

Agreement for the Non-Exclusive Distribution of Content

This agreement is entered into this 17th day of January, 2013 by and between **neXva, Inc., a Delaware corporation, located at 7660 Fay Avenue, Suite 340, La Jolla, CA 92037 USA** ("Aggregator", "we", "us" or "neXva") and **JoyBits Ltd., a UK corporation, located at 12 CHELMSFORD ROAD, SOUTHGATE, LONDON, NN145PT, UK.**

Throughout this Agreement, you will be referred to as "Content Partner" or "you". (Each a "Party" or collectively, the "Parties"). **Before you accept this Agreement, please read all of the terms, rules and policies carefully.** All terms, rules, policies and this agreement will be referred to together as the "Agreement".

EACH PARTY'S CHECKING OF THE "I ACCEPT" BOX BELOW AND USE OF NEXVA'S SERVICES (AS DEFINED BELOW) INDICATES THAT SUCH PARTY HAS AGREED TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT THIS AGREEMENT CONSTITUTES A BINDING AND ENFORCEABLE AGREEMENT BETWEEN THE PARTIES. IF A PARTY ACCEPTS THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, SUCH PARTY REPRESENTS AND WARRANTS THAT SUCH PARTY HAS THE AUTHORITY TO BIND SUCH LEGAL ENTITY TO THIS AGREEMENT.

1. **Our Distribution Program.** neXva maintains a program for the distribution of mobile applications (the "Program") that allows end users to access, download, and purchase mobile software applications, games, ringtones, wallpapers and other digital content. In this Agreement we refer to **Mobile Apps** as software applications that are created for use on mobile devices. Mobile Apps include, but are not limited to, content, ads, technology, data, enhancements, upgrades, bug fixes, new versions and replacement versions. **Content** shall mean Mobile Apps and all supporting digital material for the Mobile Apps.
2. **Your agreement.** By agreeing to this Agreement, you authorize neXva to promote, sell and distribute your Mobile Apps and other Content on neXva.com, neXva.mobi and any other site maintained by us for or on behalf of a company other than neXva. A list of the sites on which we distribute Mobile Apps shall be maintained and updated on the Content Partner portion of neXva's website (each and all of these distribution outlets shall be referred to as the "neXva Mobile App Stores").
3. **No Guaranty of Distribution.** Because there are numerous neXva Mobile App Stores maintained for many companies, there is no guaranty that placing your Mobile Apps with us will result in your Mobile Apps being offered in any or all of the neXva Mobile App Stores. In many instances, the Apps that appear in a neXva Mobile App Store are selected by neXva's customer and may exclude your Mobile Apps.
4. **Territory.** Unless otherwise specified, this Agreement shall provide for worldwide distribution of Content Partner's Mobile Apps by us.
5. **Delivery of your Mobile Apps and Content.**
 - a. **Your Commitment for Delivery of Mobile Apps.** You agree, during the term of this Agreement and any extensions, to provide to us all Mobile Apps and Content that you wish for us to distribute. In doing so, you agree that you have all legal rights to enter into this Agreement and specifically that you are the legal owner, developer or distributor of the Mobile Apps. During the time that you have a Mobile App available

for distribution through us, you agree to properly maintain and update that Mobile App, deliver to us any known bug fixes, patches, product updates revisions or new versions as you may make available on other platforms that distribute your Mobile Apps.

- b. **When you will deliver Mobile Apps to us.** You agree that any Mobile App you distribute through us will be the same version as you are distributing through other mobile app stores. If you issue a revision, new version, bug fix or other modification on another mobile app store you will, within seven (7) days, make that version available to us. **It is your sole responsibility to assure that this provision is adhered to.**
- c. **Accuracy of your Mobile Apps.** It is your sole responsibility to assure that the Mobile Apps, Content and all other information you provide to us is accurate. If, at any time, you determine that any Content or your Mobile Apps are inaccurate or need to be updated or modified, you shall promptly provide us with those modifications, updates or changes.

