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12 CV 2381

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE BAER

PAXFIRE, INC.,

Plaintiff,

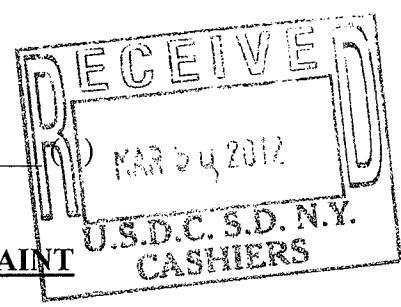
-against-

NAMESPACE STRATEGY GROUP, LLC,

Defendant.

12 Civ. \_\_\_\_\_

COMPLAINT



JURY TRIAL DEMANDED

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Paxfire, Inc. ("Paxfire"), by its attorneys, Hoffman & Pollok LLP, as and for its  
Complaint, alleges as follows:

**NATURE OF THE ACTION**

1. Paxfire is an Internet company that provides services to internet service providers ("ISPs") by redirecting user errors in browser addresses (e.g., incorrect or incomplete information) to the desired website, and in so doing generates revenue. In 2007, Paxfire entered into a contract with defendant Namespace Strategy Group, LLC ("Namespace") in connection with the redirection of user errors in browser addresses to retail websites with whom Namespace had a relationship. During the course of the relationship, Namespace was compensated by retailers for redirecting queries to them using Paxfire's software and hardware and, in turn,

Namespace would remit an agreed-upon percentage of the amount it received to Paxfire on a monthly basis.

2. In May 2010, Namespace failed to pay Paxfire the share of the revenue owed to it for April traffic. Paxfire tried to address this with various Namespace personnel. First, Paxfire's phone calls were not returned; after avoidance, Paxfire then received answers to its inquiries about payment reflecting Namespace's decision to breach the agreement. Although Namespace reported to Paxfire on June 30, 2010 the amounts actually due for April (which was more than a month late), Namespace failed to make payment in May or at any time thereafter for the amounts it owed Paxfire for April 2010 forward, thereby breaching the agreement. Namespace attempted to defend its nonpayment through a series of frivolous claims and actions. As a result, the parties' relationship ended. Before its conclusion, however, Namespace had also failed to pay Paxfire amounts due for May and June 2010. In sum, Namespace pocketed no less than \$317,000 of revenue owed to Paxfire for the period April-June 2010.

#### **PARTIES, JURISDICTION AND VENUE**

3. Paxfire is a corporation duly authorized to do business, incorporated under the laws of the State of Delaware, and maintaining its principal place of business at 43490 Yukon Drive, Suite 102, Ashburn, Virginia 20147.

4. Namespace is a limited liability corporation organized under the laws of the State of Massachusetts, maintaining its principal place of business at 35 Main Street, Topsfield, Massachusetts 01983.

5. This Court has jurisdiction over the instant action pursuant to 28 U.S.C. § 1332 because it involves citizens of different states and the amount in controversy exceeds \$75,000.

6. Venue for this action properly lies in this District pursuant to the parties' Distribution Agreement dated November 26, 2007 ("Agreement"), attached as Exhibit A, which specifies: "The federal and state courts sitting in New York, New York shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement."

### **FACTUAL ALLEGATIONS**

7. Users of the Internet often navigate websites via a browser (*e.g.*, Internet Explorer). In doing so, users type a web address called a domain name (*e.g.*, aol.com), into the browser's address bar. The domain name is the general reference to the website and forms part of a URL, or "Uniform Resource Locator" which is a unique address. When entered, the domain name is typically sent to the ISP's server, which is a system that performs computer processing for the ISP. The ISP's server then uses the Domain Name System ("DNS"), which acts like a phone book for the Internet, to translate the domain name (*e.g.*, aol.com) into an Internet Protocol ("IP") address that is typically a long string of numbers. In that way, a user can access the website he types into the address bar of his browser. From time to time, however, a user may mistype the domain name (*e.g.*, "aor.com" instead of "aol.com"). If the DNS does not contain a listing corresponding to the mistyped name, the browser normally returns an error message to the user. There are services that intervene in this process to help direct mistyped domain names. Paxfire offers such a service.

