

HENRY A. WAXMAN, CALIFORNIA  
EDWARD J. MARKEY, MASSACHUSETTS  
RICK BOUCHER, VIRGINIA  
EDOLPHUS TOWNS, NEW YORK  
FRANK PALLONE, Jr., NEW JERSEY  
BART GORDON, TENNESSEE  
BOBBY L. RUSH, ILLINOIS  
ANNA G. ESHOO, CALIFORNIA  
BART STUPAK, MICHIGAN  
ELIOT L. ENGEL, NEW YORK  
ALBERT R. WYNN, MARYLAND  
GENE GREEN, TEXAS  
DIANA DeGETTE, COLORADO  
VICE CHAIRMAN  
LOIS CAPPS, CALIFORNIA  
MIKE DOYLE, PENNSYLVANIA  
JANE HARMAN, CALIFORNIA  
TOM ALLEN, MAINE  
JAN SCHAKOWSKY, ILLINOIS  
HILDA L. SOLIS, CALIFORNIA  
CHARLES A. GONZALEZ, TEXAS  
JAY INSLEE, WASHINGTON  
TAMMY BALDWIN, WISCONSIN  
MIKE ROSS, ARKANSAS  
DARLENE HOOLEY, OREGON  
ANTHONY D. WEINER, NEW YORK  
JIM MATHESON, UTAH  
G.K. BUTTERFIELD, NORTH CAROLINA  
CHARLIE MELANCON, LOUISIANA  
JOHN BARROW, GEORGIA  
BARON P. HILL, INDIANA

ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

JOHN D. DINGELL, MICHIGAN  
CHAIRMAN

JOE BARTON, TEXAS  
RANKING MEMBER  
RALPH M. HALL, TEXAS  
FRED UPTON, MICHIGAN  
CLIFF STEARNS, FLORIDA  
NATHAN DEAL, GEORGIA  
ED WHITFIELD, KENTUCKY  
BARBARA CUBIN, WYOMING  
JOHN SHIMKUS, ILLINOIS  
HEATHER WILSON, NEW MEXICO  
JOHN B. SHADEGG, ARIZONA  
CHARLES W. "CHIP" PICKERING, MISSISSIPPI  
VITO FOSSELLA, NEW YORK  
ROY BLUNT, MISSOURI  
STEVE BUYER, INDIANA  
GEORGE RADANOVICH, CALIFORNIA  
JOSEPH R. PITTS, PENNSYLVANIA  
MARY BONO MACK, CALIFORNIA  
GREG WALDEN, OREGON  
LEE TERRY, NEBRASKA  
MIKE FERGUSON, NEW JERSEY  
MIKE ROGERS, MICHIGAN  
SUE MYRICK, NORTH CAROLINA  
JOHN SULLIVAN, OKLAHOMA  
TIM MURPHY, PENNSYLVANIA  
MICHAEL C. BURGESS, TEXAS  
MARSHA BLACKBURN, TENNESSEE

February 6, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF  
GREGG A. ROTHSCHILD, CHIEF COUNSEL

Mr. Marc Litvinoff  
CEO  
Guideline Inc.  
625 Avenue of the Americas  
New York, NY 10011

Dear Mr. Litvinoff:

Under Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating false and misleading statements and the use of celebrity endorsements of prescription medications in direct-to-consumer advertising.

We are investigating television advertisements for Pfizer's Lipitor with Dr. Robert Jarvik, and your company has been identified as one of several firms involved in these advertisements. We are interested in the circumstances surrounding your work on these ads.

Therefore, we ask that you provide the Committee with the following:

1. All records relating to your association with Pfizer and any Lipitor advertisements with Dr. Jarvik, including any contractual arrangements with Pfizer or any other entity relating to the Lipitor ads with Dr. Jarvik;
2. All financial records relating to your association with Pfizer and any Lipitor advertisements with Dr. Jarvik, including how much money you received from Pfizer or any other entity relating to these ads;
3. All records relating to payments made or to be made to body doubles used for any Lipitor advertisements with Dr. Jarvik;
4. All records relating to the use of Dr. Jarvik's family members in any Lipitor advertisements;

Mr. Marc Litvinoff  
Page 2

5. All records relating to residual payments made or to be made to Dr. Jarvik and/or any of his family members;
6. A list of all employees or contractors, actors, or other subcontractors utilized by your company in the preparation of any Lipitor advertisements including all contractual documents and financial payments made to said parties or companies relating thereto; and
7. Attached to this letter is a copy of Pfizer's contract with Dr. Jarvik, which indicates that he will be paid at least \$1.35 million dollars for these advertisements. Please provide to the Committee, in writing, what the exact percentage of the \$1.35 million paid to Dr. Jarvik, was paid by your firm.

