

# Homesteader Enterprises, Inc.

## Editorial Package Purchase Agreement

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Homesteader Enterprises, Inc., a Massachusetts corporation with its principal place of business located at Knox Trail Office Bldg., 2352 Main St., Concord, MA 01742 (hereinafter "HEI") and

\_\_\_\_\_ of

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_, hereinafter called "You" or "Buyer."

\_\_\_\_\_  
(phone)

NOW THEREFORE, in consideration of the promises and undertakings set forth herein, the parties hereby agree as follows.

### 1. SALE OF EDITORIAL.

Subject to your compliance with this agreement, HEI will provide an editorial/graphics package geared to the new homeowner market each month. The package is anticipated to include camera-ready articles (available on our website or delivered electronically), often including photos, graphics, and other editorial information.

You are free to use the articles only in your local territory, as you see fit. You must use the editorial materials within one-hundred twenty (120) days of receipt, unless otherwise approved by HEI. You are responsible for proofreading all articles. You are solely responsible for the content published by you.

If HEI fails to deliver two (2) consecutive monthly editorial packages, Your sole and exclusive remedy is a refund of any fee paid in advance for the package(s). HEI shall not be responsible for any loss or damage you may incur or sustain by HEI's failure to provide an editorial package for any reason, including, without limitation, lost profits or consequential damages.

## 2. FEES.

You shall pay to HEI a fee of Three Hundred Dollars (\$300) per package for the first six (6) editorial packages available or received (i.e., downloaded off the website, mailed, or sent by other means) by you. The next six packages will be at a rate of Four-Hundred Dollars (\$400) each. Thereafter, the rate will be Five-Hundred Dollars (\$500) per package. All packages must be prepaid. These rates will be higher if your territory (described below and in Schedule A) exceeds 300,000 in “general population” according to the most recent census bureau figures.

If the population is between 300,000 and 500,000, the rates will be 25% higher. If between 500,000-1,000,000, the rates will be 50% higher. If the general population is above 1,000,000 but less than 1,500,000, your rate will be 100% higher. If the general population is between 1,500,000 and 2,000,000, your rate will be 150% higher. If the general population is over 2,000,000, your rate will be 200% higher. If the general population is higher, it will be set at \$900 per 1,000,000 population, or any portion thereof.

The above prices are for packages purchased consecutively. If you decide to skip any one package, the next package will cost \$100 extra. If you skip more than one package in a calendar year, HEI may set its own price and/or may refuse to sell the package to you and may terminate this agreement. Failure to prepay a package for two (2) consecutive months shall be grounds for termination of this agreement by HEI.

Should you wish to reserve a territory but are not yet publishing in that territory, HEI may allow you up to six (6) months with no additional fee payable for any territories you’ve reserved but are not publishing in. After six months, you must either pay for the editorial in the areas to continue to reserve them, at the rate schedule above, or you must write to HEI and reduce the scope of your reserved area so that HEI is free to sell the editorial to another party in those areas where you are not publishing. Failure to pay for a reserved area or failure to pay for an area where you are publishing is grounds for immediate termination of this agreement by HEI.

No Use After Expiration/May Not Use Old Articles. Contents of the Editorial Package may not be used after this Agreement is terminated for any reason, after this Agreement expires, or one-hundred twenty (120) days after the editorial package is received by You. Should any article, artwork, graphic, or clip art supplied by HEI be used, published, or reproduced after the expiration or termination of this agreement, or 120 days after your receipt of the editorial package in which the article, artwork, graphic or clip art appeared, then You shall pay HEI \$500 for each article, graphic, photo, or clip art used, on demand.

Protected Sources. During the term of this Agreement and after the termination or expiration of this Agreement, You may not contract directly or indirectly with any writer, columnist, syndicate, artist, or photographer (“HEI’s Writers whose work was reproduced in any editorial package you received during the term of this Agreement, except as provided herein or as otherwise agreed by HEI. If You use, publish, or reproduce, in any printed or electronic media, any article, photo, or graphic by HEI’s Writers, You shall pay HEI \$500 for each article, graphic, photo, or clip art used, on demand.

