

IngramSpark
Digital Services Agreement

This Ingram Spark Digital Services Agreement (“**Agreement**”) is made and entered into as of _____ (the “**Effective Date**”) by and between Lightning Source Inc. (“**LS**”), a Delaware corporation and _____, with its principal offices at _____ (“**Publisher**”).

1. DEFINITIONS

- (a) “Conversion” means the creation by LS of an ePub eBook file from Publisher-supplied electronic book files (e.g., press-ready PDF).
- (b) “Digital Media File(s)” means Publisher’s eBook or eJournal, or part thereof, distributed by LS pursuant to the terms of this Agreement. An eBook is a literary work, including, without limitation, novels, books, short stories, articles, chapters or excerpts provided in digital form designed for consumption on a personal computer, hand-held device, or other electronic device and identified by its associated Metadata
- (c) “End User” means the ultimate consumer and/or purchaser of Digital Media Files.
- (d) “Metadata” means the data provided by Publisher to LS that describes Digital Media Files. LS shall provide the Metadata to Resellers. Metadata shall include, but not be limited to, the ISBN or other unique identifier (including if applicable DRM versions, DRM types, and, where appropriate and required by DRM software, device specific versions), Title, Author, Publisher, List Price, Discount, On Sale Date and Territorial Rights. Any additional Metadata requirements required by a particular Reseller shall be provided to Publisher by LS.
- (e) “List Price” means the suggested list price of the Digital Media Files set by the Publisher and identified in the Metadata provided by LS to Resellers. Publisher may change the List Price for a Digital Media File only by providing seven (7) days advance notice to LS.
- (f) “Refunds” means the amount charged back by a Reseller for any Digital Media File the use of which by an End User is impaired due to defects, damage or errors in the Digital Media File.
- (g) “Territorial Rights” means the territories for which Publisher has the rights to allow End Users to download a particular Digital Media File as identified to LS through the Metadata.
- (h) “Net Sales” means the aggregate amount owed to Publisher for sales of all Digital Media Files to Resellers during a given month less any Refunds
- (i) “On Sale Date” means the first date a Reseller may offer Digital Media Files for download to End Users and shall be identified in the Metadata. Publisher shall provide the same On Sale Date for all Resellers within the same territory.
- (j) “Reseller” means a wholesale or retail account that receives distributed Digital Media Files from LS.
- (k) “Intellectual Property Rights” means all rights in, to, or arising out of: any U.S., international or foreign patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; copyrights, copyright registrations, mask works, mask work registrations, and applications therefore in the U.S. or any foreign country, and all other rights corresponding thereto throughout the world; and any other proprietary rights anywhere in the world.

2. DISTRIBUTION SERVICES

- (a) Access to Title Portal System. LS shall make available to Publisher access to its title portal system that will allow Publisher to upload its Digital Media Files, input Metadata and other information related to its Digital Media Files, and perform other services identified in this Agreement. Publisher shall, at its expense, be solely responsible for its technology infrastructure, including but not limited to, compatible computer software, hardware and network access systems; Web browsers, FTP services, and other access solutions; development of its network features, functions and technology; and any adaptation and reconfiguration that may be necessary for purposes of accessing and using the title portal system in accordance with the terms of this Agreement.
- (b) Distribution. From time to time during the term of this Agreement, LS, as Publisher’s exclusive provider to Resellers, will make Digital Media Files available to Resellers for the purposes of selling, marketing, displaying and distributing Digital Media Files to End Users. LS shall provide the following services to Publisher:
 - i. Negotiate and manage agreements with Resellers to purchase Publisher’s Digital Media Files
 - ii. Receive and process sales reporting for Publisher’s Digital Media Files and aggregate all sales information from Resellers to report to Publisher; and
 - iii. Bill and collect amounts due from Resellers for the sale of Publisher’s Digital Media Files and remit payment to Publisher less any fees owed to LS.
- (c) Resellers. LS shall distribute Publisher’s Digital Media Files to all Resellers in accordance with the Metadata. LS makes no representations or warranties regarding the maintenance of relationships with any Reseller. In the

event a Reseller requires Publisher to provide any additional information to establish an account, Publisher agrees to provide such information to LS or Reseller, as applicable.

