



OPERA MOBILE STORE CONTENT DISTRIBUTION AGREEMENT

This Content Distribution Agreement (“**Agreement**”) is a legal contract between You, the content developer or provider (“**Content Provider**”), and Opera Software ASA, including its wholly owned subsidiary Handster, Inc. (collectively, “**Opera**”). This Agreement sets forth the terms and conditions applicable to Content Provider’s distribution of computer programs, graphical images, ringtones, music, or other mobile services and content (“**Content**”) through the Opera Mobile Store and other mutually agreeable distribution channels.

Terms & Conditions

1. SUBMISSION AND DISTRIBUTION.

1.1 **Registration.** To distribute Content under this Agreement, Content Provider must register and create a profile on the Opera Developer Portal (“**Portal**”). Content Provider’s profile must include Content Provider’s contact details, tax ID, email address for receiving information regarding orders, support email addresses, and such other reasonable information as may be requested by Opera.

1.2 **Submission.** Content Provider must provide its Content through the Portal in a form suitable for electronic reproduction and distribution. For each instance of Content submitted, Content Provider must:

- (a) provide images, thumbnails, descriptions and categorization of the Content (which, if not supplied by Content Provider, may be generated by Opera in its sole discretion);
- (b) classify the Content as freeware (free), shareware (try and buy), or commercial (for purchase) and, where applicable, provide the end-user price for the Content;
- (c) select the regions or countries in which Content Provider wishes to distribute the Content (“**Territory**”);
- (d) provide a link to, or the text of, the end-user license agreement or terms of use (“**EULA**”) under which Content Provider will license and/or provide the Content to end-users; and
- (e) provide a link to, or the text of, Content Provider’s privacy statement or policy (“**Privacy Policy**”).

Content Provider may log into the Portal and update and/or change the foregoing information at any time. Via the Portal, Content Provider may also view the details regarding its distribution of Content via the Opera Mobile Store.

1.3 **Appointment.** Content Provider appoints Opera as Content Provider’s non-exclusive agent authorized and entitled to: (a) publicly display, publicly perform, and duplicate the Content for the purpose of marketing or demonstrating the Content to prospective Partners, customers and end users; (b) market the Content at Opera’s sole discretion and expense; (c) distribute the Content in the Territory and via the Opera Mobile Store; and (d) accept payments for the Content on Content Provider’s behalf if Content Provider has specified that a fee should be charged for such Content. Opera, in its sole discretion and at any time, may refuse to distribute or indefinitely suspend (in whole or in part) the distribution of any piece of Content for any reason. Opera will bear all expenses for its operations and staff.

1.4 **License Grant.** Content Provider grants Opera a nonexclusive, worldwide, royalty-free right and license to use, in connection with the Content, Content Provider’s trademarks, trade names, service marks, logos or other identifying or distinctive marks (collectively, “**Marks**”), provided that Opera will comply with the Content Provider’s trademark usage guidelines provided to Opera.

1.5 **Distribution.** By entering into this Agreement, Content Provider agrees to distribute its Content via the Opera Mobile Store (however named, branded or customized) which is owned and operated by Opera Software ASA on behalf of itself and its distribution partners, including original equipment manufacturers, mobile network operators, and other authorized sales agents (“**Partners**”). Opera may assign and/or sub-license any of the foregoing rights to its Partners to



the limited extent necessary to operate a version of the Opera Mobile Store in cooperation with such Partners.

- 1.6 **Additional Optional Distribution Channels.** When submitting Content via the Portal, Content Provider may be offered the option of distributing its Content via additional distribution channels offered by Handster, Inc. (including other storefronts operated by third-parties). Such distribution is optional. By choosing within the Portal to distribute Content via one or more of Handster's distribution channels, Content Provider acknowledges and agrees that such distribution is pursuant to Handster's relationships with such third party storefronts and that Handster, Inc. bears sole responsibility under this Agreement with regard to such distribution.

2. OBLIGATIONS OF CONTENT PROVIDER.

- 2.1 **Safety and Compliance.** Before submitting Content via the Portal, Content Provider shall test such Content to ensure it is, to a reasonable extent, free of defects. Content Provider shall be solely responsible for ensuring that its Content is safe, free of defects in design and operation, that it complies with applicable laws and regulations, and that it does not infringe any third party's intellectual property rights. Content Provider shall provide such bug fixes and/or software patches as may be reasonably required to ensure proper operation of the Content.

