

F- Kowal Contract Draft

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1/23/96

Agreement for Susan Blohm

## AGREEMENT

This Agreement is made as of the 1st day of January, 1996, by and between Philip Morris Incorporated, a Virginia corporation, with executive offices located at 120 Park Avenue, New York, New York 10017 ("Philip Morris"), and Kowal & Associates, Inc., a Delaware corporation, with principal offices at 75 Federal Street, 8th Floor, Boston, Massachusetts 02110-1904 ("Kowal"), pursuant to which Kowal will render services to Philip Morris under the terms and conditions stated.

1. Services.

Kowal will perform consulting and telemarketing services in connection with Philip Morris' consumer promotion, database, sales and corporate affairs programs and such other programs at Philip Morris' request (the "Programs"). The precise services to be rendered, dates and locations will be described in separate Project Agreements (the "Project Agreements") which may be signed by the parties throughout the term of the Agreement in the form attached as Exhibit A. Kowal will perform the following services and such additional services as may be agreed upon by Philip Morris and Kowal and specified in the Project Agreements.

(a) Consulting Services: Kowal will provide the following if and when requested by Philip Morris and agreed to by Kowal:

- (i) Assist Philip Morris in planning and implementing the Programs to satisfy Philip Morris' marketing needs,
- (ii) conduct research as to the identity and qualifications of, and develop and deliver written recommendations for the use by Philip Morris of, vendors (including, if applicable, Kowal) who provide

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any one or more of inbound telemarketing, outbound telemarketing, Interactive Voice Response ("IVR") and database building services,

- (iii) ~~supervise~~ monitor, review and audit in accordance with Philip Morris' instructions the activities of third party vendors and suppliers of services retained by Philip Morris ("Vendors"),

~~including providing direction to the Vendors in accordance with Philip Morris' instructions,~~

- ~~(iii)~~ (iv) review training and scripting materials subject to Philip Morris' advance written approval and make recommendations for the improvement of such materials, and

- ~~(iv)~~ (v) prepare, develop and deliver reports and analyses in a format satisfactory to Philip Morris.

(b) Inbound Telemarketing Services: Provide the following services at Kowal's ~~in-house~~ Proud Voices telemarketing center if and when requested Philip Morris and agreed to by Kowal:

- (i) Perform all telemarketing services requested by Philip Morris and agreed to by Kowal in connection with the establishment and maintenance of national, operational 1-800 and 1-888 toll-free telephone numbers (the "Toll-Free Numbers") which shall be owned by Philip Morris and used in connection with the Programs,
- (ii) use commercially reasonable best efforts to ensure that the Toll-Free Numbers are accessible to consumers twenty-four hours per day, seven days per week unless otherwise approved in writing, in advance, by Philip Morris,
- (iii) hire, train, supervise and pay customer service representatives ("CSRs") to collect information from, and provide information to, callers on the Toll-Free Numbers, and
- (iv) provide information collected by CSRs to Philip Morris if and when requested by, and in a format satisfactory to, Philip Morris.

(c) Outbound Telemarketing Services: Provide the following services at Kowal's ~~in-house~~ Proud Voices telemarketing center if and when requested by Philip Morris and agreed to by Kowal:

- (i) Provide Philip Morris with telemarketing support in connection with consumer surveys, satisfaction and callbacks, sales force programs and other Programs designated by Philip Morris, and
- (ii) participate actively in Program design and implementation and deliver information compiled by Kowal in connection with its outbound telemarketing efforts to Philip Morris if and when requested by, and in a format satisfactory to, Philip Morris.

(d) Interactive Voice Response Services: Provide the following services at Kowal's ~~in-house~~ Proud Voices telemarketing center if and when requested by Philip Morris and ~~agreed to by Kowal~~:

- (i) Conduct research, develop and deliver written recommendations to Philip Morris for the use of ~~Interactive Voice Response ("IVR")~~ IVR technology, and
- (ii) provide real-time automatic number identification ("ANI") technology and capability for on-line validation of information entered by callers (if such capability is compatible with Philip Morris' long-distance service) and provide training for the use of the technology.