- (d) Digital Rights Management (“DRM”). LS shall require Resellers to apply commercially reasonable DRM technology designed to prevent unauthorized use of Publisher’s Digital Media Files and reasonable protection against intellectual property infringement. Publisher acknowledges and agrees that all DRM formats are the property of third-party vendors. LS has no control over the functionality or effectiveness of DRM formats and Publisher hereby releases LS from any and all liability resulting from a failure of the DRM format, unless such failure was directly caused by LS’s gross negligence or willful misconduct. For certain Resellers, LS will incorporate third-party DRM protection as specified by the Publisher into the Publisher’s Digital Media Files. LS’s use of any third party DRM format is subject to the terms and conditions of any applicable license agreement between LS and the third-party vendor of the applicable DRM format and such third-party vendors may reserve the right to modify their respective DRM format(s) without prior notice to LS or Publisher.
- (e) Intellectual Property. Publisher does not have and shall not acquire pursuant to this Agreement any right, title or interest in or to LS’s trade names, trademarks, service marks, copyrights, trade secrets, patents or any other of LS’s Intellectual Property Rights.

3. DIGITAL MEDIA FILES

- (a) Digital Media File. Publisher shall, at its expense, be solely responsible for all matters relating to Digital Media Files, including without limitation all costs, activities, obligations and liabilities associated with the creation, production, editing, supply, correction and maintenance and conversion, as necessary, of the Digital Media Files. Publisher shall be solely responsible for obtaining and bearing all costs, obligations and liabilities for any necessary licenses, permissions, rights or clearance for content and materials required by any third party, any act or regulation of any government, and any necessary broadcast, rebroadcast or retransmission rights or required permissions related to the Digital Media Files.
- (b) Territorial Rights. Publisher shall expressly identify to LS the territorial rights for the Digital Media Files through the Metadata. LS shall require Resellers to use commercially reasonable methods of determining the authorized territory for each End User and sell Digital Media Files pursuant to that methodology.
- (c) Exclusive Distribution. During the term of this Agreement, Publisher shall not directly distribute Digital Media Files to any Reseller for which LS is providing Publisher’s Digital Media Files pursuant to this Agreement. In the event that a Publisher has entered into a distribution agreement directly with Reseller for the distribution of its Digital Media Files and such agreement with the Reseller terminates during the term of this Agreement, LS shall make Publisher’s Digital Media Files available to Reseller hereunder.
- (d) Promotional Content. At a minimum, Publisher shall provide the Reseller with the ability to use promotional content for the purposes of marketing and selling Digital Media Files for each title as provided below. In some instances such promotional content shall not be subject to any form of digital rights management.
 - i. Front cover image(s);
 - ii. Table of contents; and
 - iii. One chapter, up to ten (10) pages or up to ten percent (10%)
- (e) On Sale Date. Publisher shall identify the On Sale Date for each Digital Media File in the Metadata. Resellers, through LS, may accept pre orders for Digital Media Files prior to the On Sale Date provided that no delivery of the Digital Media Files to End Users occurs prior to the On Sale Date. All Resellers shall be provided with the same On Sale Date within a territory for each Digital Media File.
- (f) Removal of Digital Media Files. Publisher must provide thirty (30) days advance written notice prior to removing any Digital Media Files that have been provided for distribution to a Reseller pursuant to this Agreement. In the event Publisher is under legal obligation to cease sales such that Publisher cannot provide thirty (30) days advanced written notice, Publisher shall, at a minimum, provide five (5) days advance written notice. LS may, however, maintain archival copies of the Digital Media Files solely to permit any authorized continuing access by any Reseller to allow continuing access for its End Users who purchased copies of Digital Media Files prior to its withdrawal from sale. LS reserves the right to immediately remove Digital Media Files if (i) LS, in its sole discretion, has reason to believe that the Digital Media Files or any part thereof breaches any of Publisher’s obligations, representations or warranties set forth in the Agreement, (ii) LS receives a bona fide request from a Reseller or legal or governmental authority, and Publisher does not respond or provide a remedy to such request promptly upon LS’s notification to Publisher provided such response or request is satisfactory to LS, or (iii) the Digital Media File could otherwise cause liability or damage to LS, its parent, subsidiaries or affiliates or any of their respective officers, directors, employees or agents. LS shall be neither responsible nor liable to Publisher in any manner for its Resellers or End Users that fail to remove Digital Media Files, continue to advertise Digital

