

# WHISKYTREE<sup>INC</sup>

914 Mission Avenue, 2<sup>ND</sup> Floor  
San Rafael, CA 94901

## CONTENT SUBMISSION AGREEMENT

In consideration of review of your application for employment or other retention of your services by Whiskytree Inc (the "Company") you hereby agree to the terms of this Content Submission Agreement (the "Agreement"), as follows:

1. In connection with your application for employment or other offer to provide certain services to Company ("Offer of Services"), you acknowledge and agree that any and all demos, artwork, portfolios, music, films, drawings, special effects, video, software, games, collateral, documents, prints or other materials in any medium (collectively, "Materials") you submit or disclose to Company shall be under and pursuant to the terms of this Agreement. Company's review of such Materials is solely and exclusively in reliance on this Agreement.
2. You acknowledge and agree that: (a) because the Company is in the business of developing ideas, artwork, special effects, concepts, music, software and other similar items, and because the Company constantly receives content submissions from many sources on an ongoing basis, any and all Materials you provide may be similar or identical to materials that are or may become in the possession of, or are or may be used, distributed, exploited or released by, the Company; (b) Company's use or commercialization of any materials containing elements or components which are similar or identical to the Materials in whole or in part shall not obligate the Company to you in any manner whatsoever if Company obtained such materials at any time independently of any disclosures made by you; (c) Company shall have the same rights as members of the general public with respect to use of public domain and/or uncopyrightable content contained in the Materials; and (d) Company will not intentionally use the Materials for any purpose other than as provided for herein unless you and Company enter into a separate written agreement, and that in the absence of such written agreement, Company shall have no obligations to you (including payment obligations) related to the Materials.
3. You represent and warrant that you are the sole author of the Materials, that you have the right to submit the Materials to Company, that the Materials are your original creations, and that the Materials are not infringing of any copyrights, confidentiality, patents, or other intellectual property rights.
4. You agree that you must give Company written notice by registered or certified mail at the address set forth above of any claim you may have arising or in connection with the Materials or this Agreement within ninety (90) calendar days of the date on which you first acquire knowledge of the claim or of facts to put you on notice of such a claim.
5. This Agreement will be governed by and construed according to the laws of the State of California. Any disputes between the parties arising out of or related to this Agreement or the Materials shall be resolved exclusively by binding arbitration referred to the American Arbitration Association ("AAA") in accordance with the commercial rules of the AAA in effect at the time of arbitration except as inconsistent with this section 5; the parties expressly waive the right to a trial by jury. Arbitration shall be conducted by a single independent arbitrator appointed by the AAA. Such arbitrator shall have substantial experience in the field of intellectual property. The arbitral proceedings shall be conducted in the English language, and all hearings shall take place in San Francisco, California. The arbitrator shall apply the law specified in this section 5 without regard to the choice of law rules of any jurisdiction. No later than ninety (90) days after the arbitrator is selected, the arbitrator shall hold a final hearing to resolve each of the issues identified by the parties, and shall render the award as expeditiously thereafter as possible but no more than thirty (30) days after the final hearing. In making the award the arbitrator shall rule on each disputed issue and shall adopt in whole the proposed ruling of one of the parties on each disputed issue. Any award shall be limited to monetary damages and not injunctive or prescriptive relief. Monetary awards shall be based solely on the amount Company would pay to you for similar elements and shall not exceed the fair market value of the protectible portions of such elements. The existence of any dispute between the parties, the existence or details of the arbitration proceeding, and all related documents, materials, evidence, judgments and awards therein, shall be kept strictly confidential. Except as required by law, no party may make any public announcements with respect to the proceeding or the award, except as required to enforce same. All awards may if necessary be enforced by any court having jurisdiction, in the same manner as a judgement in such court. In the event of any judicial action or arbitration, the prevailing party in such action shall be entitled to collect from the other party its legal fees and expenses incurred in connection therewith, including reasonable arbitration, attorneys and experts fees. Nothing in this section 5 shall preclude Company's right to pursue injunctive or provisional relief at any time.
6. You will hold in confidence and will not disclose, lecture upon or publish any information learned by you or provided or otherwise made available to you during the course of discussions, interviews and/or negotiations between you and the Company related to the Offer of Services or the Materials. Company may in its discretion retain a limited number of copies of the Materials and use same for evaluation purposes, with no obligation to return same; you hereby release Company from any claims arising from release of or loss or damage to such copies.
7. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid or unenforceable in any respect, such invalidity shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid provision had never been contained herein. This Agreement states the entire agreement of the parties with respect to its subject matter. No modification of or amendment to this Agreement will be effective unless in writing and manually signed by the party to be charged. The provisions of this Agreement shall survive your withdrawal of or the termination for any reason of the discussions or negotiations concerning the Offer of Services, and the assignment of this Agreement by the Company to any successor in interest or other assignee (and said assignment by Company shall not require your consent). This Agreement will be binding upon your heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

This Agreement shall be effective as of the date set out below. You have read this Agreement carefully, and understand and agree to all of its terms.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name