In addition, we ask that you do not destroy, dispose of, or tamper with any records relating to Dr. Jarvik and his association with Pfizer.

Please deliver copies of the requested records to the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, Room 316, Ford House Office Building, no later than two weeks from the date of this letter. Please note that for the purpose of responding to this request, the terms "record" and "relating" should be interpreted in accordance with the attachment to this letter. After review of the records, we may require additional records and/or staff interviews with company officials.

In addition to Guideline Inc, this letter has been sent to the following companies: Maya Group; ARS Group.; Cline, Davis & Mann, Inc.; IMC<sup>2</sup>; Ipsos-ASI, Inc.; Ipsos-Understanding Unlimited; The Kaplan Thaler Group, Ltd.; and Unit 7.

Thank you for your prompt attention to this matter. If you have any questions related to this request, please contact John F. Sopko or Paul Jung of the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell  
Chairman



Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations

Attachments

Mr. Marc Litvinoff  
Page 3

cc: The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member  
Subcommittee on Oversight and Investigations

## ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

PFIZER, INC.  
235 East 42<sup>nd</sup> Street  
Mailstop 235/10/45  
New York, New York 10017

As of April 13, 2006

Robert Jarvik, M.D.  
c/o Jarvik Heart Inc.  
333 West 52nd Street  
New York, NY 10019

Dear Dr. Jarvik:

The following will constitute the agreement (the "Agreement") between Robert Jarvik, M.D. ("Artist") and Pfizer, Inc. ("Company"), by which Artist agrees to provide his personal services as, among other things, an on-camera spokesperson for and endorsing Company's product known as Lipitor® (atorvastatin calcium) ("Product") and otherwise appear in and in connection with the production of advertising, sales, informational, promotion, marketing and publicity materials for the Product, upon the following terms and conditions:

1. TERM

(a) First Term. The initial term of the Agreement shall commence on the date hereof and shall continue thereafter in full force and effect for a period of one (1) year from the initial public broadcast use of any of the advertising materials produced hereunder ("First Term"). Solely for the purpose of calculating the date of expiration of the First Term, it is understood and agreed that the date of such initial public broadcast was March 31, 2006.

(b) Options. Company shall have the right at its sole option to extend the term of this Agreement, upon all of the same terms and conditions hereof, except as otherwise specifically set forth herein, for an additional consecutive one (1) year period commencing immediately upon the expiration of the preceding period, by giving written notice to Artist to such effect no later than thirty (30) days prior to the expiration of the First Term. Such additional term is hereafter called the "Second Term."

(c) The First Term and Second Term (if any) are sometimes hereafter individually referred to as a "Term" and the entire length of the Agreement is referred to as the "term".

2. SERVICES/SPOKESPERSON MESSAGING

(a) **Production of Advertising Materials.** Company shall have the right to utilize Artist's services and Artist shall render said services in the production of advertising, sales, informational, promotion, marketing and publicity materials and other materials for Company as follows:

(i) During each of the First Term and Second Term (if any), for up to nine (9) non-consecutive or consecutive days (in Company's sole discretion) of up to twelve(12) hours per day (each, a "Work Day", and collectively "Work Days") (exclusive of travel, rehearsals, voice-over sessions and activities relating to public relations and media training) (A) as an on-camera performer in and in connection with the production of as many television commercials, radio commercials, online commercials and other commercials as Company may elect ("Commercials"), and (B) in and in connection with still photography sessions for the purpose of producing any number and type of print materials, including, without limitation, non-broadcast consumer and trade print advertisements, publicity, collateral materials, posters, displays, point-of-sale advertising, outdoor advertising, billboards, packaging, products inserts, catalogues, brochures, online advertisements, out-of-home advertisements, industrial, patient education and physician promotional materials, media training sessions and sales force materials ("Non Broadcast Materials"), and all revisions and remakes of Commercials and Non Broadcast Materials as Company shall require in its sole discretion.

(ii) Further, during each Term, Company shall have the right to utilize Artist's services, and Artist shall render said services in the production of Commercials or for any other purpose herein, for up to four (4) voiceover sessions, each session up to two (2) hours in duration, which such sessions shall be in addition to the Work Days set forth above.

(iii) In addition, subject to Section 2(d) below and on condition that Artist is paid the additional compensation set forth in Section 4(f) below, Artist shall attend such reasonable number of rerecording sessions of up to two (2) hours in length as Company may request in connection with the production of the Commercials in which Artist originally rendered services ("Rerecording Sessions"). The Rerecording sessions shall not be considered Work Days.