Media Files that LS removed, or that continue to solicit or to process orders for Digital Media Files that LS has removed from its catalogues.

- (g) Metadata: Publisher shall provide LS with Metadata for Publisher's Digital Media Files in the ONIX or other mutually agreed upon format.
- (h) Publisher Digital Content License. LS is granted a limited, non-exclusive, non-transferable and worldwide right and license to use the Digital Media Files, including cover and marketing images, to provide the distribution services hereunder, including without limitation the right and license to display, distribute, reproduce, market and store the Digital Media Files on LS's on-premises production systems and off-site systems operated by third party service providers solely for disaster recovery and archival purposes. Except with respect to the license granted to LS herein, the Publisher's Digital Media Files shall at all times remain the property of Publisher and, if applicable, Publisher's licensors. LS is not permitted to sub-license or sell the Publisher's Digital Media Files or any portions thereof, except as otherwise permitted in this Agreement. Publisher is solely responsible and liable for all royalty or other compensation payments due to the authors, owners or licensors of the Digital Media Files. In addition, Publisher grants LS those ancillary rights as are reasonably necessary to effect the distribution of Digital Media Files to Resellers, including, but not limited to the right to reproduce and create copies of, convert, encode, encrypt, decrypt, transmit, and perform the Digital Media Files as required to effectuate such rights.
- (i) Publisher's Logos. Publisher grants LS for the Term a limited, non-exclusive and worldwide right and license to allow Resellers to use the names and logos of the Publisher and/or the its imprints solely for the purposes of identifying and marketing Publisher's Digital Media Files. LS shall require its Resellers to use the form of the names or logos supplied by Publisher if so supplied, or, if not, as they appear in the Digital Media Files.
- (j) Conversions. Publisher may elect to utilize conversion services at prices quoted by LS. In the event Publisher selects the third party conversion service provider, LS shall have no liability for any services performed by that third party provider.
- (k) TIMS: Publisher shall allow LS to deliver Metadata to the Title Inventory Management System (TIMS) to enable the delivery of such Metadata to any retail customer.

4. REPORTING

LS will provide Publisher with monthly sales reports. Final sales reports will be issued by the tenth (10th) business day following the end of each month. All reports received from Resellers during the previous month will be included on the final sales reports. In the event no Resellers report sales of Publisher's titles during a month, Publisher will not receive reporting for that month. In the event that a Reseller fails to submit a monthly report by the month end cut-off, the related sales will be reported in the following month.

5. INGRAMSPARK FEES

- (a) IngramSpark Fees.
 - i. Set Up Fee: LS shall charge Publisher a set up fee as identified in the IngramSpark Products & Services Pricing Schedule ("Pricing Schedule"). This fee shall be charged upon validation of the Digital Media File in the IngramSpark system. LS may modify the Pricing Schedule at any time upon sixty (60) days notice to Publisher.
 - ii. Market Access Fee. LS shall charge Publisher a market access fee as identified in the Pricing Schedule.
 - iii. Payment. LS shall charge fees upon the date a service is ordered or rendered and Publisher will make payment by valid credit card and hereby authorizes LS to charge Publisher's credit card for the set up fee, market access fee or other fees for services provided by LS to Publisher pursuant to this Agreement. Publisher shall be responsible for any applicable foreign transaction or currency conversion fees that may be charged by Publisher's credit card company if Publisher's credit card is denominated in a currency other than the currency of the charge. If the Publisher's credit card is not authorized, is declined, or if Publisher later disputes valid charges, LS may, at its sole option, discontinue any and all services under this Agreement until payment is received and another valid credit card has been added to Publisher's account, or at its option may immediately terminate this Agreement. If Publisher fails to repay an account deficit, LS reserves the right to deduct IngramSpark fees from the Monthly Payment.

