

11/30/2009 4:52 PM

**TERMS AND CONDITIONS  
of  
AGREEMENT BETWEEN ICONTROL SYSTEMS USA (“iControl”)  
AND  
A DISTRIBUTOR**

**UPDATED AS OF DECEMBER 1, 2009**

**Introductory Provisions**

Definitions

The term **“Agreement”** means the written agreement between iControl and a Distributor to which these Terms and Conditions are attached.

The term **“Distributor”** means a publisher, manufacturer or a third-party entity hired by the publisher to distribute a consumable item bearing a barcode (a **“Product”**) to a business (a **“Retailer”**) which sells Products to customers; and

The term **“Pricebook Management”** means the services rendered by iControl for Retailers to maintain accurate cost, retail and UPC pricing in the Retailers’ point-of-sale registers.

The term **“POD”** means proof of delivery document, which is a Distributor-generated invoice that bears the Retailer’s store stamp or store manager’s signature and printed name. This store-stamped and/or store-manager-signed document indicates the store’s acceptance of the net billing amounts printed on the invoice and credit document.

The term **“week” or “weekending”** means the 7-day period beginning Monday and ending on Sunday.

Knowledge and Acceptance of Terms and Conditions by a Distributor

It is understood by the Distributor (or by an agent acting on behalf of the Distributor) in the iControl program that the establishment of an account and vendor identification number, as well as the subsequent receipt of payments and use of iControl’s website and associated tools shall be deemed to constitute knowledge and acceptance of terms and conditions of the iControl billing consolidation system.

Relationship of Terms and Conditions to Specific Agreements with a Distributor

The Terms and Conditions set forth below are provided to supplement and clarify the terms of the specific agreements, if any, between the Distributor and iControl Systems USA, which acts as an agent on behalf of the Retailer. In the event of any inconsistency between the Terms and

Conditions set forth above and the provisions of a Distributor's written Agreement with iControl, the terms of the Agreement shall govern.

### Right of iControl to Amend the Terms and Conditions

iControl reserves the right to amend its Terms and Conditions from time to time, but no such amendment shall apply to a Distributor if it conflicts with the express provisions of a written Agreement with the Distributor.

FOR ANY GENERAL QUESTIONS RELATING TO iCONTROL, PLEASE CONTACT [info@icontrolusa.com](mailto:info@icontrolusa.com) or phone the iControl Help Desk at (301) 816-.4490 ext 100.

### Terms and Conditions

#### **1. iControl's Accounts Payable Functions**

iControl performs accounts payable functions on behalf of and as an agent of Retailers. The functions include the collection of sales data from Retailers, weekly reporting of Retailer sales data to Distributors, the collection and comparison of Distributors' sales data, as well as the remittance of funds derived from the sale of products at locations operated by the Retailers.

#### **2. Account Setup and Procedures for scanned sales and non-scanned sale; certain procedures to be followed by Distributors.**

Distributors will be paid for scan sales, and may be entitled to claim payments for non-scanned sales within 30 days of the weekending date provided they have sufficiently met all of the following procedures and conditions:

(a) Distributors must complete the setup of their account by providing detailed information for every participating Retailer, including but not limited to, stores serviced, products delivered, UPC codes, cost to the store, retail price (MSRP), and estimated units delivered by day of week (frequency). It is understood that the units delivered may change from week to week in response to sales trends.

(b) In order for a Distributor to add product to its iControl account and become the "distributor of record" of that product to that particular store, the Distributor must submit in writing: product name, cost price, retail price and valid 12 digit UPC barcode must be submitted to iControl (via mail or using the registration file located at [http://www.icontrolusa.com/crm\\_main.asp?cmd=profileWHLS](http://www.icontrolusa.com/crm_main.asp?cmd=profileWHLS) and emailed to [setup@icontrolusa.com](mailto:setup@icontrolusa.com)) prior to the on-sale date (or start date of the Retailer's program). At minimum, the submission must be at least 14 days in advance of the on-sale date. Failure to provide at least 14 days notice may result in the Retailers' failure to properly retail the product to consumers. Distributors can verify account setups by logging into their accounts at [www.icontrolusa.com](http://www.icontrolusa.com). If the Retailer is unable to sell the product at the correct retail price to its consumers due to insufficient notice by the Distributor, the Retailer will not be able to disburse payments for sales claimed by the Distributor.

Note: Price changes to existing products that are already setup in the Distributor's iControl account are covered in Section 3.

(c) Distributors must fax or mail iControl at least one historical invoice for that chain that shows the product name (title, if a periodical), costs, and delivery amounts and distribution frequency prior to the start of the program. Retailers reserve the right to request that Distributors submit an invoice from a past week for each store to be serviced.

