



Ignitor LabsSM ECONTENT Development AGREEMENT FOR OEMs

This eContent Development Agreement for OEMs (the "Agreement") is entered into as of {{info.date | date:'MMMM dd, yyyy'}} (the "Effective Date") by and between {{info.client.name}}, (" Manufacturer"), an {{info.client.corporation}}, with offices at {{info.client.address}} and Ignitor Labs LLC, an Illinois limited liability company, with offices at 3701 Algonquin Road, Suite 580, Rolling Meadows, IL 60008.

Background:

A. Ignitor Labs is in the business of developing, offering and providing learning management services, interactive and simulated training modules, and on-line portals and communities through which users can access various training and educational opportunities, including Ignitor Labs' online training portal (the "LMS Portal") currently located at www.ignitorlabs.com.

B. Manufacturer desires to engage Ignitor Labs to develop a SCORM 1.2 compliant Service Training eContent on the subject of the {{info.client.course}} (the "eContent") which is more fully described in the sample eContent Design Document attached hereto as Exhibit A (the "eCDD") and to have Ignitor Labs offer the eContent to prospective students and industry participants through the LMS Portal on the terms and conditions set forth below.

C. Upon execution of this Agreement, the parties will complete and execute a specific eCDD Agreement.

Therefore, for good and valuable consideration, Manufacturer and Ignitor Labs agree as follows:

1. **Services** . Manufacturer engages Ignitor Labs to develop the eContent. Ignitor Labs shall perform its development services in a professional, expert, competent and timely manner. A designated Instructional Designer from Ignitor Labs will meet with the Manufacturer's experts to discuss project details and collect required source materials from Manufacturer, as more fully described in the eCDD. The instructional designer will review the source materials provided by Manufacturer and develop new content as necessary to achieve the maximum effectiveness for interactive, on-line training per budget. Following execution of this Agreement and receipt of source materials, the attached eCDD will be used as the outline for the development of the storyboards/scripts for the eContent. The script will be developed in Microsoft Word and submitted to Manufacturer for review, mark-up and approval. Once the script is approved, Ignitor Labs will then begin the actual development of the storyboards and interactive, multimedia content for the eContent in accordance with the approved script. Manufacturer will be responsible for coordinating access to facilities and materials as necessary for Ignitor Labs to video and photograph equipment and document processes for use in the eContent. Manufacturer will be responsible for reviewing and approving the content of the design document, script and final eContent for the sole purpose of determining accuracy of the eContent information provided by the eContent. Manufacturer agrees to use reasonable efforts to perform all necessary reviews and submit to Ignitor Labs all review comments, changes and approvals in writing within five (5) business days following submittal of materials to Manufacturer for review (or as otherwise expressly provided in the eCDD) ("Review Period"). The review copy submittals of the eContent will be watermarked "For Review Purposes Only". The watermark will be removed by Ignitor Labs upon approval of the final compiled eContent.

2. **Development Costs; Exclusivity** . The parties have agreed that Manufacturer will pay Ignitor Labs the amount set forth in Exhibit B. Except for the Total Payment (as defined in Exhibit B), Ignitor Labs

will be responsible for all of its development costs for the eContent; provided, however, that any alterations or additions to the eContent specifications contained herein and in the attached eCDD or any alterations or additions to the script after Manufacturer's approval thereof may require additional charges which is more fully described in the "Change Order Process" attached hereto as Exhibit C. Ignitor Labs agrees to provide a written estimate of any additional cost contributions from Manufacturer and obtain Manufacturer's written approval before making any alterations or additions to the script after Manufacturer's approval thereof. In exchange for Ignitor Labs' agreement to develop the eContent with only partial cost contribution from Manufacturer, Manufacturer agrees that, during the term of this Agreement, it will not develop or engage anyone else to develop and interactive training eContent for the Henny Penny Evolution Elite® Fryer Models – EEE-15x, EEG-15x, EEG-25x model for Wendy's International/QSCC .

