

**PUBLISHER AGREEMENT  
(Plus Account)**

This Publisher Agreement (“**Agreement**”) is by and between Ebyline, Inc., a Delaware corporation (“**Ebyline**”), and you (“**Publisher**”) and is made as of the date this Agreement is accepted by you by clicking on the “I HAVE READ AND ACCEPTED” button (“**Effective Date**”).

BY CHECKING OFF THE “I AGREE TO EBYLINE’S PUBLISHER AGREEMENT” WHEN YOU REGISTERED AS A PUBLISHER WITH EBYLINE, PUBLISHER HEREBY EXPRESSLY AGREES AND CONSENTS TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS MODIFIED FROM TIME TO TIME BY EBYLINE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES.

**NOW, THEREFORE**, in consideration of the recitals, promises and mutual covenants in this Agreement, the parties agree as follows:

**1. DEFINITIONS**

1.1. “**another publisher**” or “**the other publisher**” shall mean any publisher other than Publisher.

1.2. “**Ebyline Platform**” shall mean the online platform, any websites and services of Ebyline.

1.3. “**Freelancer**” shall mean any person (other than another publisher subject to a Publisher Agreement with Ebyline) submitting articles, photos, videos or any other content to be sold through the Ebyline Platform.

1.4. “**Freelancer Agreement**” shall mean the standard form of agreement setting forth certain terms and conditions for each project between a Freelancer and Publisher as set forth in Exhibit B which may be revised from time to time at the sole discretion of Ebyline upon notice to Publisher. Publisher acknowledges that Ebyline does not provide any legal advice or provide any legal services including, but not limited to, in connection with the Freelancer Agreement between Publisher and Freelancers. Publisher should consult with their own attorney to determine if the standard form of Freelancer Agreement (attached as Exhibit B) is sufficient to protect Publisher’s interest and rights. If you or your attorney determine that the Freelancer Agreement is not adequate, you should not use the Ebyline Platform. By using the Ebyline Platform, you hereby waive and release any claims against Ebyline in connection with the Freelancer Agreement.

1.5. “**Freelancer Content**” shall mean content that a Freelancer sells exclusively to Publisher on a one-to-one basis.

1.6. “**Licensed Content**” shall mean Freelancer Content and Syndicated Content.

1.7. “**person**” shall mean an individual or entity.

1.8. “**Syndicated Content**” shall mean content that Publisher purchases from another publisher.

1.9. “**Syndication License Agreement**” shall mean the form of agreement of the selling publisher for the purchase of content from the selling publisher to Publisher.

2. **PLUS ACCOUNTS.** This Agreement shall govern the use by Publisher of the Ebyline Platform under a Plus Account with the features as described on the product features tables attached as Exhibit A (the “**Product Features Table**”) for the monthly or annual fee as set forth on the Product Features Table (a “**Plus Account**”).

(a) Billing. The fees for your Plus Account will be billed from the date you sign up for a Plus Account and on each monthly renewal thereafter unless and until you cancel your account. Ebyline will automatically bill your credit card each month on the calendar day corresponding to the commencement of your Plus Account. In the event your Plus Account began on a day not contained in a given month, Ebyline will bill your credit card on the last day of such month. All fees and charges are nonrefundable and there are no refunds or credits for partially used periods.

(b) Payment Services.

(i) You may also elect to activate certain payment services through the administration page to allow you to purchase the Licensed Content and pay for such Licensed Content directly through the Ebyline Platform by automatic debit using your credit card on file (“**Payment Services**”). For the purchase of any Licensed Content using Payment Services, Publisher hereby acknowledges and agrees that Ebyline will charge a fee to Publisher in the amount of ten percent (10%) (the “**Transaction Fee**”) of any consideration paid by Publisher for Licensed Content. For example, if Publisher and Freelancer agree on a purchase price of \$100 for a certain article, then Ebyline will charge a fee of \$10 for a total of \$110 payable by Publisher. The Freelancer will receive \$100 and Ebyline will receive \$10. The Transaction Fee will also be paid by Publisher to Ebyline for any kill fees agreed upon between Publisher and Freelancer if Publisher terminates the project after Publisher and Freelancer agree on a project. The Transaction Fee may be revised from time to time at the sole discretion of Ebyline with 30 days prior notice.