(d) Distributors may not distribute non-returnable product under any circumstance. The distribution of unauthorized product (as determined exclusively by the Retailer), or Products where the "credit" cost differs from the "invoice" cost is also prohibited. Exceptions will be granted only in cases where the Distributor provides iControl with written authorization from the Category Manager (not the store manager) based at the Retailer's corporate headquarters.

(e) Retailers require that products delivered to the stores by Distributors must bear a valid UPC code that can be scanned using the Retailer's point-of-sale machines. Products that do not bear pre-printed UPC barcodes may not be distributed at the Retailer's stores; there are no exceptions to the UPC requirement. Retailers reserve the right to request that Distributors not deliver any products that lack standard 12 digit UPC-A or 8 digit UPC-E formatted barcodes.

(f) Specifically relating to newspapers, Distributors must pick up unsold copies of daily-frequency publications from Retailer within 7 days from the end of the on sale week (the weekending date shall be defined as the Sunday date of each calendar week).

(g) Distributors shall pick up unsold copies of weekly-frequency publications from retail establishments within 7 days from the end of the delivery week. Publications with on-sale dates in excess of 2 weeks shall be paid by scanned sales.

(h) Distributors acknowledge that a failure to pick up unsold product within the prescribed time period may result in the Retailer's destruction of the unsold product. In the event that unsold product units are not picked up upon this prescribed timeline, payment will be based exclusively on the Retailer's sales data. Retailers will reject any non-scan claims from Distributors that are based on failure to pick up returns within the prescribed time period.

(i) By default, Retailers will return unsold product to Distributors. Retailers may elect (but are never required) to provide mastheads, or affidavit returns based on other bilateral arrangements in effect between the vendor and individual store management. If a Retailer fails to provide Distributor with unsold product upon request, the Distributor shall immediately notify iControl in writing for resolution.

Distributors are strictly prohibited from submitting invoices with zero returns because of the Distributor's failure to pickup returns.

(j) At the Retailer's discretion, if a Distributor's calculation of "Net Sales" (i.e., units delivered minus unsold units) differs from the Retailer's calculation of Net Sales (i.e., scanned sales), the Retailer may, at its sole discretion, issue additional payment to Distributor.

This payment for **non-scanned sales** is referred to as a “Discrepancy Credit Request Payment” or a “DCR.” A Retailer may also elect not to issue additional payment for non-scanned sales, in which case iControl shall be held harmless by the Distributor. The Retailer exclusively determines and approves both the scanned sales and, as needed, “non-scanned sales” payments to Distributors.

(k) The submission of a store-stamped or store-manager signed **proof-of-delivery** “POD” is a mandatory prerequisite for the Retailer to consider making an additional payment for non-scanned sales. If the Distributor fails to provide a store-signed or store-stamped POD, the Retailer will pay on their scanned sales data only.

*As of Monday, January 4, 2010, any invoices submitted to iControl that lack the store stamp or the store manager’s signature and printed name will not be processed. The only exception to this rule will be Retailers engaged in Phase 1 (initial launch) or Distributors who submit an affidavit signed by a VP of Circulation or CxO level manager that certifies the possession of proof of delivery documents. Any such affidavits will be subject to random audit and verification by iControl and/or the Retailer, at any time.*

(l) The Retailer may require at any time that a Distributor produce the POD document for verification of any non-scanned sales claim. The timeline for submission is to be determined by the Retailer, and is normally within 7 calendar days of request.

(m) In the event that a Distributor fails to provide the supporting POD document or fails an affidavit audit, the Retailer reserves the right to deny the Distributor’s request to be paid for any non-scanned sales, or reverse payment of any unsupported discrepancy amount, in which case iControl shall be held harmless by the distributor for any such occurrence. Multiple failures to produce POD documentation will result in the Distributor losing the privilege to submit sales data to iControl for consideration of non-scanned sales.

(n) Distributors may submit POD documents for data entry by iControl staff. Each invoice must detail the vendor’s iControl identification number, store number, delivery week (deliveries and credits must be from the same date ranges), product name, cost, MSRP, 12 digit UPC, and invoice and credit quantities (draws and returns) for each product, as well as the store stamp and/or store manager’s signature and printed name.

Submissions can be sent to iControl via fax to (202) 207-9879 or emailed to [ap@icontrolusa.com](mailto:ap@icontrolusa.com). Whereas the product information (name, UPC, cost, retail) does not change with each invoice, Distributors are strongly encouraged to create and submit a cover sheet with the product name, UPC, cost, and retail prices to accompany each and every submission of paper invoices. Distributors are responsible to ensure that the invoices submitted contain the aforementioned details to ensure acceptance by the Retailer for processing by iControl staff and consideration of payment for non-scanned product sales.