(e) Database Building Services: Provide the following if and when requested by Philip Morris and ~~agreed to by Kowal~~:

- (i) Design, build and maintain in the manner and form mutually agreed upon by the parties and in accordance with specifications designated or approved by Philip Morris, databases which are confidential and proprietary to Philip Morris ("Databases"), and

- (ii) permit Philip Morris and third parties designated by Philip Morris unrestricted, direct on-line access to the Databases.

(f) If and when requested by Philip Morris and subject to Philip Morris' advance approval, Kowal will obtain competitive bids from potential third party suppliers of telemarketing and IVR services and assist Philip Morris in the negotiation of the pricing and other contract terms for agreements to be entered into between Philip Morris and Vendors.

(g) ~~If and when requested in writing by~~ **Subject to the prior written approval** ~~of~~ Philip Morris, Kowal will retain, supervise, administer payments to, and rebill Philip Morris for the services of Vendors, including third party suppliers of telemarketing services, database services suppliers of IVR ("IVR Suppliers") and suppliers of other products and services approved in advance by Philip Morris. ~~The parties agree that Philip Morris will enter into direct contracts with any Vendors whose fees for services on any one project are expected to be \$10,000 or more. Additionally, Philip Morris will enter into direct contracts with any Vendor whose services on multiple projects during any one calendar year are expected to be (in the aggregate) \$20,000 or more. Philip Morris further agrees that, although Kowal may be charged with the responsibility of supervising or monitoring the performance of certain Vendors hereunder, Kowal will not be responsible or liable for any losses or damages that may be incurred by Philip Morris. Vendors, including IVR Suppliers, shall be independent contractors of either Kowal or Philip Morris, and shall not be, or be deemed to be, agents of either Kowal or Philip Morris.~~

- (h) Be available to meet at reasonable times with Philip Morris representatives at Philip Morris headquarters in New York or other locations designated by Philip Morris; and
- (i) Perform other services reasonably requested by Philip Morris and agreed to by Kowal in connection with the Programs.

2. Payment.

In consideration for the services performed by Kowal, Philip Morris will pay Kowal hourly fees ("Fees") in accordance with the Rate Schedule set forth in Exhibit B to the Agreement. Time spent by Kowal representatives traveling to and from Philip Morris headquarters in New York City four times per individual per calendar month will not be charged. In addition, Philip Morris will have the right to approve in advance the attendance by any Kowal representatives at such meetings. Time spent by Kowal representatives traveling to and from the locations of third parties at the request of Philip Morris or to and from meetings at Philip Morris headquarters in New York in excess of four times per individual per calendar month will be charged to Philip Morris at half the normal hourly billing rate for the Kowal representative. ~~Philip Morris acknowledges that Kowal will issue invoices each month for its services and costs advanced~~ On the day of each calendar month Kowal will issue an invoice for all Fees for services charged and all expenses and other third party charges incurred by Kowal pursuant to this Agreement during the preceding calendar month. Such invoices will itemize for each Project Agreement, the Kowal representative's name, date and type of services performed, payment due and other information reasonably requested by Philip Morris. All invoices will be sent by overnight mail or courier

