

## Kentucky Press News Service Agreement

This Agreement is entered into by the undersigned Member Newspapers of the Kentucky Press Association ("KPA") and hereby establish the Kentucky Press News Service ("KPNS"), formerly known as the News Content Service. Each of the foregoing are collectively and individually a "Newspaper."

The Newspapers agree as follows:

1. **"Content" sharing.** The Newspapers will share content with each other via a password-protected FTP or World Wide Web Site (the "Site"). The password is available to Member newspapers only, and should be protected from dissemination to individuals that are not employees of a Member Newspaper. Any materials posted to the Site are herein referred to as "Content." Except as expressly set forth herein or in any written side-agreement, any Newspaper may publish any Content as permitted herein. The Site will be hosted and maintained by the KPNS. For avoidance of doubt, the provisions and requirements of this Agreement do not apply to the use by any Newspaper of information from another Newspaper in such manner as would be permitted by law in the absence of this Agreement (e.g., as source material, fair use, etc.).

(a) KPNS members shall give KPNS access to their locally written content. If the KPNS member has a website "paywall" or any other method used to control access to the site, the member shall provide KPNS with the means to access the content. If the member posts only portions of stories on its site in lieu of a "paywall," the member agrees to give KPNS the full version of stories, via email, if requested.

2. **Story budgets and embargoes.** The KPNS director or designee will prepare a daily list of available content, which will be emailed to Newspaper editors ("Story Budget"). If a story contains a photograph, a low-resolution image will be included with a brief description of that story, along with a photo caption. Each Newspaper must contact the originating Newspaper to obtain a high resolution image suitable for publication, with appropriate attribution. In connection with the scraping of any Content to the Site, each Newspaper must notify KPNS promptly if there are any restrictions on the use or timing of the use of the Content.

3. **Licenses granted.** Each Newspaper hereby grants a license to the other Newspapers to publish any Content contained in any online or published version of the Newspaper, and in any "replica" or "whole image" reproduction of the print newspaper publication, such as microform, PDF, or other representation of the print newspaper publication as it appeared in print.

4. **Exception to licenses.** The license contained herein does not include the right to publish any Content on a Newspaper's article database (whether maintained by the Newspaper itself or by a third party, such as Nexis or Newsbank), or otherwise, except as expressly permitted in section 3.

5. **Bylines and credits.** For publication in the print version of participating Newspapers, the Newspapers agree that they are authorized to publish only a text version of the Content available on the KPNS site. The publication of any Content by any Newspaper must include the

original byline posted with the Content as well as a prominent credit to the originating Newspaper. For publication online, the Newspapers agree they are authorized to publish only a link to the Content available on the KPNS site. The link will take users to the originating Newspaper's website.

6. **Discretion to edit Content; legal responsibility for claims arising from editing.** The KPNS director or designee may edit Content, provided that any such editing must be minor in nature and may not substantially or materially alter the meaning of the original Content. If substantial editing is appropriate, the KPNS director or designee will contact the originating Newspaper for permission. Any substantial editing is subject to the approval of the originating Newspaper. The Newspapers agree that each Newspaper is permitted to shorten Content to a news brief and agree that credit to the originating Newspaper will be printed.

7. **Non-statutory corrections, clarifications, retractions, and effect on defense and indemnity under this contract.**

(a) **Notice of claims of actionable or inaccurate Content.** If any Newspaper receives any communication challenging the accuracy of Content, or claiming that Content violates any law (*e.g.*, court order, statute, ordinance, regulation) or asserted legal right, that Newspaper promptly and directly must inform the originating Newspaper about such communication as well as the KPNS. The KPNS will promptly post a notice on the Site, and the Newspaper must provide a copy of such communication to the originating Newspaper and to any other Newspaper that requests it.

(b) **Proffering a correction, clarification, retraction.** If the originating Newspaper decides to publish any statement or article to correct, clarify, apologize for, or retract any portion of any Content (collectively or individually, "correction"), it must notify and proffer such correction to all other Newspapers for their publication. This notification and correction will be available on the News Content Service's homepage as well as emailed to all Newspapers.

(c) **Conditional duty to publish correction.** After consulting with the Newspaper originating and proffering a correction, any Newspaper may decline to publish the proffered correction if that Newspaper decides that the correction does not sufficiently correct or clarify or retract the contested Content or may injure that Newspaper's legal or business interests if published or does not believe the correction is warranted. Otherwise, each Newspaper that published the challenged Content must publish the correction proffered by the originating Newspaper, or a correction of its own that likewise serves as a correction to the challenged Content. Actual or perceived injury to a Newspaper's reputation or goodwill resulting from admitting to its readers that it published an error is not a sufficient interest to justify declining to publish a correction.

(d) **Forfeiting right to defense and indemnity for not publishing correction; waiver of right to cross-claim, third party claim.**

(i) If a claimant has agreed to surrender a claim against one or more Newspapers based on published Content in exchange for those Newspapers publishing a correction approved and proffered by the originating Newspaper, the Newspaper receiving such

agreement or offer from the claimant must promptly notify KPNS of the applicable Content of such agreement or offer. KPNS will then publish a notice on the Site. If the Newspaper that originated the Content approves the correction, any Newspaper that does not publish the approved and proffered correction has no right under this Agreement to defense or indemnity against such claim, except as to expenses incurred before the date upon which the correction was to be published. Also, such Newspaper waives any right to assert a cross-claim or third party claim against any other Newspaper in defending against a claim that would have terminated by the claimant's agreement if the Newspaper had published the approved correction. This entire paragraph (d) (i) applies even if the Newspaper declined to publish the correction for a reason set forth in Section 7(c).