8. Paxfire provides services to ISPs, such as Verizon, at no upfront expense to the ISPs. Paxfire maintains a system (a combination of hardware and software) that processes mistyped URLs, and URLs that do not resolve to IP addresses that exist on the Internet. Paxfire's technology is part of the services provided by ISPs to their customers/users which detects errors in browser addresses and routes them to the appropriate website, thereby

enhancing the browser experience and preventing the user from receiving notification of an error. The entire process, carried out by Paxfire's technology, takes seconds at most and is invisible to the user. Paxfire shares revenue generated by such means with those ISPs to which it provides its service.

### **The Paxfire-Namespace Agreement**

9. Namespace is a provider of a service that allows users of the internet to access websites of third parties by using a short key word, trade name, or search phrase in lieu of a URL ("Namespace Service"). Agreement at p. 1. Namespace informed Paxfire in 2007 that it operated a service which, through relationships with retailers and advertising aggregation services, identified key words in a user's query and, if any of those key words matched key words in Namespace's software, redirected the customer to a website of the matching retailer. (An aggregator is an online affiliate advertising company, such as Commission Junction, LinkShare and Google.com, that has agreements with third party brands and trademark holders to provide advertising content to publishers, such as Paxfire.) Under the Agreement, Namespace granted Paxfire a nonexclusive license to use Namespace's Service in its address bar search and error traffic.

10. The underlying relationship between the ISPs, Paxfire and Namespace functioned as follows: If a user typed "Sears" in the address bar of his browser, that would not be a validly-phrased search and ordinarily would generate an error message to the user. Paxfire's technology, however, would redirect that query to Namespace; the Namespace Service would read the query and match it with its key words. If Namespace had a relationship with Sears, it would recognize the key word and redirect the customer to the Sears website.

11. Paragraph 3.1 of the Agreement provides that Paxfire, defined as the “Company,” will receive the following compensation:

Commissions. NAMESPACE agrees to pay a percentage of sixty-five (65%) of Fees<sup>1</sup> generated by Company’s users to Company as a commission in return for compensable Internet user actions generated by Company’s implementation of the NAMESPACE Service.

In other words, during the course of the Agreement, Namespace was paid a certain amount by its retailers and aggregators for redirecting queries to them, and Namespace was then obligated to pay 65% of the amount it received to Paxfire.

12. Paragraph 3.1 further provides:

Commissions payable to Customer [sic, should be “Company”] shall be paid by NAMESPACE within thirty (30) days of the end of each calendar month in which Fees subject to Customer’s [sic] percentage are received by NAMESPACE from NAMESPACE Keyword Customers and NameSpace [sic] Paid Search Customers.

Namespace was also required to provide Paxfire with detailed reports on a monthly basis stating the number of Paxfire-referred users and other compensable user actions, together with a commission payment. Agreement at ¶ 3. In practice, Namespace sent a preliminary report during the first ten days of each month to Paxfire and remitted payment to Paxfire on the 25th day of the month following the compensation period of the prior month (e.g., payment on January 25<sup>th</sup> for redirects for which payment was received during the period December 1-December 31). Paxfire, in turn, would compensate the ISPs with which it had agreements to redirect address bar error traffic, by forwarding a percentage of the commissions it received to the ISPs.

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<sup>1</sup> “Fees” are defined as the sums paid by Namespace Keyword Customers and Namespace Paid Search Customers when the service is performed. The former encompasses Namespace advertising customers that agree to pay for the delivery of potential buyers online and the latter for advertising customers that agree to pay for “compensable Internet user actions such as clicking through a paid search link generated by such customer’s implementation of the NAMESPACE Service.” Agreement at ¶¶ 1.0, 1.4 and 1.5.

13. Prior to February 2010, the commissions Paxfire received from Namespace began to decrease from their historic levels. Both Paxfire and Verizon Online LLC (“Verizon”), one of Paxfire’s largest ISP customers, were dissatisfied with Namespace’s performance in the revenue area and, as a result, Paxfire considered terminating the relationship with Namespace. On its behalf and on Verizon’s, Paxfire requested and Namespace, in order to retain the business arrangement and satisfy Verizon, agreed to increase the percentage of revenue to be paid to Paxfire under Paragraph 3.1 of the Agreement from sixty-five percent (65%) to seventy-five percent (75%) for all ISPs except as to Verizon which would be 80%. According to a confirmatory email from Namespace’s CEO on February 24, 2010, the new percentage was retroactive to February 1, 2010.