service at Kowal's sole expense and will be deemed received by Philip Morris on the date received, as evidenced by the courier's records or the records of the delivery person, if personally delivered. Philip Morris will review each invoice and deliver any objections to Kowal no later than five business days after its receipt of the invoice. Upon delivery by Kowal of a revised invoice, Philip Morris will review such revised invoice and will deliver any remaining objection, or its approval of the revised invoice, to Kowal no later than five business days after its receipt of the revised invoice. Payment in full will be due on the 31st day after receipt by Philip Morris of an undisputed invoice and on the \_\_\_\_\_ day after approval by Philip Morris of a revised invoice. Changes to any invoice that result in a decrease of the amount due from Philip Morris, or which are not material to the invoice, will not require the generation of a new invoice by Kowal and will not affect the due date for payment; provided, that Kowal agrees to furnish Philip Morris with a replacement invoice in the event any change reflecting an increase in the original invoice is required, however the invoice date and deemed date of delivery of the replacement invoice will be the same as the original. Payment for Fees for consulting services described in Section 1(a) and 1(i) of this Agreement ~~only~~ will be subject to an optional 1% discount if Philip Morris delivers payment for such Fees for services to Kowal within ten days following receipt approval of an invoice by Philip Morris. Payments to Kowal for expenses and for other fees third party charges will not be subject to any discount for early payment. ~~Philip Morris agrees to pay a late payment charge equal to 1% of the amount of the invoice per month on any invoice not paid within 60 days of receipt of the invoice.~~ Total Fees for services to Kowal will not exceed the total amounts set forth in the

Project Agreements without the advance written approval of Philip Morris. Kowal will not be required to provide services under Section 1 of this Agreement or any Project Agreement after such time as Kowal's Fees for services exceed the amount provided under the Project Agreement unless and until the Project Agreement is amended to increase the amount provided to cover such additional services.

3. Expenses

Philip Morris will reimburse Kowal, at cost, for reasonable, competitively priced expenses incurred by Kowal in providing services up to the maximum amount stated in the Project Agreements for such services. The total reimbursement for expenses, other than travel and postage expenses, under any Project Agreement shall not exceed the maximum stated in such Project Agreement without the prior written approval of Philip Morris. The total reimbursement for postage expenses, under any Project Agreement shall not exceed the amount of the Postage Fund (as hereinafter defined) for such Project Agreement without the prior written approval of Philip Morris. Requests for reimbursement must be itemized and submitted monthly. Expense items in excess of \$25 must be submitted with receipts. Expense items in excess of \$250 must be approved in advance by Philip Morris.

(a) Travel Expenses: Philip Morris shall not be required to reimburse Kowal for travel expenses related to any overnight stay unless such stay is approved in writing in advance by Philip Morris. Meal expenses for Kowal employees while traveling shall not exceed \$50 per person per day ~~except that in New York City such sum shall be \$~~\_\_\_\_\_.

(b) Postage Expenses: Each Project Agreement entered into pursuant to this Agreement will include an amount budgeted for postage expenses (the "Postage Fund"). The Postage Fund will be used to pay for U.S. Postal Service postage incurred by Kowal in performing services under such Project Agreement. Upon execution of each Project Agreement and submission of a budget for postage expenses signed by both parties and accompanied by an invoice, Philip Morris will advance to Kowal an amount equal to the Postage Fund for such Project Agreement. If the amount of postage paid by Kowal is projected to exceed the amount of the Postage Fund, Philip Morris will advance to Kowal, upon receipt of a revised estimate from Kowal, the additional funds agreed upon by Kowal and Philip Morris; provided, however, that total reimbursement for postage expenses under all Project Agreements will not exceed \$50,000 during [any calendar year] without the prior written approval of Philip Morris.

Upon completion of the services rendered pursuant to the Project Agreement, or upon earlier termination of the Project Agreement, Kowal will deliver to Philip Morris a reconciliation statement comprising receipts for the amount of postage paid by Kowal in connection with the Project Agreement. If the amount of postage paid by Kowal is less than the Postage Fund, Kowal shall immediately refund the difference to Philip Morris. If the amount of postage paid by Kowal is greater than the Postage Fund, the parties will amend the Project Agreement to increase the Postage Fund, and Philip Morris will reimburse Kowal for postage expenses in excess of the Postage Fund.