(ii) For Publishers without Payment Services, you hereby agree to pay directly to Freelancers for the Licensed Content. Publisher must make arrangements offline with Freelancers. Ebyline is not responsible, and you hereby waive any liability and responsibility of Ebyline, for payment of the consideration to the Freelancers including, but not limited to, any withholding tax or reporting associated with the purchase of such content.

### 3. **PURCHASING CONTENT.**

3.1. *Freelancer Content.* Prior to a Freelancer starting any new project, Freelancer and Publisher shall acknowledge, accept and be bound by the terms of a Freelancer Agreement in the form as set forth in Exhibit B. Any such acceptance by Publisher and Freelancer will be stamped with the fee, due date, acceptance time, project identification, and Publisher and Freelancer identification. The Ebyline Platform will track the applicable Freelancer Agreement for each project. Publisher agrees that any distribution rights and obligations of Publisher for Freelancer Content purchased by Publisher shall be governed by the terms and conditions of the applicable Freelancer Agreement for each project.

3.2. *Syndicated Content.* For Publishers that have activated Payment Services with a Plus Account, Publisher may purchase Syndicated Content from other publishers on the Ebyline Platform. Upon Publisher's offer to purchase the license to any Syndicated Content, Publisher shall acknowledge, accept and be bound by the terms of the selling publisher's form of Syndication License Agreement. The Ebyline Platform will track the applicable Syndication License Agreement for each transaction. Publisher agrees that any distribution rights and obligations of Publisher for Syndicated Content purchased by Publisher will be governed by the terms and conditions of the applicable Syndication License Agreement of the selling publisher.

### 4. **LIMITATIONS.** Publisher hereby acknowledges and agrees that:

4.1. Ebyline does not represent or warrant that any Licensed Content is free from plagiarism.

4.2. Ebyline will not make a specific determination of plagiarized content. Publisher will follow its own best practices to reduce the risk of using plagiarized content. The plagiarism scan, a feature offered on the Ebyline Platform, is only a word-matching feature to scan any Licensed Content for word associations. It does not provide a subjective determination of actual or potential plagiarized content.

4.3. Ebyline will not fact-check or evaluate the quality of the content.

4.4. Publisher hereby acknowledges that Freelancers are independent contractors of Publisher only, and, Publisher has complete and sole discretion to engage any Freelancers on the Ebyline Platform and execute with such Freelancers a form of Freelancer Agreement acceptable to Publisher. Ebyline cannot and does not control the actions of Freelancers. Although Ebyline may provide certain tools on the Ebyline Platform to assist Publisher to make its own determination that it is in compliance with certain legal requirements relating to worker classification, Ebyline does not advise Publisher on how to comply with any applicable laws. Publisher is solely responsible for complying with all applicable laws (including, but not limited to, all employment laws) in connection with the Freelancers. The use of the Ebyline Platform by Publisher shall not transfer any obligations from Publisher to Ebyline, or create any additional obligations of Ebyline, relating to the compliance of applicable employment laws including, but not limited to, wages, hours, worker classification, and collective bargaining. Publisher hereby agrees and acknowledges that any services or tools provided by Ebyline or a third party service provider relating to 1099 reporting, paperwork and compliance is a purely ministerial payroll

function for the convenience of the Publisher and Freelancers. By providing such services, Ebyline does not make any independent determination or analysis of the applicable employment laws.

4.5. Publisher hereby waives and releases any liability of Ebyline from any act or failure to act of Freelancers (including, but not limited to, any breach by Freelancer of a Freelancer Agreement between Publisher and Freelancer). The Freelancer Agreements are entered into by and between Publisher and Freelancer and Ebyline is not a party to such agreements. Publisher must pursue any legal claim it may have pursuant to any Freelancer Agreement against Freelancer directly.

