



## Content Distribution Agreement

**Document 4066A**

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## CONTENT DISTRIBUTION AGREEMENT

THIS CONTENT DISTRIBUTION AGREEMENT (this “**Agreement**”) is entered into by and between [NAME OF COMPANY], a [\_\_\_\_\_] corporation (the “**Company**”), and [NAME OF DISTRIBUTOR], a [\_\_\_\_\_] corporation (“**Distributor**”), as of [\_\_\_\_], 20[\_\_\_] (the “**Effective Date**”).

WHEREAS, Distributor owns and operates the electronic information distribution service defined in Exhibit A (the “**Distribution Service**”); and

WHEREAS, Distributor wants to obtain from the Company the right to receive the Licensed Content (defined below) by the Delivery Methods (defined below) and make the Licensed Content available to certain users of the Distribution Service, all on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

**1. Definitions.** The following definitions apply to capitalized terms in this Agreement. All other capitalized terms are defined in the body of the Agreement.

1.1 “**Ad Guidelines**” means the Online Advertising Guidelines that have been provided to the Distributor from the Company, they may be amended from time to time by the Company

1.2 “**Affiliate**” means a Person which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with another Person; “control” and its derivatives means the power to direct the management or affairs of a Person; and “own” and its derivatives means the beneficial ownership of 50% or more of the voting equity securities or other equivalent voting interests of the Person.

1.3 “**Change of Control**” means as to Company or Distributor (a) the sale, conveyance, transfer, or disposition of all or substantially all of such party’s assets, business, technology, intellectual property or other material goods, to a third party, (b) the acquisition of such party by a third party (whether through a merger, acquisition, consolidation or other transaction or series of transactions) the consummation of which results in a Person (other than an Affiliate of such party prior to such transaction) becoming the beneficial owner of fifty (50%) percent or more of the outstanding equity interests or voting power in such party, other than, in the case of this clause (b), an acquisition or a merger or consolidation in which holders of shares of voting capital stock immediately prior to the acquisition, merger or consolidation will not have at least fifty (50%) percent of the ownership of voting capital stock of the acquiring third party or the surviving corporation in such merger or consolidation, or transaction effected solely for purpose of changing the corporate domicile of such party, as the case may be, immediately after the merger or consolidation.

1.4 “**Company Composite Feed**” means the specifications set forth on Exhibit E.

1.5 “**Licensed Content**” means information owned by the Company that is more fully described in Exhibit B attached hereto.

1.6 “**Commercial Available Date**” means the date that the Licensed Content is first made commercially available in the Distribution Service.

1.7 “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided that the following shall be deemed to be Confidential Information even if not so marked or identified: the terms and conditions of this Agreement (including pricing and other terms reflected in all schedules hereto), the Disclosing Party’s business and marketing plans, technology and technical information, product designs, and business processes, any information or materials with the name, sign, trade name or trademark of the Disclosing Party and any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. “Confidential Information” does not include any item of information which (a) is or becomes available in the public domain without the fault of the Receiving Party; (b) is disclosed or made available to the Receiving Party by a third party without restriction and without breach of any relationship of confidentiality; (c) is independently developed by the Receiving Party without access to the disclosing party’s Confidential Information; or (d) is known to the recipient at the time of disclosure.

1.8 “**Delivery Methods**” means [delivery methods of the Licensed Content by the Company that is more fully described in Exhibit C attached hereto] OR [a format that will allow Distributor to easily upload or post the Licensed Content onto the Site]..

1.9 “**Marks**” means the trademarks and service marks owned by the Company.

1.10 “**Intellectual Property Rights**” means (a) all inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, (b) all works of authorship, including all mask work rights, database rights and copyrightable works, all copyrights, all applications, registrations and renewals in connection therewith, and all moral rights, (c) all trade secrets, (d) all registered and unregistered trademarks, service marks, trade dress, domain names, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (e) all derivative works of any of the foregoing; (f) any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force, and (g) all copies and tangible embodiments of all of the foregoing (a) through (f) in any form or medium throughout the world.