14. In May 2010, Namespace did not pay Paxfire its commissions for revenue Namespace received in April by May 25<sup>th</sup>. Paxfire attempted to address this with Namespace personnel, but Paxfire’s phone calls and emails regarding the missed payment were not returned. After such avoidance, Namespace’s CEO sent an email to Paxfire on June 4, 2010, claiming:

Under article 3.0 of the Agreement, payment is due thirty days after the month in which payment was received by Namespace. Under our agreement, all payments are current. The next payment due date under our agreement is June 30 for payments we receive in May.

This communication contained, at a minimum, misleading information, if not one or more factual falsehoods. Namespace knew it had not remitted payments due for April 2010 which would typically have been paid on or about May 25, 2010 and, therefore, payments were not current. In fact of the twenty-eight preceding monthly payments, all of which had been made by wire transfer, twenty-seven had been made between the 23<sup>rd</sup> and 28<sup>th</sup> of the month, with thirteen

having been made on the 25<sup>th</sup>.<sup>2</sup> In the absence of an explanation, which was never forthcoming, Namespace breached the Agreement by unilaterally extending the date the April payment was due.

15. Confirming the misleading nature of Namespace's June 4 email, on June 30, after Namespace had purportedly sent notice terminating the Agreement, Namespace emailed the (late) final revenue reports for April to Paxfire, specifically stating that a "a check for the revenue we have received from advertisers, as per the terms of the contract, will be sent...." In a second communication, a June 30 letter from Namespace's CEO, Paxfire was told that a check was enclosed purporting to be payment for April. No check was ever received, nor has any payment been made for April, May and June 2010, after which the Agreement was terminated.

16. Attempts to resolve the dispute over a lengthy period of time failed and this suit ensued.

**FIRST CAUSE OF ACTION**  
(Breach of Contract)

17. Paxfire repeats and realleges the allegations contained in Paragraph 1-16 as if fully set forth herein.

18. Paxfire had a contractual relationship with Namespace, the terms of which are set forth in Exhibit A hereto.

19. Paxfire fully performed its obligations under the Agreement, except when excused from performance due to Namespace's own actions.

20. Namespace breached its duties under the Agreement by, among other things, failing to: i) pay the commissions owed to Paxfire for the months April 2010, May 2010 and

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<sup>2</sup> The sole exception was the payment for October 2009 traffic, which was made on December 1, 2009. In that instance, Namespace communicated with Paxfire so Paxfire was not left in the dark about what was happening.

June 2010 and ii) timely and accurately report to Paxfire amounts owed to Paxfire for April 2010, and make any required report of amounts owed to Paxfire for May and June 2010.

21. Paxfire was damaged thereby in an amount to be proved at trial but in no event less than \$317,000.19.

**SECOND CAUSE OF ACTION**  
(Anticipatory Breach of Contract)

22. Paxfire repeats the allegations contained in Paragraphs 1 -16 as if fully set forth herein.

23. At all relevant times, Paxfire had performed its obligations under the Agreement and stood ready to perform its obligations thereunder.

24. Namespace by word and deed communicated its absolute and unequivocal refusal to perform its obligations under the Agreement and Paxfire fully performed its obligations under the Agreement.

25. Paxfire was damaged thereby in an amount to be proved at trial, but in no event less than \$317,000.

**THIRD CAUSE OF ACTION**  
(Unjust Enrichment)

26. Paxfire repeats the allegations contained in Paragraphs 1-16 as if fully set forth herein.

27. Paxfire's actions benefitted Namespace.

28. Namespace, at all relevant times, was fully aware of and appreciated the benefits conferred on it by Paxfire.



29. Namespace accepted and retained such benefits under such circumstances that it would be in equitable for Namespace to retain such benefits without payment of value to Paxfire.

30. Namespace was unjustly enriched, and is liable to account for and pay to Paxfire such amounts, to be determined at trial, but in no event less than \$317,000.

**FOURTH CAUSE OF ACTION**  
(Quantum Meruit)

31. Paxfire repeats the allegations contained in Paragraphs 1-16 as if fully set forth herein.

32. To the extent that the Agreement is determined to be invalid or unenforceable, Paxfire is entitled to compensation for directing DNS traffic to Namespace during the period April 1 through June 30, 2010.

33. Paxfire directed such traffic to Namespace with the expectation that it would be compensated by Namespace for such services.