6. Your Grant of Rights to Us.

- a. **Distribution Rights.** By agreeing to this Agreement, you grant to us a non-exclusive and royalty-free right to distribute and sell your Mobile Apps and Content to end-users in the Territories through any and all means we shall deem proper. Through these distribution rights we have the ability to test your Mobile Apps on mobile devices to determine whether your Mobile Apps work properly and we can keep your Mobile Apps and Content in our content catalogue for distribution in one or more of the neXva Mobile App Stores.
- b. **Promotion.** Further, by agreeing to this Agreement, you grant us a non-exclusive and royalty-free right to do whatever we feel necessary to properly promote your Mobile Apps either in the neXva Mobile App Stores or through other means of publication and promotion. We shall only be entitled to undertake such promotion of your Mobile Apps during the time in which you have your Mobile Apps in the neXva Mobile App Stores and while this Agreement is in force and effect. At such time as this Agreement terminates, so too does our ability to promote your Mobile Apps.

7. License to Use Brands.

- a. **Your license to us.** You hereby authorize us to use your brands in the form provided to us when you upload your Mobile Apps and Content to us. You understand that we will use your brands on the neXva Mobile App Stores for the purpose of promoting your Mobile Apps and for no other purpose.
- b. **Our Mutual Agreement.** Content Partner and neXva agree that neither of us will use any trade name, trade mark or service mark of the other, other than those whose use by you or us is expressly authorized by the other and further that neither of us will use the other's Marks in any way which would allow the other party to lose their distinctiveness, be liable to mislead the public or be materially detrimental to or inconsistent with the goodwill, reputation or image of Content Partner or neXva.
- c. Content Partner and neXva recognize the other's proprietary rights in its trade names, trade marks or service marks including neXva's or Content Partner's Marks and we both undertake not to do any act either alone or jointly with others which may jeopardize or in any way infringe the other's title to its trade names, trade marks or service marks or which might invalidate any registration of such marks. Content

Partner and neXva acknowledge that its use of the other's 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.

- d. neXva and Content Partner warrant and undertake to the other that the use of the other's Marks for the purposes of and in accordance with this Agreement will not infringe on the Intellectual Property Rights of any third party.
- e. Upon termination of this Agreement for any reason whatsoever, each party shall immediately cease to make use of the 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.

8. **Maintenance of neXva Online Back Office.** neXva maintains, for purposes of dealing with the distribution of your Mobile Apps, a password protected web site (the "neXva Back Office") whereby we will communicate with you about the activities of your Mobile Apps in the neXva Mobile App Stores.
9. **Pricing of your Mobile Apps.** Through the neXva Back Office, you shall inform us of the price you wish to charge for your Mobile Apps, ranging from \$0.00 on up. In some of the neXva Mobile App Stores, we offer the ability to price your Mobile Apps in local currency other than US Dollars. The price of you Mobile Apps in one currency may not directly correspond to the price of your Mobile Apps in another currency and it will be your responsibility to set the price of your Mobile Apps in local currency to enable your Mobile Apps to be sold in neXva App Stores that are outside of the United States.
10. **Promotional Apps.** From time-to-time we may communicate with you through the neXva Back Office and request the ability to offer your Mobile Apps at a special reduced price, possibly as low as \$0.00 for a limited and defined period of time. It will be your option, in the neXva Back Office, to accept or reject our offer of special pricing and in no instance will we change the price of your Mobile Apps without your prior agreement.
11. **Payments to Content Partner.** Currently we pay to our Content Partners, including you, for the distribution of your Mobile Apps, an amount equal to seventy percent (70%) of the Gross Revenue we receive from the sale of your Mobile Apps (the "Content Partner's Fee"). For purposes of this Agreement, we define "Gross Revenue" as the amount we receive from an end-user who purchases your Mobile Apps. From time to time, we may offer variations on the Content Partner's Fee that may enable, for instance, inclusion in certain neXva Mobile Apps Stores, the ability to be featured on some neXva Mobile App Stores or other promotional opportunities. We will never force you to accept a variable Content Partner's Fee. We will communicate these opportunities to you through the neXva Back Office and you will then have the option of selecting a variable Content Partner's Fee for the sale of your Mobile App(s) in particular or selected neXva Mobile App Stores; however, inclusion in some of the neXva Mobile App Stores or the ability to be featured on some of the neXva Mobile App Stores may be dependent upon acceptance of this variable Content Partner's Fee.
12. **Payment Terms.** Subject to Sections 11, this section and Section 13, we shall pay you the Content Partner's Fee equal to the standard percent (70%) or the variable Content Partner's Fee selected by you in the neXva Back Office times the list price of your Mobile App. A Content Partner's Fee is only due for the sale of your Mobile App for which we have received final payment from the end-user, the mobile operator who collected the payment or other

intermediary we might use to process the sale of Mobile Apps. No Content Partner's Fee shall be payable for the sale of any Mobile App with a list price of \$0.00.