(iv) In Company's sole discretion, the Commercials and Non Broadcast Materials may be produced, created and made by any process, instrumentation or device now known or hereafter developed.

(v) Company shall have the right to make or cause to be made such number of Commercials and Non Broadcast Materials as it may elect by editing, dubbing, adding to, subtracting from, compiling and integrating any or all of Artist's performances hereunder, and shall also have the right to produce

a "lift" from the audio track of a television commercial or to record during the production of a television commercial a version of the television commercial, both for radio or other use. Company shall specifically, without limitation, have the right to use film clips taken from any television commercial footage produced hereunder in the production of any Non Broadcast Materials and to use any work produced during the production of the Non Broadcast Materials in the Commercials.

(b) **Personal Appearances/Media.** During each of the First Term and Second Term, if any, Artist shall appear for up to three (3) days for miscellaneous public relations (*excluding speeches or lectures*), and/or personal appearances on behalf of Company at functions designated by Company, and including, but not limited to, media interviews, sales meetings, conventions, and professional conferences. In addition to the three (3) days set forth in the preceding sentence, Artist shall appear for up to an additional eight (8) hours per each Term, for purposes related to media training and orientation. Such media training and orientation may occur on one (1) day or may occur over several days, provided that the total aggregate time in connection therewith shall not exceed eight (8) hours per Term.

(c) **Work Sessions and Rehearsals.** Artist shall (i) to attend all customary and reasonable rehearsals as Company may request, which shall consist of a minimum of one (1) day of rehearsal and/or consultation with the creative teams of Company and/or its agents (including, without limitation, directors, photographers, advertising agencies and the like) prior to each television and/or print shoot, on such dates and at such times and places (or via telephone, unless Company reasonably requires in person) as Company shall specify; (ii) to render services in connection with the production of the Commercials and Non Broadcast Materials in a first-class, competent and painstaking manner as directed by Company. Artist further Artist's services will be subject to Company's direction and control at all times and that Artist will promptly comply with whatever reasonable instructions, suggestions and recommendations that Company may give Artist in connection with the rendition of such services. Company shall notify Artist of the designated times and dates on which Artist's services are required as far in advance as practicable, but in all events at least forty-eight (48) hours prior to such times and dates. Artist will notify Company within twenty-four (24) hours of Artist's unavailability due only to a previously scheduled, reasonable, bona-fide professional commitment or illness that would prevent Artist from rendering Artist's services hereunder and in such event, Company shall reschedule the initial time and date for such other time and date as Company designates subject to Artist's previously scheduled, reasonable, bona fide professional commitments. Artist shall use good faith efforts to be available on such rescheduled times and dates. Artist hereby acknowledges that the shooting dates for Commercials and/or Non Broadcast Materials commenced on March 13, 2006.

(d) If, for reasons beyond Company's control any of the Commercials or Non Broadcast Materials produced hereunder are damaged or destroyed, Artist shall be available for a reasonable amount of re-shoots and/or re-recording sessions at no additional cost to Company.

(e) It is the essence of the Agreement that in connection with Artist's services to be provided hereunder Artist agrees that throughout the term, Artist will appear and perform as a spokesperson for the Product and related Product properties, shall provide an endorsement for the Product, and shall deliver specific, detailed messages and claims with respect to the efficacy and safety of the Product and Artist's preference for the Product, along with information with respect to the Product's risks and side effects, as directed by Company, subject to Artist's reasonable approval of any statement by Artist as set forth in Paragraph 8(a) below. Failure or inability by Artist to comply with or fulfill the foregoing obligation shall be considered a material breach of this Agreement.

### 3. OWNERSHIP, USE AND TERRITORY

(a) All materials produced in connection with the Agreement, including advertising ideas, phrases or words, visual descriptions, illustrations, photographs, music, footage and all Commercials and Non Broadcast Materials and all versions, outtakes, revisions and drafts thereof will be and remain the absolute and exclusive property of Company in perpetuity (collectively, "Advertising Materials"). Artist acknowledges that Artist's performance and the resulting proceeds of such performances are "works made for hire" under United States Copyright law and analogous laws outside the United States, and that Artist shall not have nor shall Artist claim to have any right, title or interest of any kind or nature whatsoever in such materials, or in or to any component part, element, character or characterization thereof. If, however, Artist's performance is not considered a work for hire, or if necessary in order to otherwise effectuate the purposes of this Agreement, then Artist hereby assigns all right, title and interest to all Advertising Materials, including the Commercials and Non Broadcast Materials, to Company. Artist shall not have the right to use Company's name, trademarks or intellectual or other property of any kind, including the trademarks, logos or other identifying marks of the Product, without the prior express written consent of Company.

