

(B)

Package - including Benny. April

OUR DRAFT

As discussed with
Mr. Hahn 4/20/68

by Messrs. Helmut Schulte and Humphrey
NOTE: This is a revision of first rough
draft prepared by Mr. Schulte after
discussion.

4/18/55

G U A R A N T Y

Concurrently herewith THE AMERICAN TOBACCO COMPANY, a New Jersey corporation, hereinafter called "American", is entering into an agreement with J & M PRODUCTIONS, INC., a California corporation, hereinafter called "J & M", whereunder J & M is agreeing to produce for presentation in the United States by American the entertainment portion of sixteen (16) half-hour television shows starring me.

In consideration of the execution of said agreement by American, I hereby guaranty performance by J & M of all of the terms and conditions on its part to be performed thereunder and agree to be bound by all of the terms, warranties and conditions therein contained that apply to me.

My liability pursuant to this guaranty is subject to the same limitations as apply to J & M's liability pursuant to said agreement.

Dated: _____, 1955.

Jack Benny

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THIS AGREEMENT, made and entered into this day of ,
1955, by and between THE AMERICAN TOBACCO COMPANY, a New Jersey Corporation,
(hereinafter called "Sponsor"), and J & M PRODUCTIONS, INC., a California
corporation, (hereinafter called "Producer"),

W I T N E S S E T H:

1. Sponsor represents that it has entered into a network television facilities contract with CBS-Television, a division of Columbia Broadcasting System, Inc., covering the 7:30 to 8:00 p.m., CNYT time period, on Sunday, September 11, 1955, and on alternate Sundays thereafter, to and including Sunday, June 3, 1956. Said television facilities contract provides for television time on each available station in the CBS-Television network on either an interconnected or delayed basis as the same are made available to Sponsor by CBS-Television. The television time furnished by CBS-Television on all television stations pursuant to said facilities contract shall hereinafter be referred to collectively as "the TV time".

2. Producer agrees to produce and furnish to Sponsor for presentation in the TV time in the United States, its territories and possessions and the Republic of Cuba, the entertainment portion of sixteen (16) half-hour television shows starring Jack Benny (hereinafter referred to simply as "the shows"). Said shows shall be of the same general format as the Lucky Strike series of television shows in which Jack Benny appeared during the 1954-1955 season, and shall be of substantially equal quality and entertainment value thereto.

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The entertainment portion of said shows shall be approximately twenty-six and one-half (26½) minutes in running time and shall include the following:

- (a) The services of Jack Benny as the star;
- (b) The services of a cast as required by the script;
- (c) The services of writers and scripts;
- (d) Direction and production;
- (e) An orchestra of nineteen (19) musicians and a conductor, and all cue music and musical arrangements required;
- (f) Sound and lighting effects, if and as required;
- (g) All rights to telecast the shows;
- (h) Scenery, props and costumes;
- (i) All network clearances and production facilities, it being understood that such network production facilities to be furnished by Producer shall include, but shall not be limited to, camera director and technical crew, stage manager and stage crew, rehearsal studios, all necessary camera rehearsal time, the telecast studio for the actual telecast of the shows, and film studio, if required, for the entertainment portion of a live show;
- (j) All film production facilities and personnel necessary for the production of filmed shows;
- (k) All other personnel and equipment required for the show as such; except as such personnel and equipment are provided without additional cost to Sponsor under the terms of its facilities contract with CBS-Television;
- (l) All travel and living expenses of personnel furnished by Producer hereunder.

Said shows shall advertise Lucky Strike Cigarettes and other products of Sponsor only.

3. Producer may produce and furnish any of the shows on a live basis or on a filmed basis as Producer may elect provided, however, Producer shall produce and furnish at least four (4) of the first ten (10) of said shows on film. Producer shall have the right to deliver pursuant hereto the show, "Auto-lite", heretofore produced on film as the entertainment portion of one (1) of said sixteen (16) shows.