1.11 “**Member Agreement**” means the form that is entered into between the Company and its Registered Users, a form of which is attached as Exhibit D.

1.12 “**Registered User**” means an individual who (i) provides at least his or her first and last name and e-mail address to Distributor, (ii) becomes legally bound by Distributor’s

online member agreement and (iii) has access, by subscription or other arrangement with Distributor, to any portion of the Licensed Content.

## **2. Grant of Rights; Restrictions.**

2.1 Access to Licensed Content. The Company hereby grants to Distributor, subject to the terms and conditions contained in this Agreement, a limited, non-exclusive, [world wide] nontransferable right to: (a) receive by the Delivery Methods the Licensed Content; (b) store only the most recent transmission of the Licensed Content on one host computer owned and operated by Distributor located within the United States (the “**Distributor Host Computer**”); and (c) distribute and display the Licensed Content solely to “Registered Users” (as defined in Section 2.2(a) (Registered Users; License Restrictions), solely by means of the Distribution Service using the Authorized Distribution Methods. No provision of this Agreement shall be deemed to restrict or limit the Company’s right to market, sell, distribute, display or otherwise provide access to the Licensed Content directly or indirectly anywhere in the world, or enter into contracts, grant licenses or make arrangements with any other party to market, sell, distribute, display or otherwise provide access to the Licensed Content anywhere in the world. Distributor shall not sublicense or otherwise transfer or assign any right granted in this Section 2.1 (Access to Licensed Content) to any other person or entity. Any such attempted sublicense or transfer shall be void.

### 2.2 Registered Users; License Restrictions.

(a) Distributor shall cause each Registered User to be legally bound by its online Member Agreement. Distributor shall not amend the Member Agreement in any way [that is unfavorable to the Company] [without the Company’s written consent].

(b) Distributor shall not:

- (i) post the Licensed Content in any “public” or “free” area, or area accessible without a password, on the World Wide Web;
- (ii) distribute the Licensed Content to any third party other than a Registered User;
- (iii) distribute the Licensed Content by any means other than through the Distribution Service and using the Authorized Distribution Methods;
- (iv) incorporate or “bundle” the Distribution Service as one information source or service of many available through third-party front-end software or a third-party, electronic information service or web site;
- (v) permit Registered Users to access the Licensed Content through any interactive online or electronic information service other than the Distribution Service;
- (vi) actively engage in or authorize making any of the Licensed Content available: (A) as part of a “co-branded” or “private label” web site, web

service, or Internet access service, (B) as part of a “channel” through a software or Internet service or similar arrangements or relationships that offer or provide access to Licensed Content from or through other web sites, web services, or Internet access services, or (C) as part of the Distribution Service when “framed” and displaced as part of another web site or web service;

- (vii) allow the Licensed Content to be indexed by web search engines or any search engine that is not integrated into the Distribution Service; or
- (viii) permit any corporation, partnership or other type of legal entity other than an individual, or any other web site, to become a Registered User, without the Company’s prior written consent.

2.3 Residual Rights. All rights not expressly granted to Distributor herein with respect to the Licensed Content shall be retained by the Company.

### **3. Delivery of Licensed Content.**

3.1 Delivery and Installation. Distributor shall acquire, install, operate and maintain at its expense all communications lines, equipment, software, services and related technology necessary to receive the Licensed Content through the Delivery Method. Distributor also shall be responsible for, and shall pay for, any development work, software or hardware relating to the setup and integration of the Licensed Content as part of the Distribution Service.

3.2 Limitation of Use. Except as specifically provided herein, Distributor shall not use, store, manipulate, distribute or otherwise make available, and shall use reasonable commercial efforts to cause each third party who obtains access to Licensed Content (including any Registered User) not to use, store, manipulate, distribute or otherwise make available, any Licensed Content without the prior written consent of the Company. Distributor shall not, and shall use reasonable commercial efforts not to permit any other party to, edit, alter or otherwise change in any manner the content, format or presentation of the Licensed Content, including all copyright and proprietary rights notices.

