

Copyright Society of the USA

Making the Digital Deal

June 10, 2013

Illustrative Provisions

GRANT OF RIGHTS:

Example #1: During the Term and throughout the Territory, XYZ hereby grants to Company, its Affiliates, vendors and distribution partners a non-exclusive right and license to use, reproduce (as server or database copies), stream, create derivative works (such as promotional videos, “thumbnail” images, or by transcoding or formatting solely for the purposes of streaming the Content via the Service) of, distribute, exhibit, publicly perform, publicly display, transfer, transmit, distribute and publish the Content via the Service.

Example #2: XYZ hereby grants Company the non-exclusive, non-transferable, non-sub-licensable right and authority to exploit the XYZ Materials, in the Territory during the Term solely in connection with the Services, in accordance with the Functionality, Technical and Security Specifications, and subject to the terms, conditions and limitations prescribed elsewhere in this Agreement.

Scope of Content Commitment (includes holdbacks):

Example #1: The XYZ Content delivered to Company shall include all XYZ Content that has been cleared and generally furnished by XYZ to other similarly situated service providers in the same country of the Territory, with the exception of select circumstances, including without limitation, time-limited special projects, promotions, tests or trials conducted by XYZ or its affiliates with another entity (provided such special projects, promotions, tests or trials are entered into in good faith and not with the intent to frustrate the purposes of this Agreement), or where XYZ is not authorized to make certain XYZ Content available to Company.

Example #2: The XYZ Content delivered to Company shall include XYZ’s entire commercially cleared catalog of [content] in the Territory at such time as XYZ makes the applicable [content] generally available for sale through [type of service] in the Territory. Notwithstanding the foregoing, various releases may be windowed for limited time periods through other services in the Territory in conjunction with specific marketing campaigns, promotions, features and sales initiatives.

Takedown Rights:

At all times, XYZ will retain the right to exclude, or to request Company to remove and take-down, any XYZ Materials for bona-fide artist relations, legal and/or contractual reasons on a country-by-country basis; provided that, XYZ shall not use this right to frustrate the purpose of this Agreement or to discriminate against Company vis a vis other similarly situated services. All such take-down requests may be delivered via facsimile, electronic mail or any other effective method of written communication. Within [forty eight (48)] hours following Company’s receipt of any such take-down request, Company shall restrict access to the applicable XYZ Materials on or in connection with the Services such that the applicable XYZ Materials are not accessible by End Users on the Services.

Key Representations and Warranties:

(a) XYZ hereby represents and warrants to Company that:

(i) as between Company and XYZ, to the best of XYZ's knowledge, XYZ owns or controls all rights in and to the XYZ Materials necessary for Company to exploit the same materials via the Services to the extent contemplated by this Agreement free from any claims by any Person; and

(ii) XYZ shall be responsible for obtaining any and all necessary licenses and consents, and for making all associated payments due to third parties to whom monies fall due, in respect of Company's exploitation of the XYZ Materials via the Services in accordance with the terms and conditions set forth in this Agreement.

(b) Company hereby represents and warrants to XYZ that:

(i) except as expressly provided elsewhere in this Agreement, it will obtain and maintain in full force and effect (at Company's sole cost and expense) (A) all necessary licenses, permits and other authorizations required by law to operate its business and to use XYZ Materials and other copyrighted materials in the manner contemplated herein, and (B) all licenses and other rights (including, but not limited to, copyright, patent and trademark rights) necessary to provide the Services and functions contemplated herein;

(ii) it will not at any time through its acts and/or omissions, either directly or indirectly, in whole or in part, cause "viruses," "worms", "spyware", and/or "destructive codes", or any "adware" that is deployed or embedded without the informed consent and affirmative acknowledgment and permission of the "adware" recipient, to be embodied in or along with the software used by Company in connection with the operation of the Services;

(iii) it will not knowingly participate in any unethical or unfair competitive practices, including without limitation, product disparagement, or any other practices that are or might be detrimental to XYZ or any of XYZ's Affiliates;

(iv) Company will ensure that the Services will not contain or utilize any advertisements, content or other materials that facilitate and/or promote illegal activity, depict sexually explicit images, promote violence, promote discrimination, incorporate any materials that infringe or assist others in infringing upon any intellectual property rights, engage in the endorsement of religious causes, political positions or political candidates, or engage in the sale or advertisement of tobacco, firearms or pornography.

Indemnities:

(a) Company will at all times indemnify and hold harmless XYZ and its Affiliates and each of their respective officers, agents, employees, directors, and advisors (collectively, the "XYZ Indemnified Parties") from and against any and all claims asserted by a third party against any of the XYZ Indemnified Parties for damages, liabilities, costs and expenses (including court expenses and reasonable counsel fees) arising out of (x) any breach or alleged breach by Company of any representation, warranty, covenant or agreement made by Company herein, (y) the distribution or operation of the Service, or (z) any claim, reduced to final judgment or settled with Company's consent, that any materials used or exploited by or on behalf of Company in connection with the Service (excluding any claims with respect to Company's authorized use of the XYZ Materials), in whole or in part, directly or indirectly, infringe upon, misappropriate or otherwise violate the rights of any third party.