(o) Distributors may also submit their sales data to iControl by:

i. Through March 28, 2010 by entering the invoice and credit quantities onto

the Excel spreadsheet titled “[Vendor]\_Sales File[weekending date].xls” that is sent via email with subject line “Preliminary Invoice Pending Physical Audit Results” on Thursdays; or

ii. At select Retailers, by entering the sales information by logging into their online account at [www.icontrolusa.com](http://www.icontrolusa.com) and selecting ‘Input Data into iControl’ followed by ‘Enter Returns/Invoice information,’

iii. By providing sales information via the iControl Distributor Interface (file format can be requested by emailing [data@icontrolusa.com](mailto:data@icontrolusa.com))

(p) Distributors hereby recognize that the labor cost of iControl entering an invoice on their behalf is equal to 50 cents per invoice per store per week. iControl reserves the right to assess or waive this fee at its discretion. As of Monday, March 29, 2010, iControl intends to begin assessing the data entry fee for any paper invoices submitted.

(q) A Distributor may submit claims to be paid for non-scanned sales only once for a given store and weekending date. The data may not be restated or amended without prior authorization from the Retailer and iControl. Distributors shall submit data in one of the formats prescribed above.

(r) A store-stamped and/or store-manager signed (with printed name) POD shall not be required if, and only if, at least one of the following conditions is met:

(i) The Retailer’s authorized representative at the store location (back door receiver or inventory specialist) signs, dates and prints their name and title on the invoice; or

(ii) The Retailer provides Distributor (or iControl) with a copy the store’s corporate-issued tracking log as an acceptable POD, listing each day’s invoice (delivered) and credit (unsold) units; or

(iii) The Distributor’s request for a store stamp is refused by the Retailer without cause and communicated by the Distributor in writing at [dcr@icontrolusa.com](mailto:dcr@icontrolusa.com) within 7 days of the occurrence for further research; or

(iv) Distributor provides iControl a letter generated by the Retailer’s category manager explaining that the Retailer failed to keep all returns as set forth in section 2(i), and the Retailer accepts responsibility and agrees to disburse payment for missing product for that particular week.

**A Distributor may request consideration for a process that varies from the above, it being understood that consideration for any alternative credit procedures shall be at the discretion of each Retailer and that iControl can only facilitate consideration by the Retailer; iControl management or staff may not authorize, approve or guarantee acceptance of any alternative credit procedures.**

(s) (i) A Distributor must submit sales data within thirty (30) calendar days of the weekending date in order for payment claims for non-scanned sales to be considered by the Retailer.

(ii) Any claims for payment for non-scanned sales that are submitted more the 30 days after the weekending date will be rejected by the Retailer and not considered.

(iii) In rare cases, a Distributor may request a special consideration by contacting iControl and detailing the extenuating circumstances of the situation, along with copies of the proof of delivery (POD) documentation.

(iv). The Retailer reserves the right to reject any and all claims for additional payments for non-scanned sales that are made beyond 30 days of the weekending date.

(v). Any claims made by Distributors relating to aged receivables must be received, via mail, by iControl within 45 days of the weekending date via mail to iControl Systems USA, Attn: AP Care, PO Box 447, Rockville, MD 20848, or via email to [apcare@icontrolusa.com](mailto:apcare@icontrolusa.com) (with supporting backup documentation in PDF/TIF format) This submission shall include a summary table with columns detailing:

- a) store
- b) weekending date
- c) the net dollar amount invoiced
- d) the payments received to date
- e) the difference claimed

The payment summary table shall be accompanied by store-stamped/store-signed copies of POD documents as described above.

(vi). Any claims relating to aged receivables that fail to meet either the aforementioned 45 day claim guideline, the invoice detail guidelines, or the proof-of-delivery standards above will be rejected by the Retailer and by Control.

(t) A Distributor shall retain POD documents from the Retailer's stores on file for at least one year and shall, upon request and without warning, provide iControl for hardcopies of specific documents that are requested by the Retailer for review. Upon request, the hardcopy shall be mailed, faxed, or emailed as PDF/TIF within seven (7) calendar days.

(u) The Retailer reserves the right to amend the requirements for DCR submission or POD documentation standard. The Retailer also reserves the right to instruct iControl to request documents on its behalf from Distributors. Changes to this process may be made from time to time at the Retailer's discretion.