4.6. Publisher also acknowledges that Ebyline does not provide any legal advice or provide any legal services including, but not limited to, in connection with the Freelancer Agreement between Publisher and Freelancers. Publisher should consult with their own attorney to determine if the standard form of Freelancer Agreement (attached as Exhibit B) is sufficient to protect Publisher's interest and rights. If you or your attorney determine that the Freelancer Agreement is not adequate, you should not use the Ebyline Platform. By using the Ebyline Platform, you hereby waive and release any claims against Ebyline in connection with the Freelancer Agreement.

4.7. Publisher also hereby waives and releases any liability of Ebyline from any act or failure to act of any other publishers selling Syndicated Content to Publisher (including, but not limited to, any breach by another publisher of a Syndication License Agreement between Publisher and another publisher). Publisher must pursue any legal claim it may have pursuant to any Syndication License Agreement against the other publisher directly.

## **5. TERM AND TERMINATION; SURVIVAL**

5.1. *Term.* This Agreement will remain in force indefinitely from the Effective Date unless earlier terminated in accordance with this Section 5.

5.2. *Termination.*

(a) Your Plus Account will continue in effect until you cancel your Plus Account or we terminate it. You may cancel your Plus Account at any time. Ebyline also hereby reserves the right to suspend or end the services at any time, with or without cause, and with or without notice.

(b) You must cancel your Plus Account before it renews each month or year, as applicable, in order to avoid billing of the fees to your credit card for the next monthly or annual billing cycle. Ebyline will bill the monthly or annual fees, as applicable, associated with your Plus Account plus any applicable tax to the credit card you provide to us during registration (or to a different card if you change your account information). Ebyline Plus Accounts are prepaid and are non-refundable. EBYLINE DOES NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL PERIOD. You may cancel your Ebyline Plus Account at any time. If you wish to cancel your Plus Account you may do so on the administration page. Should you elect to cancel your Plus Account, please note that you will not be issued a refund for the most recently (or any previously) charged fees.

(c) By signing up for Ebyline Plus Account and providing Ebyline with your payment account information, you hereby agree to these payment terms and conditions.

5.3. *Effect of Termination.* Any cancellation by you or termination by Ebyline will be effective immediately, or if you have any open transactions that have not been charged to your credit card, as soon as all such transactions and fees have been charged and cleared. It is your responsibility to retrieve any data or information prior to such cancellation or termination. Ebyline shall have no obligation to maintain or provide any of your data or history of transactions and may thereafter delete all of your data, history of transactions or any other information from Ebyline's system or otherwise in Ebyline's possession or control.

5.4. *Insolvency.* This Agreement may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, (ii) upon the institution of such proceedings against the other party, which are not dismissed or otherwise resolved in its favor within 60 days thereafter, (iii) upon the other party's making a general assignment for the benefit of creditors, or (iv) upon the other party's dissolution or ceasing to conduct business in the ordinary course.

5.5. *Survival.* The following provisions shall survive any termination or expiration of this Agreement: Section 1 (Definitions), Section 4 (Limitations), Section 5 (Term and Termination; Survival), Section 8 (Indemnification), Section 9 (Limitations of Liability) and Section 10 (General).

5.6. *Limitation of Liability upon Termination.* In the event of termination by either party in accordance with any of the provisions of this Agreement, neither party will be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, investments, or commitments in connection with the business or goodwill.

6. **NONEXCLUSIVITY.** The parties acknowledge that this is a non-exclusive relationship. Publisher may purchase news content from other sources. Publisher may also use any other distribution channels to distribute and sell its content, and Ebyline may distribute work from other individuals or entities.

## 7. **REPRESENTATIONS AND WARRANTIES.**

7.1. Each party hereby represents and warrants that during the term of this Agreement:

(a) it has the right to enter into this Agreement; it is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation; it has the corporate power and authority for, and has by all necessary corporate action authorized, the execution and delivery of this Agreement, and the performance of its obligations hereunder; and

(b) the execution, performance and delivery of this Agreement by such party will not conflict with or violate or result in any breach of, or constitute a default under, any contract, agreement or other obligation of such party.

7.2. Publisher further represents and warrants that during the term of this Agreement, as it relates to any Freelancers working with Publisher, Publisher shall comply with all applicable state and federal equal employment opportunity laws and with other laws related to employment, including those related to wages, hours, worker classification, and collective bargaining.