- 2.2 **End Users.** Content Provider shall be solely responsible for providing a EULA and legally adequate Privacy Policy and for protecting the privacy and legal rights of end users of its Content. Content Provider shall, at a minimum, do as follows:

- (a) If end users provide Content Provider with, or the Content gathers or accesses, usernames, passwords or other log-in information, location data, or any personally identifiable information about end users ("End User Information"), Content Provider must make the end users aware of what End User Information will be available to Content Provider.
- (b) Content Provider may only use End User Information for the limited purposes for which the end user has given permission, and in no case may the information be used in any manner that would violate Content Provider's Privacy Policy or applicable law.
- (c) If Content Provider or the Content stores End User Information or other sensitive information provided by end users, it must do so securely and only for as long as it is needed.

- 2.3 **Support and Maintenance.** Content Provider shall be solely responsible for the content, quality, and performance of the Content, for any warranty, support, maintenance, or other obligations related to the Content, for communicating with end users regarding the Content, and for addressing any end user complaints about the Content. Content Provider agrees to provide end users with support by email or phone, state Content Provider's support email address or phone number at an appropriate place within the Content, and respond to end user related issues pertaining to the Content within five (5) business days. The level of support must, at a minimum, be in accordance with Content Provider's support policies then in effect. Content Provider further agrees to provide a link to any support materials for the Content when submitting the Content to Opera.

3. FEES, PAYMENT AND REPORTING.

- 3.1 **Free Content.** This Section 3 shall apply solely to Content for which Content Provider specifies, via the Portal, a license or service fee it wishes to charge end-users for use or access to such Content ("**Fee**"). If no such Fee is specified, the Content shall be distributed to end-users without charge.

- 3.2 **Pricing.** If Content Provider wishes to charge end-users for Content distributed pursuant to this Agreement, Content Provider will provide the Fee it wishes to charge for such Content. Opera will collect such amount on Content Provider's behalf subject to the following:

- (a) **Pricing Discretion.** Opera may vary the Fee to maximize gross receipts in light of local market conditions as follows: (i) for Content distributed within North American and Western



Europe, Opera may vary the retail price by up to 25% to match mobile carrier billing points, or for time-limited promotions; (ii) for Content distributed outside of North America and Western Europe, Opera may vary the Fee as determined by Opera in its reasonable discretion.

- (b) **Bundled Pricing.** Outside of North America and Western Europe, access to multiple instances of mobile content from one or more participating content providers may be offered for a bundled Fee (on a one time or recurring subscription basis). The bundled Fee will be allocated pro rata amongst participating content providers based on program downloads. The bundled Fee will be set by Opera in its reasonable discretion based on the properties of the package and local market conditions, and in order to maximize gross receipts. Opera may offer users free trial access to a package for up to seven (7) calendar days on a promotional basis. Participation in this distribution model is optional. Content Provider may at any time disable such model as to one or more instances of its Content via the Portal.
- 3.3 **Reporting.** Within thirty (30) days after the end of each calendar month, Opera will issue to Content Provider a Summary Report of amounts payable pursuant to this Agreement.
- 3.4 **Payment.** Provided that Content Provider is not in material breach of any of its obligations under this Agreement, within 30 days after the end of each month Opera will pay Content Provider an amount equal to Net Receipts, less Opera's retained Service Fee. The following shall apply to the calculation of amounts payable pursuant to this Section 3.4:
- (a) **"Gross Receipts"** for each month shall be comprised of amounts actually collected with respect to the Content during such month. Gross Receipts shall be reduced by any amounts respecting the Content that are charged back or otherwise returned during such month due to customer refunds or contested payment transactions, and any fees or penalties associated therewith ("Chargebacks").
- (b) **"Net Receipts"** for each month shall be comprised of Gross Receipts less Transaction Costs.
- (c) **"Transaction Costs"** means all costs associated with Gross Receipts, including but not limited to: (i) credit card, mobile carrier billing and other transactional fees; (ii) fees payable to Opera's distribution Partners; and (iii) applicable taxes.
- (b) **"Service Fee"** means Opera's retained fee of: (i) 30% of Net Receipts from Content for the Android, Blackberry and Symbian platforms; and (ii) 50% of Net Receipts from Content for Java platforms.
- 3.5 **Minimum Payment Amount.** Opera shall have no obligation to effect payment in any month in which the total amount Content Provider is owed is less than \$200 USD. Amounts under \$200 USD will be retained and accumulated with amounts accruing in subsequent months until 30 days after the end of the month in which the total amount payable comes to exceed \$200 USD. Accumulated amounts shall not accrue any interest.
- 3.6 **Chargebacks.** If Chargebacks result in a negative amount of Gross Receipts for a particular month, Opera shall at its discretion either: (i) offset such negative amount against future payments Content Provider is owed under this Agreement; or (ii) invoice this amount. Content Provider agrees to pay within thirty (30) days of the date of invoicing any amounts invoiced by Opera as a result of such Chargebacks. Opera reserves the right to de-list the Content or to increase Opera's Service Fee for the Content if Opera determines, at its sole discretion, that the Content quality or related customer support is causing excessive Chargebacks. Opera will notify Content Provider in advance of taking such action to give Content Provider a chance to correct the problem.



