

KNOWLEDGE@WHARTON

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “Agreement”) is made as of this ___ day of _____, 200_ (“Effective Date”) between The Trustees of the University of Pennsylvania, acting on behalf of Knowledge@Wharton, with offices at the Wharton School, the University of Pennsylvania, 1030 Steinberg Hall-Dietrich Hall, Philadelphia, PA 19104 (“Licensor”) and [Insert name of Licensee], with offices at _____ (“Licensee”).

BACKGROUND

Licensor publishes a bi-weekly online resource that offers the latest business insights, information and research from a variety of resources. Licensor also distributes its content through newsletters to subscribers and through licensing arrangements with third parties. Licensee is in the business of publishing and/or distributing content to subscribers or other customers of Licensee. Licensee is interested in obtaining certain rights to Licensor’s content, and Licensor is interested in granting such rights to Licensee subject to the terms and conditions of this Agreement.

TERMS

In consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS.

“Advertising Rights” shall mean the advertising and promotional rights sold, licensed or otherwise transferred with respect to Content Pages on the Licensee Website.

“Articles” shall mean the articles, other than Customized Articles, as specified in Section 4.1 below.

“Content Pages” shall mean those pages in the Licensee Website that contain or have hyperlinks to any of the Articles.

“Customized Articles” shall mean the articles posted on the Licensor Website that are identified by at least one of the following phrases, “written for [],” “in association with [],” or “in collaboration with []”, or that are otherwise identified as having been created for the benefit of a third party entity.

“Intellectual Property Rights” shall mean all rights in and to trade secrets, patents, copyrights, trademarks, know-how, all moral rights, and other similar rights of any type under the laws of any governmental authority, domestic or foreign.

“Licensee Website” is the website located at the URL http://_____.

“Licensor Trademarks” shall mean the trademarks, service marks and logos specified in Exhibit A hereto.

“Licensor Website” is the website located at the URL <http://knowledge.wharton.upenn.edu> or any other replacement or supplemental URL thereof.

“Link” shall mean graphic and/or textual hyperlinks to the Licensor Website placed on the Licensee Website.

2. GRANT OF LICENSES.

2.1. Grant of Licenses. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee:

(a) A non-exclusive, non-transferable, revocable license to reproduce and display without modification the Articles in electronic form in the Licensee Website, and to permit users of the Licensee Website to download and print the Articles for personal use only and not for reproduction, redistribution, publication or display. Licensee may not modify or abbreviate any Article without the prior written consent of Licensor. Except as otherwise expressly provided herein, Licensor retains all right, title and interest in and to the Articles and modified or abbreviated Articles. Licensor retains the right, in its sole discretion, to request and immediately obtain removal of any or all of the Articles from the Licensee Website at any time during the Term of this Agreement.

(b) A non-exclusive, non-transferable, revocable license to reproduce and display the Licensor Trademarks for the following purposes: (i) as Links used in connection with the presentation of the Articles on the Content Pages in the Licensee Website; and (ii) in connection with the marketing and promotion of the Licensee Website. All uses of the Licensor Trademark shall be subject to the prior, written approval of Licensor. Licensor retains all other right, title and interest in and to the Licensor Trademarks.

3. LICENSEE RESPONSIBILITIES.

3.1. Licensee in its sole discretion, shall choose the location for placement of the Articles within the Licensee Website; provided, however, that Licensee shall at all times have at least two (2) Articles on the Licensee Website and at least one (1) of the Articles shall have a prominent position on the Licensee Website.

3.2. Licensee shall maintain and operate the Licensee Website twenty-four (24) hours a day, every day of the year; provided, however, that Licensee makes no representation to Licensor that the operation of the Licensee Website will be uninterrupted or error free, and Licensee shall not be liable for the consequences of any interruptions or errors.

3.3. Licensee shall maintain the Licensee Website, the Licensee Website server and all equipment related thereto at a quality reasonably expected of websites in the same industry and shall comply with all laws relating to the Licensee Website.

3.4. Licensee shall remove materials posted on the Licensee Website that: (a) are defamatory, libelous, slanderous or criminal or that violate any person's right of publicity, privacy or personality, or that have otherwise caused or resulted in any tort, injury, demise or harm to any person; (b) will result in civil damages against either party to this Agreement; or (c) violate any statute, regulation or ordinance.

3.5. Licensee shall have the sole right to transfer or retain all Advertising Rights with respect to Content Pages; provided, however, that if any advertisement or promotion of any kind appears on the Content Pages and Licensor, in its sole and absolute discretion, decides it does not want the Article(s) to appear on the Content Pages with such advertisement(s) or promotion(s) (the "Trigger Advertisements"), Licensor shall have the right to request and receive immediate removal of the Trigger Advertisements from the Content Pages. If such removal does not occur within twenty-four (24) hours of notice to Licensee thereof, Licensor may, in Licensor's sole and absolute discretion: (a) request and receive immediate removal of Articles from the particular page(s) of the Content Pages on which the Trigger Advertisement appears; (b) request and receive removal of all other Articles on the Content Pages within fifteen (15) days of notice to Licensee; and/or (c) terminate this Agreement effective immediately.