## **8. INDEMNIFICATION.**

8.1. Publisher hereby agrees to indemnify, defend and hold harmless Ebyline, its affiliates, and each of their directors, officers, agents, representatives, employees, licensors, and the successors and assigns thereof from and against any and all claims, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising out of or related to (a) Publishers' use of the Licensed Content including, but not limited to, any libel or defamation claims arising from the use of the Licensed Content by Publisher, (b) any breach or alleged breach of any of Publisher's promises, agreements, representations or warranties in this Agreement, or any Freelancer Agreement or Syndication License Agreement that Publisher is a party to, (c) any liability incurred by Ebyline relating to Section 4.4, or (d) any other claims based on any Freelancer Agreement (including, but not limited to, any claims relating to employment laws, wages, hours, worker classification or collective bargaining) or Syndication License Agreement that Publisher is a party to.

8.2. Ebyline hereby agrees to indemnify, defend and hold harmless Publisher, its affiliates, and each of their directors, officers, agents, representatives, employees, licensors, and the successors and assigns thereof from and against any and all claims, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising out of or related to any breach or alleged breach of any of Ebyline's promises, agreements, representations or warranties in this Agreement.

## **9. LIMITATIONS OF LIABILITY**

9.1. EBYLINE MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS, ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF ANY LICENSED CONTENT OR THE EBYLINE PLATFORM. FURTHERMORE, EBYLINE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUORY OR OTHERWISE, REGARDING ANY FREELANCER AGREEMENT OR SYNDICATION LICENSE AGREEMENT INCLUDING, BUT NOT LIMITED TO, THE ENFORCEABILITY OF ANY PROVISION OR ANY SUCH AGREEMENT.

9.2. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES OR PROFITS RELATING TO THE SAME, OR COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, SERVICES, OR TECHNOLOGY), ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN

IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EBYLINE'S AGGREGATE LIABILITY TO PUBLISHER WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS RECEIVED BY EBYLINE FOR THE MOST RECENT SIX (6) MONTHS.

9.3. EBYLINE MAKES NO REPRESENTATION AND WARRANTY REGARDING THE LICENSED CONTENT IN ANY RESPECT INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION THAT THE LICENSED CONTENT DOES NOT VIOLATE THE RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL EBYLINE, OR ITS AFFILIATES, EMPLOYEES OR AGENTS BE LIABLE FOR LOSS OF PROFITS, BUSINESS, USE OR DATA, OR FOR INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 10. GENERAL

10.1. *Entire Agreement; Amendment.* This Agreement (including any exhibits) contains the complete agreement and understanding between the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings, written or oral. Ebyline strongly recommends that prior to clicking the "I HAVE READ AND ACCEPTED" button below, you print and keep a copy of this Agreement (including all documents referenced herein) for its records. This Agreement and the exhibits may be amended or modified at any time, in the sole discretion of Ebyline, and shall be effective upon notice of an updated version of this Agreement or the exhibits. Continued use of the Ebyline Platform after any such revisions shall constitute your consent to such revisions.

10.2. *Nonassignment and Binding Agreement.* Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Publisher, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Ebyline, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

10.3. *Force Majeure.* Ebyline will not be liable to Publisher on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of Ebyline. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions.

10.4. *Waiver.* Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a

party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

10.5. *Severability.* If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

10.6. *Integration.* This Agreement (including the Attachments and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. This Agreement may not be amended, except by a writing signed by both parties.

10.7. *Governing Law.* This Agreement will be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Los Angeles County, California, and each party hereby consents to the personal jurisdiction thereof.



## Exhibit A

### List of Features

Features	Plus Monthly	Plus Annual
Price	\$50/month/user	\$420/year/user
Editorial Workflow <sup>1</sup>	X	X
Freelancer Management <sup>2</sup>	X	X
Pitchboard <sup>3</sup>	X	X
Search Freelancer Database <sup>4</sup>	X	X
Plagiarism Scan <sup>5</sup>		
Auto Payments <sup>6</sup>	X	X
Purchase Content <sup>7</sup>		

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<sup>1</sup> Online management dashboard functionality allowing registered users to: negotiate and discuss potential projects; agree on terms for, and accept project assignments; track project ownership/responsibility during workflow process; discuss project in process; and submit and complete final projects.

