

## DIGITAL CONTENT DISTRIBUTION AGREEMENT

THIS AGREEMENT is made the \_\_\_\_ day of \_\_\_\_, 2014 (the “Effective Date”)

### BETWEEN:

**AUDIOBOOKS INC.**, incorporated under the laws of the Barbados having its principal address at the L’Horizon, Gunsite Road, Brittons Hill, St. Michael, Barbados.

(“ABC”)

- and -

**Fred Hoehn Ministries .**, a corporation governed by the laws of the State of Nebraska, of the United States of America

(the “Publisher”)

### RECITALS:

- A. ABC is the provider of an online membership-based audiobook service that allows its customers to: purchase and download audiobooks in electronic format (each, an “E-Audiobook”).
- B. The Publisher is a distributor of Licensed Content.
- C. ABC wishes, as part of its audiobook service, to distribute the Licensed Content distributed by the Publisher.
- D. The parties now wish to confirm the terms upon which ABC will be entitled to distribute the Licensed Content to its customers.

**THEREFORE**, the parties agree as follows:

## ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

### 1.1 Definitions

Wherever used in this Agreement, including the recitals, the following terms shall have the following meanings:

“**Agreement**” means this Digital Content Distribution Agreement, including all schedules, exhibits and all amendments and references to “**Article**”, “**Section**” or “**Schedule**” mean the specified Article, Section or Schedule of this Agreement.

**“Business Day”** means any day, other than a Saturday or Sunday, on which banks in the United States of America are open for commercial banking business during normal banking hours.

**“Confidential Information”** means: (i) any Transaction Records; (ii) any Financial Records; and (iii) the terms of this Agreement.

**“E-Audiobook”** has the meaning given to that term in the recitals to this Agreement.

**“Financial Records”** means all financial information relating to the purchase of Licensed E-Audiobooks by ABC’s customers.

**“Licensed E-Audiobooks”** means the titles of E-Audiobooks set out in Schedule A to this Agreement, as updated from time to time, which are provided by the Publisher to ABC pursuant to this Agreement.

**“Person”** means any individual, corporation, company, partnership, limited partnership, joint venture, syndicate, trust, unincorporated organization, the Crown or any agency or instrumentality thereof, regulatory authority or any other entity recognized by law, howsoever designated or constituted.

**“Subscription-Based Plan”** has the meaning given to that term in Section 3.2(b).

**“Promotional Materials”** means audio samples, artwork or other promotional materials used to market, promote and advertise the Licensed E-Audiobooks.

**“Transaction Records”** means all transactions processed by ABC or any applicable service provider in respect of Licensed E-Audiobooks purchased by ABC’s customers, including the quantity of Licensed E-Audiobooks sold by title and in the aggregate.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Consent** - Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, the party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Governing Law and Jurisdiction** – This Agreement shall be governed by and construed in accordance with the laws of Barbados, and the courts of the Barbados shall have jurisdiction over all suits, proceedings or actions with respect to this Agreement.
- (c) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

- (d) **Including** - Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (e) **No Strict Construction** – The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.
- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.
- (g) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision or its application to other parties or circumstances in any other jurisdiction.
- (h) **Time** - Time is of the essence in the performance of the parties’ respective obligations.
- (i) **Time Periods** - Unless otherwise specified, time periods within or following which any act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **1.3 Entire Agreement**

This Agreement and any other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

## **ARTICLE 2 DISTRIBUTION AND PROMOTIONAL RIGHTS**

### **2.1 Distribution and Promotional Rights**

The Publisher grants to ABC the non-exclusive, worldwide right, in accordance with this Article 2, to:

- (a) encode, distribute, sell and transmit electronically the Licensed Content in E-Audiobook format to ABC's customers; and
- (b) use the Publisher's name, trade-marks to promote the Licensed E-Audiobooks in accordance with the Publisher's name and trade-mark usage guidelines in existence from time to time; and
- (c) use, modify, reproduce and make derivative works of the Promotional Materials in connection with the marketing, promotion and advertisement of the Licensed E-Audiobooks by ABC (or any third party service provider on behalf of ABC).