3.3 Service Presentation. Distributor shall ensure that all Licensed Content available through the Distribution Service is identified as property of the Company, including prominently displaying on the Distribution Service the Company-branded logos provided to Distributor by the Company. The Company shall have the right to approve the final design and presentation of the Licensed Content in the Distribution Service prior to the Commercial Availability Date, and shall have the right to require reasonable changes in the presentation of the Licensed Content from time to time during the term of this Agreement.

3.4 Quality of Transmissions. Distributor shall use its best efforts to ensure that each transmission of Licensed Content (a) is of high commercial quality, (b) contains an accurate and complete copy of the Licensed Content which Distributor has been licensed to distribute, (c) is free from errors or defects, and (d) with the exception of isolated short-term technical difficulties, is made available to Registered Users within [TIME PERIOD] after receipt from the Company.

3.5 Specifications. Distributor shall adhere to the Company Composite Feed specifications, and any updates thereof delivered to Distributor from time to time. Distributor shall not store, and shall dispose of, any codes and content it receives from the Company hereunder other than the Licensed Content licensed hereunder.

#### 4. **Payments and Payment Terms.**

4.1 Fees. Beginning on the earlier of (a) the Commercial Availability Date; or (b) [NUMBER (\_\_\_)] days after the Effective Date, Distributor shall pay to the Company a monthly fee equal to the greater of (i) U.S. \$[\_\_\_\_], or (ii) [\_\_\_]% of all amounts received by Distributor for the sale of advertising on the same screen display or web page as the Licensed Content as follows: [DESCRIBE DETAILS] (“**Fees**”).

4.2 Expenses. Except as expressly agreed otherwise in writing by Company, Distributor shall bear all of its own expenses arising from its performance of its obligations under this Agreement, including expenses for facilities, work spaces, utilities, management, clerical and reproduction services, supplies, and the like.

4.3 Payment Terms. Unless otherwise provided herein, all payments will be due net thirty (30) days from the date of invoice and shall be made in U.S. Dollars. Payments to Company shall be made to [ADDRESS] or another address that may be provided by notice to Distributor. If there is a dispute with regard to whether work was actually completed or whether an invoice is properly payable, the amount of the invoice in dispute shall not be due until the dispute is resolved. All charges are considered valid unless disputed in writing within [NUMBER (\_\_\_)] days of the invoice date. The Client’s failure to fully pay any and all fees and taxes on the applicable due date shall be deemed a breach of this Agreement as provided in Section 6.2 of this Agreement (Termination for Breach).

4.4 Late Payments. Late payments shall incur interest at the rate of [\_\_\_]% per month from the date such payments were originally due.

4.5 Taxes. Distributor shall pay any taxes, fees and similar governmental charges related to the execution or performance of this Agreement, other than applicable income taxes imposed on the Company related to its receipt of Payments.

4.6 Maintenance and Inspection of Records. Distributor shall maintain complete and accurate books and records, in accordance with generally accepted accounting practices, of all matters related to its compliance with its obligations hereunder (“**Records**”). The Company shall have the right itself, or through its authorized representatives, upon at least [NUMBER (\_\_\_)] days’ prior written notice to inspect the Records during normal business hours no more than [twice] per year; provided, however, that if such inspection reveals an underpayment to the Company of more than [\_\_\_]%, the cost of such inspection shall be paid by Distributor. The Company will keep confidential all information obtained from such inspection and use it solely for the purpose of verifying compliance with the terms hereof.

## **5. Advertising and Promotion.**

5.1 Advertising. Distributor shall cause all advertising or promotional material that appears on the same screen display or web page as any Licensed Content to comply with the Ad Guidelines. The Company will provide at least thirty (30) days' advance notice prior to any amendment to the Ad Guidelines.