(b) Except as otherwise provided herein, Company shall have the full and complete right, during the term hereof, to broadcast, use, reproduce, publish, copyright and/or exhibit the Commercials and the Non Broadcast Materials, and any and all versions or revisions thereof, and all other materials created or produced hereunder, whether produced in the then current Term or any earlier Term, in the following media: broadcast media (including, without limitation, national network, spot, cable, cinema, and syndication television, and national, spot, syndication and satellite radio), the internet (including, without limitation, website design, online advertising and electronic mail), wireless applications (including without limitation, i-pod casting and cell phones), video-on-demand, internal Company communications, annual reports, Industrial purposes (including without limitation, marketing conferences), print, press materials, out-of-home (on all formats), collateral (including, without limitation, all patient education materials, interactive voice recordings (IVR), physician promotion materials, Company sales force communications, sell sheets, brochures) and direct mail, throughout the United States, Canada, and Mexico and their respective territories, possessions, military bases and commonwealths (including Puerto Rico) (the foregoing shall collectively be defined as "Territory") including the right to use the same at any conventions or sales, distributor or institutional meetings sponsored or attended by Company or its dealers or distributors outside



the Territory. The Territory with respect to any and all Commercials or Non Broadcast Materials available for online viewing shall be the Universe. Company shall be entitled to utilize any materials produced or created hereunder only in conjunction and/or affiliation with the Product. Without otherwise limiting the foregoing, Company shall not utilize Artist's name or likeness in such a manner as to convey the impression that Artist is personally communicating directly with the consumer via electronic mail or other interactive means.

(c) The fact that any Non Broadcast Materials or Commercials remain on public display after the term through no fault of Company shall not give rise to any claim by Artist against Company, provided that Company shall use reasonable commercial efforts to notify any relevant distribution channels that such material must be removed. Subsequent to the expiration of the term, Company shall not be prohibited from mentioning the fact that Artist was previously a spokesperson for the Product.

#### 4. CONSIDERATION

(a) In full consideration for Artist's performance of the provisions of this Agreement and for all of the rights granted by Artist hereunder, the following amount shall be payable to Artist:

(i) During the First Term: the guaranteed sum of Five Hundred and Fifty Thousand Dollars (\$550,000).

(ii) During the Second Term, if any: the guaranteed sum of Eight Hundred Thousand Dollars (\$800,000).

(b) The total of the guaranteed sum owing for Commercials and the sums owing for Non Broadcast Materials and personal appearances in a Term shall collectively be referred to as the "Total Payment". Subject to Artist's fulfillment of all terms and conditions of this Agreement, and unless otherwise adjusted in accordance with the terms and conditions set forth herein, the Total Payment for the First Term shall be payable as follows:

(i) Two Hundred Seventy Five Thousand Dollars (\$275,000), payable within fifteen (15) business days following the later of (a) full execution hereof and (b) satisfactory completion by Artist of the first Work Day hereunder; and

(ii) Two Hundred Seventy Five Thousand Dollars (\$275,000), payable within ten (10) business days following the later of (a) the date six months from the first public broadcast use of any of the Advertising Materials produced hereunder and (b) the satisfactory completion by Artist of an aggregate of five (5) Work Days hereunder, but in any event, no later than October 30, 2006.

The Total Payment for the Second Term (if any) shall be paid according to a schedule reasonably determined by Company, but in no event shall such schedule be less favorable than the schedule for the First Term.

(c) Notwithstanding that Artist is not presently a member of any union or guild having jurisdiction over the services performed hereunder (as set forth in Paragraph 8(b) below), all payments due under the applicable collective bargaining agreement shall be credited at double scale, with travel credited at scale, against the guaranteed sums set forth in paragraphs 4(a) (i) and (ii) above which are allocable to Artist's broadcast services hereunder. If at any time the sums payable pursuant to this paragraph 4(c) shall exceed the guaranteed sums, then Company shall promptly pay such excess to Artist in accordance with the terms of the applicable collective bargaining agreement.

(d) Notwithstanding that Artist is not presently a member of any union or guild having jurisdiction over the services performed hereunder (as set forth in Paragraph 8(b) below), Company shall pay directly to the Pension and Health Plan of SAG and/or the Health and Retirement Fund of AFTRA the appropriate contributions which payments shall be in addition to any other payments provided for herein.