Purchase of editorial is for Your use only and editorial You purchase from HEI may not be resold, retransmitted, or reauthorized for use to any third party by You, and may not be used outside Your Territory as listed in Schedule A or otherwise modified by agreement between You and HEI.

No Website Use. You may not use any article supplied by HEI on any website, whether operated by you or not.

### **3. TERRITORY.**

A. GRANT OF TERRITORY. Subject to Your compliance with this Agreement, for the term hereof, HEI hereby grants to You the territory described in Schedule A. Subject to Your compliance with this Agreement, HEI will not authorize another person or entity to start a publication for new or recent homeowners nor will HEI sell editorial to another person or entity to publish in Your territory.

1. Limited Exclusivity. So long as You comply fully with this Agreement, except as otherwise provided herein, during the term HEI shall not operate or assist another to operate in the Territory, a business that publishes "THE HOMESTEADER" or any other directly competitive publication under any name or mark. Notwithstanding the preceeding sentence, however, You agree that HEI may engage in certain promotional activities or sell other products or services in the Territory but otherwise will not solicit actual or potential local customers of Yours in the Territory.
2. Marks. You have no right to use and shall not use any trademarks, service marks, logos or commercial symbols of HEI, including without limitation "The Homesteader," nor any mark, logo, or commercial symbol similar thereto in HEI's view, at any time. If you do, you will pay HEI the sum of \$10,000 on demand.

You acknowledge that outside your Territory, HEI may use and allow others to use its Marks and operate or allow others to operate similar or competitive businesses or publications and engage in such activities as it deems appropriate.

Any use of HEI's marks by You without authorization shall allow HEI to terminate this Agreement without further notice.

3. Distribution. Any unauthorized distribution, resale, or reuse of any articles or other editorial package components at any time or place outside your territory is prohibited and shall allow HEI to terminate this agreement immediately on written notice. Distribution shall be defined as circulating more than fifty (50) copies of any publication outside the Territory. In addition, nothing provided by HEI may be posted on any website or otherwise used in electronic commerce.
4. HEI or its licensees or affiliates may attempt to sell national or regional advertising and that may involve contacting current or prospective advertisers of yours, either inside or outside your territory. HEI will not solicit any single-location advertisers in your territory but may attempt to sell advertising or other services to multiple-location customers in or near your territory. You acknowledge and agree that HEI and its system of publishers in other states

may solicit and sell advertising to so-called National Accounts (accounts with more than one business location outside your territory) and the sole remedy of any inadvertent solicitation or sale of one of your “local” accounts by HEI or its licensees or affiliates shall be the reassignment of the account to you.

If a local customer seeks to advertise outside Your territory, You must check with HEI first to see if the territory has been assigned to another party, including a licensee or affiliate of HEI. If so, You agree to only offer advertising outside Your territory on such terms as you have agreed to with owners of the applicable territories, subject to any rules then in effect for multiple-edition advertising for Homesteader (and affiliated) publications.

You are free to accept or reject any advertisements sold into any of your products or publications.

5. You further agree, during the term of this agreement, and for three (3) years after its expiration or termination, not to start a “new or recent homeowner” publication or service in any territory owned by an HEI licensee or affiliate.
6. You acknowledge that you have received no training or assistance in starting or operating your publication from HEI or any of its affiliates.

#### **4. TERM AND RENEWAL.**

- A. **TERM.** Subject to the termination provisions mentioned elsewhere, the term of this Agreement shall run for a period of one (1) year from the date of this Agreement set forth above.
- B. **RENEWAL.** Upon the expiration of the initial term, the Agreement may be renewed for additional yearly terms upon mutual agreement so long as You satisfy the following conditions:
  1. You shall have complied with this Agreement during the term and shall be in compliance at the time of renewal;
  2. You shall be current on all amounts owed to HEI.
  3. You agree to hold HEI and its officers, directors, employees, licensees, and affiliates harmless for any actions undertaken during the previous term.
  4. You shall furnish HEI with a release of all claims that you may have against HEI, its principals and affiliates, in such form as HEI may direct.

