SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release ("the Settlement Agreement") is made by and among (1) the United States Government, through the Department of Justice (the "United States"), (ii) the United States Army ("Army"), (iii) Leo Burnett, Company Inc, formerly known as Leo Burnett USA Inc., and its parents, subsidiaries, affiliates, successors and assigns (collectively "Leo Burnett") and (iv) Greg Hamilton and Michele Casey ("Relators"). The United States, Army, Leo Burnett and Relators hereinafter are jointly referred to as the "Parties."

II. RECITALS

A. Leo Burnett's principal place of business is Chicago, Illinois. On June 27, 2000 the U.S. Army's Defense Supply Service-Washington awarded Leo Burnett an indefinite delivery-indefinite quantity contract, DASW01-00-D-3035, and subsequent bridge contracts for the Army's advertising program (collectively "Army Contracts") extending through December 31, 2005; and

B. On June 8, 2004, a *qui tam* suit was filed in the United States District Court for the Northern District of Illinois, *U. S. ex rel. Hamilton vs. Leo Burnett, USA Inc.* (Civ.04C3897), (the "*Qui Tam* Action"), alleging that Leo Burnett knowingly did not comply with the terms of the military contracts set forth in the complaint. The allegations described in the *Qui Tam* Action encompass the Covered Conduct. On January 5, 2009, Relators filed an Amended Complaint in the *Qui Tam* Action.

C. The United States Attorney's Office for the Northern District of Illinois, the Civil Division of the United States Department of Justice, the Army's Criminal Investigative Command and the Department of Defense Office of Inspector General, and the Defense Criminal Investigative Service contend that they have certain administrative and civil claims against Leo Burnett for its conduct under the Army Contract as follows:

> 1. The Relators and the United States allege that under the terms of the Army Contracts, Leo Burnett failed to properly include labor rates for subcontractors in proposing, negotiating, billing, and receiving payments for labor rates on the Army Contracts. Prior to the Government's investigation, Leo Burnett brought this to the Army's attention and offered to refund this overpayment on various occasions in 2002. The Army refused that refund. In this Agreement, the term "Contract Disputes Act Conduct I" shall mean the estimation, use and application by Leo Burnett in proposing, negotiating, billing, and receiving payments for products and services under the Army Contracts; and
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> 2. The Relators and the United States allege that Leo Burnett knowingly submitted false and fraudulent bills to the United States for services performed by its affiliated company "Chemistri" at the outset of the Army Contracts and several years later, by its internal division “iLeo,” as if they were third party independent subcontractors. By billing Chemistri and iLeo's work as independent contractors, Leo Burnett charged a higher rate than was allowed under the Army Contracts.

D. In the course of the Army Contracts, Leo Burnett performed $3.4 million worth of advertising buys for a NASCAR Army advertising program at the direction of the Army. The Army has not paid Leo Burnett for these services. In this Agreement, the term "Contract Disputes Act Conduct II" shall mean the unpaid balance of all advertising buys dealing with NASCAR under the Army Contracts. Allegations relating to the NASCAR program were made in the *Qui Tam* Action.

E. Leo Burnett disputes the allegations in the *Qui Tam* Action and denies any wrongdoing. As to the labor rates allegation, Leo Burnett asserts that the government's investigation concluded that Leo Burnett's failure to properly include subcontractors rates in proposing, negotiating, billing and receiving payments for labor rates was inadvertent, and that in 2002 Leo Burnett had brought such inadvertent error to the government's attention, offering to refund the money due the government as a result of such error. Leo Burnett further asserts that the government's investigation concluded that the inadvertent error had no effect on Leo Burnett's payments to its subcontractors. As to the Chemistri and iLeo allegations, Leo Burnett asserts that the Army, including the Secretary of the Army, was aware that Chemistri and iLeo were affiliated with Leo Burnett and were not independent subcontractors, and that Leo Burnett properly billed, and the Army properly paid, for the services they performed.

F. WHEREAS, the Parties mutually wish to avoid litigation relating to the *Qui Tam* Action and the Contract Disputes Act Conduct and are desirous of a final negotiated settlement and compromise of their disputes, as more fully set forth herein.