(ii) No Newspaper forfeits the right to defense and indemnity, however, if that Newspaper did not publish the Content that is the subject of the claim, even if that Newspaper also did not publish the proffered and approved correction.

(iii) Even if the originating Newspaper approves a correction that is the subject of a claimant's agreement or offer to surrender a claim, no Newspaper which published Content forfeits the right to defense and indemnity by not publishing a correction that criticizes the non-originating Newspaper or its personnel, attributes liability or responsibility to that Newspaper or its personnel for any act or omission of any kind, criticizes any person or place, or attributes to that Newspaper any quality, characteristic, or opinion to which it does not consent.

8. **Warranty of Content.** Each Newspaper posting Content warrants and represents that it has the right to share the Content and to permit the other Newspapers to publish such Content as expressly permitted herein.

9. **Duty to defend and indemnify.** Except as described in paragraphs 6 and 7 (d), each originating Newspaper will defend and indemnify the other Newspapers, their parents and affiliates and respective officers, directors, employees, and representatives against any claims, costs, expenses, and liabilities (including reasonable attorneys fees and court costs) arising from claims of defamation, infringement of personal or proprietary rights of third parties, or violations of law (*e.g.*, court orders, statutes, ordinances, regulations) based on Content published as permitted hereunder. The indemnified Newspaper may participate in the defense by counsel of its choosing at its own expense. Such claims, costs, expenses, and liabilities are "indemnifiable claims."

10. **Settlement of indemnifiable claims.**

(a) The originating Newspaper may settle any indemnifiable claim on behalf of any or all Newspapers by agreeing that the originating Newspaper or its insurer will pay money in exchange for an adequate release of all liability encompassing any or all Newspapers against which an indemnifiable claim has been asserted, and may do so without the consent of any other Newspaper, but must consult each affected Newspaper about the adequacy of the release before agreeing to the release.

(b) The originating Newspaper has no authority to settle an indemnifiable claim by obligating another Newspaper to perform any service or function unless that Newspaper

consents, but failure of that other Newspaper to consent could result in that Newspaper's loss of defense and indemnity rights under paragraph 7.

(c) Without the originating Newspaper's consent, another Newspaper may accept an offer to settle an indemnifiable claim on behalf of itself only, but accepting a settlement offer without the originating Newspaper's consent waives the settling Newspaper's right to all further defense and to indemnity, but not as to defense expenses incurred before accepting the offer.

(d) A Newspaper waives the right to defense and indemnity by agreeing, as a condition of settling an indemnifiable claim, that its personnel will testify against any other Newspaper (including against that Newspaper's employees, agents, or contractors).

11. **Disengaging from agreement.** Any Newspaper can disengage from this Agreement at any time by providing written notice thereof to the Kentucky Press Association Executive Board. This Agreement may be terminated without cause upon a majority agreement of all of the Newspapers. In the event any Newspaper has breached the terms of this Agreement, the Kentucky Press Association's Executive Board may terminate such Newspaper's participation if such Newspaper does not cure such breach within three (3) business days of its receipt of written notice of such breach and demand for cure. Paragraphs 3, 6, 7, 8, 9, 10, and 12-14 will survive any termination or disengagement.

12. **Waiver of warranties and responsibilities for maintaining the Site.** The KPNS disclaims any and all warranties and responsibilities with respect thereto, including with respect to the manner in which the Site functions, viruses, security, the continued maintenance thereof, and any and all other matters. Each Newspaper expressly waives any and all claims against the KPNS arising in any way out of or relating to the Site.

13. **No liability to each other for damages.** Except for the obligations in paragraphs 9 and 10, no Newspaper shall be liable to any of the other Newspapers for any indirect, consequential, special or punitive damages.

14. **Arbitration.** Any and all claims arising from this Agreement and solely between or among the parties to this Agreement shall be submitted to binding arbitration. However, a Newspaper shall have the ability to seek appropriate indemnity as provided in this Agreement in a court.

15. **Fully integrated agreement.** This Agreement constitutes the entire agreement and understanding between the parties, supersedes prior agreements between the parties, whether oral or written, with respect to the subject matter hereof, is binding on the respective successors and permitted assigns of the parties, and may not be altered except in a document signed by the party to be bound thereby. No contrary or inconsistent terms, conditions, restrictions, or other provisions in delivery memos, invoices, letters, or other documents will be binding on a party unless expressly agreed to in writing by that party. This Agreement will be governed by the laws of the State of Kentucky applicable to contracts to be wholly performed therein. This Agreement may not be assigned by any Newspaper without the prior written consent of the Kentucky Press Association Executive Committee. Any notices must be sent by overnight delivery, certified mail, return receipt requested, or fax accompanied by first class mail, to the KPNS.

16. **Insurance.** Each Newspaper agrees to have a libel insurance policy or errors and omissions insurance policy covering the publication of the Content herein and that all premiums and deductibles are paid timely and in full. KPA agrees to carry for KPNS members a \$1 million libel insurance policy covering KPNS content only that is published or broadcast by KPNS members only.

17. **Counterparts; facsimile signatures.** This Agreement may be signed in counterparts and by facsimile.

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

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

Newspaper: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_