Except as otherwise provided herein, the sixteen (16) shows shall be furnished by Producer to Sponsor for telecast as the first sixteen (16) shows to be telecast hereunder in the TV time. In addition, Producer shall furnish to Sponsor for telecast as the last four (4) shows to be telecast in the TV time four (4) second-run filmed shows to be selected by Producer from the sixteen (16) shows produced and furnished under this agreement and filmed Jack Benny shows telecast by Sponsor prior to the 1955-1956 season.

4. Producer agrees to integrate into the negative of each show furnished on film the commercial material for the shows which Sponsor desires to be inserted therein. Sponsor shall deliver to Producer not later than four (4) weeks prior to the scheduled date of telecast of each filmed show, at no cost to Producer, a 35mm master fine grain, a composite print and a positive sound track for all such commercial material which Sponsor desires integrated in such film. Producer agrees to use its best efforts to accomplish such integration so that the release prints which are furnished to Sponsor will be as balanced as is reasonably possible and will include

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necessary opticals for proper integration. For integrating said commercial material into the negative of each film, Sponsor agrees to pay Producer Producer's out-of-pocket costs incurred in connection with such integration, provided, however, that in no event will Sponsor be obligated to pay Producer more than Two Hundred Dollars (\$200.00) per filmed show with respect to such integration.

Producer shall deliver to Sponsor at such address in Los Angeles, California, as Sponsor shall elect one (1) 35mm and one (1) 16mm standard black and white release print of each filmed show with commercials integrated, as above provided, not later than ten (10) days prior to the date scheduled for the presentation of each such show, respectively. Each such release print shall be a first-class, clear, composite print, fully cut, main and end titled, edited and assembled, with the sound track printed thereon in perfect synchronization with the photographic action and fit and ready for exhibition. All shows that are produced on film shall be presented as delivered, without change, except for causes beyond Sponsor's control.

Producer shall also deposit at least two (2) weeks prior to the scheduled telecast of any filmed show the negative of such show with Sponsor's commercials integrated, as above provided, at a laboratory in Los Angeles, California, or environs, with instructions to such laboratory to permit Sponsor, at Sponsor's expense, to order as many release prints therefrom as may be necessary for the purposes hereof and shall notify Sponsor of the name and address of such laboratory.

5. No entertainment portion of any of the shows shall ever be interrupted for any commercial announcement without Producer's express prior written approval in each case first had and obtained, and, without such approval commercial announcements shall be made on the shows only before the beginning or after the end of the entertainment portion thereof, provided, however, Producer shall furnish and include an integrated middle commercial in each of the shows, live or filmed, to be furnished hereunder similar to the integrated commercials included in telecasts of the "Jack Benny Program" sponsored by Sponsor prior to the 1955-1956 season. During the term of this agreement and any renewal thereof, Sponsor shall have the right to use in any and all advertising and publicity media the format, idea, plot and any other literary, musical or other creative material included in any integrated middle commercials.

6. The live shows shall originate from Los Angeles, California, or New York, New York, as Producer shall elect, or at such other place as Producer and Sponsor shall mutually agree upon.

7. (a) Producer agrees that the shows will not include any material which Producer has reasonable grounds to believe shall be detrimental to Sponsor's products or offensive to Sponsor or to any race, creed or national origin and that the material used by Producer will be in accord with CBS-Television's policies and standards with respect to good taste. If Sponsor deems any material included in any script in violation of Producer's agreement set forth in the preceding sentence and Sponsor notifies Producer in

writing of its objections, Producer agrees to rectify the matter complained of by Sponsor in all future shows.

The selection by Producer of all persons who are to receive name credit (visual or oral) in each of the shows shall be subject to Sponsor's approval, which approval shall not be withheld unreasonably. The selection by Producer of said persons in each of the shows and any substitutes for Jack Benny shall be submitted to Sponsor for approval at the Los Angeles or Hollywood offices of Sponsor's advertising agency, and in the event Producer does not receive from Sponsor written notice of Sponsor's disapproval of any such person within two (2) days (Saturdays, Sundays and holidays excluded) after receipt by Sponsor, as above provided, of the names of such persons, such persons shall be deemed automatically approved by Sponsor.