3.6. Licensee shall reproduce and shall not alter or impair any notice or acknowledgment of copyright or other Intellectual Property Rights of Licensor that may appear in or with the Articles, including all copyright, trademark and similar notices that Licensor may reasonably request.

3.7. Licensee shall provide attribution for each Article in accordance with Licensor policies as communicated to Licensee from time to time. Attribution for each Article shall include (a) a text hyperlink, located prominently at or near the beginning of such Article, which shall link the viewer to a page within the Licensor Website to be chosen by Licensor; (b) the date and source for such Article; and (c) a text hyperlink, located prominently at or near the end of such Article, which shall link the viewer to a page within the Licensor Website to be chosen by Licensor.

3.8. Licensee shall notify Licensor of any significant changes to the content or structure of the Licensee Website within fifteen (15) days of such change. The parties agree that for the purposes of this provision, a significant change is a change which is outside the ordinary course of business of Licensee or which is reasonably likely to materially harm the goodwill of Licensor. Within fifteen (15) days after receipt of a notice of a significant change, Licensor may give thirty (30) days prior written notice to Licensee that it will terminate this Agreement.

4. ARTICLES; FEES.

4.1. Licensee's license under Section 2.1(a) is limited to ten (10) Articles available on the Licensor Website on the Effective Date of this Agreement and, thereafter, two (2) Articles from each subsequent issue of the Knowledge@Wharton online publication available on the Licensor Website. Licensee shall be responsible for copying these Articles from the Licensor Website.

4.2. Fees. During the Initial Term (as defined herein) of this Agreement, all Articles shall be provided by Licensor without charge to Licensee. After the Initial Term of this Agreement and at the request of Licensor, both parties shall negotiate in good faith a mutually acceptable compensation provision, which may include an extension of this provision.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Licensor represents and warrants that Licensor owns and/or has the right to license the Articles.

5.2. Licensee represents and warrants that the Licensee Website and the use thereof shall not infringe upon any Intellectual Property Rights or otherwise violate the rights of any third party.

5.3. Each party represents and warrants that the person signing this Agreement on its behalf has the right and authority to bind the party to its obligations under this Agreement.

6. INDEMNIFICATION.

6.1. Licensor, at its own expense, will indemnify, defend and hold harmless Licensee, its officers, directors, employees, representatives and agents, against any claim, suit, action, or other proceeding brought against Licensee based on, relating to or arising from a claim that the Articles as delivered to Licensee and used in accordance with this Agreement or any Licensor Trademark as used in accordance with this Agreement infringes in any manner any Intellectual Property Right of any third party or contains any material or information that is obscene, defamatory, libelous, slanderous, that violates any person's right of publicity, privacy or personality, or that has otherwise caused or resulted in any tort, injury, damage or harm to any person.

6.2. Licensee, at its own expense, will indemnify, defend and hold harmless Licensor, its trustees, officers, directors, employees, representatives, agents and students, against any claim, suit, action, or other proceeding brought against Licensor, its trustees, officers, employees, representatives, agents and/or students based on, relating to or arising from: (a) a claim that the Licensee Website and any content contained therein, other than the Articles used in accordance with this Agreement, infringes in any manner any Intellectual Property Right of any third party or contains any material or information that is obscene, defamatory, libelous, slanderous, that violates any person's right of publicity, privacy or personality, or that has otherwise caused or resulted in any tort, injury, damage or harm to any person; or (b) any breach by Licensee of this Agreement or any representation or warranty herein.

6.3. The obligations of the party providing the indemnification (the "Indemnifying Party") under Sections 6.1 and 6.2 shall be contingent upon the following: (a) the other party (the "Indemnified Party") providing the Indemnifying Party with prompt notice of any such claim; (b) the Indemnified Party permitting the Indemnifying Party to assume and control the defense of such action, with counsel chosen by the Indemnifying Party; and (c) the Indemnifying Party not entering into any settlement or compromise of any such claim without the Indemnified Party's prior written consent, which consent shall not be unreasonably withheld. Without limiting the foregoing, the Indemnifying Party will pay any and all costs, damages, and expenses, including,

but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by the Indemnified Party in connection with or arising from any such claim, suit, action or proceeding.