(e) If it is necessary for Artist to travel from the area Artist is in to render Artist's services hereunder, Company shall provide Artist with round trip first class air fare for two people (inclusive of Artist) (provided that general commercial first class air transportation is available from Artist's location), along with hotel accommodations for two people, local ground transportation and properly vouchered and necessary living expenses up to a maximum of One Hundred Dollars (\$100) per day in the aggregate for one person (i.e., Artist only), or, in Company's discretion, Company may reimburse Artist for such expenses, provided that such expenses are reasonable and approved by Company in advance, in writing. Artist shall not incur any expenses without Company's prior written consent.

(f) In the event Company shall, in Company's sole discretion, require additional Work Days from Artist ("Additional Work Days"), Artist shall perform services for up to five (5) such Additional Work Days (each day up to twelve (12) hours), at the rate of Eight Thousand Dollars (\$8,000) per each such Additional Work Day. In the event Artist's services are required for four (4) hours or less for any such session, Artist's services in connection therewith shall be payable *pro rata* (not less than Four Thousand Dollars per day), and such session shall only be counted as one half (1/2) of one Additional Work Day. Additional Work Days shall be scheduled subject only to Artist's reasonable availability. In the event Company shall, in Company's sole discretion pursuant to Section 2A(iii), require Rerecording Days from Artist, Company shall pay Artist Two Thousand Dollars (\$2,000) per each such Rerecording Day.

(g) All payments pursuant to this Agreement shall be made payable to Artist at the address set forth above unless otherwise provided for in writing and such payments shall include all payments due to Artist, Artist's agent, manager, broker and any

other third party acting on behalf of Artist, or seeking payment from Artist, and shall otherwise fully satisfy all of Company's obligations hereunder.

5. NAME AND LIKENESS

During the term hereof, Company shall have the right to use and permit the use of Artist's name, photograph, likeness, endorsement, voice and biographical material and/or frames from the Commercials and/or photographs of the production of the Commercials and Non Broadcast Materials in the Commercials and Non Broadcast Materials, and for purposes of advertising, sales, trade, promotion, marketing, informational purposes and publicity and for all other uses as set forth herein. Company shall have the right to identify to the trade, public and press that Artist is the voice in the Commercials.

6. COMPANY'S RIGHT TO TERMINATE

(a) Events of Force Majeure; Disability; Death:

(i) If for any reason beyond Company's control, such as boycotts, war, acts of God, labor troubles, strikes, restraints of public authority, terrorism or terrorist-related activity, or any similar or dissimilar occurrence (each, an "Event of Force Majeure"), Company is prevented from having Artist render Artist's services hereunder or from producing or using the Commercials or the Non Broadcast Materials, then Company shall have the right to extend the applicable Term for a period of time equivalent to the duration of such Event of Force Majeure, with no further payment owing to Artist therefore, it being agreed that no such extension of the applicable Term will exceed ninety (90) days.

(ii) In the event that Artist suffers any mental or physical disability or illness during the Term which prevents Company from utilizing Artist's services hereunder (subject to the parties' good faith efforts to reschedule any services so affected), Company shall have the right, but not the obligation, to terminate this Agreement, and the Total Payment owing to Artist for the Term during which such termination occurs shall be adjusted as described in paragraph 6(d) below.

(iii) In the event of Artist's death during the Term, Company shall have the right, but not the obligation, to terminate this Agreement, and the Total Payment owing to Artist for the Term during which such termination occurs shall be adjusted as described in paragraph 6(d) below.

(b) If Artist shall: (i) materially breach the terms of this Agreement, or (ii) fail, neglect or refuse to perform any of the obligations to be performed by Artist hereunder

(including, without limitation, failing to appear for service days or to reasonably reschedule such service days), or (iii) have committed or shall commit any act or do anything that (A) is or shall be an offense involving moral turpitude or constituting a felony, or (B) which brings Artist or Company into public disrepute, contempt, scandal, or ridicule, or (C) which insults or offends the community or any substantial organized group thereof, or (D) which might tend to embarrass Company, bring about negative reporting of Company, or injure the success of Company or any of Company's products or services, or (iv) deliver conflicting, controversial or inappropriate messaging with respect to any advertising campaign for Product, or (v) subject to Artist's reasonable approval as set forth in Paragraph 8(a) below, fail to deliver appropriate messages as directed by Company with respect to any advertising campaign for Product, or (vi) convey attitudes or opinions toward Artist's own heart health or others' heart health that is inconsistent with any advertising campaign with respect to Product, then within thirty (30) days from the time the Company learns of any such act or omission or of Artist's intent to commit such act or omission, Company shall have the right (but not the obligation), at its sole option, in addition to its other legal and other remedies, to terminate this Agreement by written notice to Artist to that effect and the Total Payment owing to Artist for the Term during which such termination takes place shall be adjusted as described in paragraph 6(d) below. Company's decision on all matters arising under this paragraph shall be conclusive but shall be exercised in good faith.