<sup>2</sup> Functionalities within the dashboard workflow described above allowing Editors to: invite new Freelancers; locate and evaluate Freelancer profiles; assign work to selected Freelancers; and favorite (save) Freelancers.

<sup>3</sup> Story-generation tool allowing Editors to propose story ideas or assignments to an individual or select group of Freelancers for response; and for Freelancers to propose story ideas to an individual Editor or Publication (in certain cases).

<sup>4</sup> Database of screened, qualified journalists and sophisticated search tool allowing access to the database. Database search allows Editors to narrowly focus a search of the 10,000+ registered Freelancers, and/or 2,000+ Ebyline Approved Freelancers, using a series of relevant parameters, or to search by name.

<sup>5</sup> Online tool allowing Editors to review submitted work for duplication of existing content. Tool reviews all accessible online content and compares against submitted work to validate originality of content purchased through Ebyline.

<sup>6</sup> Service that facilitates payment of Freelancers by Publishers automatically. When publishers subscribe to Payments service, Ebyline manages collection of funds from Publisher and payment to freelancer on an agreed-upon schedule. Publishers agree to a 10% service charge per project to provide automatic payments.

<sup>7</sup> Editors or Publications may search the Ebyline database of content available for re-license. This database comprises original work created in the Ebyline workflow experience, and made available for re-use or re-license by mutual agreement of author and any previous Publisher.

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**Exhibit B**

**Form of Freelancer Agreement between Freelancer and Publisher**

## Freelancer Agreement

This Freelancer Agreement (“**Agreement**”) is by and between the publisher (“**Publisher**”) and you (“**Freelancer**”) and is made as of the date this Agreement is accepted by you by clicking on the “I HAVE READ AND ACCEPTED” button w(the “**Effective Date**”).

BY CLICKING THE “I HAVE READ AND ACCEPTED” BUTTON, THE PARTIES HEREBY EXPRESSLY AGREE AND CONSENT TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT IN CONNECTION WITH THE PROJECT (THE “**PROJECT**”) TO BE COMPLETED BY FREELANCER FOR PUBLISHER.

THIS AGREEMENT SHALL GOVERN THE SERVICES (AS DEFINED BELOW) TO BE PROVIDED BY FREELANCER FOR PUBLISHER IN CONNECTION WITH THE PROJECT ACCEPTED BY FREELANCER.

IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST SELECT THE “I DECLINE” BUTTON.

**NOW, THEREFORE**, in consideration of the recitals, promises and mutual covenants in this Agreement, the parties agree as follows:

### 1. DEFINITIONS

1.1. “**IP Rights**” shall mean all forms of intellectual property rights and protections throughout the world, whether currently existing or hereafter developed or acquired and whether now known or hereafter recognized, including, but not limited to, all right, title and interest arising under United States or foreign common or statutory law in and to all copyrights, copyright registrations, design registrations and applications therefor, Moral Rights, other literary property or authors’ rights, whether or not protected by copyright or as a mask work.

1.2. “**Moral Rights**” shall mean any rights to claim authorship of any Work, to object to or prevent any modification of any Work, to withdraw from circulation or control the publication or distribution of any Work, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is called or generally referred to as a “moral right.”

1.3. “**Related Parties**” shall mean any owner, parent, partner, affiliate, subsidiary, supplier, subcontractor, shareholder, director, officer, hired or leased employee or worker, agent, representative or permitted assignee or successor of Publisher or Freelancer, as the case may be and as context requires.

1.4. “**Taxes**” shall mean any sales, value added, use and/or other applicable taxes, as well as any duties or other charges imposed on or related to the provision of the Services (as defined below) or the payments provided under this Agreement.