7. LIMITATION OF LIABILITY.

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, EVEN IF SUCH PARTY AND THE OTHER PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL NOT APPLY TO EITHER PARTY'S OBLIGATIONS UNDER SECTION 6. TO THE EXTENT THAT LICENSOR IS LIABLE FOR ANY DIRECT DAMAGES, THOSE DAMAGES SHALL BE LIMITED TO THE ACTUAL DAMAGES INCURRED AND SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT PAID BY LICENSEE TO LICENSOR HEREUNDER. THE PARTIES AGREE THAT THE DISTRIBUTION OF LIABILITY AND RISK UNDER THIS AGREEMENT IS MUTUALLY ACCEPTABLE.

8. TERM AND TERMINATION.

8.1. Initial Term and Renewals. This Agreement will become effective as of the Effective Date and shall, unless sooner terminated as provided below, remain effective for an initial term of six (6) months following the Effective Date (the "Initial Term"). The Agreement shall automatically renew for successive additional thirty (30) day periods ("Renewal Terms"), unless otherwise terminated by either party for any reason or for no reason by giving notice to the other party not less than fifteen (15) days prior to the end of a Term. As used herein, "Term" means the Initial Term and any Renewal Term(s).

8.2. Termination for Cause. Notwithstanding the foregoing, this Agreement may be terminated by either party immediately upon notice if the other party: (a) becomes insolvent; (b) files a petition in bankruptcy; (c) makes an assignment for the benefit of its creditors; or (d) breaches any of its obligations under this Agreement in any material respect, which breach is not remedied within thirty (30) days following receipt of written notice from the other party.

8.3. Effect of Termination. Upon termination or expiration of this Agreement, the provisions of Sections 5, 6, 7, 8.3, 9 and 10 shall survive and Licensee shall (a) cease, effective immediately, using the Licensor Trademarks for any purpose, (b) immediately remove all Articles and all Links from the Licensee Website and (c) destroy all copies of the Articles, including, without limitation, copies stored on electronic media.

9. OWNERSHIP.

Licensee acknowledges and agrees that: (a) Licensor owns all right, title and interest in the Articles and the Licensor Trademarks; (b) nothing in this Agreement shall confer in Licensee or an affiliate any right of ownership in the Articles or the Licensor Trademarks; and (c) neither Licensee nor its affiliates shall now or in the future contest the validity of the Licensor Trademarks or use or authorize the use of any trademarks, servicemarks or logos that are

confusingly similar to the Licensor Trademarks. No licenses are granted by Licensor except for those expressly set forth in this Agreement.

10. NOTICE: MISCELLANEOUS PROVISIONS.

10.1. Notice. Any notice, approval, request, authorization, direction or other communication required or permitted under this Agreement shall be given in writing and shall be deemed to have been delivered (a) on the delivery date if delivered by confirmed facsimile, electronic transmission or by personal delivery, (b) one (1) business day after deposit with a commercial overnight courier with written verification of receipt, or (c) five (5) business days after the mailing date if sent by U.S. mail, return receipt requested, postage and charges prepaid. Notice shall be given to each party at the following addresses:

If to Licensor: Knowledge@Wharton
The Wharton School, University of Pennsylvania
1030 Steinberg Hall-Dietrich Hall
Attn: Mukul Pandya
(T): 215/898-1801
(F): 215/898-1883
e-mail: pandyam@wharton.upenn.edu

With a copy to: Office of the General Counsel
University of Pennsylvania
133 S. 36th Street, Suite 300
Philadelphia, PA 19104-3246
Attn: General Counsel

If to Licensee: **[Licensee Name]**
Attn:
[Title]
[Address]
[Phone]
[Fax]
[Email Address]

With a copy to:

10.2. Insurance. Licensee shall maintain at all times at its own cost and expense general liability insurance covering claims for defamation, copyright infringement or violation of any right of publicity or privacy or any other personal right. Such insurance will be for a minimum annual coverage of \$2,000,000.

10.3. Independent Contractor. It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

10.4. Miscellaneous Provisions. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement, in whole or in part, without the other party's written consent, which shall not be unreasonably withheld or delayed. Any attempt to assign this Agreement other than in accordance with this provision shall be null and void. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to conflicts of laws, rules, and without regard to its location of execution or performance. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. Neither this Agreement, nor any terms and conditions contained herein may be construed as creating or constituting a partnership, joint venture or agency relationship between the parties. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights. This Agreement and its exhibits are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings, both written and oral, regarding such subject matter. This Agreement, may only be modified, or any rights under it waived, by a written document executed by both parties. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

THE TRUSTEES OF THE
UNIVERSITY OF PENNSYLVANIA,
ACTING ON BEHALF OF
KNOWLEDGE@WHARTON

By: _____

Title: _____

[LICENSEE]

By: _____

Title: _____

EXHIBIT A

LICENSOR TRADEMARKS

KNOWLEDGE@WHARTON
KNOWLEDGE@WHARTON and Design