

DISTRIBUTION AGREEMENT - TERMS AND CONDITIONS

This is a licensing agreement between neXva, Inc., a Delaware corporation, (the Aggregator) and Content Partner whereby Content Partner grants to Aggregator in the Territory and during the Term, a non-exclusive license for the Content within guidelines outlined in this Agreement and to the extent incorporated for the Content, the Underlying Rights to distribute the Content by Electronic Means including, but without limitation, by browsing, streaming, downloading, playback, storage and purchase.

It is accordingly agreed as follows:

OPERATIVE CLAUSES

1. Interpretation In this Agreement :

1.1 - The following expressions have the following meanings:

"Agreement" - This document which is a binding contract between Aggregator and the Content Partner.

“Device” – Digital computation equipment or computer including but not limited to Personal Digital Assistants (PDAs), Desktop Computers and Mobile Phones.

"Content" – A product which is sourced by the Content Partner who has ownership and/or distribution rights, which includes any Executables, Music Content, Images, Caller Tunes, MMS Content, Ringtones, Video Content and Digital Literature.

“Music Content” means any product consisting of or including any musical work (including but not limited to monophonic, polyphonic or real music ringtones, Caller Tunes, music downloads).

“Executable” means a piece of software (e.g. game, utility, computer application) in the form of an executable file (e.g., .exe or .bat files), including class libraries, images and melodies that are required by the device concerned in order to use the full range of content functions; also including screenshots, FAQs (frequently asked questions) and other documentation that the Content Partner is obliged to deliver to Aggregator under this Agreement.

"Image“ means any visual representation that is stored in digital format – this term also includes, without restrictions, a series of such representations that can be played in combination as an animation or a video clip.

“Caller Tune” means a type of Content consisting of an original master recording or an extract thereof (as selected by a user to be a customized call connection tone that a caller hears when

calling that user) and which may be played simultaneously with a standard ITU call connection tone.

“Digital Literature” means any form of literature which has been digitised including but not limited to e-books and so forth.

"Video Content" refers to the video clips of movies, dramas, plays, and any form of video, along with their individual titles.

"MMS Content“ means a content package that consists of one or more images, melodies and/or items of text data and is transmitted via the MMS gateway, if necessary, together with program instructions (or codes) needed for the proper display and execution of the content package concerned.

"Melody“ means any monophonic or polyphonic sound or sound sequence that is stored in digital format and can be played in audible form on a device.

"Ring Tone" means a melody that a device can use to signal an incoming telephone call or similar event.

"SMS Text“ means any text to be transmitted to a user in the form of an SMS message.

“Electronic Means” means any wireless and wireline technology (whether now known or subsequently developed) including but not limited to that which is or may be used with radio frequency spectrum in any band, to enable or facilitate transmission of textual material, data, voice, audio, video, audio-visual and/or multimedia services to devices (including wireless technology employed in General Packet Radio Services (GPRS), the Global System for Mobile Communications (GSM), Personal Communications Networks (PCN), Code Division Multiple Access (CDMA and CDMA2000), Time Division Multiple Access (TDMA), Tetra, Local Area Networks (LAN), Wireless Local Area Networks (WLAN), Wireless Application Protocol (WAP), the Universal Mobile Telecommunications System (UMTS) and wireless-enabled websites and their related or derivative systems.

"Business Day" – Working hours between 9AM and 5PM local time on a day other than Saturday, Sunday or a public bank holiday in the UK, USA and Canada.

"Transaction" - The sale of the Content to a customer through the Aggregator or Aggregator affiliated or branded portal.

"Commission" - The agreed upon amount paid to Aggregator for handling the sale of Content Partner’s Content.

"Royalty" - The agreed amount paid to Content Partner for the sale of Content at the Aggregator or Aggregator affiliated or branded portals.

"Aggregator's Marks/Brands" - Such trade names, trade marks, service marks or logo(s) owned

by Aggregator as may be in use in connection with the sale and marketing of the Content.

"Content Partner's Marks/Brands" - Such trade names, trade marks, service marks or logo(s) owned by Content Partner as may be in use in connection with the sales and marketing of the Content.

"Commencement Date" - As agreed between the Parties being the date on which the provisions hereunder of the Agreement will commence.

"Data" - All data relating to marketing collateral, customers and prospects of Content sold through Aggregator portals.

"Intellectual Property Rights" - Patents, trademarks, servicemarks, design rights (whether registerable or otherwise), copyright, know-how and other similar rights or obligations whether registerable or not in any country.