1.5. “**Work**” or “**Works**” shall mean any deliverables, technology, designs, articles, written expressions, materials, content, graphics, data, information, images, photographs, art,

illustrations, animations, video, audio, or audio/visual work, music, text, and/or any works of authorship that Freelancer (or Freelancer's authorized employees, subcontractors or agents) may conceive of, create or develop in the course of performing the Services (even if such Works were conceived of, created or developed prior to the Effective Date), whether or not eligible for patent, copyright, trademark, trade secret, or other legal protection.

2. SERVICES. Publisher hereby engages Freelancer to create and submit various original Works in connection with the Project for Publisher accepted by Freelancer (the "**Services**").

3. OWNERSHIP. Conditional upon Publisher's full payment, Publisher shall own the copyright in and to the Works and may use, reproduce, have reproduced, edit for length or clarity, publish and exploit such Works in its sole discretion, including, without limitation, licensing the Works to any agent or third party, copying, distributing, displaying, publicly performing, and creating derivative works of the Works. Any and all Works that Freelancer prepares or creates in the performance of the Services under this Agreement shall be a "work made for hire" as defined in Section 101 of the Copyright Act. In the event that the Works or any component of the Works are deemed not to qualify as a "work made for hire," Freelancer hereby assigns all right, title and interest in and to the Works and all derivative rights therein to Publisher and the unqualified right to use the Works in whole or in part, in Publisher's discretion, throughout the world in all languages and to reproduce the Works in any medium now known or hereafter developed.

(a) Freelancer waives and agrees never to assert any Moral Rights Freelancer may have in or with respect to any such Work in connection with Publisher's use thereof, even after termination of this Agreement.

(b) Freelancer also agrees that Publisher shall have exclusive rights to the Works.

(c) Publisher shall also have the right to re-sell any such Works.

(d) Publisher may, but shall not be obligated to, include the Freelancer's byline with the Works.

4. FEES. In full consideration for the Services provided hereunder, and upon acceptance of the Work(s) by Publisher, Publisher shall pay Freelancer the purchase price mutually agreed upon between Publisher and Freelancer for the subject Work(s) (the "**Consideration**").

5. FURTHER COOPERATION. Freelancer, at the request of Publisher, or its counsel, and at no additional charge, shall execute, acknowledge and deliver any and all documents or instruments that Publisher may determine necessary, in its reasonable discretion, to carry out the intent of this Agreement; provided, however, this Agreement shall be effective regardless of whether any such additional documents are executed. In the event Publisher is unable for any reason, after reasonable effort, to secure Freelancer's signature on any document needed in connection with the actions or grants specified herein, Freelancer hereby irrevocably designates and appoints Publisher and its duly authorized officers and agents as his/her agent and attorney in fact, which appointment is coupled with an interest, to act for and in Freelancer's behalf to

execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Agreement with the same legal force and effect as if executed by Freelancer.

6. **NO OBLIGATION TO USE WORKS; INDEPENDENT DEVELOPMENT.** Without in anyway limiting the obligation of Publisher to pay the Consideration to Freelancer pursuant to this Agreement, Publisher may choose to use none, some, or all of the subject Works, to transfer such rights to a third party, and/or discontinue any use of such Works in Publisher's sole discretion, as it sees fit and for any purpose. Nothing in this Agreement will be construed as restricting Publisher's ability to independently acquire, license, create, develop or distribute for itself, or have others independently acquire, license, create, develop or distribute for Publisher, any materials, works, products, services, or technology similar to the Works and/or that perform the same or similar functions as the Works, or to market and distribute such similar materials, works, products, services, or technology in addition to, or in lieu of, the Works.

7. **TERM AND TERMINATION; SURVIVAL.**

7.1. **Term.** This Agreement shall be effective on the Effective Date and shall terminate upon acceptance of the Works, and payment of the Consideration, by Publisher.

7.2. **Termination.** Publisher may terminate this Agreement immediately upon the death of Freelancer or any illness or injury that materially prevents Freelancer from performing the Services. The foregoing termination rights are in addition to any termination rights that may be provided elsewhere in this Agreement. Publisher shall have no liability for such termination.

7.3. **Kill Fee.** Publisher shall pay a kill fee in an amount as agreed upon between Publisher and Freelancer if Publisher terminates the Project without cause after Publisher and Freelancer agree on a project.