- (b) Monthly Payment. Monthly, as determined by the LS accounting month, LS will account for the Net Sales of Publishers' Digital Media Files reported by Resellers within that month. LS shall remit forty percent (40%) of the List Price for each Digital Media File reported by a Reseller on a monthly basis, less any Refunds, as the "Monthly Payment". LS will pay the Monthly Payment ninety (90) days after the end of each LS accounting month. Publisher authorizes LS to electronically deposit the Monthly Payment into Publisher's designated bank account. Any amount referred to in this Agreement which is relevant in determining a payment to be made is, unless indicated otherwise, a reference to that amount expressed on a tax exclusive basis.
- (c) Credit. LS will manage the credit risks for sales to Resellers and shall have the right to establish credit limits, determine credit worthiness and establish the date payment is due. LS will use commercially reasonable credit management and collection practices and LS shall have the option, at its sole discretion, to discontinue sales to any Reseller that fails to meet LS's credit and collection requirements. In the event a Reseller's account is uncollectible, Publisher shall be responsible for its portion of the resulting loss from that Reseller's account. LS will charge back Publisher's portion of the uncollectible amount following the month a Reseller's account becomes uncollectible.
- (d) Currency. All obligations in this Agreement involving the payment of money shall be conducted in the currency of the United States. Sales will be reported to Publisher in the currencies authorized for each market by the Publisher as communicated in the Metadata. Amounts reported in currencies that are not the Publisher's preferred payment currency will be converted to Publisher's preferred payment currency using conversion rates provided by LS's independent third party exchange rate information service; provided, however, that the sales and payment currencies are among the standard currencies that are supported by LS for reporting and payment. All amounts are converted to Publisher's preferred payment currency on the last day of the LS accounting month of the then current sales reporting period.
- (e) Taxes. Publisher shall be the owner for all purposes of its Digital Media Files. Publisher shall be responsible and liable for all taxes relating to the sale and distribution of its Digital Media Files including sales, use, personal property, gross receipts, business activity, VAT, GST, and/or similar type taxes and will be responsible for reporting and remitting all such taxes and fees to the applicable authorities/jurisdictions. Publisher shall indemnify, reimburse, defend and hold harmless from any and all tax claims and assessments LSI, its parent, subsidiaries and affiliates, and their respective officers, directors, employees and agents may be required to pay and/or are imposed with respect to sales, use, personal property, gross receipts, business activity, VAT, GST, and/or similar type taxes that are related to decisions by Publisher to transact business in any jurisdiction with respect to Publisher's Digital Media Files and LS's performance of any services under this agreement. Publisher agrees to pay LS for any sales, use, gross receipts, business activity, VAT, GST, and/or similar type taxes that LS is required to charge and collect and/or are imposed due to services rendered and/or rights and accesses granted under this Agreement. LS will accept valid (as determined by each jurisdiction's guidelines & regulations) resale and/or exemption certificates provided by Publisher as justification not to charge and collect such taxes if such an exemption exists.
- (f) Tax Treatment in the European Union, Norway & Switzerland. In the event a Publisher is organized in the European Union, Norway or Switzerland and for purposes of Publisher's sales of Digital Media Files in the European Union, Norway and Switzerland, pursuant to this Agreement, Publisher hereby appoints LS as its non-exclusive, non-risk bearing agent to act in LS's own name on behalf of Publisher as an undisclosed principal, and LS accepts such appointment, for the sale and delivery of Digital Media Files in the territories authorized by Publisher. Publisher and LS agree that for the purposes of VAT only, LSI shall in accordance with article 28 of the European Union Directive of 28 November 2006, on the common system of value added tax (2006/112/EC) be deemed to act under this Addendum as principal by virtue of it acting, as a matter of law, as undisclosed agent. Any services provided by LS to Publisher under this agreement that are subject to EU VAT will be accounted for by Publisher under the EU reverse charge procedures.
- (g) Withholdings. Both parties shall deduct and withhold from the gross amount of all payments to the other any amounts required by law to deduct or withhold as applicable. If such deduction or withholding is required, the deducting/withholding party shall remit any amounts so deducted or withheld to the appropriate governmental authority within the required time, and shall provide the other party with evidence of such remittance and deliver an appropriate document with respect to withheld taxes to support a claim for any tax credit to which the party may be entitled under any applicable laws. All such deduction/withholdings shall be at statutory rates, unless the payee provides the payor with properly completed and executed documentation as prescribed by applicable law permitting payments to be made without withholding or at a reduced rate pursuant to a relevant tax treaty.
- (h) Tax Audits. Both parties agree to use commercially reasonable efforts to cooperate and provide assistance to each other with respect to any potential tax audits including sales, use, gross receipts, business activity, VAT, GST, and/or similar type taxes in connection with activities under this Agreement. Furthermore the parties agree that only information that is readily available using the parties' existing information systems will be provided