Producer agrees that it will include a provision in all contracts entered into with artists, except Jack Benny, for their performance on the shows by which Producer shall have the additional right to dismiss any such artist and to terminate his services forthwith in the event Producer shall determine that any performance by such artist wilfully violates accepted standards with respect to good taste, or in the event such artist at any time shall commit any act or thing which shall be an offense involving moral turpitude under Federal, State, or local laws or which brings artist into public disrepute, contempt, scandal or ridicule or which insults or offends the community or any organized group thereof, or which reflects unfavorably upon

Producer, Sponsor or its advertising agency, or injures the success of the show.

Upon written request from Sponsor, Producer shall exercise its said right to terminate.

(b) Producer warrants that Jack Benny will not knowingly or wilfully act or conduct himself in such manner that the reasonable consequence thereof will expose Sponsor to contempt, ridicule or obloquy and thereby cause Sponsor to suffer injury or damage. The filing, commencement, maintenance of defense of any action or proceeding of any character, or for any purpose whatsoever, either civil or otherwise, shall not be deemed in and of itself proof or evidence of the breach of the foregoing warranty.

8. The title of the show shall be "The Jack Benny Program". Jack Benny or his substitute as herein provided shall receive sole star billing on each of said shows and in all advertising of the shows issued by or under the control of Sponsor. Subject to the provisions of Paragraph 7 (a) hereof, all other credits shall be as Producer may specify.

9. (a) Producer shall defend, indemnify and save harmless, Sponsor, its agents, officers and employees, and its advertising agency, their agents, officers and employees, from and against any and all claims, demands, actions and proceedings of any kind or nature whatsoever that may be made or brought by Producer's employees, sub-contractors, and employees of sub-contractors, for any cause arising out of their employment by Producer in connection with the shows made available hereunder; and from and against any and

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all claims, demands, actions and proceedings that may be made or brought by others arising out of any act of commission or omission of Producer, its agents, employees and sub-contractors, arising out of or connected with the shows or resulting from the dangers and hazards of the shows, including claims of members of the studio audience (including participants in the shows) and their legal representatives for personal injuries, death, loss of services and damage to personal property. Producer shall at its own cost and expense obtain and maintain in full force and effect during the term of this agreement, and any renewal thereof, Workmen's Compensation Insurance effective in the state or states where Producer produces, presents and performs the shows as provided for herein by insuring payment of such compensation with a stock corporation, mutual association or state fund authorized to transact the business of Workmen's Compensation Insurance in such state or states. The Workmen's Compensation policy or policies shall provide that notice of cancellation thereof shall be sent to Sponsor as well as to Producer. The Workmen's Compensation policy or policies shall be exhibited to Sponsor for examination and approval as to compliance of policy with the provisions of this paragraph and as to the financial capacity of the insurance company, which approval shall not be unreasonably withheld, and shall be approved or rejected by Sponsor within one (1) week after Producer exhibits the same; and if Sponsor rejects the same, the reason shall be specified in writing, and Producer shall procure substitute insurance meeting with Sponsor's stated objections.

Producer agrees to indemnify Sponsor, Sponsor's advertising agency, and the telecasting stations and all telecasting companies whose facilities are employed for the telecast of these shows, and to save and hold all such parties harmless from and defend any and all claims, suits and/or judgments, including fines, penalties, costs, expenses and legal fees based upon any alleged violations of the equitable or legal rights of any person, firm or corporation, or upon any alleged violation of law arising out of the telecast of any show hereunder with respect to anything furnished or produced by Producer or the persons Producer engages to appear on said shows. Producer shall, at its own cost and expense, obtain and maintain in full force and effect during the term of this agreement and any renewal thereof, a television producer's liability policy insuring Producer's obligation under this paragraph in the amount of at least Five Hundred Thousand Dollars (\$500,000.00). Producer shall promptly furnish Sponsor with a copy of said policy.

Sponsor agrees to give Producer reasonable notice of any claim made against it, against which Producer herein agrees to indemnify Sponsor.

Sponsor and its advertising agency reserve the right, at their own expense, without being required to do so, to engage independent counsel to participate in the defense of their interests regarding any claim, action or suit as to which they are indemnified under this Paragraph 9.

