

# Welcome New and Current Locations!

Please fill out the following information:

Page 1

- Location Name
- Jurisdiction and entity type
- Doing business as
- The business address

Page 8 (Location Section Only)

- Location Name
- Your Signature
- Printed Name
- Title
- Your cell number
- Location Phone number
- Email address
- Location Address
- Liquor license # (if applicable)
- EIN

**\*\* Location's signatory has provided a photocopy of their driver's license or other valid state-issued identification, which is included as Exhibit C \*\***

Please return the contract to:

Email: [bjamco@aol.com](mailto:bjamco@aol.com)

Office: 5617 Villa Dr, Lubbock Texas 79412

Phone: 806-747-5297 (we can have one of our friendly route agents pick them up!)

**TEXAS APPROVED LOCATION  
AGREEMENT**

This TEXAS APPROVED LOCATION AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between High Plains Games \_\_\_\_\_ [operator name], a \_\_\_\_\_ LLC \_\_\_\_\_ [jurisdiction and entity type] with an address at 5617 Villa Dr, Lubbock TX 79412 \_\_\_\_\_ (“**Operator**”), and \_\_\_\_\_ [location name], a \_\_\_\_\_ [jurisdiction and entity type] doing business as \_\_\_\_\_ with an address at \_\_\_\_\_ (“**Location**”).

**WHEREAS**, Thunderbird Holdings, LLC (“**Distributor**”) and POM of Texas, LLC (“**Manufacturer**”) have contracted with Operator to provide to Operator certain currency-activated electronic gaming machines that award prizes for skillful play (“**POM Skill Games**”) housed in Terminals in the State of Texas (the “**Territory**”);

**WHEREAS**, Location desires to have POM Skill Games placed in its business establishment; and

**WHEREAS**, Operator and Location desire to share in revenue generated by POM Skill Games subject to the provisions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Operator and Location agree as follows:

1. **Definitions.** The following definitions shall apply to this Agreement and all exhibits thereto.

a. “**Competitive Equipment**” means any currency- or credit-activated entertainment game machine that awards to the player cash or other prizes or the opportunity to redeem an award of cash or other prizes, not including electronic game machines licensed by the Lottery Division of the Texas Lottery Commission.

b. “**Fill(s)**” means the extended play authorizations in the form of a software license or software license renewal sold by Manufacturer for the software utilized in POM Skill Games in the Territory.

c. “**Gross Revenue**” means all revenue from game play on POM Skill Games.

d. “**Net Revenue**” means an amount equal to Gross Revenue less all Payouts and taxes, other than income taxes, imposed or assessed on revenue generated by the POM Skill Games.

e. **“Payout”** means the amount paid to players for winnings on any POM Skill Game.

2. **Operator to Provide and Service POM Skill Games.** Operator will install POM Skill Games at Location and, if applicable, the additional business establishments of Location listed on **Exhibit A** hereto (the **“Locations”**) as it deems appropriate in order to maximize revenue. Operator agrees to service and maintain POM Skill Games as required. Annex I lists the POM Skill Game Terminal identification number (**“TID”**) of each POM Skill Game installed at Location(s) under this Agreement.

3. **Provision of Facilities for POM Skill Games.** Location agrees to (i) exercise its best efforts to offer POM Skill Games for play to the public as directed by Operator, (ii) provide sufficient and conspicuous space within Location's place of business, which space shall be readily accessible to the public during all business hours, (iii) provide adequate seating for the operation of the POM Skill Games, (iv) provide adequate electrical outlets and keep POM Skill Games powered, and (v) ensure the POM Skill Games are cleaned on a daily basis.

4. **Manufacturer Guarantee.** Manufacturer has spent considerable resources, and intends to continue to do so, designing and obtaining approval for the POM Skill Games as games that are legal under the laws of the Territory. Manufacturer agrees to defend the legality of the POM Skill Games and provide legal support for the Location, if necessary, in any legal or administrative challenge to the legality of the POM Skill Games, as set forth on **Exhibit B** hereto.