- 3.7 **Tax.** Content Provider is solely responsible for any and all taxes related to its distribution of Content through the Opera Mobile Store including any value added tax, sales tax, or similar transactional taxes applicable in the Territory in which Content Provider chooses to offer its Content. The fee specified by Content Provider for its Content must be inclusive of all transactional taxes for each Territory in which Content Provider chooses to offer its Content.
- 3.8 **Verification.** Content Provider may, once every twelve (12) months and at its sole expense, hire an independent certified public accountant to audit Opera's financial records to the extent reasonably necessary to verify Opera's compliance with its payment obligations under this Agreement. The certified public accountant will execute a reasonable confidentiality agreement prior to commencing any such inspection. Notwithstanding the foregoing, any financial records not audited within a twelve (12) month period will be deemed accurate and not subject to review.

4. **LIMITATION OF LIABILITY.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS) IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE FURNISHING, FUNCTIONING, USE, DISTRIBUTION OR MARKETING OF THE CONTENT OR ANY RELATED ITEM OR SERVICE PROVIDED BY CONTENT PROVIDER OR OPERA. IN NO EVENT SHALL OPERA'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF SERVICE FEES OPERA RECEIVES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING SUCH CLAIM.

5. **TERM AND TERMINATION.**

- 5.1 **Term.** This Agreement commences on the date of the last signature or, if made electronically, the date of Content Provider's online or email acceptance, and shall remain in effect until terminated as provided in this Section 5.
- 5.2 **Termination.** For Cause: This Agreement may be terminated by either Party if the other Party is in material breach of any term or condition of this Agreement and such breach is not remedied for a period of thirty (30) calendar days after the Party in breach has been notified of the breach by the other Party. Without Cause: Either Party may terminate this Agreement for any reason and at any time by giving the other Party ninety (90) days prior written notice.
- 5.3 **Rights and Duties Upon Termination.** In the event of expiration or termination of this Agreement: (i) within sixty (60) days of termination, Opera shall provide Content Provider with a statement of all sums due to Content Provider under this Agreement; (ii) Opera shall not distribute the Content to any third party after the effective date of such expiration or termination; and (iii) the Content Provider shall be responsible for continued support of its past and future sales of the Content. Content Provider acknowledges and agrees that the termination or expiration of this Agreement does not terminate the rights or licenses of an end user to continue to use the Content, if the Content was subscribed to or downloaded by the end user prior to the effective date of expiration or termination.
- 5.4 **Return of Content.** Upon termination or expiration of this Agreement, Opera shall return to Content Provider or destroy all Content, including code and documentation, covered by this Agreement. Notwithstanding the foregoing, Opera may retain one copy of the Content and documentation solely for archival purposes.

6. **INTELLECTUAL PROPERTY RIGHTS.**

- 6.1 **Ownership of Content.** The parties agree that Content Provider owns all intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in and to the Content and that this Agreement does not transfer ownership of any of these rights.



6.2 **Ownership by Opera.** The parties agree that Opera owns all intellectual property rights, including copyrights or trademarks, including copyrights, patents, trademarks, and trade secrets, in and to the Opera Mobile Store and that this Agreement does not transfer ownership of any of these rights.

7. WARRANTIES AND INDEMNIFICATION.

7.1 **General Warranties.** Each party warrants that it has the full power, legal right and authority to enter into this Agreement and perform its obligations hereunder.