under this Section. Each party agrees that any costs incurred in connection with such cooperation and assistance will be borne solely by the party incurring such costs.

6. TERM AND TERMINATION

- (a) Effective Date. This Agreement will begin and remain in effect for a period of one (1) year ("Initial Term"). It will automatically renew upon the expiration of the Initial Term for additional one (1) year terms ("Renewal Term(s)") until terminated by either party in accordance with this Section 6. Either LS or Publisher may withdraw from the Agreement at any time with ninety (90) days advanced written notice. The terms and conditions in effect will continue to apply during this notice period. If either party breaches a material provision of this Agreement, the non-breaching party may terminate this Agreement provided that the breaching party has not cured the material breach within thirty (30) days of its receipt of written notice of such breach. The following sections shall survive the termination, cancellation or expiration of this Agreement: Sections 7, 8, 9, 10, 11 and 14. Upon the termination, cancellation, or expiration of this Agreement: (a) Publisher shall return to LS all Confidential Information received from LS within ten (10) days of the termination of this Agreement; (b) LS shall return to Publisher all Confidential Information received from Publisher within thirty (30) days of termination of the Agreement, and all copies thereof; and (c) LS shall remove all Digital Media Files from its current on-site system within sixty (60) days of termination.
- (b) Notices. Any notice provided or permitted to be given, made, or accepted by either party to the other pursuant to this Agreement must be in writing and given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, or (iv) by electronic mail. Such notices shall be delivered to the Publisher at its physical address and/or email address listed in its LS account, or if delivered to LS using the addresses provided below:

Lightning Source Inc.
legal@ingramcontent.com
Attn: General Counsel
Lightning Source Inc.
One Ingram Blvd.
LaVergne, TN 37086

All notices will be effective on the date of delivery.