## **2.2 Order Fulfilment**

- (a) ABC shall maintain, either directly or through a third party service provider, an order fulfilment system where digital Licensed E-Audiobooks are reasonably secure from theft, unauthorized copying (including by customer retransmission), infringement, unauthorized manipulation or any other misappropriation.
- (b) The Publisher acknowledges and agrees that ABC may use one or more third party service providers to assist it with the sales and fulfilment of the Licensed E-Audiobooks. ABC shall be responsible for ensuring that such service providers comply with the terms and conditions of this Agreement.

## **2.3 Copies**

ABC may copy and reproduce, in whole or in part, the Licensed E-Audiobooks but only to the extent required by ABC to use the Licensed E-Audiobooks in accordance with the rights granted in Section 2.1 and for back-up and archival purposes.

## **2.4 No Ownership to ABC**

Other than the rights conferred under Section 2.1, no other distribution or promotional rights are granted or conveyed under this Agreement. The parties agree that no transfer of ownership or any other legal, equitable or proprietary right, title or interest in the Licensed E-Audiobooks or the Promotional Materials is intended or created by this Agreement or any other aspect of the relationship between the parties. ABC acknowledges and agrees that:

- (a) the Licensed E-Audiobooks and the Promotional Materials are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties;
- (b) the Publisher or the authors of the Licensed E-Audiobooks, as the case may be, are the owners of all such rights;
- (c) it will not dispute or contest the ownership, validity or enforceability of the rights in the Licensed E-Audiobooks or the Promotional Materials;
- (d) all rights not expressly granted to it are reserved by the Publisher;

- (e) it will not remove, cover or alter any copyright or trade-mark notices embedded in or displayed by the Licensed E-Audiobooks or the Promotional Materials; and
- (f) it shall not modify, or make derivative works of, the Licensed E-Audiobooks.
- (g) Promotional Material can and will include audio samples used by ABC for promotional use of said content.

### **ARTICLE 3 DELIVERY AND PURCHASE TERMS**

#### **3.1 Delivery of the E-Audiobooks and the Promotional Materials**

Upon the Effective Date and as necessary thereafter, the Publisher shall provide to ABC a compact disc or digital versatile disc containing a copy of the Licensed E-Audiobooks, in MP3 format or any such other format acceptable to ABC, and the Promotional Materials.

#### **3.2 Purchase Terms**

The Publisher agrees to supply the Licensed Content to ABC, on the following terms:

- (a) ***Regular Channel Discount:*** ABC may purchase each copy of each Licensed E-Audiobook from the Publisher at a discount of sixty percent (60%) off the Publisher's suggested retail price for such Licensed E-Audiobook for resale directly to ABC's customers by any means other than through a Prepaid Subscription-Based Plan.
- (b) ***Subscription-Based Retail Channel Discount:*** ABC may purchase each copy of each Licensed E-Audiobook from the Publisher at a discount of sixty percent (60%) off the Publisher's suggested retail price for such Licensed E-Audiobook for resale directly to ABC's customers who have subscribed to membership plan offered by ABC in which customers are obligated to purchase in advance from ABC the right to select at least one (1) Licensed E-Audiobook within a defined period of time (a "**Subscription-Based Plan**"). By way of example only, a Prepaid Subscription-Based Plan might require the obligation to purchase in advance the right to select: (i) at least one (1) Licensed E-Audiobook per month; or (ii) three (3) or more Licensed E-Audiobooks over a defined period of time, provided the total number of purchased E-Audiobooks averages at least one (1) Licensed E-Audiobook every three (3) months.
- (c) ABC acknowledges and agrees that all purchases made under this Agreement shall be made on a non-returnable basis.
- (d) The Publisher acknowledges the use of a five (5) minute audio sample to be used by ABC. ABC shall pay The Publisher for each copy of the Licensed E-Audiobook that is consumed by any ABC customer part of the Subscription-

Based Retail Channel, that exceeds five (5) minutes of audio playtime. If any ABC customer part of the Subscription-Based Retail Channel listens to four minutes and fifty-nine seconds or less (4 minutes and 59 seconds), ABC shall consider this a sample and shall not be required to pay the Publisher for said sample. The sample to be used by ABC shall be the first five (5) minutes of each Licensed E-Audiobook.

