure obligations of section 7 of his Fourth Employment Agreement and further not to disclose any Smithsonian information which is of a trade secret or privileged nature to any third party (including the competitors listed in his employment agreement). Such information may include private, personal, or business-related information furnished to the Smithsonian in confidence. In return, the Institution releases Mr. Beer from the non-compete provisions of section 8 of his Fourth Employment Agreement.

17. Mr. Beer agrees to cooperate and to assist the Smithsonian in good faith in its prosecution or defense of any administrative claim or litigation based upon or arising from events that occurred during his employment with the Smithsonian, including but not limited to the claims of [REDACTED] now pending before the EEOC, by developing and providing truthful testimony. The Smithsonian will reimburse Mr. Beer for his reasonable actual expenses incurred in

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connection with such cooperate and assistance, subject to submission of proper documentation in compliance with Smithsonian policies.

18. The Institution reserves the right to seek repayment from Mr. Beer for any fiscal years 2006 and 2007 expenses which the OIG determines lacked any business purpose or were personal to Mr. Beer. Mr. Beer disagrees with this standard and believes that the only expenses that should be repaid are those that *in fact* lacked any business purpose and were personal to Mr. Beer. The Institution agrees to provide a copy of the OIG report concerning fiscal year 2006-2007 expenses at least two weeks before the report is released outside the Smithsonian. Mr. Beer will have 90 days to respond to the IG's findings concerning fiscal years 2006 and 2007 expenses. The Institution will consider the information provided by Mr. Beer in good faith before determining any amounts requested to be repaid (or recategorized as income pursuant to paragraph 22 below).

19. Mr. Beer shall have 45 days from the date of this Agreement to provide evidence of business purposes for some or all of the \$28,707 in expenses that the Audit and Review Committee found to be personal or unsupported in accordance with the OIG report. The Institution will consider such evidence in good faith in determining the amount to be repaid by Mr. Beer.

TAX ISSUES

20. On Friday, July 27, 2007 the Institution's Audit and Review Committee voted to accept the recommendations of the OIG with respect to the tax treatment of his business expenses. Mr. Beer strongly disagrees with this decision by the Audit and Review Committee, but has decided not to pursue these issues further in the context of the Institution's internal procedures and instead to have them resolved by the Internal Revenue Service, if necessary. The Institution agrees that the Internal Revenue Service would be the appropriate entity to address such issues.

21. The Institution has issued or will issue amended Forms W-2 to Mr. Beer for the tax years 2003 (\$28,578.94), 2004 (\$14,248.13), and 2005 (\$19,782.65) showing additional income to Mr. Beer in the total amount of \$62,609.72. The Institution recognizes that Mr. Beer objects to the issuance of such Forms W-2 and that Mr. Beer contends that none of the business expenses submitted by him should be treated as income to him. Nothing in this Agreement is intended to prejudice Mr. Beer's rights to assert these positions before the Internal Revenue Service or in any other forum. In addition, the Institution will issue 1099s to both Mr. Beer and any designated attorneys for the amount of \$180,000 referred to in paragraph 15 above and make no withholdings from that payment.

22. In the event that the OIG's 2006-07 Review determines that certain business expenses were inadequately supported and should be reported as additional taxable income to Mr. Beer, the Institution will issue amended Forms W-2 to Mr. Beer. Mr. Beer may object to the IRS regarding the issuance of such Forms W-2 and contend that none of the business expenses submitted by him should be treated as income to him. Nothing in this Agreement is intended to

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prejudice Mr. Beer's rights to assert this position before the Internal Revenue Service or in any other forum.

23. Nothing in this agreement will prevent the Institution from making all accurate reporting on any other Internal Revenue Service information returns that it believes to be required. Mr. Beer may object to the issuance of such returns and nothing in this agreement is intended to prejudice Mr. Beer's rights (if any) with respect to such returns. This agreement shall not relieve Mr. Beer from any tax liability that may be imposed by the Internal Revenue Service or any other taxing authority.

GENERAL PROVISIONS

24. This Agreement supersedes any and all previous agreements or contracts (written or oral, expressed or implied) that may have existed between the Institution and Mr. Beer prior to the date of this Agreement, specifically excluding paragraph 7 of the Fourth Employment Agreement (but including paragraph 8 thereof), but does not supersede any indemnification rights preserved in paragraph 10 above.

25. Mr. Beer acknowledges that the following representations are accurate and true:

(a) This Agreement is written in a manner that I can and do understand. I have read this Agreement carefully and understand it and agree to it.

(b) I understand that this Agreement specifically waives all of my claims against the Institution arising under any statute (including but not limited to the ADEA), regulation, contract, or under common law, which are based upon or arising from events occurring at any time before the signing of this Agreement (with the exceptions specified in paragraphs 10 and 11 above).

(c) I understand that this Agreement does not waive rights or claims based upon or arising from events occurring after the signing of this Agreement, but that it does waive claims based on the future consequences of events that occurred before the signing of this Agreement.

(d) I understand that my release of claims includes all possible claims, including those of which I am not currently aware or that I do not now suspect to exist.

(e) I understand that my waiver of rights and claims in this Agreement is made in exchange for monetary payments that are in addition to what I would otherwise be entitled to.

(f) The Institution has advised me to consult with an attorney prior to signing this Agreement and that I have in fact consulted with counsel.

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(g) In making my decision to sign this Agreement, I have not relied upon any oral representations or statements. I have voluntarily chosen to sign this Agreement.

(h) I have been allowed a period of at least 21 days in which to consider this Agreement prior to signing it, but I voluntarily and knowingly waive that 21-day period. I further understand that for seven (7) days following my signing of this Agreement, I may revoke my agreement to the above terms. I further understand that the Institution's agreement to pay money to me will not become effective and no monetary payments will be made until this seven-day period has ended.

26. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors, and assigns.

27. Neither party makes any admission of liability or wrongdoing by entering into this Agreement, and the parties do not intend that the Agreement shall be interpreted as such an admission of liability or wrongdoing. Both parties specifically deny that they have engaged in any unlawful or improper conduct.

28. The parties agree that this Agreement shall be construed and enforced under, and in accordance with, the laws of the District of Columbia, without reference to the conflicts of laws principles thereof.

29. This Agreement constitutes the entire understanding between the parties. The terms of this Agreement may not be amended orally, but only by means of a writing signed by both parties.

30. This Agreement will become effective when both parties have signed it. This Agreement may be signed in multiple counterparts, each of which shall constitute an original for all purposes.

30.1 It is understood by the parties to this Agreement that its contents are not confidential and may be publicly disclosed. It is further understood by the parties that the Institution, each of the Released Parties and Mr. Beer are free to comment lawfully about the other and are not restricted in doing so by this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seal as of the date noted below.

Date: _____

Gary Beer

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Gary Beer

Date: 12/17/07

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For the Smithsonian Institution



Date: 12/14/07

Cristián Samper

WP-GB/SI-0535