(c) If Artist's appearance or health changes materially during the term of the Agreement, including, but not limited to, an individual or discrete incident involving Artist's health, or a change in overall health, weight or hairstyle from that which exists as of the date hereof, and Company reasonably deems such change an inability to render services which is incapable of being cured within a reasonable period of time, then Company, in its good faith discretion, shall have the right (but not the obligation), in addition to its other legal and other remedies, either to extend the term of this Agreement for a period of time equivalent to Artist's inability to render services, with no further payment owing to Artist therefore (it being agreed that no such extension of the applicable Term will exceed one hundred and eighty (180) days), or to terminate the Agreement forthwith, in which case the Total Payment owing to Artist for the Term during which such termination occurs shall be adjusted as described in paragraph 6(d) below.

(d) If Company should terminate this Agreement pursuant to paragraph 6(a), 6(b), 6(c) or 6(f)(ii), the Total Payment due hereunder to Artist in respect of the then current Term shall be allocated 50% thereof to the number of Work Days completed by the date of termination (with the maximum nine (9) Work Days in the Term to be the denominator) and 50% thereof to usage (with such 50% usage allocation to be multiplied by a fraction, the numerator of which is the number of days which have been completed in the Term and the denominator of which is the total number of days in the Term). Artist shall promptly remit payments in excess of the amount due hereunder, if any, to Company.

(e) Artist hereby acknowledges that this Agreement is contingent upon Company undertaking and receiving a satisfactory criminal background check of Artist. Artist hereby agrees to provide Company with any and all requested information in order for

Company or an agent acting on Company's behalf to undertake such background check. In the event Artist does not pass such background check in Company's sole discretion, Company shall have the right, but not the obligation, to terminate this Agreement and Artist and Supplier shall return to Company any and all monies paid to Artist by Company in connection herewith. Upon any termination pursuant to this paragraph, Company shall cease using any and all materials created from the product of Artist's services hereunder.

(f) Artist hereby specifically acknowledges that this Agreement is contingent upon the United States Food and Drug Administration, on an ongoing basis throughout the Term of this Agreement, furnishing timely, full and unqualified approval with respect to the Advertising Materials, advertising campaigns and other materials featuring Artist and Product as contemplated hereunder. In the event Company does not receive such timely, full and unqualified approval, Company shall have the right to terminate this Agreement at any time, in accordance with the following: (i) in the event such termination occurs prior to the satisfactory completion by Artist of one Work Day hereunder, no payments or monies whatsoever shall be due Artist and Artist shall promptly return to Company any and all payments furnished by Company hereunder, and (ii) in the event such termination occurs subsequent to the satisfactory completion by Artist of at least one Work Day hereunder, the Total Payment owing to Artist shall be adjusted in accordance with paragraph 6(d) above.

(e) Nothing contained in this paragraph 6 shall affect or limit any other right or remedy, at law or in equity, which may otherwise be available to Company.

## 7. REPRESENTATIONS AND WARRANTIES

Artist hereby represents and warrants that:

(a) Competitive Protection. Artist has not heretofore rendered any services, directly or indirectly, in or in connection with commercials or advertisements on behalf of any product competitive to or incompatible with the Product or Company's products or services the utilization of which commercials or advertisements may occur during the term. ("Competitive Products/Services"). Artist will not, at any time during the period which Company is entitled to use the Advertising Materials produced pursuant to this Agreement: (i) render any services of any kind, directly or indirectly, for any of the following: any and all pharmaceutical products whatsoever, or any other product or service of any kind making any therapeutic claim, including, without limitation, any food, drug or supplement making cardiovascular claims or claims related to cardiovascular health (the foregoing shall collectively be defined as "Excluded Products/Services"), or (ii) authorize the use of Artist's name, photograph, likeness, endorsement, voice or biographical material in any manner in or in connection with the sale, advertising, publicity, marketing or promotion of any kind in connection with an Excluded Product/Service. Without otherwise limiting any of Company's rights herein, Excluded Products/Services shall not include the medical or scientific purposes associated with inventions, writings, scientific research and medical-related devices attributed solely to Artist.

(b) **Compliance With Law.** Artist will comply with all applicable laws, regulations, orders and ordinances in rendering the services provided for herein and all such services rendered by Artist shall be promptly rendered and shall be of first quality.