III. <u>TERMS OF AGREEMENT</u>

NOW, THEREFORE, in reliance upon the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below, and in resolution of the issues relating to the disputed Contract Act Disputes Conduct and *Qui Tam* Action, and for good and valuable consideration as stated herein, receipt of which is acknowledged by the Parties, the Parties agree as follows:

1. Within 7 business days of the full execution of this Agreement, Leo Burnett will pay the United States the sum of $12,100,000 to resolve the *Qui Tam* Action and Contract Disputes Act Conduct I. Leo Burnett agrees to pay the $12,100,000 by electronic funds transfer pursuant to written instructions to be provided by the United States. This sum will be included in and made part of the Settlement Proceeds.

2. Contemporaneously with the execution of this Agreement, Leo Burnett agrees to waive any rights it has to assert a claim or request for equitable adjustment under the Contracts Dispute Act for the $3,400,000 of Army advertising it performed and was not paid for under the Army contract resolving Contract Disputes Act Conduct II. This sum is included in and made part of the Settlement Proceeds.

3. Contingent upon the United States receiving the payment referenced in Paragraph 1 from Leo Burnett, the United States agrees to pay 18% of the total Settlement Proceeds, in the amount of $2,790,000, to the Relators as the Relators' share pursuant to 31 U.S.C. 3730 (d)(1). This sum will be paid by electronic funds transfer within five (5) business days after the United States receives the payment described in paragraph 1 above, pursuant to written instructions supplied by Relators' counsel, Michael I. Behn of Behn & Wyetzner, Chartered and Steven H. Cohen of the Cohen Law Group.

4. Leo Burnett and the Relators have entered into an agreement to resolve Leo Burnett's statutorily obligated duty under the False Claims Act to pay the Relators for

attorney fees, costs and expenses pursuant to 31 U.S.C. 3730 (d)(1) and employment claims under 31 U.S.C. 3730 (h). The rights and obligations of the Relators in this Settlement are conditioned upon the execution of the agreement between Leo Burnett and Relators, and Relators' receipt of the payments described therein.

5. Contemporaneous with the signing of this Settlement Agreement and the agreement referenced in paragraph 4 above, the Parties shall execute the attached Stipulation of Dismissal and Proposed Order (Exhibit A), in which the United States and Relators agree to dismiss the *Qui Tam* Action with prejudice subject to the terms of the Settlement Agreement. The United States shall file the Stipulation of Dismissal and Proposed Order with the United States District Court for the Northern District of Illinois within five (5) business days after the receipt of payment under this Settlement Agreement.

6. Subject to the exceptions in paragraph 7 (concerning excluded claims), below, in consideration of the obligations of Leo Burnett in this Agreement, conditioned upon Leo Burnett's full payment of the Settlement Proceeds and subject to paragraph 15, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Leo Burnett from any and all civil or administrative monetary claims the United States has and/or may have for the Covered Conduct under the False Claims Act, 31 U.S,C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and/or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

7. This Agreement does not release Leo Burnett, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability with respect to:

a. any claims for deficient or defective products, for personal or property injury, or for other consequential damages arising from the direct or indirect sale or delivery by Leo Burnett of any deficient or defective product, or from breach of express or implied product warranty other than the Covered Conduct;

b. any claims based on such obligations as are created by this Settlement Agreement;

c. any claims that the United States may have under the Internal Revenue Code, Title 26 of the United States Code;

d. any administrative liability;

e. the suspension or debarment of rights of any federal agency; and

f. any criminal liability.

8. Leo Burnett fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Leo Burnett has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. Leo Burnett fully and finally releases the Relators, their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Leo Burnett has asserted, could have asserted, or may assert in the

future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

10. Conditioned upon receipt of the full payments as provided in paragraphs 3 and 4, the Relators, for themselves individually, and for their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, agree to release Leo Burnett, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Relators have asserted, could have asserted, or may assert in the future against Leo Burnett, related to the Covered Conduct and Leo Burnett's investigation and prosecution thereof.

11. Conditioned upon final receipt of payment described in paragraph 3 pertaining to the Relators' share, the Relators, for themselves individually, and for their heirs, personal representatives, legal representatives, successors, agents and assigns, fully and finally release, waive, and forever discharge the United States, its officers, agents, and employees, from any claims arising from the filing of the *Qui Tam* Action, and from any other claims for a share of the Settlement Proceeds.