Sponsor agrees to indemnify Producer, its agents, officers and employees, and save and hold all such parties harmless from and defend any and all claims, demands, suits, judgments, including fines, penalties, costs,

expenses and legal fees based upon any alleged violation of the equitable or legal rights of any person, firm or corporation, arising out of the telecasting or other use of the commercial material furnished by Sponsor or its agents hereunder, or based upon any claim brought by Sponsor's employees, agents, or sub-contractors arising out of their employment by Sponsor or its agents in connection with said commercial material. Producer agrees to give Sponsor reasonable notice of any claim made against it against which Sponsor agrees herein to indemnify Producer. Producer reserves the right, at its own expense, without being required to do so, to engage independent counsel to participate in the defense of its interests regarding any claim as to which it is indemnified under this paragraph.

10. Producer warrants that Jack Benny will not appear on television from the date of this agreement until sixty (60) days after the last scheduled network telecast hereunder except as follows:

(a) on a program sponsored by Sponsor pursuant to this or any other agreement;

(b) as a master of ceremonies and/or star in not more than five (5) shows which may have multiple sponsors;

(c) in an exchange appearance with another star to secure such other star's appearance on one (1) of the shows hereunder, it being understood that such exchange appearances shall be subject to the reasonable approval of Sponsor;

(d) on re-runs of television films heretofore produced and not previously sponsored by Sponsor;

(e) in telecasts of theatrical motion pictures in which Jack Benny has appeared;

provided, however, Jack Benny will not so appear pursuant to (b), (c), (d) and (e) above, (i) for any tobacco product; (ii) nor on the same night as the presentation of any show pursuant hereto; (iii) nor opposite any network television or radio show sponsored by Sponsor which is on the air at the time the contract for the appearance involved is made; (iv) nor on any program entitled "The Jack Benny Program".

Nothing herein contained shall prevent Jack Benny from appearing at any time in any other medium of the entertainment industry, including but not limited to, radio (live or transcribed, new or re-issue), motion pictures exhibited in the immediate presence of the audience, vaudeville, night clubs, personal appearances and the legitimate stage, provided, however, Producer warrants that Jack Benny will not appear on radio while this agreement is in effect (i) for any tobacco product, nor (ii) opposite any network radio or television show sponsored by Sponsor which is on the air at the time the contract for the appearance involved is made.

11. As full compensation for the shows to be produced and furnished by Producer pursuant hereto, Sponsor agrees to pay Producer the sum of One Million, One Hundred and Eighty Thousand Dollars (\$1,180,000.00) in installments as follows:

(a) With respect to the first sixteen (16) shows, Sixty-Five Thousand Dollars (\$65,000.00) respectively, within ten (10) days after the scheduled network telecast of each such show;

(b) With respect to the last four (4) shows, Thirty-Five Thousand Dollars (\$35,000.00) respectively, within ten (10) days after the scheduled network telecast of each such show.

No sum shall be due and payable to Producer with respect to any telecast of a live show hereunder which is omitted because of an Act of God, withdrawal or pre-emption of telecasting facilities, breakdown of wire connections, requisition in whole or in part of the telecasting facilities by the government of the United States or any other properly constituted agency of government, or for any other cause beyond Sponsor's control. In event CBS-Television assumes the cost of the entertainment portion of any such omitted telecast of a live show, Sponsor agrees to pay Producer such amounts as are so assumed by CBS-Television.

In event that any telecast of a filmed show is omitted for any of the reasons set forth above, Sponsor shall have the right to telecast said omitted filmed show on CBS-Television in the 7:30 to 8:00 p.m., CNYT time period on any Sunday prior to the last scheduled telecast hereunder on which the shows are not scheduled to be telecast (with delays, as provided in the facilities contract), or Sponsor may telecast such omitted filmed shows in the same time period on alternate Sundays following the completion of the scheduled network telecast of all subsequent shows hereunder (with delays, as provided in the facilities contract).