(c) **Right to Enter Agreement.** Artist has full power and authority to enter into this Agreement and to perform all of the obligations hereunder without violating the legal or equitable rights of any third party.

(d) **Confidential Information.** Artist shall not disclose to any party or utilize any confidential or proprietary information obtained hereunder regarding Company or its products or services, including, without limitation, the subject matter, terms or existence of this Agreement. Artist shall not make any announcement, public or otherwise, with respect to this Agreement, Artist's services to be rendered hereunder, or any matter whatsoever with respect to Company, without the express prior written consent of Company, without limitation to Artist's right to review all press releases pursuant to Paragraph 8(a) below.

(e) **Comparative Advertising.** Artist recognizes that Artist is rendering valuable services to Company, in the creation of goodwill for Company and its products. Accordingly, Artist agrees that, during the Term of the Agreement, Artist will not render Artist's services or permit the use of Artist's name, recorded voice, likeness, photograph or biography in advertising or publicity for anyone else in the Territory where such advertising or publicity damages said goodwill by demeaning or denigrating, directly or indirectly, Company or any of its products.

(f) **Testimonial Affidavits.** If, and to the extent that Company shall require testimonial affidavits or other documentation for the purpose of complying with legal or broadcaster or publisher requirements concerning the use of testimonials and endorsements in advertising, Artist shall furnish appropriate affidavits or appropriate documentation attesting to Artist's preference for the Product or as may otherwise be required.

(f) **Insurance.** Company shall have the right to protect its interest hereunder by taking out an insurance policy, at Company's cost, on the life of Artist. Artist agrees that if necessary, Artist shall attend any reasonable physical examinations that may be necessary to obtain said policy. If Artist so desires and if permitted by the insurance carrier, Artist shall have the right to have a doctor of Artist's choice present at any such examination at Artist's own expense.

## 8. **GENERAL PROVISIONS**

(a) **Publication of Advertising Material** Company shall be under no obligation to cause the Commercials or Non Broadcast Materials produced hereunder to be used or broadcast, it being understood that the sole obligation of Company is to make such payments as are required under this Agreement. Other than as specifically set forth herein, Artist waives any right to inspect or approve the Commercials and Non Broadcast Materials

and Company shall have no liability for any visualization which may occur to the Commercials or Non Broadcast Materials, including, but not limited to blurring, distortion, alteration or optical illusion. Company agrees that Company shall consult with Artist with respect to Artist's services to be provided hereunder provided that in all events, Company shall have final approval in its sole discretion with respect to all Commercials, Non Broadcast Materials and other materials produced, created or distributed hereunder; all elements incorporated therein and related thereto (including, without limitation, scripts); and all uses to which the foregoing may be applied. Company shall not be required to obtain Artist's approval in connection with any of the foregoing. Notwithstanding the foregoing, Artist shall have the right, in Artist's discretion, to refuse to have a statement attributed to Artist if Artist believes in good faith that such statement is untrue. In the event Company, in its sole discretion, requests approval from Artist with respect to any materials or any particular element, Artist shall provide comments, if any, in writing, within twenty four (24) hours of Artist's receipt of such materials or element. In connection with the preceding sentence, Artist shall have the right to review all press releases prior to the general commercial distribution of such releases.

(b) **Union Membership.** Company acknowledges that Artist is not presently a member of the Screen Actors Guild, AFTRA or any other union or guild having jurisdiction over Company and the services performed by Artist hereunder, and Company shall be responsible for any penalties imposed by any such unions or guilds with respect to the services performed by Artist hereunder. This Agreement is subject to all of the terms and conditions of the collective bargaining agreements with SAG and AFTRA and any other union agreements or codes having jurisdiction over Artist's services hereunder. To the extent that any applicable collective bargaining agreement shall require any additional compensation to Artist with respect to Artist's services, whether for travel, rehearsal time, wardrobe fittings, make-up or any or all other types of compensation now or in the future contained in said agreements, such compensation shall be deemed paid by the guaranteed sums provided in paragraphs 4(a)(i) and (ii) above with respect to the respective Term.

(c) **Indemnity.**

(i) Company shall defend, indemnify and hold harmless Artist from and against any and all third party claims, damages, costs, judgments, penalties and expenses (including, without limitations, reasonable legal fees and disbursements) arising out of or in connection with (i) the production, broadcast, cablecast or other use by Company of the materials produced by Company pursuant to this Agreement (including, without limitation, as a result of any representations made by Company in any Commercials or Non Broadcast Materials produced by Company hereunder) and/or (ii) Company's products and services (including, without limitation, any product liability actions related to Company's products or services brought against Artist or Company), except to the extent any damages, costs, judgments, penalties and expenses are due to any tortious conduct or intentional misconduct of Artist.