5. **Exclusive Provider.** Location agrees that Operator shall have the sole and exclusive right to offer POM Skill Games for placement at Locations. Location shall not accept, house, or provide to its customers Competitive Equipment. Location acknowledges and agrees that it is strictly prohibited from accepting cash and/or gifts presented to Location with the purpose of inducing Location to replace Operator with another POM Skill Game operator. In the event this Agreement is terminated by either Party under its terms, Location shall be free to contract with a new operator for the provision of POM Skill Games.

6. **Revenue Share & Collections.**

a. For the Term, Operator shall collect, and Location shall remit, all revenue from POM Skill Games placed at Locations at least every two weeks. Location will be paid 35% of Net Revenue for its services.

b. Operator will reimburse Location for all valid Payouts generated and registered by each POM Skill Game at Location. Operator shall not be responsible for any invalid Payouts, including any payments made pursuant to counterfeit or vandalized Payout tickets and payments made on previously paid out tickets. Any POM Skill Game malfunction, as determined in the sole discretion of Operator, will void all unreimbursed plays and payouts. All decisions as to the validity of a challenged Payout will rest with the Distributor if the issue relates to hardware and with Manufacturer if the issue relates to software. In all normal circumstances any malfunction voids any Payout which resulted from such malfunction.

c. Operator has the express right to remove Location's access to cash doors of the POM Skill Games, or to completely remove any or all POM Skill Games or any other equipment provided to Location by Operator, upon (i) failure of the Location to be present at agreed-upon collection times, (ii) failure by Location to pay the Operator with cash or other currently available funds, and/or (iii) any breach of the Agreement.

d. Operator at collection times and when POM Skill Games are being repaired will exercise the good business habit of making sure that all Terminals are clean and free of any debris. Location will clean POM Skill Games, empty cup holders of any debris, clean monitors, and regularly test game play to make certain the game is functioning properly. If POM Skill Games are found to be in disrepair or reported to be continually dirty, Location will be deemed to be in violation of this Agreement. Neither Operator nor Location may alter the appearance of any POM Skill Game.

7. **Term; Renewal.** The Agreement shall be for an initial term of five (5) years (the "Initial Term") from the date of execution and shall automatically renew for subsequent five (5) year terms (each, a "Renewal Term"), unless either party serves upon the other a written notice of cancellation no later than one hundred and eighty (180) days before the expiration date of the applicable term. The Initial Term and any Renewal Terms are collectively referred to herein as the "**Term.**" Notwithstanding the preceding, Location shall have the right to terminate this agreement for convenience at any point during the first ninety (90) days of the Initial Term upon written notice to Operator (a "Termination for Convenience"). Should Location exercise a Termination for Convenience, this Agreement shall be void, *ab initio*, including Section 24 (Survival) and Operator will use best efforts to remove POM Skill Games from Location as soon as possible thereafter.

8. **Location's Breach of Agreement.** If Location breaches this Agreement, Operator may immediately terminate the Agreement upon written notice by Distributor and Manufacturer. Notwithstanding the foregoing, upon breach by Location, Manufacturer may take remedial measures short of terminating this Agreement, including, but not limited to, reducing the proportion of Net Revenue to which Location is entitled.

9. **Breach Due to Improper Activity.** Location may be found in breach of this Agreement if Location, or any principal, agent, or affiliate thereof, is convicted of a criminal offense not related to the operation of POM Skill Games. Location may also be found in breach if Manufacturer reasonably believes Location's business is operating in an unlawful manner, including, but not limited to, allowing the play of POM Skill Games by persons under the age of 18. In the event that POM Skill Games are seized by law enforcement due to alleged illegal conduct not related to the operation of POM Skill Games, Location will reimburse Operator for the cost of the POM Skill Games seized.

10. **Location's Authority to Enter into Agreement.** Location represents and affirms that its signatory below is the duly authorized representative of the Location and has the authority to bind Location to the Agreement. Location's signatory has provided a photocopy of their driver's license or other valid state-issued identification, which is included as **Exhibit C** hereto.

11. **Non-Competition.** Location acknowledges that Operator, Distributor, and Manufacturer have expended significant resources and upfront investment in the POM Skill Games and associated goodwill, intellectual property, trade secrets, training, marketing, promotion

and other intangibles. Location agrees that during the term of this Agreement and for a period of twelve (12) months immediately following the termination of this Agreement for any reason, Location, and its owners and affiliates, shall not, on Location's own behalf or on behalf of any person, firm, partnership, association, corporation or business organization, entity or enterprise, compete with Operator, Distributor, or Manufacturer within a ten (10) mile radius of the Location(s) set forth herein, by engaging or attempting to engage in the business of providing or offering to provide to Competitive Equipment. Location agrees that this non-compete covenant is ancillary to an otherwise enforceable agreement, including the confidentiality covenant. Location and Operator acknowledge and agree that the covenants in this section are necessary for the protection and preservation of the value and the goodwill of Operator's, Distributor's, and Manufacturer's business and prospects and are reasonable and valid in geographical and temporal scope and in all other respects.

12. **Specific Performance/Injunctive Relief.** Location agrees that in the event it breaches any of the terms of this Agreement, Operator, Manufacturer, and Distributor will suffer immediate and irreparable harm, and Operator, and Distributor and/or Manufacturer as third-party beneficiaries, shall be entitled to specific performance and/or immediate injunctive relief to prevent such violation and/or otherwise enforce the terms of this Agreement. This remedy shall be in addition any other legal or equitable relief to which Operator, Distributor or Manufacturer may be entitled. Location further agrees that Operator, Distributor or Manufacturer shall not be required to post any bond, and Location waives the right to seek any bond, as a condition of Operator, Distributor or obtaining such relief.

13. **Liquidated Damages.** In the event of a breach of this Agreement by Location, the parties agree that it would be impossible to ascertain the exact damages that Operator, Distributor, and Manufacturer would sustain and therefore the parties agree that reasonable liquidated damages due and owing the Operator, Distributor, and Manufacturer by the Location for the breach is the sum of money equal to the number of weeks remaining under the terms of the Agreement, multiplied by the average weekly income derived by Operator and Manufacturer (including the cost of Fills) from all POM Skill Games operated by Location from the date of execution of this Agreement to the date of the breach.

14. **Third-Party Beneficiaries.** Location and Operator specifically agree that each of Distributor and Manufacturer receives a benefit from the placement of the POM Skill Games in accordance with the Agreement, and each is an intended third-party beneficiary to the Agreement. Location and Operator specifically agree that Distributor and Manufacturer shall each have the right to enforce any right or remedy of Operator under the Agreement. Location hereby specifically waives any defense of real party in interest with respect to each of Distributor and Manufacturer.

15. **Protection of Intellectual Property.** Location acknowledges and agrees that it will not, nor shall it permit or request a third party to, copy, distribute, reproduce, incorporate, use or allow access to POM Skill Games software, or alter, modify, prepare derivative works of, decompile, reverse engineer, disassemble, or otherwise attempt to derive source code from POM Skill Games software. Location acknowledges and agrees that it will not, nor will it permit a third party to, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available POM Skill Games software to any person or entity, or bypass or breach any security device or protection used for or contained in the software.

Notwithstanding anything to the contrary herein, Location shall not be vested with any title or ownership rights in POM Skill Games, including, but not limited to, its software.

16. **Duty to Prevent Theft, Vandalism or Illegal Use.** Location agrees to file a report with local police authorities promptly upon any vandalism, theft or pilfering of a POM Skill Game Terminal. In the event of losses or damages to the POM Skill Games resulting from vandalism, theft, pilfering or intentional misuse by Location or any patron of Location, Operator may hold Location fully or partially liable for such damages, including any amount of cash stolen by any individual or entity from the POM Skill Games, and deduct the costs of Terminal repair or replacement or stolen cash from the percentage of Net Revenue otherwise payable to Location.

17. **Advertising Restrictions; Marketing.** Location shall not advertise the POM Skill Games outside the walls of each Location. Location further agrees that any signage or other advertising or promotional materials with respect to the POM Skill Games shall be approved by Manufacturer.

18. **Confidentiality.** Location recognizes that during the parties' performance under this Agreement, Location will obtain access to certain information that is confidential and proprietary to Operator, Distributor, Manufacturer and their respective affiliates, contractors, customers, agents and related entities, collectively referred to herein as "Proprietary Information." Location agrees that during the term of this Agreement, Location shall only use or disclose Proprietary Information in connection with the performance of Location's responsibilities under this Agreement, and disclose Proprietary Information only to its employees or others who have a legitimate business need to know, or others as may be expressly authorized by Manufacturer. The rights of Operator, Distributor, and Manufacturer under this section are in addition to those rights both have under the law for protection of trade secrets or any other state or federal law concerning confidential information, trade secrets or business proprietary information.

19. **Operator Termination.** If Operator's agreement or contract with Manufacturer and Distributor with respect to the operation of POM Skill Games is terminated, Location agrees that Manufacturer shall assume the role of Operator under this Agreement for the remaining duration and any renewal period. At its discretion, Manufacturer may present to Location a list of new operators in its region, which Location may choose from to assume Operator's obligations under this Agreement.

20. **Arbitration and Applicable Law.** Any claim or controversy that arises out of or relates to this Agreement or the breach of it, whether legal or equitable in nature, shall be settled by arbitration administered by and in accordance with the rules of JAMS, and the place for arbitration shall be a county in the Territory selected by Manufacturer. Judgment upon the award rendered may be entered in any court with Jurisdiction. This Agreement shall be governed by the laws of the State of Texas without regard to the principles of conflicts of laws.

21. **Attorneys' Fees.** In any action at law, or in equity, or any arbitration proceeding in accordance with section 20 of this Agreement, the prevailing party shall be entitled to actual

attorneys' fees, court costs, and any other necessary disbursements in addition to any other relief to which it may be entitled.

22. **Assignment**. This Agreement is not assignable without Operator's written approval. Any change in the ownership or control of Location that Operator considers substantial shall be deemed an assignment.

23. **Integration Clause**. This Agreement is the only agreement of the parties and there is no collateral agreement (oral or written) between the parties in any manner relating to the subject matter hereof. The failure of either party to enforce at any time or for any period-of-time, the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of such party thereafter to enforce any provision hereof. This Agreement shall not be subject to change, modification or discharge in whole or in part except by written instrument signed by all parties.

24. **Severability**. Should any portion of this Agreement for any reason be declared invalid, such invalidity shall not affect the validity of any remaining portion, which remaining portion will remain in full force and effect to the maximum extent permitted by law and as if this Agreement had been executed with the invalid portion eliminated.

25. **Survival**. Notwithstanding anything to the contrary herein, Section 11 (Non-Competition), Section 12 (Specific Performance/Injunctive Relief), Section 13 (Liquidated Damages), Section 14 (Third-Party Beneficiaries), Section 15 (Protection of Intellectual Property), Section 18 (Confidentiality), Section 20 (Arbitration and Applicable Law), Section 21 (Attorneys' Fees), Section 24 (Severability), Section 25 (Survival), and Section 28 (Disclaimer of Warranties) of the Agreement shall survive the expiration or earlier termination of the Agreement for any reason whatsoever.

26. **Counterparts**. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together constitute one and the same instrument. The delivery of an executed counterpart copy of this Agreement by facsimile or portable document format (PDF) shall be deemed to be the equivalent of the delivery of an original executed copy thereof.