12. Upon the Court's dismissal of the *Qui Tam* Action, the United States fully and finally releases, waives and forever discharges the Relators, their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims related to the Covered Conduct. This Settlement Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Settlement Agreement.

13. Relators agree that this Settlement Agreement is fair, adequate, and

reasonable under all the circumstances and that they will not challenge this Settlement Agreement pursuant to 31 U.S.C. § 703(c)(2)(B).

14. Leo Burnett agrees to the following:

a. Unallowable Costs Defined: if applicable, that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Leo Burnett, and its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) Leo Burnett's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment Leo Burnett makes to the United States pursuant to this agreement and any payments that Leo Burnett may make to Relators, including costs and attorneys fees, are "Unallowable Costs" for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: if applicable, Unallowable Costs will be separately determined and accounted for by Leo Burnett, and Leo Burnett shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: if applicable, Leo Burnett further agrees that within 90 days of the Effective Date of this Agreement it shall identify any unallowable costs (as defined in this Paragraph) included in payments previously sought by Leo Burnett or any of its subsidiaries or affiliates from the United States. Leo Burnett agrees that the United States, at a minimum, shall be entitled to recoup from Leo Burnett any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Leo Burnett or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Leo Burnett , or the effect of any such Unallowable Costs on the amount of such payments,

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Leo Burnett 's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Leo Burnett waives and will not assert any defenses Leo Burnett may have to any criminal prosecution relating to the covered conduct that may be based in whole or in part on the contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth

Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Proceeds for purposes of the Internal Revenue laws, Title 26 of the United States Code.

16. Leo Burnett warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(1), and shall remain solvent following payment to the United States of the Settlement Proceeds. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Leo Burnett, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Leo Burnett was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

17. The Parties agree that, if the United States District Court for the Northern District of Illinois fails to enter the Order of Dismissal dismissing Case No. 04 C 3897 with prejudice, this Settlement Agreement shall be null and void *ab initio*. Should the Court fail to enter the Order of Dismissal dismissing Case No. 04 C

3897 with prejudice, the United States will return any payments Leo Burnett may have made pursuant to paragraph 1, the Relators will return any payments the United States may have made pursuant to paragraph 2 and will return any payments Leo Burnett may have made pursuant to paragraph 3 within a reasonable time after the Court's action.

18. This Settlement Agreement is intended to be for the exclusive benefit of those entities and individuals released herein, and by this Settlement Agreement the Parties do not waive, compromise, or release any claims or causes of action against any other entity or individual.

19. This Settlement Agreement and the agreement referenced in paragraph 4 of this Settlement Agreement constitute the complete agreement between the parties on the subject matter covered herein. This Settlement Agreement may not be amended except by written consent of the Parties. This Settlement Agreement shall be binding upon the Parties hereto, and their heirs, personal representatives, legal representatives, successors, agents and assigns. In the event of a breach of this Settlement Agreement, the non-breaching Party or Parties shall be entitled to all legal and equitable remedies. In the event of any action to enforce this Settlement Agreement, the prevailing Party or Parties shall be entitled to recover reasonable attorney's fees and expenses; however, the United States shall only be liable for any such attorney's fees and expenses to the extent specifically authorized by federal statute.

20. This Settlement Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between, and among, the Parties under this Settlement Agreement will be the United

States District Court, Northern District of Illinois.

21. This Agreement may be executed in counterparts each of which constitutes an original and all of which constitutes one and the same Agreement.

22. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

23. The individuals signing this Agreement on behalf of Leo Burnett represent and warrant that they are authorized by Leo Burnett to execute this Agreement. The individuals(s) signing this Agreement on behalf of Relators represent and warrant that they are authorized by Relators to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

24. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED:_____________ BY: ______________________________

PATRICK JOHNSON
Assistant United States Attorney
Northern District of Illinois

DATED:______________ BY: ______________________________

ART J. COULTER
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Leo Burnett, USA, Inc. - DEFENDANT

DATED:____________ BY: ______________________________

DATED:____________ BY: ______________________________

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RELATORS

DATED__________________ BY: ______________________________
GREG HAMILTON

DATED__________________ BY: ______________________________
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