(ii) Artist shall defend, indemnify and hold harmless Company from and against any and all damages, costs, judgments, penalties and expenses of any kind

(including reasonable legal fees and disbursements) which may be obtained against, imposed upon or suffered by Company as a result of the breach by Artist of this Agreement or any of the warranties and representations made herein or as a result of any representation, information or material supplied by either Artist to Company in connection herewith.

(d) **Nature of Services.** It is expressly understood and agreed that the services to be performed by Artist and the rights and privileges granted to Company hereunder are special, unique, extraordinary and impossible of replacement, which gives them a peculiar value, the loss of which could not be reasonably or adequately compensated in damages in an action of law, and that Artist's failure or refusal to perform Artist's obligations hereunder would cause Company to suffer irreparable loss and damage. Accordingly, Artist agrees that should Artist fail or refuse to perform such obligations, Company shall be entitled to seek *ex-parte* injunctive or other equitable relief against Artist to prevent the continuance of such failure or refusal or to prevent Artist from performing services for, or granting rights to others, in violation of this Agreement. Neither the right to resort to injunctive or other equitable relief, nor the exercise of such right, shall constitute a waiver of any other or additional rights at law or pursuant to the terms of this Agreement which Company may have against Artist as a result of such failure or refusal.

(e) **No Waiver.** Any failure by Company or Supplier to exercise any right granted herein upon the occurrence of any contingency set forth in this Agreement will not in any event constitute a waiver of any such right upon the occurrence of any such contingency.

(f) **Interviews.** Supplier agrees that neither it nor Artist will authorize or release advertising or publicity materials, nor will Artist give interviews which make reference to the details of Artist's engagement hereunder, without Company's prior written approval, although Artist may, during interviews, respond, discuss and comment in a favorable and positive manner that Artist is associated with Company and endorses its products and services.

(g) **Notices.** Any notice to be given by Company to Artist hereunder will be deemed sufficiently given if in writing and delivered personally or sent by certified mail or facsimile transmission to Artist or Artist's agent at the address set forth above with a copy to Richard Hofstetter, Frankfurt Kurnit Klein & Selz P.C., 488 Madison Ave., New York, NY 10022; and if the notice is to be given to Company, then by Artist forwarding same in the manner herein set forth to the attention of Donna Fernandes and, if such notice is pursuant to paragraph 2(c) hereof, Artist shall telephone Donna Fernandes at Pfizer and follow up said call by a confirming facsimile transmission. Any notice so delivered, mailed or transmitted will be deemed to be given on the date it is delivered personally, mailed or transmitted.

(h) **Captions.** The captions in this Agreement are inserted solely for purposes of facilitating easy reference and shall not be construed in any way as a part of the text, or as altering the substantive provisions of this Agreement.



(i) **Applicable Law.** This Agreement is made in the State of New York and shall be construed and interpreted in accordance with the internal laws of the State of New York, applicable to contracts made and performed entirely therein. Artist agrees and consents that jurisdiction and venue of all matters relating to this Agreement shall be vested exclusively in the Federal, state and local courts within the Southern District of the State of New York.

(j) **Severability.** If any provision of this Agreement is determined to be invalid by a court of competent jurisdiction, such determination shall in no way affect the validity or enforceability of any other provision herein.

(k) **Time Of the Essence.** Time is of the essence with regard to Artist's performance of the services described herein, as is Artist's appearance at all scheduled production dates and other dates scheduled with Company, subject to Artist's prior bona fide professional commitments and obligations as provided herein.

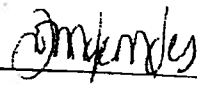
(l) **Binding Nature.** This Agreement shall be binding upon Artist and their respective successors, heirs, guardians, representatives and executors. For purposes of this Agreement, Company shall include its parent, agents, assigns, affiliates, subsidiaries and distributors ("Company Representatives"), and all rights granted to Company shall also be deemed to be granted to Company Representatives.

9. **COMPLETE AGREEMENT**

This document is a complete and exclusive statement of the terms of this Agreement and may not be changed orally but only by a writing signed by both parties hereto. Artist's signature at the end hereof, together with Company's, will constitute this a binding agreement between Artist and Company.

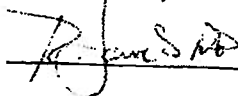
Very truly yours,

**Pfizer, Inc.**

By: 

**ACCEPTED AND AGREED:**

Robert Jarvik, M.D.



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

Date: 6/15/06