3. **Completion Date** . Ignitor Labs estimates that the eContent will be completed within {{info.client.complete}} weeks from the date of this Agreement is signed by both parties, subject to Manufacturer's timely fulfillment of all of its obligations to supply information, and review and approve drafts and work product hereunder and under the eCDD. There will be four (4) review periods during the course of the eContent development. Manufacturer will review the script at the halfway point as well as upon its completion, and will review the eContent at the halfway point as well as upon its completion. Manufacturer agrees to use reasonable efforts to perform all necessary reviews and submit to Ignitor Labs all review comments, changes and approvals in writing within five (5) business days following submittal of materials to Manufacturer for review (or as otherwise expressly provided in the eCDD) ("Review Period"). In the event Manufacturer fails to provide comments, changes or approvals within the stated Review Period, the length of the 30 day viewing period (as outlined in Exhibit B) will be reduced by one day for each business day in excess of the stated Review Period.

4. **IP Ownership** . Ignitor Labs shall have and retain all right, title and interest in and to the eContent and all other materials produced by Ignitor Labs under this Agreement, including all copyrights, inventions (whether patented or patentable), methods, works of authorship, designs, trade secrets, know-how and other intellectual property rights comprising or embodied therein ("Work Product") and any translations of other modifications or derivative works thereof; provided, however that all right, title and interest to any materials and intellectual property supplied by Manufacturer to Ignitor Labs hereunder that is incorporated into the Work Product shall be retained by Manufacturer, and Manufacturer hereby grants to Ignitor Labs a perpetual, irrevocable, world-wide, royalty-free license to use, publish, and display such materials and intellectual property for the purpose of offering and providing the eContent to third parties pursuant to this Agreement and for the purpose of performing the obligations of this Agreement. In addition, Ignitor Labs shall have the sole and exclusive right to commercialize, use, publish, display, offer and provide training using, in whole or in part, the eContent and other Work Product during term of this Agreement. Ignitor Labs will offer access to and use of the eContent to third parties through its Ignitor Labs Portal and/or such other reasonable means as Ignitor Labs determines, and charge students or their employers such fees, on a tuition, subscription or other basis, as Ignitor Labs determines in its sole discretion.

5. **Use of Marks**. Manufacturer hereby grants Ignitor Labs a nontransferable, non-exclusive revocable license to use Manufacturer's Marks in connection with this Agreement. Ignitor Labs will not alter, obtain, or assert any claim to any of Manufacturer's Marks (whether owned or licensed). "Manufacturer's Marks" means Manufacturer's name, trade names, service name and any other names for which Manufacturer has rights under common law or for which application has been made, or may be made during the Term of this Agreement, to the applicable regulatory authority for recognition as a registered trademark or service mark of Manufacturer.

6. **Notices** . All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and signed by the party giving notice, and shall be deemed to have been given when hand delivered by personal delivery, or by FedEx, UPS or similar courier service, or three (3) business days after being deposited in the United States mail, registered or certified mail, with postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth in the first paragraph of this Agreement, or to such other address as either party may designate for itself by written notice to the other party as herein provided.

7. **Independent Contractors** . The parties are and shall remain independent contractors and

neither Ignitor Labs nor employees of Ignitor Labs will be deemed to be an agent or employee of Manufacturer. Ignitor Labs has no authority to enter into contracts or agreements on behalf of the Manufacturer. This Agreement does not create a partnership, joint venture or any agency relationship between the parties.

8. **Indemnification** . It is the responsibility of the Manufacturer to verify and validate the accuracy of all content contained within the training eContent developed by Ignitor Labs hereunder. Manufacturer shall indemnify, defend and hold Ignitor Labs harmless from and against all liability, loss, cost or expense in connection with third party legal proceedings, including in the form of any judgments, settlements, court costs, and attorney's fees, incurred by Ignitor Labs arising out of any errors or omissions in the content of and training information provided by the eContent as approved by Manufacturer hereunder. Ignitor Labs shall indemnify, defend and hold Manufacturer harmless from and against all liability, loss, cost or expense in connection with third party legal proceedings, including in the form of judgments, settlements, court costs, and attorney's fees, incurred by Manufacturer due to a claim by a third party that programming, illustrations or formatting provided by Ignitor Labs for the eContent or any software used by Ignitor Labs to produce the eContent infringe such third party's intellectual property rights.

9. **Limitation of Liability** . EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST REVENUES, LOSS OF BUSINESS OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

10. **Term and Termination** .

A. This Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as provided in this Agreement.

B. This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligations provided hereunder and the breaching party fail to cure such breach within thirty (30) days of the receipt of the notice.