5.2 Promotional Materials. Distributor shall not make, publish, distribute or cooperate with any third party in making, publishing or distributing any public announcements, press releases, advertising, marketing, promotional or other materials (whether in print, electronically or otherwise) that use the Company's name, logos, or Marks with regard to the existence, execution or performance of this Agreement, without the prior written approval of the Company.

## **6. Term and Termination.**

6.1 Term. This Agreement shall be effective as of the Effective Date and shall extend until [\_\_\_\_, 20\_\_] (the "**Term**") and thereafter shall be automatically renewed for successive [NUMBER (\_\_\_\_)] year periods unless, [NUMBER (\_\_\_\_)] days prior to the date on which this Agreement would otherwise terminate, either party hereto gives written notice to the other party of its election not to renew.

6.2 Termination for Breach. Company shall have the right, at its sole option, to immediately terminate this Agreement by giving written notice to Distributor in the event that Distributor:

(a) files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law, or discontinues or dissolves its business or if a receiver is appointed for Distributor or for Distributor's business and such receiver is not discharged within [NUMBER (\_\_\_\_)] days;

(b) within [NUMBER (\_\_\_\_)] [days, months] of the Commercially Available Date, fails to sell any Licensed Content; or

(c) fails to pay any fees or other amounts due to Company.

6.3 Right to Terminate on Notice. Either party may terminate this Agreement on [NUMBER (\_\_\_\_)] days' written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that during such notice period the breaching party fails to cure such breach; or if either party discontinues publishing or commercial distribution of the Licensed Content.

6.4 Distributor's Right to Terminate. The Distributor shall have the right to terminate this Agreement at any time on [NUMBER (\_\_\_\_)] months' written notice to Company for any reason.

## **7. Effects of Termination.**

7.1 Payment Upon Termination. Upon expiration or termination of this Agreement, all outstanding Fees and any other payments due to the Company shall be accelerated and shall immediately become due and payable.

7.2 Termination of License. Upon the expiration or termination of this Agreement for any reason, all rights granted to Distributor under this Agreement shall forthwith (a) terminate and immediately revert to Company and Distributor shall immediately discontinue all use of the Licensed Content and the like, (b) discontinue all representations or statements from which it might be inferred that any relationship exists between the parties; (c) discontinue any use of the Company's name, logo, trademarks, service marks and slogans; (d) cease to promote, solicit, distribute or otherwise sell any Licensed Content; and (e) promptly return all Confidential Information and related materials in accordance with Section 8 (Intellectual Property Rights; Confidential Information.).

7.3 Survival. The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 4 (Fees), 6 (Termination), 7 (Effects of Termination), 8 (Intellectual Property Rights; Confidential Information), 9 (Noncompetition), 12 (Indemnification), and 15 (Miscellaneous Provisions).

## **8. Intellectual Property Rights; Confidential Information.**

8.1 Ownership. Company shall retain ownership of all Company Intellectual Property Rights. Distributor shall retain ownership to all Distributor Intellectual Property Rights.

The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission; provided that a Receiving Party may disclose any Confidential Information of the Disclosing Party to its employees, attorneys and accountants who have a need to know such Confidential Information for purposes of this Agreement and who are bound to a written agreement protecting such Confidential Information as required hereby.

8.2 Protection. The Receiving Party agrees to protect the confidentiality of the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

8.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

8.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 8 (Intellectual Property Rights; Confidential Information), the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the



necessity of posting bond, it being specifically acknowledged by the parties that any other available remedies are inadequate.