13. Payments and Reporting.

- a. Content Partner's Fee.** Subject to the terms of this section and Section 12, above, we will pay you a Content Partner's Fee for each sale of your Mobile Apps on the neXva Mobile App Stores. Through the neXva Back Office, you can view all download activity for your Mobile Apps. Through the neXva Back Office you shall also be able to invoice neXva for sales of your Mobile Apps, should that be necessary. We shall report to you within twenty (20) days of the end of each calendar month the sales of your Mobile Apps, the payments received and your share of those sales. Within thirty (30) days of that report, and in any calendar month in which the amount owing from us to you exceeds USD \$300, we shall make that amount owing to you available. All payments will be made in US Dollars and will be remitted to you via Electronic Funds Transfer (EFT) to a valid US bank account in your name, which information you will provide to us. If you are located outside of the US, we shall remit the amounts owing to you by check sent to a mailing address that you provide to us. We could also, at your direction, make payment to you via Paypal. For any month in which the payment minimum of \$300 is not met, we shall accrue and withhold those funds, without interest, until the total amount owing to you is at least \$300.
- b. Limitations on payments.** All Content Partner's Fees payable to you are subject to our receipt of payments due from the purchasers of your Mobile Apps. neXva shall be entitled to deduct from any Content Partner's Fees to be paid any amounts which have been charged back by purchasers of your Mobile Apps for whatever reason.
- c. Taxes.** We are responsible for collecting and remitting any taxes imposed on the sale of Mobile Apps to end users. You are responsible for the payment of any income or other taxes due and payable resulting from our payments to you.

14. Customer Support. Content Partner shall be responsible to provide second level support to all purchasers of your Mobile Apps. These support queries will include, but are not limited to: the provision of unlock codes (where applicable) and responding to technical support issues, installation issues and other customer questions related to the use of Content Partner's Mobile Apps. Failure of Content Partner to provide this second level technical support may result in a customer requesting a full refund of the amount said customer paid for the Mobile App. Should this be the case, neXva 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 the amount of the Content Partner's Fee previously paid to Content Partner. In the case of any such refund, each party shall bear its respective share of the refunded amount.

15. Term of This Agreement. This Agreement shall commence on the date on which you acknowledge your acceptance by clicking that you accept it and will continue until either you or we terminate this Agreement. Either you or neXva can terminate this Agreement at any time and for any reason or no reason by giving at least ten (10) days advance written notice. At any time such a termination takes place, we will stop selling your Mobile Apps as of the date the termination takes effect. Following any termination of this Agreement, we will deliver all sales of your Mobile Apps that are pending as of the date of the termination. Regardless of the manner in which this Agreement is terminated, the following provisions of this Agreement shall survive; 11, 12, 13, 14, 18, 19, 20, 22, 23, and 24 as well as all representations and warranties you made in this Agreement and any other provisions of this

Agreement that are meant to survive the termination of this Agreement.

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

17. Agreement Changes. We reserve the right to change this Agreement at any time in our discretion. If we make changes to this Agreement, we will give you notice of the changes by posting an updated version of this Agreement on the neXva Back Office and/or by emailing you. Any changes will be effective 15 days after we give you notice of the changes. Your continued participation in the program after we make any changes will constitute your acceptance of the changes. If you do not agree to any changes we propose you must stop participating and terminate this Agreement in accordance with Section 15, above.