- (e) ABC shall pay the Publisher for all Licensed E-Audiobooks purchased under this Agreement within thirty (30) days of the end of the month in which reports (4.1) are issued.

## **ARTICLE 4 REPORTS AND RECORDS**

### **4.1 Reports**

ABC shall provide to the Publisher, by electronic means on a quarterly basis, reports that are generated using the Transaction Records and the Financial Records. Such reports shall indicate (i) the total amount payable by ABC to the Publisher pursuant to Section 3.2 for the preceding quarter, and (ii) a detailed accounting of the calculation of such amount.

### **4.2 Audit**

The Publisher may, upon fifteen (15) Business Days prior written notice to ABC and no more than once during any twelve (12) month period, at its own expense, employ an independent chartered accountant, who is a nationally recognized accounting firm and who is acceptable to ABC (such acceptance not to be unreasonably withheld), to make an examination and audit (in this section, the “**Audit**”), during normal business hours, of only such books, records and accounts necessary to verify the accuracy of reports provided pursuant to Section 4.1, for the period in question. At its own expense, ABC may, within fifteen (15) Business Days of receipt of the Audit report prepared by such accountant pursuant to this Section 4.2, conduct an independent review of the Audit report (in this section, the “**Audit Review**”). Subsequently, prompt adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by the Audit and/or the Audit Review. If errors in favour of the Publisher of five percent (5%) or more of the total amount (minimum error of \$1000) reported to be due to the Publisher in any such report are discovered as a result of the Audit and confirmed by the Audit Review, if applicable, ABC shall reimburse the Publisher for the expense of the Audit.

## **ARTICLE 5 TERM AND TERMINATION**

### **5.1 Term**

This Agreement shall become effective as of the Effective Date and shall continue for a period of two (2) years, unless terminated in accordance with Section 5.2. This Agreement shall be renewed for successive terms of two (2) years, unless either party delivers written notice to the

other party of its intent not to renew this Agreement thirty (30) days prior to the expiration of the Agreement.

## **5.2 Termination**

- (a) In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement by giving thirty (30) days prior written notice to the other party; provided, however, that this Agreement will not terminate if the other party has cured the breach prior to the expiration of such thirty (30) day period.
- (b) Either party may terminate this Agreement if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or a proposal for the benefit of creditors, if that petition or proceeding is not dismissed within sixty (60) days after filing.
- (c) ABC may terminate this Agreement, at its sole option, by giving ninety (90) days prior written notice to the Publisher.
- (d) The Publisher may terminate this Agreement, at its sole option, by giving ninety (90) days prior written notice to ABC.

## **5.3 Obligations upon Termination**

- (a) Upon termination or expiration of this Agreement:
  - (i) the rights granted by the Publisher to ABC pursuant to Section 2.1 shall be terminated immediately;
  - (ii) ABC shall provide to the Publisher, by electronic means, a final report generated using the Transaction Records and the Financial Records. Such report shall indicate (i) the total amount payable by ABC to the Publisher pursuant to Section 3.2 for the period since the last completed quarter, and (ii) a detailed accounting of the calculation of such amount;
  - (iii) ABC shall pay to the Publisher any undisputed amounts accrued by the Publisher through to the date of termination or expiration pursuant to Section 3.2 that remain unpaid as of such date;
  - (iv) Subject to Section 5.3(b), ABC shall return to the Publisher or, at the Publisher's option, destroy, the Licensed E-Audiobooks, the Promotional Materials and the Publisher's Confidential Information that are in ABC's possession and that were obtained from the Publisher pursuant to the Agreement; provided that if the Publisher elects to cause ABC to destroy any or all of such property, ABC shall deliver to the Publisher a certificate signed by a senior officer of ABC certifying the destruction of such property; and