8.5 Disposition Upon Termination. Upon the termination of this Agreement for any reason whatsoever, or upon request of a Disclosing Party, the Receiving Party shall return to the Disclosing Party, or shall destroy, as the Disclosing Party shall specify, all copies of all the Disclosing Party's Confidential Information in the Receiving Party's possession. Within five (5) days thereafter, the Receiving Party shall provide the Disclosing Party with a certificate, executed by the Receiving Party or by an officer of the Receiving Party, confirming that all copies of all such Confidential Information have been returned to the Disclosing Party or destroyed, as the case may be.

## **9. Non-Competition.**

9.1 Covenant. During the Term and for a period of [NUMBER] (\_\_) years thereafter, Distributor shall not, directly or indirectly, either as a partner, owner, shareholder, advisor or consultant, or in any other capacity whatsoever, of any entity whatsoever conduct, or assist others in conducting, or be financially involved in any manner in, any business that is a competitor of the Company.

9.2 Reasonableness of Covenant. Each party specifically acknowledges that it is aware that the business of the other party is international in scope and that geographical limitations on the covenants set forth in this Section 9 (Non-Competition) are therefore not appropriate. Each party further acknowledges that the scope of each of the covenants contained in this Section 9 (Non-Competition) is reasonable as to time, persons and area, are necessary to protect the legitimate business interests of the other party, that the other party has been induced to enter into this Agreement upon such party's representation that such party will abide by and be bound by the above restrictions, and that such restrictions do not now, and will not in the future, present such party with any hardship or inconvenience. Such covenants are regarded by each party hereto as divisible and if any such covenant is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or persons or in too broad a geographic area, it shall be interpreted to extend over the maximum period of time, range of activities or persons, or geographic area as to which it may be enforceable. The provisions of this Section 9 (Non-Competition) shall survive the termination of the Agreement.

9.3 Remedies. If either party breaches (or threatens to breach) this Section 9 (Non-Competition), the non-breaching party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the necessity of posting bond, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## **10. Relationship of Parties.**

10.1 Independent Contractor. It is expressly agreed and understood that during the term of this Agreement, Company's relationship to Distributor will be that of an independent contractor and that neither this Agreement nor the Services shall for any purpose whatsoever or in any way or manner create any employer-employee relationship. Accordingly, Company shall

have sole and exclusive responsibility for the payment of all federal, state and local income taxes, for all employment and disability insurance and for Social Security and other similar taxes with respect to any compensation or benefits provided by Distributor hereunder. Company shall assume and accept all responsibilities which are imposed on independent contractors by any applicable statute, regulation, rule of law or otherwise.

## **11. Representations and Warranties.**

11.1 Licensed Content Rights. Company hereby represents and warrants that the Licensed Content: (a) is owned by the Company; (b) does not breach or infringe any copyright, common law right or any other intellectual property right of any third party; (c) does not contain any matter that is libelous, scandalous, obscene or an invasion of privacy or in any way unlawful.

11.2 Company Authority. Company has the full right, power and authority to enter into and perform all obligations under this Agreement.

## **12. Indemnification.**

12.1 By the Company. The Company shall indemnify and hold Distributor harmless against all liabilities, costs and expenses (including reasonable attorneys' fees) incurred by Distributor that arise out of any claim asserted by a third party that the Licensed Content infringes a US copyright (except for claims for which the Company is entitled to indemnification under Section 12.2 (Indemnification of Distributor), with respect to which the Company shall have no indemnification obligations), provided, however, that Distributor, upon receipt of notice of a claim that could result in the Company indemnifying Distributor pursuant to this subsection, gives prompt written notice to the Company of the existence of such claim and permits the Company, if it so requests, either to conduct the defense of such claim or to participate with Distributor in the defense thereof and in any settlement negotiations relating thereto; provided, further, that the Company shall not be required to pay any settlement amount that it has not approved in advance.