12. Producer shall retain full ownership of the entertainment portion of the shows, it being understood that Sponsor's rights in and to said shows shall be limited to the rights granted to Sponsor hereunder. Sponsor may, however, retain the 16mm release print delivered by Producer pursuant to the second paragraph of Paragraph 4 hereof, of any show which is produced on film, and one (1) kinescopic reproduction of any show which is produced on a live basis, but Sponsor agrees not to use the same in any manner except for library purposes. Sponsor shall return to Producer the 35mm release print delivered by Producer to Sponsor pursuant to the second paragraph of Paragraph 4 hereof, and shall cause to be destroyed all release prints ordered by Sponsor from the laboratory promptly upon the completion of Sponsor's authorized use thereof hereunder.

13. (a) Producer represents that it will be authorized to grant and does hereby grant to Sponsor the right to use and to license others to use in a dignified manner, during their respective engagements on the shows, the name and likeness of each permanent performer (including Jack Benny) appearing on the shows in the advertising and publicity of Sponsor's products advertised on the shows and in advertising and publicizing the telecasting of the shows, but Sponsor shall not use, or license others to use, the name or likeness of any such performer in connection with any endorsement of any kind without the prior permission of such performer. The rights granted in this Paragraph 13 shall expire with the completion of the telecasting of all shows hereunder except for material previously released.

(b) Producer warrants that Jack Benny will not authorize his name, facsimile signature, likeness, photograph, biography, testimonial or endorsement to be used prior to the scheduled completion of all telecasts of all shows hereunder by any person, firm or corporation to advertise tobacco products other than the products of Sponsor.

(c) Except as may be otherwise authorized by Sponsor, Producer agrees to provide in its respective agreements with all permanent principal actors appearing on the shows, other than Jack Benny, that during their respective engagements upon the shows they will not participate in any radio broadcast or television telecast (other than the telecasts which are the subject of this agreement, or other broadcasts and telecasts sponsored by Sponsor), which advertise any tobacco or tobacco products, and that they will not authorize the use of their names and/or likenesses in connection with advertising of or giving publicity to any tobacco or tobacco products. Producer agrees that Sponsor, in its own name, or that of Producer, and at Sponsor's expense, may take all necessary steps to enforce performance of such agreements. Producer shall take reasonable precautions to guard against the employment of any personnel as a permanent principal actor who has authorized the use of his name or likeness in connection with the advertising of or giving publicity to any other tobacco or tobacco products.

14. Sponsor shall have the right to make kinescopic reproductions of each telecast of the live shows hereunder and to present delayed telecasts

of such live shows by means of such kinescopic reproductions, as provided in Sponsor's television facilities contract with CBS-Television, within sixty (60) days after the original network telecast of such live show.

15. No discontinuance by Sponsor of the manufacture and/or advertising of Lucky Strike cigarettes shall nullify or otherwise affect this agreement; and, despite any such discontinuance, this agreement shall continue in full force and effect.

16. Producer warrants that the production of the shows will comply with the rules and regulations of all labor unions having jurisdiction.

17. Producer may include in any of the shows an announcement of the title of any motion picture in which Jack Benny may be appearing or scheduled to appear, together with the name of the producer thereof. However, not more than five (5) such announcements may be made with respect to any such motion picture and not more than one (1) such announcement shall be included in any show hereunder.

18. Nothing in this agreement shall require the commission of any act contrary to law. If there is any conflict between any provision of this agreement and any statute, law or ordinance, the latter shall prevail, and, in such event, the provision of this agreement affected shall be curtailed and limited, but only to the extent necessary to bring it within the legal requirements.

19. No waiver by Sponsor or Producer of any breach of any agreement to be performed by the other hereunder shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other agreement.

20. (a) In the event Jack Benny dies, then this agreement shall terminate forthwith except that if there are filmed shows completed but not yet telecast prior to his death, then this agreement shall terminate forthwith following the telecast of such filmed shows on the immediately succeeding scheduled telecast dates of "The Jack Benny Program".

(b) In the event, by reason of any acts beyond Jack Benny's control, he shall not appear on any one (1) or more scheduled shows hereunder, this agreement shall not terminate or become terminable by reason thereof except as provided in sub-paragraph (c) of this Paragraph 20. In such event, Producer shall furnish the show with a substitute for Jack Benny, who shall be subject to the approval of Sponsor. If Producer is unable to furnish such show with a substitute for Jack Benny who meets with the approval of Sponsor, then the show shall be eliminated from the terms of this agreement, and Sponsor shall be under no obligation to make any payment to Producer with respect thereto.