#### **5. PROPRIETARY MARKS.**

You have no rights to use any trademarks, service marks, logos, or commercial symbols owned by Homesteader Enterprises, Inc., its officers or its principals, or anything, in HEI’s view, similar to HEI’s marks, logos, or symbols.

Furthermore, you may not use these Marks during the operation of the publishing business or thereafter, including after the expiration or termination of this Agreement. Nor may you describe yourself as part of HEI’s system to customers, suppliers, or others.

## **6. Relationship of Parties**

The parties agree that this Agreement does not create a fiduciary or a franchise relationship between us. You and HEI are and shall be independent contractors. Nothing in this Agreement is intended to make either party a general or special agent, legal representative, joint venturer, partner or employee of the other party for any purpose.

You shall not make any express or implied agreements, guarantees or representations, or incur any debt in the name of or on behalf of HEI. HEI shall not be obligated by or have any liability under any agreements or representations made by You, nor shall it be obligated for any damages to any person or property directly or indirectly arising out any publishing activity by You or Your use of any editorial materials supplied by HEI.

You specifically agree that you are purchasing an editorial product only and are not receiving other products or services including without limitation, no other training, license, or franchise to operate a publishing business. HEI is not helping you set up a business and you acknowledge that you are not relying on HEI to help you start a business or run a business.

You further agree that HEI is not providing any training or ongoing assistance to You in the operation of a publishing business or otherwise; that you have sufficient experience to operate a publishing business without any assistance from HEI; and that you have not been given permission to use any of HEI's intellectual property, promotional materials, or trademarks; and that You have not been promised nor do you expect any assistance in the start-up or operation of your business.

Choice of Law and Forum for Resolving Disputes. This agreement and all rights and obligations of the parties shall be governed by the law of the Commonwealth of Massachusetts without regard to its conflicts of laws rules. Further, all disputes between you and HEI, as well as our agents, representatives, directors, officers, principals, shareholders and other equity holders, will be resolved by litigation in the Commonwealth of Massachusetts in the state or federal court located closest to HEI's principal place of business.

## **7. Territory Boundaries**

The Territory described in Schedule A and agreed to by HEI is used to determine the cost of the editorial package. You are free to request additional territories and this contract may be amended from time to time by mutual agreement by adding certain towns, counties, or zip codes. So long as the additional territories have been approved by HEI and you pay for the editorial as specified in the rate structure above, HEI will not sell the editorial, nor assist anyone else (including itself) in starting a local "new or recent homeowner" publication for such additional territory during the term of this Agreement, unless the agreement is terminated because of non-compliance by You.

Further, so long as You continue to pay for the editorial at the specified rate (according to the current population of the Territory), HEI shall not terminate this Agreement without cause unless you are given at least three months notice.

## **8. Additional Acknowledgements**

You acknowledge that You are not purchasing a franchise, license, rights, or a business opportunity within the meaning of applicable law (NY or federal franchise sales laws or business opportunity laws) and that in consideration of HEI's furnishing editorial, You will not assert a claim under any such laws in any legal proceeding;

Other than the editorial packages, seller is not selling and buyer is not buying (and does not expect to receive) a marketing program of any kind nor any technical marketing, financial, or operational assistance;

You acknowledge and agree that HEI has not provided any training or assistance in starting Your publishing business;

The editorial packages are not purchased to start a business;

HEI has not represented to You that you could earn income in connection with editorial packages in an amount greater than what you pay for them;

HEI has not represented that we are providing a marketing program that would enable You to derive income from the purchase in an amount greater than You paid for it.

This is the entire agreement between the parties regarding its subject matter. All amendments must be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement in \_\_\_\_\_ counterparts on the day and year first above written.

HOMESTEADER ENTERPRISES, INC. (HEI):

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

Allen Nitschelm, President

You/Buyers: \_\_\_\_\_

\_\_\_\_\_

SCHEDULE A

Your Territory is described as follows: