

Supplement to AOR 2008-17

COLLABORATION AND JOINT INDEMNITY AGREEMENT

This COLLABORATION AND JOINT INDEMNITY AGREEMENT (this "Agreement") is entered into by and between Senator Christopher S. ("Kit") Bond ("Bond"), and [REDACTED] ("[REDACTED]") as of December 20, 2005.

WHEREAS, Bond and [REDACTED], as authors (each, an "Author," and together, the "Authors"), and Simon & Schuster, Inc. (the "Publisher") have entered into a certain publishing agreement dated as of December 20, 2005 (as same may be from time to time amended, the "Publishing Agreement") with respect to, *inter alia*, the publishing of a literary work (and any related literary works, the "Work") now entitled UNTITLED WORK;

WHEREAS, Bond and [REDACTED] desire to set forth the working relationship between the two regarding, *inter alia*, control, credit, confidentiality, and the like;

WHEREAS, pursuant to the Publishing Agreement, the Authors shall share all the advance due to the Authors, approximately 66% (\$125,000 of a \$190,000 advance) to [REDACTED] and approximately 34% (\$65,000 of a \$190,000 advance) to Bond, and shall share in any additional royalties, in the following proportion: 50% to [REDACTED] and 50% to Bond;

WHEREAS, pursuant to the Publishing Agreement, the Authors are jointly and severally liable for all obligations, costs, expenses, claims, judgments and liabilities of the Authors arising out of, or related or connected to, the Publishing Agreement, including without limitation: (i) any permissions expenses incurred by the Authors pursuant to the Publishing Agreement; (ii) any costs incurred for examination of the Publisher's books and records pursuant to the terms of the Publishing Agreement; (iii) the return of advances in the event of termination of the Publishing Agreement pursuant to Paragraphs 78, 79 or 83 of the Publishing Agreement (which shall be in proportion to the amount each Author has received); (iv) any costs for which the Authors are liable under Part Six of the Publishing Agreement; (v) any costs for which the Authors are liable under Part Nine of the Publishing Agreement; and (vi) any amounts the Publisher may offset or charge to the Authors' account pursuant to the terms of the Publishing Agreement (the foregoing, collectively, the "Liabilities"); and

WHEREAS, the parties desire to ensure that pursuant to this Agreement each Author shall be liable ultimately only for the following proportions: regarding repayment of the advance, the amount actually paid to each Author or approximately 34% to Bond and 66% to [REDACTED], and otherwise, 50% to Bond, and 50% to [REDACTED] (each such fraction with respect to each Author, such Author's "Pro Rata Share") of any and all Indemnified Obligations (as defined herein).

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, and in order to induce each other to enter into the Publishing Agreement and this Agreement, the parties agree, as follows:

1. DELIVERY.

a. [REDACTED] agrees to perform all services related to preparation of the Work which shall include - without limitation - conducting interviews, including Bond and other persons Bond suggests, examining and organizing materials, preparing all drafts, performing all editing as requested by the Publisher, preparing a final draft, reviewing and editing all proofs and writing any updates as Publisher reasonably requests. Bond agrees to make himself reasonably available so as to enable [REDACTED] to accomplish said tasks. Bond and [REDACTED] will agree upon a method and means of accomplishing the necessary work in order to satisfy the delivery requirements set forth in the Publishing Agreement, including [REDACTED] delivering to Bond successive portions of the Work for Bond's review, editing, and approval, in accordance with a schedule agreed to by Bond and [REDACTED], with Bond replying promptly to a mutually agreed-upon schedule. [REDACTED] agrees that timely performance is of the essence of this Agreement. [REDACTED] agrees to make changes, additions, eliminations, and/or revisions as agreed upon by both parties. The Work will not be submitted to the Publisher without the written approval of both authors.

b. After delivery of the Work to the Publisher, [REDACTED] agrees to exercise best efforts to render the Work acceptable to the Publisher in a timely manner.

c. Until such time as Publisher accepts the Work for publication, [REDACTED] and Bond agree that they shall devote an amount of their time and attention to the Work sufficient to fulfill their obligations hereunder. [REDACTED] shall not allow any existing responsibilities or obligations to interfere with his obligations hereunder, nor will he incur any additional responsibilities or obligations that are likely to interfere with the performance of his obligations hereunder. In addition to the foregoing, [REDACTED] agrees that he will not participate in any other book-writing project until his duties hereunder are completed. Consistent with the foregoing, it is agreed that work on the Work will always take priority. Timely performance of [REDACTED] obligations hereunder is of the essence to this Agreement.

2. CONTROL. Subject to the rights and requirements of the Publisher, the Authors shall assume mutual responsibility for final control and approval with respect to the Work and all other matters relating to the preparation of the Work including, without limitation, the contents thereof, the title, credit, illustrations, and all other ancillary matters to be included therein.

3. COMPENSATION / EXPENSES. It is understood and agreed that the compensation to be paid for each of [REDACTED] and Bond's services hereunder are as set forth in the Publishing Agreement, but that [REDACTED] shall pay for all expenses incurred by him in connection with his services hereunder including, travel, cost of transcriptions, long distance telephone calls, photocopying, tape transcription costs and other incidental expenses; should Publisher require extraordinary expenses such as an additional overseas trip, the payment of the expenses shall be negotiated by [REDACTED] with the Publisher.

4. TERMINATION. Upon termination of the Publishing Agreement resulting in a requirement to pay back any or all of the advance, it is hereby understood and agreed that each of Bond and [REDACTED] will be responsible to the Publisher to pay back that portion of the advance that either Bond or [REDACTED] has received.

5. CONFIDENTIALITY.

a. Bond and [REDACTED] agree that, whether or not the Work is published and whether or not this Agreement is terminated or expires, they shall not, other than as required by law, discuss publicly or privately or otherwise disclose in any manner whatsoever to any third party (excepting their agent, attorney, or accountant in direct connection with their provision of professional services) any information about the terms and conditions, including the financial terms, of any Publishing Agreement or other agreement that may become known to Bond and [REDACTED], the nature and contents of any material or information provided to or obtained by them during the course of their performance under the terms of this Agreement or any confidential, proprietary, or other information that they may obtain through or about each other, or otherwise in the course of their research and interviews. Bond and [REDACTED] may acknowledge that they are co-authoring or have co-authored a book with each other. The provisions of this Paragraph shall survive the termination or expiration of this Agreement for any reason whatsoever.

With regard to the Work, and the project, Bond and [REDACTED] will not write any articles or books or scripts, and will not discuss with anyone and will not disclose in any manner the contents of the Work or any portions of the Work or drafts of or notes for the manuscript for the Work, any discussions or interviews between Bond and [REDACTED], or any aspect of the relationship of the parties involved in the preparation of and the publication of the Work. Neither Bond nor [REDACTED] will participate in interviews about the foregoing or about content of the Work without the agreement of the other to the best of their ability which shall mean and include, in Bond's case, consistent with his professional obligations as a U.S. Senator. Following publication of the Work, Bond and [REDACTED] shall be relieved from disclosure restrictions only with respect to material appearing in the Work. However, all other restrictions contained in this Paragraph shall apply. The provisions of this Paragraph shall survive the termination or expiration of this Agreement for any reason whatsoever.

b. Bond and [REDACTED] will take all reasonable precautions to avoid unauthorized access by any person or entity to materials and information relating to their work, copies of the manuscript for the Work, or parts of or drafts of the manuscript for the Work or notes prepared for the Work. [REDACTED] and Bond shall at all times maintain confidentiality about the financial terms of this Agreement and any terms of the Publishing Agreement or any other agreement relating to the Work as set forth herein, with the exception of disclosures required of Bond by the Senate Ethics Committee. The provisions of this Paragraph shall survive the termination or expiration of this Agreement for any reason whatsoever. In any interviews, or discussions, or descriptions of the Work, Bond and [REDACTED] will not discuss any areas of disagreement between them on the contents of the book or any unrelated policy differences.

6. INDEMNIFICATION.

(a) Each Author, according to, and only to the extent of, each Author's Pro Rata Share, agrees (each Author in such capacity, an "Indemnifying Author") to indemnify, reimburse and hold the other Author(s) (each Author in such capacity, an "Indemnified Author") harmless for: (1) any payment made to the Publisher or any other party on account of any Liabilities paid after the date hereof by any Indemnified Author in excess of such Indemnified Author's Pro Rata Share of the total amount of such Liabilities provided that, if and to the extent the Authors are required to return advances to the Publisher for any reason they shall each return that portion that

each has received to date (i.e., if all advances have been paid, \$125,000 shall be returned by [REDACTED] and \$65,000 shall be returned by Bond) and any other payment regarding Liabilities shall be paid according to each Author's Pro Rata Share; and (ii) all costs, expenses and fees, including, without limitation, reasonable attorneys' fees and disbursements, arising out of, or related to, any claims, actions, suits, demands or other proceedings brought by the Publisher or any other party in connection with the attempted collection from such Indemnified Author of the Liabilities (the foregoing set forth in clauses (i) and (ii), collectively, the "Indemnified Obligations").