34. Namespace understood and agreed during this period that Paxfire was directing such traffic to Namespace in return for compensation at commercially reasonable rates.

35. Notwithstanding the foregoing, Namespace has failed and refused to compensate Paxfire for these services, even though Namespace benefitted from the services Paxfire provided to it.

36. Paxfire has been injured by Namespace's conduct in an amount to be proved at trial.

WHEREFORE, Paxfire respectfully prays for the entry of judgment against Namespace as follows:

- A. An award of damages in an amount to be determined at trial but in no event less than \$317,000.

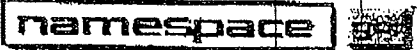
- B. Awarding prejudgment interest at the maximum rate permitted by law; and
- C. Awarding attorneys fees, and such other and further relief as the Court deems proper.

Dated: New York, New York  
March 29, 2012

HOFFMAN & POLLOK LLP

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Lisa Rosenthal (LR-3738)  
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**EXHIBIT A**



### DISTRIBUTION AGREEMENT

Company Name: Paxfire, Inc.	Contract Contact: Doug Armentrout
Company Address: 462 Herndon Parkway, #201 Herndon, VA 20170-5233	Technical Contact: Mike Sullivan
	Phone: (703) 744-4213
	Fax: (860) 364-9669
Website: www.paxfire.com	E-Mail: darmentrout@paxfire.com

This Distribution Agreement (the "Agreement") is made by and between Namespace Strategy Group, LLC, 200 Broadway, Suite 303, Lynnfield, MA, a Massachusetts limited liability corporation ("NAMESPACE"), and the party identified above as Company ("Company"), both of which are referred to in this Agreement as the "Parties," as of the date it is executed by NAMESPACE ("Effective Date")

WHEREAS, NAMESPACE is a provider of a service that allows users of the Internet to access the Web sites of third parties by using a short keyword, trade name, or search phrase in lieu of a Uniform Resource Locator ("URL"), which service is referred to in this Agreement as the "NAMESPACE Service"; and

WHEREAS, Company is a provider of search and error redirection technology and services "Company Services"; and

WHEREAS, NAMESPACE and Company desire that Company be able to use the NAMESPACE Service in conjunction with Company's services on the terms and subject to the conditions set forth below;

NOW THEREFORE, the Parties agree as follows:

#### TERMS AND CONDITIONS

**1.0 Definitions.** As used in this Agreement:

1.1 "Fees" means the sums paid by NAMESPACE Keyword Customers and NAMESPACE Paid Search Customers to NAMESPACE when the NAMESPACE Service is performed. As used in this Agreement, "Fees" includes both Navigation Fees and Paid Search Fees.

1.2 "Keyword" means a proprietary exact match natural language Web address assigned by NAMESPACE to a NAMESPACE Keyword Customer that can be translated into a URL address through the use of the NAMESPACE Service.

1.3 "Keyword Data" means the proprietary data created and maintained by NAMESPACE that contains Keywords, corresponding URLs, titles, descriptions, and other data. Wherever used in this Agreement, the term "NAMESPACE Service" includes the Keyword Data.

1.4 "NAMESPACE Keyword Customer" means

NAMESPACE's advertising customer that agrees to pay NAMESPACE for the delivery of potential buyers online using the direct Keyword navigation function of the NAMESPACE Service.

1.5 "NAMESPACE Paid Search Customer" means NAMESPACE's advertising customer that agrees to pay NAMESPACE for compensable Internet user actions such as clicking through on a paid search link generated by such Customer's implementation of the NAMESPACE Service.

1.6 "Navigation Fee" means sums paid by a NAMESPACE Keyword Customer to NAMESPACE when the NAMESPACE Service is utilized and the Internet user goes to the NAMESPACE Keyword Customer Web page and takes action (e.g. buys something or clicks through).

1.7 "Paid Search Fee" means sums paid by a NAMESPACE Paid Search Customer to NAMESPACE when the NAMESPACE Service

is utilized and the Internet user goes to the search results page provided by NAMESPACE and takes action by clicking on a paid search link

## 2.0 GRANT OF LICENSE

2.1 License Grant. Subject to the terms and conditions of this Agreement, NAMESPACE hereby grants to Company a nonexclusive, personal, non-transferable license under NAMESPACE's intellectual property rights to use the NAMESPACE Service in connection with the Company Services. The NAMESPACE Service licensed to Company includes proprietary trade secrets owned by NAMESPACE or its third party licensors and is provided to Company solely under license and not by sale. NAMESPACE and its third party licensors will continue to own their respective interests and will be entitled to terminate this Agreement and demand the return of their software or other property upon any failure of Company to comply with the terms of this Agreement. NAMESPACE shall have the right to add and remove advertisers and keywords from the NAMESPACE Service at any time at its discretion.