12.2 By Distributor. Distributor shall indemnify and hold the Company harmless against all liabilities, costs and expenses (including reasonable attorneys' fees) incurred by the Company that arise out of any claim asserted by a third party that involves, relates to or concerns (a) the marketing, sale, or promotion by Distributor of the Distribution Service, (b) any use by Distributor of any Licensed Content in violation of this Agreement, or (c) any claim alleging that the Distribution Service infringes any patent, trade secret, copyright or other intellectual property rights of any third party; provided that the Company, upon receipt of notice of a claim that could result in Distributor indemnifying the Company pursuant to this subsection, gives prompt written notice to Distributor of the existence of such claim and permits Distributor, if it so requests, either to conduct the defense of such claim or to participate with the Company in the defense thereof and in any settlement negotiations relating thereto; provided however, that Distributor shall not be required to pay any settlement amount that it has not approved in advance.

### **12.3 Mutual Indemnity.**

(a) The parties agree to indemnify and hold harmless the other party, and each of them, jointly or severally, against any loss or liability whatsoever, including reasonable

attorney's fees, caused by any action or proceeding before any court or government agency, commission, division or department of any state, federal or local governing body, which is brought by the other party or its successors-in-interest, if such action or proceeding arises out or is related to any claim, demand or cause of actions released herein.

(b) The parties will indemnify, defend and hold harmless the other party, and each of them, jointly and severally, for any taxes, assessments, penalties or interest payments that they may at any time incur by reason of any demand, proceeding, action or suit brought against them arising out of or in any manner related to local, state or federal taxes allegedly due in connection with the payment set forth above.

### **13. Disclaimer of Warranties.**

13.1 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE COMPANY MAKES NO REPRESENTATION ABOUT THE SUITABILITY OR ACCURACY OF THE COMPANY INFORMATION FOR ANY PURPOSE, AND MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THAT THE USE OF THE COMPANY INFORMATION WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. THE COMPANY INFORMATION IS PROVIDED "AS IS".

13.2 Limitation. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12 (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 8 (INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIAL INFORMATION) HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY DISTRIBUTOR HEREUNDER.

13.3 Exclusion of Consequential and Related Damages. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12 (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 8 (INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIAL INFORMATION) HEREOF, IN NO EVENT SHALL EITHER PARTY OR ANY THIRD PARTY PROVIDER HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY. EACH PARTY MAY ALSO HAVE ADDITIONAL RIGHTS NOT STATED IN THIS DOCUMENT.

**14. Force Majeure.** Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by strike, riot, fire, flood, natural disaster, war, [actual or threatened] act of terrorism or other similar cause beyond such party's control, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible, and provided further that the other party may terminate this Agreement if such condition continues for a period of [NUMBER (\_\_\_)] days.

**15. Miscellaneous.**

15.1 Governing Law. This Agreement will be governed exclusively by, and construed exclusively in accordance with the laws of [STATE], without giving effect to the conflict of law principles of the [STATE].

15.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement. Distributor's rights and obligations under this Agreement may not be assigned without the prior written consent of Company.

15.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

if to Distributor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 15.3 (Notices). All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

15.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

15.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

15.6 Entire Agreement. This Agreement, including all schedules and exhibits attached hereto, embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

15.7 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

15.8 Cumulative Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

15.9 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section 15 (Miscellaneous Provisions) shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

[15.10 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator’s rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings.

Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.]

OR

[15.10 Venue. The state and federal courts located in [CITY/STATE] shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of *forum non conveniens* or otherwise. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.]

15.11 Compliance with Applicable Laws. Each party shall, at its own expense, comply with all applicable laws and make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order required for such party to perform its obligations under this Agreement.

15.12 No Benefit to Others. There are no intended third party beneficiaries of this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons

15.13 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned have executed this Content Distribution Agreement as of the date first written above.