"Proprietary Information" - All information which relates to the business affairs, product development, trade secrets, know-how, personnel, customers and suppliers of either Party (whether or not designated as "proprietary information" by either party) together with all information derived from the foregoing or any other information which is by its nature confidential.

"Territory" – the world – All exceptions will be managed in the management screens accessible by the Content Partner on Aggregator's portal, for each individual product where territorial restrictions can be defined and enforced.

"Musical Publishing Rights" – In the case of music, the rights in underlying literary and/or musical copyright works embodied in the Content.

"Underlying Rights" – Any and all rights that may be embodied in the Content including without limitation copyright, in the case of music; any performer's rights, copyright, and any other intellectual Property Right including the Musical Publishing Rights.

1.2 - The singular number shall include the plural and vice versa and reference to natural persons shall include bodies corporate;

1.3 - References to Aggregator and to Content Partner shall be construed as including each party's permitted assigns and/or successors to the benefit of this Agreement;

1.4 - The clause and schedule headings are for convenience only and shall be ignored for the purposes of construction;

1.5 - References to clauses, schedules, paragraphs and sub-paragraphs are to the clauses, schedules, paragraphs and sub-paragraphs of this Agreement;

2. Parties' Contribution

2.1 - Aggregator will promote and distribute the Content through the Aggregator portals (including but not limited to www.nexva.com) and/or Aggregator affiliated or branded portals. From time to time, Aggregator will expand the list of portals through which it distributes content. A list will be maintained and updated on the Content Provider portion of Aggregator's website.

2.2 - Aggregator will manage the payment and collection process of all transactions through the Aggregator or Aggregator-affiliated branded portals.

2.3 - Upon successful payment collection, Aggregator will notify the Content Partner with the details of each transaction via email.

2.4 - Aggregator will provide the Content Partner with information on all transactions via password protected web screens. Using these web screens, Content Partner will be able to invoice Aggregator, if necessary, for payment of royalties from the distribution of Content Partner's content.

2.5 - Aggregator shall continuously inform Content Partner of the sales activity of Content Partner's Content on Aggregator's site(s). At the end of any calendar month that the amount owing from Aggregator to Content Partner exceeds USD \$300 (minus commissions to the Aggregator), Aggregator shall within fifteen (15) business days make that amount owing to Content Partner available. These amounts will be remitted from Aggregator to Content Partner by bank check (in US Dollars) or Paypal. Should Content Partner desire the amount to be remitted via wire transfer, Content Partner shall bear the full cost of such wire transfer. Should Content Partner desire remittance of amounts owing to it from Aggregator at a time other than as defined above, Content Partner shall make a written request of Aggregator and Aggregator shall comply within fifteen (15) business days of receiving such request. An administrative fee of twenty-five (\$25) US Dollars shall be charged by Aggregator to Content Partner for compliance with this request, plus any costs of money transfer, above.

2.6 - All Royalty payments are subject to Aggregator's receipt of all payments due from Aggregator's customers. Aggregator shall deduct from any Royalties due to Content Partner an amount equivalent to Royalties previously paid or credited on sales of the Content which have since been charged back by Aggregator's customers (whether by reason of credit card fraud or other reason, which in Aggregator's judgment renders the account uncollectable.)

2.7 - Content Partner will be responsible to provide 2nd level support to all Content support related queries by customers. These support queries will include 1) (where applicable) the sending of unlock codes to the customer 2) responding to technical support issues. Failure of Content Partner to provide second level technical support may result in a customer requesting a full refund of the amount said customer paid for the Content. Should this be the case, Aggregator will not get involved in this issue and will, upon said customer's request, provide a full refund and debit Content Partner's account for said amount. Should such a refund be made, each party, Aggregator and Content Partner, shall bear its respective share of the refunded amount.

3. Royalty Agreement

3.1 – For all Partner Content sold via Credit/Debit Card, PayPal, or other payment methods, royalties paid to the Content Partner are according to the following revenue share :

30 % for neXva

70% for Content Partner

4. Licence to Use Brands

4.1 - Content Partner hereby authorizes Aggregator to use Content Partner's Brands in the form provided by Content Partner when it uploads its Content and materials to Aggregator. Content Partner understands and agrees that Aggregator will use said brand(s) on Aggregator's portal, Aggregator's affiliated portals and branded or white labelled portals for the purpose of promoting Content Partner's Content and for no other purpose.