- (v) the Publisher shall return to ABC or, at ABC's option, destroy ABC's Confidential Information that is in the Publisher's possession and that was obtained from ABC pursuant to the Agreement; provided that, if ABC elects to cause the Publisher to destroy any or all of such Confidential Information, the Publisher shall deliver to ABC a certificate signed by a senior officer of the Publisher certifying the destruction of such property.
- (b) Notwithstanding Section 5.3(a)(iv), ABC shall be permitted to maintain archival copies of the Licensed E-Audiobooks solely to continue to provide access to any ABC customer who has purchased a copy of any such Licensed E-Audiobooks prior to the termination or the expiration of this Agreement; provided that ABC fully complies with Sections 2.2, and 2.3 in respect of any such archival copy of such Licensed E-Audiobooks.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES, LIABILITY AND INDEMNIFICATION**

**6.1 Representations and Warranties of the Publisher**

The Publisher represents and warrants to ABC that:

- (a) it has all right, title and interest in and to the Licensed E-Audiobooks and the Promotional Materials to the extent necessary to fulfill all of its obligations under this Agreement;
- (b) there are no claims in progress or pending or threatened against the Publisher relating to the Licensed E-Audiobooks or the Promotional Materials and there is no valid basis for any such claim; and
- (c) the use of the Licensed E-Audiobooks and the Promotional Materials by ABC in accordance with this Agreement will not breach, violate, infringe or interfere with any rights of any Person.

**6.2 Disclaimer**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE LICENSED E-AUDIOBOOKS AND THE PROMOTIONAL MATERIALS ARE PROVIDED TO ABC ON AN "AS IS" BASIS AND THE PUBLISHER DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR COLLATERAL, INCLUDING AS TO OWNERSHIP AND NON-INFRINGEMENT, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE.



### **6.3 Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE IN THE AGGREGATE FOR DAMAGES FOR ANY BREACH OR SERIES OF BREACHES UNDER THIS AGREEMENT INCLUDING FUNDAMENTAL BREACH, WHICH EXCEEDS THE LESSER OF (I) \$100,000, AND (II) THE AMOUNT PAID BY ABC TO THE PUBLISHER PURSUANT TO SECTION 3.2 DURING THE PRECEDING SIX (6) MONTH PERIOD OR, IF SIX (6) MONTHS HAVE NOT ELAPSED UNDER THE TERM OF THIS AGREEMENT, SUCH AMOUNT PAID, AS EXTRAPOLATED OVER A SIX (6) MONTH PERIOD. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR LOSS OF PROFIT, FAILURE TO REALIZE EXPECTED GAINS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS DO NOT APPLY IN THE EVENT OF WILFUL MISCONDUCT, THE PUBLISHER'S INDEMNITY OBLIGATIONS UNDER SECTION 6.4 OR A BREACH OF CONFIDENTIALITY UNDER SECTION 7.1.

### **6.4 Infringement Claims**

- (a) The Publisher agrees to indemnify and hold ABC harmless from and against any loss, cost, expense or damage suffered or incurred by ABC or its directors, officers, employees, contractors, shareholders or service providers arising out of or related to any claim brought against ABC by any third party for intellectual property rights infringement in connection with ABC's use of the Licensed E-Audiobooks or the Promotional Materials in accordance with the terms of this Agreement.
- (b) ABC shall give notice to the Publisher immediately of any such claim that is threatened or is instituted by any Person against ABC with respect of its use of the Licensed E-Audiobooks or the Promotional Materials in accordance with this Agreement and allow the Publisher to undertake the defence of any such claim. If the Publisher undertakes the defence of any such claim, ABC shall at the expense of the Publisher fully co-operate with and assist the Publisher and execute such documents and do such acts and things as in the opinion of the Publisher may be necessary to defend the claim.