4. Term and Termination.



(a) The term of the Agreement commenced on January 1, 1996 and will continue until December 31, 1996 and will automatically renew for successive one-year terms unless notice of non-renewal is given, in writing, by either party no less than thirty days prior to the end of the initial or any renewal term. If Kowal delivers a revised Rate Schedule no less than thirty days prior to the end of the original or any renewal term and Philip Morris approves the revised Rate Schedule in writing, the then current Rate Schedule set forth in Exhibit B will be deleted and the new Rate Schedule approved by Philip Morris will be substituted there for and will be attached to, and made a part of, the Agreement, effective as of the first day of the renewal term.

(b) Either party may terminate the Agreement or any Project Agreement, with or without cause, effective thirty days after delivery of written notice to the other party.

(c) Either party may terminate a Project Agreement effective less than thirty days after delivery of written notice to the other party if a shorter notice period is agreed upon by the parties in a Project Agreement. If Philip Morris or Kowal terminates the Agreement or a Project Agreement, Philip Morris will have no liability to Kowal after the effective date of termination, with the exception of Fees accrued for services satisfactorily performed, documented expenses properly incurred and binding obligations properly undertaken, prior to the effective date of termination.

5. Program Materials.

Philip Morris will supply or have the right to approve or reject, in advance, all elements of Philip Morris' involvement in the Programs and the manner of their use. Kowal will not use Philip Morris' name, logo or likeness or the name, logo or likeness of any Philip Morris product in any materials it produces without the advance, written approval of Philip Morris. No materials furnished by Philip Morris will be changed without Philip Morris' prior written approval. Kowal will not sell, give away or allow to be sold or given away any Philip Morris products in connection with the Programs, without Philip Morris' prior written approval.

6. Records.

Kowal and its employees will maintain detailed and accurate books and records of account with respect to activities undertaken on behalf of Philip Morris, and Kowal will use the best commercially reasonable efforts to ensure that Kowal's representatives and agents maintain detailed and accurate books and records of account with respect to activities undertaken on behalf of Philip Morris. Kowal will provide periodic reports as and when requested by Philip Morris and a final accounting of expenses incurred in providing services, within thirty days of completion of all services under each Project Agreement. Philip Morris or its designated agent may inspect, review and copy Kowal's books and records relating to the Agreement or any Project Agreement at reasonable times during normal business hours upon reasonable, advance notice to Kowal and at the expense of Philip Morris.

7. Confidentiality

Kowal, its employees, representatives and agents will hold strictly confidential all information and materials provided by Philip Morris to Kowal or created or acquired by Kowal in performing the Agreement ("Confidential Information"). Kowal will not use or disclose the confidential information to third parties, other than as required by the terms of the Agreement, without Philip Morris' prior written consent. Confidential Information shall not include any information which is ~~readily~~ publicly available ~~or which Kowal receives from a third party~~ or which is known by Kowal before Kowal learns or receives the information from Philip Morris or any database structures or programming developed by Kowal. Upon termination or expiration of the Agreement, or within thirty days thereafter, upon Philip Morris' written request, Kowal will return to Philip Morris all materials owned by Philip Morris. Neither Kowal nor Philip Morris will disclose the terms of the Agreement to third parties without the prior written consent of both Kowal and Philip Morris. Kowal's obligation to maintain confidentiality will survive the termination or expiration of the Agreement.

7 8. Ownership.

All material prepared or developed by Kowal pursuant to the Agreement derived from Confidential Information (as defined in paragraph 8 below) will become the property of Philip Morris, and Kowal hereby agrees to assign to Philip Morris any and all copyrights in and other rights to such material ("Copyrightable Material"). Kowal will not engage, or permit the creation of any copyrightable material for Philip Morris by, any person who is not a regular full time employee whose work is performed on Kowal's business premises unless that person agrees

to execute an assignment to Philip Morris of any and all copyrights in all Copyrightable Material created. Such assignment will be in a form acceptable to Philip Morris. Upon the acceptance by Philip Morris of any Copyrightable Material prepared by Kowal, Kowal, at the request of Philip Morris will assign all of its right, title and interest in the Copyrightable Material to Philip Morris and will execute an assignment in a form acceptable to Philip Morris. [Database structures or programming developed by Kowal in connection with the servicing of the Philip Morris account and maintained on-site at Kowal's business premises will remain the property of Kowal.] All data pertaining to, or collected for, Philip Morris will remain the property of Philip Morris and Kowal will make no claim to this data. Kowal will obtain all releases necessary to the proper performance of the Agreement.