18. Representations and Warranties.

- a. If you are an individual, you are of legal age of majority and are able to form a legally binding contract. If you are a business and a legal entity other than an individual, you, as the person signing this Agreement, have the right and authority to bind the legal entity to this Agreement.
- b. You are the sole and exclusive owner of all right, title and interest in and to the Mobile Apps that are subject to this Agreement and that you have full distribution rights to the Mobile Apps, in the Territory, during the term of this Agreement, including and not limited to copyright, patent, trade secret and trademark rights.
- c. The Mobile Apps and Content do not infringe upon or otherwise violate any rights, including without limitation, copyright, patent, trade secret or trademark rights, of any person or entity.
- d. Your Mobile Apps will not contain any viruses, spyware, “Trojan Horses”, or other “malware” or harmful code, and will not cause injury to any person or any property.
- e. There is not now any outstanding litigation or threat of litigation or claim or threats of claims that affect or are concerned with or in any way touch upon the Mobile Apps or Content or any of the rights granted by you pursuant to this Agreement.
- f. Should any of these representations prove to be incorrect or untrue, neXva retains all rights afforded to us under this Agreement, including, but not limited to our right to terminate this Agreement pursuant to Section 15, above and our right to seek indemnification pursuant to Section 19, below.

19. Content Partner Indemnification. You will, at your sole cost and expense, indemnify, defend and hold harmless neXva, 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, judgements and liabilities of any kind and character whatsoever (collectively “Claims”) arising out of or in connection with the breach of any representation or warranty by you and you shall pay all damages arising from same, including but not limited to attorney’s fees. You agree to cooperate fully with neXva in the defense of such Claims.

20. Confidentiality. Content Partner and neXva will keep confidential any information that is disclosed by the other Party as being confidential or should reasonably be considered to be confidential. Neither party will divulge any such confidential information 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 it is reasonably necessary for the performance of obligations arising under this Agreement with out the consent in writing of the other. This obligation of confidentiality shall not apply to any material or information which:

- a. Is in the public domain (other than as a result of a breach of this Agreement);
- b. The receiving party can clearly demonstrate was already known by that receiving party;
- c. Is lawfully disclosed to the receiving party by a third party (without breach of any obligation of confidentiality on the party of the disclosing party);
- d. Is ordered to be disclosed by any court of other tribunal of competent jurisdiction.

21. Ownership of Data. All customer data and any other Proprietary Information relating to the direct sale of Content Partner's Mobile Apps through a neXva App Store shall be owned jointly by Content Partner and neXva.

22. Disclaimers and Limitations of Liability. THE AGREEMENT FOR DISTRIBUTION OF CONTENT PATRNER'S MOBILE APPS AND ALL MATERIALS ARE PROVIDED "AS IS". NEXVA WILL IN NO EVENT BE LIABLE TO CONTENT PARTNER FOR ANY LOSS OF DATA OR CONTENT, LOSS OF PROFITS, COST OF COVER OR OTHER SPECIAL DAMAGES ARISING FROM OR IN RELATION TO THIS AGREEMENT, OR FOR ANY EQUITABLE REMEDY OR DISGORGEMENT OR OTHERWISE, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY. IN NO EVENT WILL OUR LIABILITY HEREUNDER EXCEED THE AMOUNT OF FEES DUE AND PAYABLE TO CONTENT PROVIDER UNDER THIS AGREEMENT FOR THE TWELVE-MONTH PERIOD PRECEEDING SUCH CLAIM. WE SPECIFICALLY DISCLAIM, WITH RESPECT TO ALL SERVICES, SOFTWARE, CONTENT OR PRODUCTS PROVIDED BY OR ON BEHALF OF US IN CONNECTION WITH THIS AGREEMENT, ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CONTENT PROVIDER ACKNOLWEDGES AND AGREES THAT WE CANNOT ENSURE THAT CONTENT SUBMITTED BY OR ON BEHALF OF YOU WILL BE PROTECTED FROM THEFT OR MISUSE, AND WE WILL HAVE NO LIABILITY ARISING FROM ANY FAILURE OF ANY SECURITY TECHNOLOGY OR PROCEDURE OR OF ANY END USER TO COMPLY WITH ANY TERMS OF USE.

23. Exclusion of all Damages.

- a. To the maximum extent permitted by 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 Mobile Apps, whether based on contract, tort, negligence, strict liability or otherwise, even if neXva 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.
- b. 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.