7.4. **Survival.** Any termination of this Agreement shall be without prejudice to the rights of either party against the other in respect of any antecedent claim or breach of any of the provisions of this Agreement. The following provisions, in addition to any other provision of this Agreement that by its nature is intended to survive, shall survive any termination of this Agreement: Sections 1 (Definitions), Section 3 (Ownership), Section 5 (Further Cooperation), Section 6 (No Obligation to Use Works; Independent Development), Section 7 (Term and Termination; Survival), Section 8 (Independent Contractor Status), Section 9 (Representations and Warranties), Section 10 (Indemnification; Limitation of Liability); and Section 11 (Miscellaneous).

8. **INDEPENDENT CONTRACTOR STATUS.**

8.1. **General.** In performing the Services, Publisher and Freelancer acknowledge and agree that Freelancer shall be an independent contractor, and shall not be an employee of Publisher. The parties understand and agree that: (i) Freelancer is not required to perform work exclusively for Publisher and that Freelancer is free to contract to provide services to other companies during the term of this Agreement; (ii) Publisher will not provide Freelancer any business registrations or licenses that may be required; (iii) Publisher will not dictate the number of hours Freelancer is required to work; (iv) Publisher will not combine business operations with Freelancer; and (v) Freelancer will be paid as set forth herein and will not be paid a salary or

hourly rate. This Agreement does not create an association, joint venture, or partnership between the parties nor does it impose any partnership liability upon either party.

8.2. **Taxes.** No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Freelancer. Freelancer is solely responsible to report as income all compensation received by Freelancer hereunder, and for paying all payroll and employment taxes including, but not limited to, FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, state unemployment insurance tax, and state workers' compensation insurance taxes.

8.3. **Workers' Compensation; Unemployment Compensation.** Freelancer acknowledges and agrees that Publisher will not obtain any workers' compensation or unemployment compensation insurance on account of Freelancer or Freelancer's authorized employees, subcontractors or subcontractors' employees, if any. Freelancer agrees to provide workers' compensation and unemployment compensation insurance coverage for Freelancer's own employees and shall ensure that all such subcontractors provide workers' compensation and unemployment compensation insurance coverage for their employees.

8.4. **No Other Benefits.** Publisher shall not provide to Freelancer (or to Freelancer's authorized employees, subcontractors or subcontractors' employees, if any) any benefits, including but not limited to holiday, vacation, paid time off, or sick pay; social security; workers' compensation; unemployment compensation; Medicare; unemployment or disability insurance; health and welfare benefits; profit sharing; 401(k) or any employee stock option or stock purchase plans. FREELANCER HEREBY WAIVES AND RELEASES ANY AND ALL RIGHTS TO ANY OF THE FOREGOING BENEFITS EVEN IF FREELANCER IS LATER RECLASSIFIED BY ANY COURT OF COMPETENT JURISDICTION TO BE A COMMON LAW EMPLOYEE OF PUBLISHER.

8.5. **Other Obligations of Freelancer.** Freelancer shall exercise independent judgment regarding the manner in which Freelancer performs the Services while exercising best efforts to comply satisfactorily with the terms of this Agreement. Freelancer agrees to comply with all ordinances, laws, orders, rules, and regulations related and/or applicable to the Services. Freelancer shall have no right or authority to assume or create any obligation of any kind or to make any representation or warranty on behalf of Publisher, whether express or implied, or to bind Publisher in any respect.

9. **REPRESENTATIONS AND WARRANTIES.** Freelancer hereby represents, warrants and covenants to Publisher that as of the effective date of this Agreement and for the entire term of this Agreement:

9.1. if Freelancer is an individual, Freelancer is over the age of eighteen (18);

9.2. Freelancer shall use its reasonable best efforts to perform the Services in an ethical, diligent and professional manner consistent with highest industry standards and otherwise in accordance with the terms and conditions of this Agreement;

9.3. Freelancer shall perform the Services in accordance with the law and generally accepted journalistic practices. Freelancer agrees that the term "generally accepted journalistic

practices” includes, but is not limited to, using reasonable care to ensure that facts and statements are true and do not defame or violate the privacy, intellectual property, or any other rights of any other person or entity;