7.2 **Warranties by Content Provider.** Content Provider represents and warrants that the Content, as submitted and as subsequently updated or upgraded: (a) will be free from code that might disrupt, disable, harm, or otherwise impede the operation of any software, firmware, mobile device, computer system, or network; (b) complies with all applicable laws in the Territory and Content Provider's Privacy Policy; (c) does not infringe or otherwise violate the copyright, trademark or other intellectual property rights of any third-party; and (d) does not contain any material (or advertising promoting material) that is unlawful in the Territory, defamatory, pornographic, discriminatory or which promotes or facilitates, illegal activity, violence, discrimination, or infringement of any copyright, trademark, or other intellectual property right.

7.3 **Disclaimer of Warranties.** Except for the express representation and warranties set forth in this Agreement, neither Content Provider nor Opera make any other representations or warranties. Each party expressly disclaims all other representations or warranties.

7.4 **Duty to Indemnify.** Content Provider hereby agrees to indemnify and defend Opera, its Partners, successors and assigns from and against all claims, demands, actions, proceedings, liabilities, costs, and expenses based on any claim that: (i) arises from an alleged breach of Content Provider's obligations, representations or warranties under this Agreement; (ii) arises from Content Provider's actions or Content allegedly infringing the intellectual property rights of any third party; (iii) arises as a result of Content Provider's alleged breach of any warranty, representation, or support, maintenance, privacy or other obligation to end users.

8. GENERAL PROVISIONS.

8.1 **General.** Opera will not be liable for any delay or failure to fulfill its obligations hereunder that results from acts of God, war, civil disturbance, court order, legislative or regulatory action, catastrophic weather condition, failure or fluctuation in electrical power or other utility services or other cause beyond its control. This Agreement will not be construed to create a joint venture or partnership between the parties and neither will have the right, power, or authority at any time to act on behalf of, or impose any obligation on or to represent the other, except as expressly set forth herein. Except as otherwise provided herein, neither party may assign this Agreement, or sublicense, assign or delegate any right or duty hereunder, without the prior written consent of the other. Content Provider understands that Opera may subcontract certain of its obligations under this Agreement. This Agreement and its exhibit(s), attachments, and/or addenda, if any, set forth the entire understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings and negotiations with respect to the subject matter hereof.

8.2 **Notices.** All notices under or relating to this Agreement may be sent by e-mail or by registered mail to the address below or to any other address the party may designate in writing.

8.3 **Amendment.** Opera may, from time to time, modify the terms of this Agreement by: (i) posting the revised agreement on Opera's website and notifying Content Provider of the change by e-mail; (ii) forwarding a copy of the revised Agreement to Content Provider, whether electronically or through a postal service; or (iii) any other means reasonably calculated to inform Content Provider of the terms of the revised agreement. Unless Content Provider objects to the revised agreement in writing to Opera within thirty (30) days of receiving notice of the change, in which



case no revision will take effect, Content Provider 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 Provider's thirty (30) 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 Provider in the manner described above or signed by both Parties.

- 8.4 **Governing law. Arbitration of disputes.** This Agreement (and any question about its subsistence, effect or termination) is to be interpreted in accordance with the laws of Norway, except that body of laws controlling conflict of laws. In the event of a dispute arising out of or relating to this Agreement (including non-contractual disputes or claims), the parties shall first seek settlement of that dispute by negotiation between senior executives of the parties. If they are unable to settle the dispute within thirty (30) days, or such other period as the parties shall agree in writing, the dispute including any question regarding the subject matter of this Agreement, its existence, its validity or termination, and any non-contractual disputes or claims relating thereto shall exclusively be referred to and finally be resolved by arbitration pursuant to the Norwegian Act on Arbitration of 2004, which hereby is incorporated into this Agreement. The place of arbitration shall be Oslo, Norway, and the proceedings shall take place in English. The initiation of arbitration proceedings, the proceedings and the award(s) shall be treated as Confidential Information. Nothing in this Agreement will be deemed as preventing either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as is necessary to protect either Party's name, proprietary information, trade secrets, know-how, or any other intellectual property rights.
- 8.5 **Legal Effect.** A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

BY REGISTERING AS A DEVELOPER VIA OPERA'S DEVELOPER PORTAL OR REPLYING "I AGREE" TO THE EMAIL WITH THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT: (1) THE INFORMATION PROVIDED IS TRUE AND ACCURATE; (2) YOU ARE AT LEAST 18 YEARS OLD; (3) YOU ARE EITHER THE CONTENT PROVIDER OR AN AUTHORIZED REPRESENTATIVE OF CONTENT PROVIDER WITH THE POWER AND AUTHORITY TO ENTER INTO AND BIND THE CONTENT PROVIDER TO THIS AGREEMENT; AND (4) YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.