(b) Each Author, in his capacity as an Indemnifying Author, hereby agrees to pay all costs, fees and expenses incurred by the Indemnified Author arising out of, or relating to, the enforcement by the Indemnified Author of the foregoing indemnification obligations set forth in Paragraph 1(a), including, but not limited to, reasonable attorneys' fees and disbursements.

(c) All claims by the Indemnified Author shall be asserted and resolved as follows:

(i) In the event that (A) any claim, demand, suit, action, cause of action or proceeding is asserted or instituted by any person or entity other than an Indemnified Author that could give rise to Liabilities for which an Indemnifying Author would be liable to any Indemnified Author hereunder (such claim, demand, suit, action, cause of action or proceeding, a "Third Party Claim") or (B) any Indemnified Author shall have a claim to be indemnified by any Indemnifying Author that does not involve a Third Party Claim (such claim, a "Direct Claim"), such Indemnified Author shall with reasonable promptness send to any Indemnifying Author a written notice specifying the nature of such claim; demand, suit, action, cause of action or proceeding, and the amount or estimated amount at risk with respect thereto (which estimate shall not be conclusive of the final amount of such claim, demand, suit, action, cause of action or proceeding) (a "Claim Notice"); provided that, the failure to provide such Claim Notice in a timely manner shall not prejudice the claim of the Indemnified Author except to the extent that any Indemnifying Author was prejudiced by such delay in responding thereto.

(ii) In the event of any Third Party Claim, the Authors shall make best efforts to agree on how to defend such claim with the understanding that the legal fees and disbursements incurred by the Authors in connection therewith shall be deemed to be Indemnified Obligations to be paid by each of the Authors in accordance with his respective Pro Rata Share.

(iii) In the event of a Direct Claim, if the Indemnifying Author fails to notify the Indemnified Author within thirty (30) days of receipt of a Claim Notice that he disputes such claim, the amount of such claim shall be conclusively deemed a liability of the Indemnifying Author hereunder and shall be paid to the Indemnified Author immediately.

(d) The indemnification obligations contained in this Paragraph 1 shall survive termination or expiration of the Publishing Agreement. The parties hereto agree that any Indemnified Obligations owed pursuant to this Agreement may be set off by an Indemnifying Author against any Indemnified Obligations previously owed by the Indemnified Author to such Indemnifying Author.

7. **FORUM SELECTION AND CONSENT TO JURISDICTION.**

(a) Any litigation based hereon, or arising out of, under, or in connection with, this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of the parties hereto shall be brought and maintained exclusively in the courts of the District of Columbia or the United States District Court for the District of Columbia. Each party hereby expressly and irrevocably submits to the personal jurisdiction of the courts set forth in the foregoing sentence for the purpose of any such litigation as set forth above and irrevocably agrees to be bound by any judgment rendered thereby in connection with such litigation.

(b) Each party further irrevocably consents to the service of process by registered mail, postage prepaid or by overnight courier, at the address for each party set forth in Paragraph 4, or by personal service within or without the District of Columbia. Each party hereby expressly and irrevocably waives any objection, defense or claim relating to insufficient or improper service of process and lack of personal jurisdiction, inconvenient or improper venue, so long as the service of process or the choice of venue, as the case may be, is in accordance with the provisions of this Paragraph 2.

8. **APPLICABLE LAW.** This Agreement shall be construed under and governed by the internal laws of the District of Columbia, without regard to any otherwise applicable principles of conflicts of law.

9. **NOTICES.** Any notice, request or documentation required or permitted to be given hereunder shall be sufficient if in writing and delivered personally or sent by overnight courier or first class, certified or registered mail, return receipt requested, or delivered by telecopy (with prompt written confirmation by mail or courier) to the address set forth below or any address designated by any party by notice similarly given. Such notice shall be deemed to have been given upon the actual receipt of such notice.

To Senator Bond:

The Hon. Christopher S. Bond
c/o Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005
ATTN: Robert E. Barnett, Esq.
Telecopy 202-434-5029

To [REDACTED]

[REDACTED]

10. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.

11. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

12. **SUCCESSORS AND ASSIGNS.** Every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, legatees, legal representatives and transferees. This Agreement shall not be assigned by any Author without the prior written consent of the other Author.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.


CHRISTOPHER S. BOND