COMPANY

[NAME OF COMPANY]

By: \_\_\_\_\_

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

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

DISTRIBUTOR

[NAME OF DISTRIBUTOR]

By: \_\_\_\_\_

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

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

**DISTRIBUTION SERVICE**



**LICENSED CONTENT**

**AUTHORIZED DISTRIBUTION METHODS**

**FORM OF MEMBER AGREEMENT**

**The Distributor Terms of Service Agreement and Disclaimer**

The following provisions govern the use of [NAME OF SITE] (the “**Site**”) operated by [NAME OF DISTRIBUTOR] (the “**Distributor**”) by Distributor’s members. Members agree to the following by submitting a member registration form. Members receive access to all the Site’s features.

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ACCESS TO THE SITE MAY BE INTERRUPTED AND INFORMATION PROVIDED MAY NOT BE ERROR FREE.

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[NAME OF COMPANY] (the “**Company**”) provides editorial content to the Distributor. Their publications are designed to provide general information in regard to the subject matter covered. If [DESCRIBE] advice or other expert assistance is required, consult a [DESCRIBE].

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circulate any content published by the Company to anyone, including but not limited to others in the same company or organization, without the express prior consent of the Company, with the following exception:

You may, on an occasional and irregular basis, disseminate an insubstantial portion of content published by the Company, for a noncommercial purpose, without charge, and in non-electronic form, to a limited number of individuals, provided you include all copyright and other proprietary notices with such portion of the content in the same form in which the notices appear in the Company, and the phrase “Used with permission from the Company.”

### **Indemnification**

You agree to hold harmless and indemnify the Company and Distributor, their owners and agents, and the contributors to the Site, against any liability for any claims and expenses, including reasonable attorney’s fees, relating to any violation of the terms of this Agreement or arising out of any materials submitted by you.

### **Governing Law; Jurisdiction; Statute of Limitations**

This Agreement shall be governed by the laws of the State of [STATE] applicable to agreements wholly made and performed in [STATE] without regard to its conflict of laws principle. Before seeking legal recourse for any harm you believe you have suffered from your access to the Site, you will give the Distributor written notice specifying the harm and 30 days to cure the harm after providing such notice. In the event that you believe you have been irreparably harmed by any cause of action relating to the Distributor, you agree to inform the Company in writing and grant the Distributor 30 days to cure the harm before initiating any action. Any legal action, suit or proceeding arising out of or relating to this Agreement or a breach thereof, shall be instituted in a court of competent jurisdiction in [NAME] County, [STATE], and you hereby consent and submit to personal jurisdiction of such court, waive any objection to venue in such court and consent to service of process by overnight courier or express mail at your last known address. Any cause of action initiated by you must be initiated within one year after the claim or cause of action has arisen or it will be barred.

### **Acceptance Procedure**

By submitting the Distributor membership application form or accessing materials on the Site you agree with all the terms and conditions of this Agreement. You further agree that this agreement and the terms and conditions hereof, including all disclaimers set forth herein, shall inure to the benefit of the editors and their agents, and the contributors to the Site, as third-party beneficiaries hereto, to the same extent that this agreement inures to the benefit of the Distributor.

The Distributor reserves the right, at its sole discretion, to change the terms and conditions of this Agreement from time to time and your access to the Site will be deemed to be your acceptance of and agreement to any changed terms and conditions.

The Distributor may contain links to web sites operated by other parties. Such links do not imply the Distributor's endorsement of material on any other site and the Distributor disclaims all liability with regard to your access of such linked web sites.

**The Distributor's Policy on Member Privacy**

Please see the Distributor's Member Privacy Statement.

**COMPOSITE FEED SPECIFICATIONS**

**ONLINE ADVERTISING GUIDELINES**

Advertising or promotional materials related to the following products or services shall not appear on any screen display or web page on which any Licensed Content, or any Company Mark, trade name or logo, appears:

[Tobacco products

Pornography or “adult services”

Alcohol

Firearms

Employment recruiting

Business research services

Advertisements for any product or service which gratuitously or excessively uses the word “sex” or other sexually explicit or vulgar term or description

Games of chance, lotteries, gambling sites, and other products, services or web sites involving wagering.]

**PAYMENTS**

[DETAILS]