9.4. Freelancer will be available to cooperate with the Publisher in fact-checking and will provide the Publisher, upon request, any supporting documentation for the Work;

9.5. Freelancer is the owner of all IP Rights relating to the Works and has full legal power and authority to enter into and perform this Agreement in accordance with its terms, including without limitation, the full right and power to grant to Publisher the rights granted in the Works, as described herein, without the consent of any governmental body, any regulatory authority, or any third party;

9.6. the Works, and Publisher’s use thereof, does not and shall not violate or in any way infringe upon the rights of third parties, including without limitation, any IP Rights, rights of publicity or privacy rights of any third party;

9.7. the Services will not be in violation of any applicable law, rule, or regulation, and Freelancer will have obtained all permits required to comply with such laws and regulations;

9.8. the Works are free and clear of all claims, liens, encumbrances and the like of any nature whatsoever, and Freelancer has not made a previous assignment, transfer, license grant or agreement in conflict herewith or constituting a present or future assignment, license grant or encumbrance with respect to any Works in conflict herewith;

9.9. the Works shall not contain any unlawful, threatening, abusive, false, libelous, defamatory, obscene, pornographic, profane, or otherwise infringing or objectionable content or material of any kind;

9.10. the execution, delivery and performance of this Agreement does not conflict with, constitute a breach of, or in any way violate any arrangement, understanding or agreement to which Freelancer is a party or by which Freelancer is bound; and

9.11. Freelancer further represents, warrants and covenants to Publisher that no claim, whether or not embodied in an action past or present, of any infringement, of any conflict with, or of any violation of any IP Right or similar right, has been made or is pending or threatened against Freelancer or Freelancer’s Related Parties relative to the Works, nor to the best of Freelancer’s knowledge, are there any valid grounds for any claim challenging the ownership, validity, or enforceability of the Works or any IP Rights therein.

10. INDEMNIFICATION; LIMITATION OF LIABILITY. Freelancer shall defend, indemnify and hold harmless Publisher and its Related Parties (collectively, the “**Indemnified Parties**”), from and against all claims, demands, suits, losses, damages, costs, awards, judgments and expenses (including the costs of investigation and defense and reasonable attorneys’ fees), regardless of the form of action, including, without limitation, those based on, arising out of or relating to: (i) Freelancer’s breach or alleged breach of any representations, warranties, obligations or other term of this Agreement; (ii) Freelancer’s non-payment of any federal, state or local withholdings or taxes, social security, unemployment, workers’ compensation or

disability insurance; and (iii) any acts or omissions (including negligence or strict liability) of Freelancer's or any party affiliated with Freelancer related to the subject matter of this Agreement, including, without limitation, any third party claim or action based on, arising out of or relating to any Work(s) licensed hereunder.

## 11. MISCELLANEOUS

11.1. **Entire Agreement; Amendment.** This Agreement and the documents referenced herein contains the complete agreement and understanding between the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings, written or oral. Publisher strongly recommends that prior to clicking the "I HAVE READ AND ACCEPTED" button below, Freelancer print and keep a copy of this Agreement (including all documents referenced herein) for its records.

11.2. **Severability; Waivers.** If any provision of the Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the parties hereby authorize the court to modify such provision to the minimum extent necessary to effectuate the parties' intentions and the remaining provisions shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by a statement in writing signed by the party against whom enforcement of the waiver or estoppel is sought.

11.3. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and fully performed in this state, and the state and federal courts locating in this state will have exclusive jurisdiction over all suits and proceedings arising out of or in connection with this Agreement. Both parties hereby submit to the jurisdiction of such courts for purposes of any such suit or proceeding and waive any claim that such forum is inconvenient or inappropriate.

11.4. **Waiver.** No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by both parties. Failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of such rights, and a waiver by either party of a default in one or more instances shall not be construed as a continuing waiver or as a waiver in other instances.

11.5. **Headings.** The section headings and numberings of this Agreement are inserted only for convenience, and shall not be construed as a part of this Agreement.

11.6. **Nonassignment/Binding Agreement.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Freelancer, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Publisher. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.