C. Manufacturer may terminate this Agreement if Ignitor Labs dissolves, terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute which is not dismissed within thirty (30) days (except that Ignitor Lab's filing of a reorganization proceeding under Chapter 11 of the Federal Bankruptcy Code, 11 USC §§ 1101 *et seq*, shall not be considered a cause for termination.) In the event of termination by Manufacturer pursuant to this Section 10.C., Ignitor Labs shall provide Manufacturer with a copy of all eContent created pursuant to this Agreement.

D. Manufacturer shall pay Ignitor Labs for all services rendered and work performed up to the effective date of the termination for any reason.

11. **Limited Warranties; Non-Conformity** . Ignitor Labs warrants that the professional services provided as part of this Agreement will be performed in a workmanlike and professional manner by appropriately qualified personnel and that for a period of 2 years from the launch of the eContent, the eContent will operate in accordance with all the material terms of the eCDD. Upon notice of a breach of warranty by Manufacturer to Ignitor Labs, in addition to any other remedies available, Ignitor Labs shall correct any nonconformity. Any aforementioned corrections will be at the cost of the Manufacturer, if the nonconformity was present at the time of final approval of the eContent.

12. **Confidentiality** .

A. As used in this Agreement, the term "Confidential Information" shall mean and include: (i) confidential information concerning the businesses and affairs of Ignitor Labs or its clients, customers or business partners (the "Disclosing Entities"), including business and financial records, customer preferences, characteristics and

identities, strategic plans, marketing plans, advertising plans, customer lists, customer preferences, customer idiosyncrasies, customer credit matters, computer programs, codes and operations, designs, experiments, research and development projects, supplier lists, development and acquisition opportunities, Ignitor Labs' and the other Disclosing Entities' training programs, methods and materials, trade secrets and confidential planning or policy matters, financial projections, and any secret or confidential operational, management, financial, property, accounting, control, system, marketing or tax information relating to the business of the Disclosing Entities, (ii) information which Ignitor Labs is required to keep confidential in accordance with applicable law or any confidentiality obligations to third parties, including the confidential information of Ignitor Labs' clients, customers and business partners, and (iii) information which gives any of the Disclosing Entities an opportunity to obtain an advantage over their competitors or other persons who do not know or use the same or by which any of them derive actual or potential value from such matter or material not generally being known to other persons who might obtain economic value from their use or disclosure. The term "Confidential Information" does not include (x) information that has become or hereafter becomes generally available to the public in a single publication through legitimate means not involving any act or omission by Manufacturer or any of its representatives, (y) information that is furnished in a single disclosure to Manufacturer on a non-confidential basis from a source other than the Disclosing Entities that is not under any obligation of confidentiality with respect to such information, or (z) information that is, as a whole, within the Manufacturer's possession prior to it being furnished to Manufacturer by a Disclosing Entity, as is clearly demonstrated by written records of Manufacturer existing prior to disclosure by a Disclosing Entity.

B. Manufacturer acknowledges and agrees that the Disclosing Entities have expended, or will expend significant sums of money and have invested, or will invest, a substantial amount of time to develop, use, and maintain the secrecy of, the Confidential Information. The Disclosing Entities have thus obtained, or will obtain, a valuable economic asset that has enabled, or will enable, them to develop an extensive reputation and to establish long-term business relationships with their suppliers and customers. If such Confidential Information were disclosed to another person or used for the benefit of anyone other than the Disclosing Entities, the Disclosing Entities would suffer irreparable harm, loss and damage. Accordingly, Manufacturer acknowledges and agrees that:

i. the Confidential Information is, and at all times hereafter shall remain, the sole property of the respective Disclosing Entities, and nothing herein shall be construed to grant to Manufacturer any license or other right or interest in any of the Confidential Information or any other property of any of the Disclosing Entities;

ii. Manufacturer shall use its best efforts and the utmost diligence to guard and protect the Confidential Information from any unauthorized disclosure to any competitor, or any other person, other than to those of Manufacturer's employees necessary for purposes of providing consulting services or other products or services to Ignitor Labs who have agreed to keep such information confidential;

iii. Unless Ignitor Labs gives Manufacturer prior express written permission, during Manufacturer's relationship with Ignitor Labs and thereafter, Manufacturer shall not use for its own benefit or for the benefit of any person or entity other than Ignitor Labs, or divulge to any competitor, supplier or any other person, the Confidential Information which Manufacturer may obtain as a result of Manufacturer's discussions or relationship with Ignitor Labs or any other Disclosing Entity; and

iv. Except to the extent required for purposes of providing consulting services and other products or services to Ignitor Labs, Manufacturer shall not seek or accept any Confidential Information from any former, present, or future employee of the Disclosing Entities.