4.2 - Content Partner and Aggregator undertake that the other will not use any trade names, trade marks or service marks of the other, other than those whose use by the Content Partner or Aggregator is expressly authorized by the other and further that it will not use the other's Marks in any way which would allow them to lose their distinctiveness, be liable to mislead the public, or be materially detrimental to or inconsistent with the goodwill, reputation or image of Aggregator or Content Partner or any Aggregator or Content Partner Group Company.

4.3 – Both Content Partner and Aggregator recognize the others' proprietary rights in its trade names, trade marks or service marks including the Aggregator's or Content Partner's Marks and undertakes not to do any act either alone or jointly with others which may jeopardize or in any way infringe the others title to its trade names, trade marks or service marks or which might invalidate any registration of such marks. The Content Partner and Aggregator acknowledge that its use of the others' Marks shall not create for itself any rights in such marks and if any such rights are created the party to which such right is created shall undertake to assign such rights to the other or as it shall otherwise direct.

4.4. - Aggregator and Content Partner warrants and undertakes to the other that the use of the others' Marks for the purposes of and in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party.

4.5 - Upon termination of this Agreement for any reason whatsoever, each party shall immediately cease to make use of other's Marks and shall do and execute all such acts, deeds and

things that the other party shall require for the purpose of cancellation of the permission granted hereunder.

5. Confidentiality

5.1 - The Content Partner and Aggregator will keep confidential any Proprietary Information and/or any information obtained from the other in pursuance of this Agreement and neither will divulge the same to any third party, except such of its employees, contractors and agents as may need to know the same for the purposes of the implementation of this Agreement and who agree to be bound by the provisions of this clause, or use the same, except as is reasonably necessary for the performance of obligations arising under this Agreement without the consent in writing of the other.

5.2 - The obligations aforesaid shall not apply to any material or information which:

5.2.1 - is in the public domain (other than as a result of a breach of this Agreement);

5.2.2 - the receiving party can clearly demonstrate was already known to him;

5.2.3 - is lawfully disclosed to him by a third party (without breach of any obligation of confidentiality on the part of the disclosing party);

5.2.4 - is ordered to be disclosed by any court or other tribunal of competent jurisdiction.

6. Ownership of Data

6.1 - All customer data and any other Proprietary Information relating to the direct sale of the Partner Content through the Aggregator or Aggregator affiliated or branded portals is owned by Aggregator and the Content Partner.

7. Term

7.1 - This Agreement shall remain in effect for an initial period of twelve (12) months from the date of execution by both parties. This Agreement shall automatically renew for successive twelve (12) month periods unless either party notifies the other party, in writing, no less than thirty (30) days prior to the end of any term or renewal term of this Agreement of its election not to renew.

8. Exclusion of all Damages

8.1 - To the maximum extent permitted by applicable law, in no event shall either party be liable for any consequential, incidental, direct, indirect, special, punitive or other damages whatsoever, including, without limitation: damages for any injury to person or property, damages for loss of profits, business interruption, loss of business information, loss of privacy for failure to meet any duty including of good faith or of reasonable care, negligence, and for any pecuniary or other loss whatsoever, arising out of or in any way related to the use of or inability to use the Partner Content, whether based on contract, tort, negligence, strict liability or otherwise, even if

Aggregator has been advised of the possibility of such damages. The exclusion of damages shall be effective even if any remedy fails of its essential purpose.

8.2 – In no event shall either party be liable to the other for any indirect, special, consequential or incidental damages, including, but not limited to loss of anticipated profits, even if such party has been advised of the possibility of such potential loss or damage, in connections with or arising out of this Agreement.

9. Entire Agreement

9.1 - This Agreement contains all the terms which the Parties have agreed in relation to the transactions provided for by this Agreement. Neither of the parties have been induced to enter this Agreement by a statement or promise which it does not contain. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of this Agreement.

10. Operative Law

10.1 - This Agreement shall be construed under the laws of the State of California, USA, without reference to its conflicts of laws provisions and any claim or controversy concerning this Agreement shall be heard in the Superior Court of the State of California located in San Diego County, California, USA.

11. Proprietary rights

11.1 - Ownership by Content Partner. The parties agree that the Content Partner owns all proprietary rights, including copyrights, patents, trademarks, and trade secrets, in and to the Partner Content and that this Agreement does not transfer ownership of any of these rights.