2.2 Related Rights and Obligations. Company agrees to use commercially reasonable efforts to implement the NAMESPACE Service as part of Company's business. Company may not remove brand Keywords or monetize Keyword navigation directly or through a third party for a customer of Company once such customer has been activated on the NAMESPACE Service. Notwithstanding the foregoing, Company may deactivate or remove the NAMESPACE Service from any customer of Company at any time upon written notice to NAMESPACE, and may remove brand Keywords or monetize Keyword navigation directly or through a third party for any customer of Company which is not, at that time, active on the NAMESPACE Service.

## 3.0 Payment/Reports/Audit.

3.1 Commissions. NAMESPACE agrees to pay a percentage of sixty-five (65%) of Fees generated by Company's users to Company as a commission in return for compensable Internet user actions generated by Company's implementation of the NAMESPACE Service. Commissions payable to Customer shall be paid by NAMESPACE within thirty (30) days of the end of each calendar month in which Fees

subject to Customer's percentage are received by NAMESPACE from NAMESPACE Keyword Customers and NameSpace Paid Search Customers.

3.2 Reports. NAMESPACE shall provide Company with detailed reports on a monthly basis (or as otherwise mutually agreed on by the Parties) that shall state, at a minimum: (a) the number of Company-referred click-throughs and other compensable Internet user actions per NAMESPACE Keyword Customer and (b) Company commissions payable. The number of Company-referred click-throughs and other compensable actions will be determined by the monthly reports provided to Company by NAMESPACE based on the NAMESPACE reporting system. Such report will be provided along with the commission payment to be made by NAMESPACE to Company.

3.3 Audit. Company may audit relevant NAMESPACE records during normal NAMESPACE business hours to confirm the accuracy of any reports provided or amounts paid or payable by NAMESPACE to Company under this Agreement. Company may not more than once every twelve (12) months and upon not less than fifteen (15) days prior written notice. If, upon performing such audit, it is determined that NAMESPACE has underpaid Company by an amount greater than five percent (5%) for the period being audited, then NAMESPACE will promptly make adjustment to Company and bear all reasonable expenses and costs of such an audit. If NAMESPACE is found to have underpaid Company by an amount less than five percent (5%) in the period being audited, or if NAMESPACE is found to have overpaid Company, then NAMESPACE will promptly make adjustment to Company or deduct the overpayment from Company's next scheduled payment and Company will bear all reasonable expenses and costs of such an audit.

4.0 Publicity/Marketing. The parties will mutually agree on acceptable marketing and messaging rights and activities associated with this Agreement, including any and all related press releases. Neither party will conduct any marketing or messaging activities in contradiction to such mutually agreed upon program, nor under any circumstance issue a press release related to the other party or this

Agreement, or disclose the existence of this agreement or the nature of the relationship between the parties publically or to any third party, without the prior written approval of that other party.

#### 5.0 Term and Termination.

5.1 Term. This Agreement will commence on the Effective Date and continue for an initial term of twelve (12) months unless earlier terminated as set forth herein. Thereafter this Agreement shall automatically renew for successive one (1) year terms unless either party shall terminate it by giving written notice of termination to the other at least thirty (30) days prior to the scheduled expiration date. At any time during the first ninety (90) days of this Agreement ("Trial Period"), Company may terminate this Agreement at any time upon written notice to NAMESPACE.

5.2 Termination. If either party materially defaults in the performance of any of its material obligations hereunder and if any such default is not corrected within thirty (30) days after notice in writing, the non-defaulting party may terminate this Agreement upon written notice. This Agreement may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, which are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter, (ii) upon the other party's making a general assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to conduct business in the ordinary course. Notwithstanding the foregoing, this Agreement may be terminated by either party upon thirty (30) days prior written notice for any reason or no reason at all.