27. **Modification**. The Agreement may not be modified without the prior written consent of Distributor and Manufacturer. Any modifications to this Agreement shall be in writing.

28. **Disclaimer of Warranties**. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, NONE OF OPERATOR, DISTRIBUTOR OR MANUFACTURER MAKES ANY WARRANTY WHATSOEVER WITH RESPECT TO THE POM SKILL GAMES OR THEIR LEGALITY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

29. **Independent Contractor**. No partnership, joint venture or agency relationship is created nor shall a partnership, joint venture or agency relationship be deemed to exist between the parties. Location is not authorized to act for, incur debt for or make any representations or warranties on behalf of Operator, Distributor or Manufacturer without the express written consent Operator, Distributor or Manufacturer, as applicable.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written, and each hereby acknowledges receipt of a completed copy hereof:

**LOCATION:**

\_\_\_\_\_ (Location Name)

By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_

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

Signatory Cell Phone Number: \_\_\_\_\_

Location Phone Number: \_\_\_\_\_

Email Address for Notices: \_\_\_\_\_

Location Address for Notices: \_\_\_\_\_

\_\_\_\_\_

Liquor License Number (if applicable): \_\_\_\_\_

EIN: \_\_\_\_\_

**OPERATOR:**

High Plains Games LLC \_\_\_\_\_ (Operator name)

By: \_\_\_\_\_ (Signature)

Name: Curtis Jordan

Title: Member

Email Address for Notices: bjamco@aol.com

Operator Address for Notices: \_\_\_\_\_

5617 Villa Dr, Lubbock TX 79412

**EXHIBIT A**  
**LOCATIONS**

Location Name	Jurisdiction and Name of Entity Owning Location	Contact Person	Location Address	Location Liquor License Number	Date of Addition to Location Agreement	Signature of Authorized Signatory on Behalf of Additional Location

## **EXHIBIT B**

### **LEGAL DEFENSE OF POM SKILL GAMES**

Manufacturer agrees to indemnify Location for any legal costs and penalties incurred in connection with defending against any challenges to the legality of the POM Skill Game developed by Manufacturer and any claim that the POM Skill Game itself at Location violates Texas law (any such claim a “Legality Claim”) so long as (a) the Legality Claim does not in any way implicate Location’s placement or operation of Competitive Equipment at Locations, (b) the POM Skill Games are being operated in accordance with their design and in compliance with the terms and conditions of the Agreement, (c) the POM Skill Games have not been altered by any individual or entity other than Manufacturer, and (d) Location is not in breach of the Agreement. Manufacturer shall have the right to appoint legal counsel to defend against any Legality Claim. For the avoidance of doubt, Manufacturer shall not be required to defend any claim other than a Legality Claim even if such claim is brought against Location in the same cause of action as the Legality Claim. If Location receives notice of any Legality Claim against it, Location shall give Operator and Manufacturer prompt written notice thereof. Location shall cooperate in the conduct of the defense of a Legality Claim, including by retaining records and information reasonably relevant to such Legality Claim and providing reasonable access to Manufacturer of Location’s relevant business records, other documents and employees. Manufacturer will not indemnify Location if a POM Skill Game is seized by a governmental enforcement agency or entity in connection with reasons unrelated to the legality of the POM Skill Game, such as tax evasion, drug possession, sale of alcohol to minors or the illegality and use of software other than the software developed by Manufacturer for use in POM Skill Games. Location will cooperate with Manufacturer in any legal action or regulatory activity regarding the POM Skill Games, and agrees not to initiate, respond to or otherwise participate in any legal or regulatory activities regarding the POM Skill Games other than through legal counsel selected by Manufacturer, except that Location may respond to legal action taken against Location by Operator, Distributor or Manufacturer.

**EXHIBIT C**

**LOCATION SIGNATORY IDENTIFICATION**

**ANNEX I**

**TERMINAL TIDS AT LOCATION(S)**

<b>TID</b>	<b>Address</b>