~~8. Confidentiality~~

~~Kowal, its employees, representatives and agents will hold strictly confidential all information and materials provided by Philip Morris to Kowal or created or acquired by Kowal in performing the Agreement ("Confidential Information"). Kowal will not use or disclose the confidential information to third parties, other than as required by the terms of the Agreement, without Philip Morris' prior written consent. Confidential Information shall not include any information which is readily available or which Kowal receives from a third party or which is known by Kowal before Kowal learns or receives the information from Philip Morris or any database structures or programming developed by Kowal. Upon termination or expiration of the Agreement, or within 30 days thereafter, upon Philip Morris' written request, Kowal will return~~

~~to Philip Morris all materials owned by Philip Morris. Neither Kowal nor Philip Morris will disclose the terms of the Agreement to third parties without the prior written consent of both Kowal and Philip Morris. Kowal's obligation to maintain confidentiality will survive the termination or expiration of the Agreement.~~

9. Philip Morris Brand Names.

Kowal recognizes and acknowledges that the names of any and all Philip Morris brands of cigarettes, and the designs, emblems, slogans and insignia of the respective brands, and the goodwill associated therewith, have great value and are the sole property of Philip Morris, and Kowal agrees that it has and will claim no right, title or interest in the same or the use thereof except the right to use them pursuant to the terms of the Agreement.

10. Indemnity.

(a) ~~Except to the extent otherwise provided under Section 1(g) hereof,~~ Kowal hereby indemnifies and agrees to defend (at its sole cost and expense) and hold harmless Philip Morris, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs and expenses, including reasonable attorneys' fees, that arise from, or may be attributable to, the intentional misconduct or negligent errors, omissions or fault of Kowal, Kowal's Kowal's employees, representatives, servants, agents or contractors and which are not caused by Philip Morris. Kowal's obligation to indemnify and hold harmless will survive the termination or expiration of the Agreement.

(b) Philip Morris indemnifies and agrees to defend (at its sole cost and expense) and hold harmless Kowal, its affiliates and their officers, employees, directors and agents from all

claims, liabilities, costs and expenses, including reasonable attorneys' fees, that arise from, or may be attributable to, the intentional misconduct or the negligent errors, omissions or fault of Philip Morris, Philip Morris' employees ~~representatives,~~ and ~~servants, agents or contractors~~ and which are not caused by Kowal. Philip Morris' obligation to indemnify and hold harmless will survive the termination or expiration of the Agreement.

(c) The indemnified party will notify the indemnifying party of any claim, demand, liability or lawsuit that comes to its attention. Upon the written agreement of the indemnifying party, such claim shall be defended by the indemnifying party, but the indemnified party will be given the opportunity to participate, at its own cost, in such defense. Until the indemnifying party shall have so assumed the defense of any claim, all legal and other expenses reasonably incurred by the indemnified party shall be borne by the indemnifying party. [ Notwithstanding the foregoing, if the indemnified party reasonably concludes that there are likely to be defenses available to the indemnified party that are different from or in addition to those available to the indemnifying party, the indemnifying party shall not be entitled to assume the defense of such claim, and all legal and other expenses reasonably incurred by the indemnified party in defending the claim shall be borne by the indemnifying party.] Each party will immediately consult with the other and provide details of negotiations and discussions undertaken in an effort to settle a third party claim or lawsuit. If the party to provide indemnity hereunder objects to a settlement, such settlement shall not be entered into or be binding upon the party who is to provide indemnity, unless such party is given the opportunity to meet in person with the

responsible management of the other party to this Agreement to explain its objections to a settlement and propose alternatives.