5.3 Termination. Company may terminate this Agreement by written notice to NAMESPACE immediately upon Company's reasonable belief that the NAMESPACE Service infringes the rights of any third party or if a third party claim is filed alleging the NAMESPACE Service infringes the rights of a third party.

5.4 Effect of Termination. Sections 6 through 14 of this Agreement will survive termination. The termination of this Agreement will have no effect on the commissions due as of the time of termination or on the commissions

previously paid hereunder.

6.0 Warranties/Disclaimer. NAMESPACE warrants and represents that (i) it has the right to enter into this Agreement; (ii) no claim, lien, or action exists or is threatened against the Party which would interfere with the other party's rights under this Agreement; (iii) the execution and performance of this Agreement does not, and shall not violate any agreements, rights or obligations between a Party and any third party, (iv) that it will refrain from engaging in any illegal, unfair, or deceptive trade practices and will be at all times in compliance with any and all laws, statutes, regulations or governmental orders, at common law or otherwise related to the activities contemplated hereunder, and (v) that the NAMESPACE service or NAMESPACE's performance under this Agreement do not infringe upon the rights of any third party.

OTHER THAN THE WARRANTIES SPECIFICALLY SET FORTH HEREIN, THE PARTIES ACKNOWLEDGE AND AGREE THAT THEIR PRODUCTS, SERVICES, AND/OR MATERIALS PROVIDED HEREUNDER OR IN CONNECTION WITH THIS AGREEMENT ARE BEING PROVIDED "AS IS" AND "WITH ALL FAULTS," AND THAT THEY MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM, ON THEIR OWN BEHALF AND ON BEHALF OF THEIR SUPPLIERS AND LICENSORS, ANY WARRANTIES AS TO THE USEFULNESS, ACCURACY, RELIABILITY OR EFFECTIVENESS OF THE PRODUCTS, SERVICES AND/OR MATERIALS PROVIDED HEREUNDER OR THAT ANY OF SUCH PRODUCTS, SERVICES AND/OR MATERIALS WILL BE UNINTERRUPTED, ERROR FREE, OR THAT DEFECTS HAVE BEEN OR WILL BE CORRECTED, OR THAT SUCH PRODUCTS, SERVICES AND/OR MATERIALS WILL MEET THE NEEDS OF ANY PARTY. WITHOUT LIMITING THE FOREGOING, THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY FAILURE, DISRUPTION, DOWNTIME, OR OTHER NON-PERFORMANCE OF THE PARTY'S SERVICE.

## 7.0 Confidentiality

7.1 General. Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to certain information and material concerning the other party's business, plans, customers, technology, and products that are confidential and of substantial value to the disclosing party ("Confidential Information"), which value would be impaired if such information were disclosed to third parties. Each party agrees to maintain all Confidential Information received from the other, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing party. Each party further agrees to use the Confidential Information only for the purpose of performing this Agreement. Notwithstanding the foregoing, Confidential Information shall be deemed confidential if it is so marked if given in writing or, if given orally, identified as confidential orally prior to disclosure, or if, by the nature of the circumstances surrounding its disclosure, as reasonable party would assume it to be confidential, except that Company agrees that any Confidential Information in whatever form relating to the design, functionality, operational methods, or coding of the NAMESPACE Service, including but not limited to any complete or partial source or object code versions, shall be deemed Confidential Information of NAMESPACE regardless of the presence or absence of any confidential markings or identification unless such information is excluded pursuant to Section 7.2, and except further that NAMESPACE agrees that any information in whatever form relating to the Company's search and error redirection technologies, including but not limited to any complete or partial source or object code versions, shall be deemed confidential information of Company regardless of the presence or absence of any confidential markings or identification unless such information is excluded pursuant to Section 7.2

7.2 Exclusions. The parties' obligations of non-disclosure and confidentiality under this Agreement shall not apply to information that: (i) is or becomes a matter of public knowledge through no fault of or action by the receiving party; (ii) was rightfully in the receiving party's possession prior to disclosure by the disclosing

party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a third party who is lawfully in possession of such information without restriction; or (iv) is independently developed by the receiving party without reference to Confidential Information or information derived from Confidential Information. The Recipient may, in addition, use or disclose Confidential Information if and to the extent (1) required by any requirement or order of any governmental authority; (2) otherwise required by law; or (3) necessary to establish its rights under this Agreement; provided that, in each case, the Recipient will first notify the other Party of such requirement, permit the other Party to contest such requirement, and cooperate with the other Party in limiting the scope of the proposed use or disclosure and/or obtaining appropriate further means for protecting the confidentiality of the Confidential Information.