(c) If, for any reason beyond Jack Benny's control, he shall fail to perform on six (6) or more consecutive shows, then Sponsor, at any time before Jack Benny shall thereafter have appeared on any show, shall have the right to terminate this agreement by giving written notice to Producer.

21. Producer shall not be liable in damages to Sponsor for any failure by Producer to produce or deliver any of the shows as herein provided because of any epidemic, fire, action of the elements, strike, lock-out, labor dispute, governmental law, regulation, ordinance or order, court or executive decree or order, the act of God or a public enemy, war, riot, civil commotion, earthquake, flood, accident, explosion, casualty, embargo, delay of a common carrier, inability to obtain material, transportation, power or other essential commodity required, or by any other cause beyond Producer's control whether of the same or of any other nature.

Sponsor shall not terminate this agreement for any failure by Producer to produce or deliver any of the shows, as herein provided, because of any of the causes enumerated in this Paragraph 21, but in any such event, Sponsor shall be released from any obligation to make any payment to Producer with respect to shows not so produced or delivered.

22. Producer agrees that the shows provided for hereunder, or any Jack Benny television program sponsored by Sponsor prior to the 1955-1956 season, or any television program utilizing the title, "The Jack Benny Program", will not be furnished to or telecast by anyone other than Sponsor until the completion of the last scheduled telecast of all shows to be produced and furnished hereunder.

23. It is understood and agreed that the shows to be furnished by Producer hereunder are of a special, unique, extraordinary, and intellectual character, which gives them a peculiar value, the loss of which cannot

reasonably or adequately be compensated for in damages in an action at law, and that a breach by Producer of the provisions of this agreement will cause Sponsor irreparable injury. Producer hereby agrees that Sponsor shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by Producer.

It is understood and agreed that the services to be rendered by Jack Benny under this agreement are of a special, unique, unusual, extraordinary and intellectual character, which gives them a peculiar value, the loss of which cannot reasonably or adequately be compensated for in damages in an action at law, and that a violation by Producer of its agreement to make available the services of Jack Benny under this agreement will cause Sponsor irreparable injury.

It is hereby agreed that Sponsor shall be entitled to injunctive and other equitable relief against Jack Benny to prevent a breach of this agreement with respect to the services of Jack Benny.

24. Nothing contained herein shall be construed to obligate Sponsor to telecast any of the shows, and Sponsor shall have discharged all its obligations to Producer by causing to be paid to Producer such sums as may be due Producer from time to time hereunder.

25. Notices to be given hereunder to Sponsor shall be sufficient if mailed or telegraphed to it, all charges prepaid, addressed as follows:

The American Tobacco Company
c/o Batten, Barton, Durstine & Osborn, Inc.
383 Madison Avenue
New York 17, New York

or such other address as may hereafter be designated from time to time in writing.

Notices to be given hereunder to Producer shall be sufficient if mailed or telegraphed to it, all charges prepaid, addressed as follows:

J & M Productions, Inc.
c/o MCA Artists, Ltd.
9370 Santa Monica Blvd.
Beverly Hills, California

or such other address as may hereafter be designated from time to time in writing.

Any such notice to Producer or Sponsor shall be deemed to have been given when placed in the United States mails, and, if telegraphed, when delivered to an office of the Telegraph Company for transmission.

As a courtesy to Producer, Sponsor shall send copies of all notices to Producer to Business Administration Co., 360 North Camden Drive, Beverly Hills, California, and to Wright, Wright, Green and Wright, Esquires, 111 West 7th Street, Los Angeles 14, California. The sending of these additional notices shall not be a requirement of legal notice hereunder.

26. This agreement may be executed in any number of counterparts, each of which shall be deemed an original.

27. This agreement constitutes the entire agreement between the parties hereto and can be amended only by a written agreement amending the same.

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28. This agreement shall be interpreted and construed according to the laws of the State of California.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto the day and year first hereinabove mentioned.

THE AMERICAN TOBACCO COMPANY

By _____

J & M PRODUCTIONS, INC.

By _____