7. CONFIDENTIALITY

In performing the services pursuant to this Agreement, the parties may exchange information that is of a confidential and proprietary in nature, both technical and commercial, including, without limitation this Agreement (collectively, the "**Confidential Information**"). Each party agrees to mark documents containing Confidential Information using a legend such as "Confidential" or "Proprietary" and agrees that if not so marked, Confidential Information includes information that is reasonably understood by the receiving party from the context of disclosure or from the information itself, to be confidential. Information which is disclosed orally or visually falling within the scope of the information described in this Section is deemed Confidential Information unless excluded herein. Both parties agree not to disclose to any third parties any Confidential Information received from the other and shall protect the Confidential Information against unauthorized use or disclosure with at least the same degree of care as the receiving party normally exercises to protect its own information of like character and importance, but in no event less than reasonable care or such higher standard of care as is justified by the facts and circumstances of the disclosure. Both parties agree not to use any Confidential Information received from the other for any purpose other than performance under this Agreement. The parties acknowledge and agree that their respective remedy at law for any actual or threatened breach of this provision would be inadequate and that each party shall be entitled to specific performance or injunctive relief, or both, in addition to any damages otherwise recoverable in law. In the event the receiving party is required by law, regulation or court order to disclose any of the Confidential Information, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure in order to allow the disclosing party to seek a protective order or other appropriate remedy from the proper authority. The receiving party will reasonably cooperate with the disclosing party in seeking such order or other remedy or in defining the scope of any required disclosure. In the event that the receiving party is required to make a disclosure of Confidential Information, the receiving party shall limit the scope of such disclosure to include only that information which is the minimum information that the receiving party is legally required to disclose. The confidentiality provisions of this **Section 7** will not apply to information that (a) is not in fact kept as confidential by the disclosing party (b) is developed by the receiving party independently of its disclosure by the disclosing party, without use of the confidential or proprietary information, by one or more person(s) who do not have access to the confidential or proprietary information, or (c) is, or becomes other than by reason of a breach of this Agreement, generally known to the public. In addition, nothing in this Agreement will limit either party's right to use any documents or information in connection with any litigation between the parties; provided, however, that all legal privileges that may apply to such documents or information may still be asserted.

8. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY

ALL SERVICES AND PRODUCTS (IF ANY) PROVIDED BY LS UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS-IS" BASIS. LS DOES NOT WARRANT THAT THE SERVICES OR PRODUCTS (IF ANY) PROVIDED HEREUNDER WILL BE UNINTERRUPTED OR ERROR FREE. LS DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, QUIET ENJOYMENT, DATA ACCURACY AND SYSTEM INTEGRATION. LS'S TOTAL LIABILITY TO PUBLISHER FOR ANY DAMAGES (REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY AND/OR OTHERWISE) SHALL NOT EXCEED IN THE AGGREGATE THE AMOUNT OF FEES ACTUALLY PAID BY PUBLISHER TO LS HEREUNDER FOR THE TWELVE MONTH PERIOD PRIOR TO LS'S ACT GIVING RISE TO THE LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT WITH RESPECT TO THE OBLIGATIONS UNDER SECTION 7 IN NO EVENT SHALL LS OR PUBLISHER, THEIR PARENT, SUBSIDIARIES OR AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR PUNITIVE, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, REVENUES, BUSINESS, USE, DATA OR OTHER INTANGIBLES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF LS OR PUBLISHER HAD BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. Publisher acknowledges that due to the nature of the Internet its Digital Media Files may be sold in geographic territories for which it does not have Territorial Rights. Publisher, therefore, waives any claim for damages against LS for sales of its Digital Media Files in territories for which it does not have the right to sell or distribute the Digital Media Files.