7.3 Return of Information. Whenever requested by a disclosing party, a receiving party shall immediately return to the disclosing party all manifestations of the Confidential Information capable of separation and return or, at the disclosing party's option or if incapable of separation from other information, shall destroy all such information as the disclosing party may designate, subject in either case to legal requirements as to document retention. Recipient's obligation of confidentiality shall survive this Agreement for a period of five (5) years from the date of its termination, and thereafter shall terminate and be of no further force or effect.

7.4 Remedies. Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information hereunder may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event each party shall be entitled to seek equitable relief to protect its interests, including but not limited to temporary restraining orders, preliminary and permanent injunctive relief, as well as money damages.

8.0 Limitation of Liability. A PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNTS PAID AND PAYABLE BY NAMESPACE TO COMPANY PURSUANT TO THIS AGREEMENT UNDER

THE TWELVE MONTHS PRIOR TO WHEN THE CLAIM AROSE, AND NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES PROVIDED THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY BREACH OF THE LICENSING PROVISIONS OF THIS AGREEMENT, THE CONFIDENTIALITY PROVISIONS OF SECTION 7, OR A PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION 9. THE PARTIES ACKNOWLEDGE THAT COMMISSIONS AGREED UPON BY NAMESPACE AND COMPANY ARE BASED IN PART UPON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

**9.0 Indemnity.** Company, at its own expense, will defend, indemnify and hold NAMESPACE, its officers, directors, employees, agents, and successors harmless against any liability, or any litigation cost or expense (including attorneys' fees), arising out of third-party claims against NAMESPACE as a result of Company's acts or omissions, but solely to the extent that such claim arising out of Company's gross negligence or willful misconduct.

NAMESPACE, at its own expense, will defend, indemnify and hold Company, its officers, directors, employees, agents, and successors harmless against any liability, or any litigation cost or expense (including attorneys' fees), arising out of third-party claims against Company as a result of NAMESPACE's acts or omissions, but solely to the extent that such claim arising out of NAMESPACE's gross negligence or willful misconduct.

NAMESPACE will also, at its own expense, indemnify, defend, and hold harmless Company, its officers, directors, agents, and successors, (the "Company Indemnitees") from and against any claim brought against the Company Indemnitees for an actual or alleged infringement or violation of any patent, trade secret, trademark, copyright or other Intellectual

Property Right attributable to Company's use of NAMESPACE's Service.

NAMESPACE will also, at its own expense, indemnify, defend and hold Company and its officers, directors, employees, agents, and successors (the "Company Indemnitees") harmless from and against any Claim brought against the Company Indemnitees by a search engine provider, Internet browser provider or non-Internet browser application provider, that any of the NAMESPACE Services interfere with or disrupt such search engine product, Internet browser product or non-Internet browser application, respectively.

A party's obligations of indemnity and defense set forth above are conditioned on (i) the indemnified party having provided prompt written notice of the claim to the indemnifying party sufficient for the indemnifying party to file its timely response; (ii) the indemnifying party having the sole right to conduct and control the defense and settlement of any such claim at its discretion; (iii) the indemnified party providing assistance in connection with such Claim as reasonably requested by the indemnifying party; provided that the Indemnified Party shall not be obligated to incur any out-of-pocket expenses except to the extent the indemnifying party agrees in writing to reimburse the Indemnified party for such expenses as they are incurred; (iv) the indemnified party making no admissions, except as otherwise required by law, in respect of such claim without the indemnifying party's prior written consent; and (v) the indemnified party's compliance with all reasonable instructions relating to the claim given by the indemnifying party. Notwithstanding the foregoing, the indemnifying party does not have any right, without the Indemnified party's prior written consent, to settle any claim if such settlement arises from or is part of any criminal action, suit or proceeding or contains a stipulation to or admission or acknowledgment of, any liability or wrongdoing (whether in contract, tort or otherwise) or the payment of damages on the part of the Indemnified party.