11. Insurance.

Within ten days of execution of the Agreement, Kowal will deliver to Philip Morris certificates of insurance evidencing coverage for (1) comprehensive general liability, including contractual liability, with limits of no less than \$1,000,000 combined single limit for personal injury and property damage; (2) statutory worker's compensation coverage meeting all state and local requirements; and, (3) employer's liability with limits of no less than \$500,000. The insurance certificates required in (1) must name Philip Morris Incorporated, its affiliates, employees and assigns as additional insureds and must state that Philip Morris will be provided at least thirty days advance, written notice of a cancellation or modification of the insurance. The insurance must be primary coverage without right of contribution from any other Philip Morris insurance. Insurance maintained by Philip Morris is for the exclusive benefit of Philip Morris and will not inure to the benefit of Kowal. If Kowal rents or leases motor vehicles in connection with Kowal's performance under the Agreement, Kowal will purchase insurance satisfactory to Philip Morris.

Kowal will procure comparable certificates of insurance from all subcontractors of Kowal and the insurance must name Philip Morris Incorporated, its affiliates, agents, representatives, employees and assigns as additional insureds.

12. Independent Contractor.

Kowal is an independent contractor and the Agreement shall not be construed to create an association, partnership, joint venture, relation of principal and agent or employer and employee between Philip Morris and Kowal or its agents within the meaning of any federal, state or local law. Kowal will not enter into any agreement, oral or written, on behalf of Philip Morris or otherwise obligate Philip Morris without Philip Morris' advance, written approval.

~~13. Exclusivity.~~

**13. Exclusivity.**

During the term of the Agreement, and for six months thereafter, Kowal will not, without the prior, written consent of Philip Morris, engage in comparable telemarketing consulting activities for any company or entity whose business competes with any tobacco product of Philip Morris.

**14. Third Party Contacts**

If at any time Kowal is contacted by a third party, including the media, concerning Kowal's activities on behalf of Philip Morris, other than as contemplated by the terms of the Agreement, Kowal will make no comment, immediately notify Philip Morris of the third party contact, and refer the third party to Philip Morris, Media Spokesperson, Corporate Affairs.



15. Miscellaneous

(a) The Agreement and all matters collateral hereto, shall be governed by the laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York.

(b) Kowal must comply with all applicable laws, regulations, and ordinances relating to its performance of the agreement. Kowal acknowledges that it is cognizant of the provisions of Title 15, Section 1331, et seq. of the United States Code.

(c) This Agreement is the complete agreement between the parties and supersedes any prior oral or written agreement concerning the subject matter.

(d) If any provision of the Agreement is held invalid or unenforceable, the remaining provisions will remain in effect.

(e) The Agreement may not be amended or assigned except in a writing signed by both parties. If an assignment occurs, the assignment will not relieve the assigning party of its liabilities and obligations under the Agreement. The Agreement is binding upon successors and assignees of the parties. A waiver by either party of any of the terms and conditions of the Agreement in one or more instances will not constitute a permanent waiver of the terms and conditions.

(f) Notices provided shall be in writing and sent by certified mail, return receipt requested. Notices shall be deemed effective upon receipt. Notices to Kowal will be sent to Kowal & Associates, Inc., 75 Federal Street, 8th Floor, Boston, Massachusetts 02110-1904, Attention: G. Paul Kowal. Notices to Philip Morris will be sent to Philip Morris U.S.A., 120

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Park Avenue, New York, New York 10017, Attention: Susan Blohm, with a copy to the Philip Morris representative identified in each, then current, Project Agreement.

~~(g) Unless otherwise specifically provided in this Agreement or in a Project Agreement, instructions, approvals or requests for services by Philip Morris may be given either orally or in writing. Consents or approvals required to be given by Philip Morris under this Agreement or a Project Agreement shall not be unreasonably withheld or delayed.~~

KOWAL & ASSOCIATES, INC.

PHILIP MORRIS INCORPORATED

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Taxpayer ID# 04-3147174

Filing Status: Corporation

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