24. General Provisions.

- a. Applicable Law.** Each Party shall comply with all applicable laws in the performance of its obligations under this Agreement.
- b. Arbitration of Claims.** Should any dispute arise between the Parties in connection with, or arising out of this Agreement, the Parties shall endeavour to settle the dispute in an amicable manner through negotiations in good faith. Any dispute that cannot be settled by mutual agreement within ninety (90) days, shall be resolved under the arbitration proceedings carried out by the American Arbitration Association in the County of San Diego, State of California in accordance with the rules and regulations of the said Association. Any award made pursuant to the said Arbitration shall be final and binding upon both Parties and both Parties hereby consent to the enforcement of an arbitration award by any appropriate court of law.
- c. Assignment.** Neither Party hereto shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party hereto. Any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition or by subscription of all or part of the corporate shares of a Party, or an affiliate of a Party which results in a change in the effective voting control of such Party, shall be deemed to be an assignment of this Agreement requiring the other Party's approval.
- d. Currency.** All references to money herein are to United States dollar currency, unless otherwise specified.
- e. Force Majeure.** Neither Party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage or any cause beyond the reasonable control of either Party. A Party who contends that its obligation is suspended or its performance is excused by reason of force majeure must give prompt written notice to the other Party specifying the condition or event constituting same in which case both Parties' obligations pursuant to this Agreement shall be suspended during such period. Upon cessation of such force majeure, such Party shall give like notice and commence performance hereunder as promptly as reasonably practicable. If the condition or event constituting force majeure persists for more than 30 days after such notice, either Party may terminate this Agreement by written notice to the other Party. For the purposes hereof, "force majeure" shall mean any cause which is beyond the reasonable control of the Party claiming the force majeure and which is affecting performance by such Party.
- f. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California, County of San Diego without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of California, County of San Diego.
- g. Interpretation.** Section headings are inserted for convenience of reference only and

are not intended to be part of or to affect the meaning or interpretation of this Agreement.

- h. Language.** The Parties have requested that this Agreement and all communications and documents relating hereto be expressed in the English language.
- i. No Waiver.** Any failure by any Party to exercise its rights, powers or remedies hereunder or any delay by such Party in the exercise of any of its rights and remedies hereunder shall not, to the extent permitted by law, operate as a waiver or variation of such or any other right or remedy hereunder. Any waiver, amendment or modification of this Agreement shall not be effective unless made in writing and signed by both Parties.
- j. Notices.** Any notice to be given under this Agreement shall be in writing and (i) delivered personally or (ii) sent by prepaid courier service or (iii) facsimile, in each case to the address set out below:

- i. If to neXva:** **neXva, Inc.**
7660 Fay Avenue, Suite 340
La Jolla, CA 92037
partners@neXva.com

- If to Content Partner** **JoyBits. Ltd.**
12 CHELMSFORD ROAD, SOUTHGATE
LONDON, NN145PT, UNITED KINGDOM
olga@joybits.org

Notices given hereunder shall be deemed to be delivered: (i) in case of personal delivery, upon delivery to the other Party designated above or a replacement representative duly appointed by the Party; (ii) in the case of prepaid courier service, by receipt of written confirmation that delivery has been effected to the Party's address for notice as set forth above, or (iii) in the case of facsimile delivery, upon receipt of electron confirmation that the facsimile has been sent to the Party's facsimile number set forth above.

- k. Rights Cumulative.** The Parties agree that their respective rights and remedies in this Agreement shall be independent and cumulative and no remedy contained herein is intended to be exclusive but shall be in addition to every other remedy contained herein and that the taking of a judgment or judgments with respect to any of the covenants contained herein shall not operate as a merger of any of the other covenants contained in this Agreement.
- l. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- m. Successors and Assigns.** This Agreement will inure for the benefit of and be binding upon the Parties hereto and their respective permitted successors and assigns. Except as otherwise set out herein, neither Party may assign any of its rights or obligations hereunder without the prior written consent of the other, such consent shall not be unreasonably delayed or withheld.
- n. Survival.** The provisions of this Agreement, which may by their terms, require

performance after the termination or expiration of this Agreement, or have application to events that may occur after the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement All indemnity obligations and any applicable indemnification procedures will be deemed to survive the termination or expiration of this Agreement.

BY COMPLETING THE INFORMATION OR CLICKING THE “I ACCEPT THE AGREEMENT TERMS AND CONDITIONS” BUTTON BELOW, YOU REPRESENT AND WARRANT THAT THE INFORMATION PROVIDED IS TRUE AND ACCURATE, THAT 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.