12. Representations and Warranties

12.1 Content Partner hereby represents and warrants that: (a) Content Partner is the sole and exclusive owner of all right, title and interest in and to the Content, and/or has full distribution rights of the Content, in the Territory during the Term of this Agreement, including and not limited to copyright, patent, trade secret and trademark rights. (b) none of the Content infringes upon or otherwise violates any rights, including without limitation, copyright, patent, trade secret or trademark rights, of any person or entity (c) Content Partner has full power to enter into this Agreement and to grant all rights herein granted; and (d) there is not now any outstanding litigation or threat of litigation or claim or threats of claims that affect or are concerned with or any way touch upon the Content or any of the rights granted by Content Partner pursuant to this Agreement. Should any of these representations prove to be incorrect or untrue, Aggregator retains all rights afforded to it under this Agreement including, but not limited to, Aggregator's

right to terminate this Agreement immediately and without cause as well as its right to seek indemnification under section 13, below.

13. Content Partner Indemnification

13.1 Content Partner will, at its sole cost and expense, indemnify, defend and hold harmless Aggregator, its parent, subsidiaries, affiliates, successors and assigns, and the officers, directors, members, managers, shareholders, administrators, agents and employees of same, from and against any and all claims, demands, actions, suits, judgments and liabilities of any kind and character whatsoever (collectively, "Claims") arising out of or in connection with breach of any representation or warranty by Content Partner, and Content Partner shall pay all damages arising from same, including but not limited to attorneys' fees. Content Partner agrees to cooperate fully with Aggregator in the defense of such Claims.

14. Notices

14.1 Any notice or other communication provided for herein to be sent to any Party under this Agreement shall be dated and in writing and shall be deemed to have been duly given (a) if to be delivered to an address in the country from which it was sent, on the third day after deposit in the mail, first class postage prepaid, and addressed as provided below, (b) if to be delivered at an address outside of the country from which it was sent said notice shall be delivered by means of personal delivery, telex, telecopy or other electronic facsimile transmission, and shall be deemed to be delivered on the day after such personal delivery of transmission of the telex, telecopy or other electronic facsimile transmission. Such notices shall be transmitted to the address for the Party set forth as follows:

Aggregator

Content Partner

neXva,
Inc.

—

7660 Fay Avenue, Suite
340

La Jolla, CA 92037
USA

Amendment

15.1 Aggregator may, from time to time, modify the terms of this Agreement by posting the revised agreement on Aggregator's website and notifying Content Partner of the change by e-mail or by posting to the Partner News section of the login screens or any other means reasonably calculated to inform Content Partner of the terms of the revised agreement. Unless Content Partner objects to the revised agreement in writing to Aggregator within fifteen (15) days of receiving notice of the change, in which case no revision will take effect, Content Partner will be deemed to have accepted the terms of the revised Agreement and the as-revised Agreement will take effect and be binding on both parties at the end of Content Partner's fifteen (15) day objection period. No modification, amendment, supplement to or waiver of any provision of this Agreement shall be binding upon the Parties unless in writing and accepted by Content Partner in the manner described above or signed by both Parties.

16. Special Provisions

16.1 MUSIC AND VIDEO CONTENT

The Content Partner shall provide details of payments made to collecting societies and other licensors, in addition to any other information reasonably requested by Aggregator from time to time.

The Content Partner will take sole responsibility in obtaining any necessary licences from the relevant collecting society or other licensor as may be required to reproduce, adapt, make available, distribute or otherwise exploit the Music and/or Video Content and the musical works underlying such Music and/or Video Content in any part of the world.

SCHEDULE I : Territory, countries, excluded by this Agreement

Territory restrictions for specific content are to be outlined below or may be provided as an excel spreadsheet. Any content not specified will default to the definition of Territory as outlined in definitions.

BY COMPLETING THE INFORMATION OR CLICKING THE "I ACCEPT THE AGREEMENT TERMS AND CONDITIONS" BUTTON BELOW, YOU REPRESENT AND WARRANT THAT THE INFORMATION PROVIDED BELOW IS TRUE AND ACCURATE, YOU ARE AT LEAST 18 YEARS OLD, AN AUTHORIZED REPRESENTATIVE OF THE

CONTENT PARTNER AND HAVE THE POWER AND AUTHORITY TO ENTER INTO AND BIND CONTENT PARTNER TO THIS AGREEMENT. YOU AND THE CONTENT PARTNER, ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT (WHICH INCLUDES ALL EXHIBITS), UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.