C. Manufacturer acknowledges and agrees that all Confidential Information, regardless of its form, is supplied or made available by Ignitor Labs to Manufacturer solely to assist Manufacturer in providing consulting services and other products and services to Ignitor Labs.

D. Manufacturer also acknowledges and agrees that, upon the termination of Manufacturer's business relationship with Ignitor Labs for any reason, Manufacturer shall immediately return to Ignitor Labs all documentary or tangible Confidential Information in Manufacturer's and its representatives' possession, custody,

or control, and not make or keep any copies, notes, abstracts, summaries, tapes or other record of any type of any of the Confidential Information.

E. Manufacturer acknowledges and agrees that, if Manufacturer is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil or regulatory investigative demand or other process) to disclose any Confidential Information, Manufacturer will provide Ignitor Labs with prompt written notice of such request or requirement so that Ignitor Labs may seek an appropriate protective order or other remedy and/or waive its rights under this Agreement with respect to that portion of the Confidential Information which comes within the scope of the request or requirement.

F. Unless specifically agreed to by the parties in a separate writing, Manufacturer agrees that all information provided to Ignitor Labs by Manufacturer shall be free of any confidentiality obligation.

13. **Remedies** . The parties acknowledge that any material breach of this Agreement will result in immediate and irreparable damage, and that money damages alone will be inadequate to compensate the other party. Therefore, in the event of a material breach or threatened material breach of any provision of this Agreement, the non-breaching party may, in addition to all other remedies, obtain immediate injunctive relief prohibiting the breach or compelling specific performance.

14. **No Assignment** . Either party may, without the prior written consent of the other party, assign or transfer this Agreement or any obligation incurred hereunder.

15. **Interpretation** . When required by the circumstances, the singular shall be read as the plural, the conjunctive as the disjunctive, the masculine as the feminine or neuter, and vice versa. Headings have been inserted for convenience only and are not to be considered when interpreting the provisions of this Agreement. All schedules and exhibits attached hereto are incorporated herein by reference and constitute a part of this Agreement as fully as if set forth in this Agreement in their entirety. The background recitals in this Agreement are, and shall be construed to be, an integral part of this Agreement. Whenever the terms “include,” “including,” or “included” are used in this Agreement, they shall mean “including without limiting the generality of the foregoing.”

16. **Legal Compliance & Applicable Law** . Ignitor Labs and Manufacturer shall comply with all applicable laws and regulations in carrying out their respective obligations under this Agreement. The validity, construction and enforceability of this Agreement shall be governed in all respects by the domestic laws of the United States and the State of {{info.client.performState}} applicable to agreements made and to be performed entirely in the State of {{info.client.performState}}, without giving effect to any choice of laws, or any principles of comity, or conflict of law provision, or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of {{info.client.performState}}.

17. **Amendments; Entire Agreement** . Any and all amendments, modifications, changes revisions and discharges of this Agreement, in whole or in part and from time to time, shall be binding upon the parties hereto only if the same shall be in writing and delivered in accordance with the terms hereof. This Agreement, together with the schedules and exhibits attached hereto constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings between the Manufacturer and the Ignitor Labs with respect to such subject matter.

18. **Severability** . If any provision of this Agreement is held to be unenforceable, such provision shall be limited and construed so as to make it enforceable consistent with the parties' manifest intentions or, if such limitation or construction is not possible or would be inconsistent with the parties' manifest intentions, such provision will be deemed stricken from this Agreement. In any such event, all other provisions of this Agreement will remain in full force and effect, unless such enforcement would result in an injustice or be inconsistent with the purposes of this Agreement.

19. **Counterparts** . This Agreement may be executed in counterparts, which taken together shall form one legal instrument. The signatures of all of the parties do not need to appear on the same counterpart and

delivering of an executed counterpart by facsimile or electronically is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or electronically also will deliver an original executed counterpart of this Agreement to the other party, but the failure to do so does not affect the validity, enforceability or binding effect of this Agreement. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

20. **Survival** . Certain provisions shall, by their nature, survive any expiration or termination of this Agreement, including without limitation Sections 4, 5, 8, 9, 11, 12, 13 and 14.

Manufacturer and Ignitor Labs have caused this Agreement to be signed and delivered by their duly authorized representatives as of the date first written above.