(v) Distributors agree to bear the cost of development of any internal processes related to the submission of data to support payment of non-scanned claims, or for the submission of PODs, or gathering of unsold product, or reconciliation of payments, or using

generally accepted media (phone, fax, mail, email and internet) to communicate with iControl. ***Distributors always retain the right to elect to be paid on scanned product sales as reported by the Retailer.***

(w) Any deviations from the iControl program terms must have explicit, written approval from at least two (2) of the following iControl employees: the COO, President, or CEO. Any other approval will be deemed as unauthorized; moreover, any Distributor or other party that initiates an unauthorized program (e.g., non-returnable sales) at a Retailer without such approval is specifically forfeiting their right to be paid for sales.

### **3. Certain actions required of Distributors to proposed price changes.**

(a) For a proposed changes by Distributors to cost and/or retail must be received in writing, and should be submitted via email to iControl at [pricebook@icontrolusa.com](mailto:pricebook@icontrolusa.com), along with the cost and/or retail changes, the affected product name, stores, and UPC code in 12 digit UPC-A format. Prices should be communicated using only two decimal places (no fractions of pennies).

(b) Distributors must provide 28 calendar days advance notice prior to the proposed effective date.

(c) A Distributor's failure to provide sufficient lead time or sufficient detail (cost, retail, product name, full 12-digit UPC code, and affected stores,) prior to the proposed date of change may result in delayed payments, or payments made at the old (incorrect) cost basis.

(d) The Retailer will reserve the right to reject claims for payment at the new cost if the Distributor fails to provide adequate notice and details as described above. iControl shall be held harmless by the Distributor for any such occurrence on payment at the incorrect rate based on the Distributor's failure to provide advance notice as outlined in section 3(b).

**4. Approval by Retailers of Certain Proposed Price Changes.** Any price change proposals that impact the Retailer's gross margin will be subject to the approval of the Retailer.

**5. Timing of Payment by Retailers.** The time of disbursement of funds by a Retailer is based on a schedule that is determined by Retailer and may be changed by the Retailer at the Retailer's discretion from time to time. Generally speaking, most Retailers operate in a net 14 payment environment from the end of the week (Sunday). Money is disbursed by the Retailer to iControl, is reconciled by iControl, then is disbursed to the Distributor. Payments made based on DCRs or non-scanned sales may take slightly longer due to data entry, research, and reconciliation by the Retailer.

**6. Retailer Determines Payments to Distributors.** The Retailer is the sole party that determines the payment issued to the Distributor. Scanned sales, service fees, interest or administrative fees, or any additional discrepancy payments that are supported by adequate proof of delivery ("POD") as outlined in section 2 below, are determined solely by the Retailer, not by

iControl management or iControl staff members.

## **7. Distributors Obligations of Indemnification, etc. of iControl**

Distributors are obligated to indemnify, defend and hold harmless iControl for any data entry errors made by iControl in good faith on behalf of the Distributor.

## **8. Choice of Law**

This Agreement and all matters relating to the this Agreement shall be governed and construed in accordance with the law of the State of Maryland, without respect to its conflict of interest principles, as if all parties were Maryland residents.

## **9. Agreement to Mediate**

9.1 (a) All claims or disputes arising out of or in any way relating to this Agreement or any of the parties' respective rights and obligations arising out of this Agreement, the parties agree that before proceeding to litigation they will first submit the claim or dispute to non-binding mediation by a single mediator in the Rockville, Maryland area under the auspices of (1) the American Arbitration Association (the "AAA"), in accordance with the AAA's "Commercial Mediation Rules" then in effect, or, of the parties so agree, (2) under the auspices of Judicial Arbitration and Mediation Services ("JAMS") or (3) another mediation service.

(b) A party to this Agreement having a claim or dispute subject to paragraph 9.1 may not institute any legal action against any other party to this Agreement unless the mediation proceedings have been terminated as a result of a written declaration of the mediator that further mediation efforts are not worthwhile

### **9.2 Expenses of Mediation**

The fees of the AAA or other mediation service and the mediator shall be borne equally by the parties to the mediation.

### **9.3 Enforceability**

A party's right to mediation may be specifically enforced by said party.

### **9.4 Certain Limitations**

All statements, promises, offers, views and opinions made or communicated by any party in the mediation proceeding will be secret and confidential in all respects, and will not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding between the parties. However, evidence otherwise discoverable or admissible will not be excluded from discovery or admission as a result of its use in the mediation proceeding.

## **10. Jurisdiction; Service of Process**

10.1 Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Maryland, Montgomery County; or if it has or can acquire jurisdiction, in the United States District Court for the district in which Rockville, Maryland is located; and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in such court and agrees not to bring any proceeding arising out of or relating to the Agreement in any other court.

10.2 The parties agree with either or both of them may file a copy of this Section 10 with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum.

10.3 Process in any proceeding may be served on any party anywhere in the world.

\*\*\*end\*\*\*