**10.0 Ownership of materials.** Subject to the license granted to Company in this Agreement, NAMESPACE retains all right, title, and interest in the NAMESPACE Service, and all Intellectual property rights therein. Company will not, and will not authorize any third party to (1) create derivative works of, or alter or in any way or modify the NAMESPACE Service without the



prior written consent of NAMESPACE, (2) use the NAMESPACE Service to construct, reverse engineer, or assemble any database, including without limitation, a URL database, or (3) translate or localize any element of the NAMESPACE Service without the prior written approval of NAMESPACE.

**11.0 Governing Law and Jurisdiction.** This Agreement shall be governed by and construed under the law of the State of New York without regard to conflict of laws provisions. The federal and state courts sitting in New York, New York shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement.

**12.0 General.** For all purposes of this Agreement, each party will be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party will assign or transfer any rights or obligations under this Agreement, either in whole or in part, without the prior written approval of the other party, and any attempt to do so will be void and without effect, except that a party may assign this Agreement as a result of an acquisition, merger, or sale of all or substantially all of the party's assets. Neither party will be responsible for any delay in the performance of its obligations hereunder caused by any acts, omissions, or events beyond such

party's reasonable control. The terms and conditions of this Agreement may only be modified in a writing signed by both parties. The invalidity or unenforceability of any provision of this Agreement will not affect the enforceability or validity of any other provision. All notices under this Agreement will be in writing, and will be deemed given when personally delivered, or when sent by prepaid recognized commercial courier service or prepaid certified or registered U.S. mail, to the address of the party to be noticed as set forth in this Agreement or such other address as such party last provided to the other by written notice.

**13.0 Entire Agreement.** The terms and conditions of this Agreement, including all exhibits hereto, constitute the entire agreement between the parties and supersede all previous agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which taken together shall constitute a single instrument.

**14.0 Authority.** Each party warrants and represents as a part of the consideration for this Agreement that it is a duly authorized and valid corporation and that its agents signing hereto specifically represent that they have authority to bind said corporation and that the corporation is authorized to enter into and execute this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**COMPANY**

Signed: [Signature]  
Printed: Mark [unclear]  
Title: President  
Date: 11/26/07

**NAMESPACE**

Signed: [Signature]  
Printed: Joe Furner  
Title: President  
Date: 11/27/2007

**AMENDMENT NO. 1 TO DISTRIBUTION AGREEMENT**

This Amendment No. 1 to Distribution Agreement ("**Amendment**"), is made this 26th day of January, 2009 ("**First Amendment Effective Date**") by and between Paxfire Inc., a Delaware corporation, with its principal place of business at 45665 Willow Pond Plaza, Sterling, Virginia 20164 ("**Company**"), on the one hand, and Namespace Strategy Group, L.L.C., a Massachusetts limited liability corporation, with its principal place of 200 Broadway, Suite 303, Lynnfield, MA ("**Namespace**"). Company and Namespace may be referred herein to individually as a "**Party**" and collectively as the "**Parties.**"

WHEREAS, Namespace and Company are parties to that certain Distribution Agreement effective as of November 27, 2007 ("**Agreement**"); and

WHEREAS, the Parties wish to amend the Agreement as set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Capitalized terms not otherwise defined herein shall have the meaning given them in the Agreement.
2. Section 2.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

"2.2 Related Rights and Obligations. Company agrees to use commercially reasonable efforts to implement the NAMESPACE Service as part of Company's business. Company further agrees to use commercially reasonable efforts to ensure that any brand Keywords that are monetized under the Namespace Service are not monetized directly or through a third party for a customer of Company in a manner that contradicts or infringes the trademark rights of Namespace or its third party licensors. In the event any brand Keywords that are monetized under the Namespace Service are monetized directly or through a third party for a customer of Company in a manner that contradicts or infringes the trademark rights of Namespace or its third party licensors, then and in that event NAMESPACE shall have the right to deactivate or remove the NAMESPACE Service from Company or any customer of Company upon thirty (30) days prior written notice to Company."

3. This Amendment may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. This Amendment may be executed by facsimile, and each facsimile signature shall be deemed to constitute a valid and binding signature of the executing party.

4. Except as amended as set forth herein, all terms of the Agreement, as amended, shall remain in full force and effect. In the event of an express conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the First Amendment Effective Date.

PAXFIRE INC. ("COMPANY")

NAMESPACE STRATEGY GROUP, LLC

By: [Signature]

By: [Signature]

Name: [Signature]

Name: JOSEPH FURRIER

Title: [Signature]

Title: PRESIDENT