## **ARTICLE 7 GENERAL**

### **7.1 Confidentiality**

- (a) All Confidential Information of the disclosing party shall be kept in strict confidence by the receiving party and shall not be used by the receiving party for its benefit, or for the benefit of any other Person, or for any purpose other than strictly for the purpose of this Agreement. Each party shall prevent the other party's Confidential Information from misappropriation, unauthorized use,

unauthorized disclosure, unauthorized copying, unauthorized electronic transmission or other communication, and sabotage of any kind whatsoever.

- (b) The following circumstances shall constitute exceptions to the obligations of Section 7.1(a):
- (i) where such information is in the public domain through no act or omission of the receiving party; or
  - (ii) where such information has been independently developed by such Person as evidenced by written documentation; and
  - (iii) where disclosure of Confidential Information is either compelled by law or by order of a court of competent jurisdiction, provided that reasonable steps have been taken in such circumstances by the disclosing party to maintain the confidentiality of the subject Confidential Information and reasonable prior notice of such disclosure has been provided by the disclosing party to the receiving party.

## 7.2 Public Notices

The parties shall jointly plan and co-ordinate any public notices, press releases, and any other publicity concerning this Agreement and no party shall act in this regard without the other's prior approval (not to be unreasonably withheld) unless the disclosure is required to meet any Party's timely disclosure obligations under applicable laws or stock exchange rules in circumstances where prior consultation with the other party is not practicable and a copy of such disclosure is provided to the other party at the time it is made to the regulatory authority.

## 7.3 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a "**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of a Notice to ABC at:

Audiobooks Inc.  
935 Sheldon Ct  
Burlington, ON  
L7L 5K9

Attention: Pamela Schuer  
Fax: (905) 634-5189

And

Audiobooks Inc.  
L'Horizon, Gunsite Road, Brittons Hill  
St. Michael, Barbados

Attention: Steven Parker  
Fax: +1 246 431 9748

(b) in the case of a Notice to the Publisher at:

Fred Hoehn Ministries  
P.O. Box 404  
Omaha, Nebraska 68101

Attention: Frederick Hoehn  
Fax: ( ) xxx-xxxx

Any Notice delivered or transmitted to a party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted if it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day, then the Notice shall be deemed to have been given and received on the next Business Day.

Either party may, from time to time, change its address by giving Notice to the other party in accordance with the provisions of this Section 7.3.

#### **7.4 Amendment; Waiver**

No amendment, supplement or modification of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

#### **7.5 Assignment**

Unless otherwise stated in this Agreement, neither party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other party. No waiver of any of the provisions of this Agreement is binding unless it is in writing and signed by the party entitled to grant the waiver.

#### **7.6 Enurement**

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors (including any successor by reason of amalgamation of any party) and permitted assigns.

**7.7 Independent Parties**

The parties are and will at all times remain independent contractors and are not and shall not represent themselves to be the agent, joint venturer, partner or franchisee of each other.

**7.8 Survival**

Sections 1.2(b), 4.2, 5.3, 6.3, 6.4, 7.1, 7.8 and 7.9 shall survive the termination or expiration of this Agreement.

**7.9 Cumulative Rights**

The rights of each party are cumulative, and no exercise or enforcement by a party of any right or remedy, including termination, shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or which such party is otherwise entitled by law or in equity to enforce.

**7.10 Further Assurances**

The parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.

**7.11 Execution and Delivery**

This Agreement may be executed by the parties in counterparts and delivered by facsimile and all such counterparts when so executed and delivered shall together constitute one and the same agreement.

**IN WITNESS OF WHICH** the parties have duly executed this Agreement.

**AUDIOBOOKS INC.** [ ]

By: \_\_\_\_\_

Name: Steven Parker

Title: CEO

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE A**  
**E-AUDIOBOOKS TITLES**

**[To be completed]**