9. REPRESENTATIONS; INDEMNITIES

Publisher represents and warrants to LS with respect to the Digital Media Files and all other content provided to LS by Publisher that the Digital Media Files and other content (a) is owned or licensed to Publisher and Publisher possesses all worldwide rights necessary and appropriate to authorize LS to perform all services under this Agreement; (b) is not and shall not be libelous, slanderous, defamatory, obscene, pornographic; (c) does not and shall not infringe any copyright, trademark, trade secret, patent or other intellectual property or proprietary right, or violate any right of privacy, publicity or other right of any person; (d) does not and shall not violate any applicable laws, rules, ordinances or regulations, including without limitation any export controls as amended from time to time; (e) does not and shall not contain any recipes, formulae or instructions that, if implemented, might be injurious to users; (f) does not and shall not contain any viruses, Trojan horses, trap doors, worms or any other malicious computer programming routines that might damage a computer system; (g) does not and shall not contain any disabling devices or code which could be capable of preventing, any Reseller or any End User's use of the Digital Media Files and/or materially impairing the processing environment of Reseller or any End User; and shall pay or cause to be paid all, royalties, fees or other compensation due to third parties that it is obligated to make in connection with the distribution of Digital Media Files in the manner contemplated by this Agreement. Except to the extent caused by the gross negligence or willful misconduct of LS, Publisher shall defend, indemnify and hold harmless LS, its parent, subsidiaries and affiliates, and their respective officers, directors, employees and agents from and against any and all third-party claims, actions, proceedings, damages and expenses (including reasonable attorneys' fees and allocable costs of in-house counsel), related to any and all breaches by the Publisher of any representations, warranties, covenants, terms or conditions of this Agreement; and (ii) any claim that the Publisher in the performance of this Agreement has infringed, violated or misappropriated any third party's right, including, without limitation, any Intellectual Property Right. Except to the extent caused by the gross negligence or willful misconduct of Publisher, LS shall defend, indemnify and hold harmless Publisher, its parent, subsidiaries and affiliates, and their respective officers, directors, employees and agents from and against any and all third-party claims, actions, proceedings, damages and expenses (including reasonable attorneys' fees and allocable costs of in-house counsel) caused by the gross negligence of LS in distributing the Digital Media Files. A party claiming indemnification hereunder will give the other party prompt written notice of all claims, provide reasonable cooperation in the investigation and defense, and permit the indemnitor at its expense to defend the claim with the legal counsel of its choice. A party entitled to indemnification hereunder shall not settle any claims without the other party's prior consent. This section shall survive any expiration or termination of this Agreement.

10. FORCE MAJEURE

Any delay or failure of LS or Publisher to perform its obligations under this shall be excused if and to the extent that such delay or failure is caused by an event beyond the reasonable control of the non-performing party, including without limitation, any act of God, actions by any government authority, fires, floods, natural disasters, riots, wars, labor problems (including lockouts, strikes, and slowdowns), failure of or interruptions in telecommunications or data transmission systems, or the inability to obtain materials, labor, equipment or transportation.

11. ASSIGNMENT

Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder or any portion thereof without prior written approval of the other, which will not be unreasonably withheld; provided, however, that LS may, without the prior written approval of Publisher, assign or otherwise transfer this Agreement or any of its

rights or obligations hereunder, or any portion thereof, to its parent, subsidiaries, affiliates or successors. This Agreement will be binding on and inure to the benefit of Publisher and LS and their respective permitted successors and assigns.

12. NO JOINT VENTURE

Nothing contained in the Agreement shall be deemed to create any partnership, agency, joint venture or fiduciary relationship between LS and Publisher for any purpose.

13. PUBLIC ANNOUNCEMENT

Neither party shall make any public announcement regarding the existence or content of this Agreement without the other party's prior approval, such approval not to be unreasonably withheld.

14. GOVERNING LAW AND VENUE

Any disputes between the parties shall be governed by the laws of the State of Tennessee, without regard to its conflicts of law provisions, and the laws of the United States. Each party submits to the jurisdiction of the United States district courts and state courts having jurisdiction in Nashville, Tennessee. The prevailing party in a dispute between the parties to this Agreement shall be entitled to its damages plus all costs and expenses, including reasonable attorneys' fees and allocable costs of in-house counsel.

15. ENTIRETY

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the parties with respect to the subject matter herein and supersedes all prior proposals, understandings and all other agreements, oral and written. This Agreement may not be and Publisher has not modified or altered the terms of this Agreement except by a written instrument duly executed by both parties. By completing the fields in the signature section, Publisher represents and warrants that it has the legal right, power and authority to enter into this Agreement and that LS and Publisher agree to execute such document using electronic signature.

16. SIGNATURE

Publisher represents and warrants that it has the legal right, power and authority to enter into this Agreement and execute such document using an electronic signature. By typing your name in the space provided below, you acknowledge that your typewritten name acts as a handwritten signature complying with electronic signatures as described in the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act).

By completing the information below, I agree to be bound by the terms of this Agreement.

PUBLISHER

By: _____

Name: _____

Title: _____

Date: _____

LIGHTNING SOURCE INC.

By: _____

Name: _____

Title: _____

Date: _____