(b) XYZ will at all times indemnify and hold harmless Company and its Affiliates and each of their respective officers, agents, employees, directors, and advisors (collectively, the “Company Indemnified Parties”) from and against any and all claims asserted by a third party against any of the Company Indemnified Parties for damages, liabilities, costs and expenses (including court expenses and reasonable counsel fees) arising out of (x) any breach or alleged breach by XYZ of any representation, warranty, covenant or agreement made by XYZ herein, or (y) any claims, reduced to final judgment or settled with XYZ’s consent, that items of XYZ Materials (but not to the extent arising from the use or exploitation of any copyrighted musical compositions or lyrics embodied therein that requires the acquisition and/or administration of licenses that are Company’s responsibility under the Agreement or otherwise) exploited by Company in accordance with the terms, conditions and limitations prescribed elsewhere in this Agreement, infringe upon, misappropriate or otherwise violate the rights of any third party. Notwithstanding the foregoing, XYZ’s indemnification obligations hereunder shall not apply to the exploitation by Company of any items of XYZ Materials, on a prospective basis from the effective date of the Take-Down Notice for the XYZ Materials concerned.

Disclaimer/Limitation of Liability:

EXCEPT WITH RESPECT TO: (I) THE PARTIES’ RESPECTIVE INDEMNIFICATION OBLIGATIONS; (II) ANY UNAUTHORIZED USE, REPRODUCTION, DISTRIBUTION OR OTHER EXPLOITATION OF ANY XYZ MATERIALS OR ANY BREACH OF [GRANT OF RIGHTS AND RESTRICTIONS SECTIONS] CAUSED BY THE INTENTIONAL OR GROSSLY NEGLIGENT ACT OF COMPANY, (III) ANY INTENTIONAL AND MATERIAL BREACH BY XYZ OF ITS [IP] REPRESENTATIONS, WARRANTIES AND COVENANTS, (IV) DAMAGES TO A PARTY CAUSED BY THIRD PARTY CLAIMS ARISING OUT OF OR RELATED TO BREACHES OF THIS AGREEMENT BY THE OTHER PARTY, AND (V) ANY BREACH BY EITHER PARTY OF [CONFIDENTIALITY SECTION], UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED BY EITHER PARTY.

Data Reporting and Use:

Personally Identifiable Information: To the extent permitted by applicable law and regulation, Company shall use its best efforts to secure a data protection opt-in from End Users, wherever appropriate within the Services but at a minimum during the user registration process, which opt-in shall be crafted by Company so as to constitute informed consent by those End Users for Company to share their contact details paired with Service usage data (“Opt-In Data”) with XYZ with a view to such End Users receiving direct communications from XYZ and its Affiliates. Company shall regularly during the Term make available Opt-In Data to XYZ in a mutually agreed format. Company acknowledges and agrees that (i) Opt-In Data shall be jointly owned by XYZ and Company, and (ii) to the fullest extent permitted by the consent provided by the relevant End Users and applicable laws and regulations, XYZ and its Affiliates shall be entitled unilaterally to exploit the Opt-In Data, including for commercial gain. XYZ agrees to include an “unsubscribe” option with every email, SMS or other electronic communication sent to End Users.

Aggregated Data: Company shall provide access for XYZ to dashboard data during the Term at no additional cost, including online, real-time access to detailed statistics and usage data concerning the use of XYZ Materials on the Services on an aggregate basis.

if Company provides additional categories of data to any other content providers then Company shall provide such additional data to XYZ on terms and conditions that are reasonably equivalent in all material

respects to the terms and conditions governing Company's provision of such additional data to such other content provider.

Geo-blocking:

(a) XYZ acknowledges that Company intends to utilize one of the following geographic filtering measures (such applicable measures, the "Geographic Filtering Measures"), as determined by Company at its sole election, to assist Company in determining as far as possible in which country any given End User (or potential End User) of the Services is located for the purposes of this Agreement:

(i) Company may utilize state-of-the-art IP address look-up technology that is designed to determine whether an End User's (or potential End User's) IP address is within the applicable country in the Territory at the time of such individual's establishment of a User Account for the Service; or

(ii) With respect to any End User for whom there is a Registered Payment Method (and regardless of whether that Registered Payment Method is used for the purchase of access to a Service), and prior to such End User's actual accessing of a Service, Company may, as applicable (I) utilize issuing bank location look-up that is designed to determine whether such issuing bank for the applicable Registered Payment Method is on a listing of financial institutions located within the applicable country in the Territory, or (II) if applicable, utilize information from such End User's mobile telecommunications provider that is designed to determine whether such End User is registered for access to mobile data/voice services within of the applicable country of the Territory; or

(iii) Geo-filtering based on the applicable End User's billing address of record, as registered by such End User in connection with the establishment of the applicable End User's User Account, and as verified by cross-checking against any billing address associated with the applicable Registered Payment Method (where available).

XYZ acknowledges that Company shall not be deemed to be in breach of the Territory-specific limitations set forth in this Agreement to the extent that it implements and relies on Geographic Filtering Measures.

**XYZ
Distribution Agreement**

This Distribution Agreement (this “**Agreement**”) is entered into as of the Effective Date, by and between XYZ (“**XYZ**”), a Delaware corporation with its principal place of business at [_____] and the producer listed below (“**Producer**”) (each a “**Party**” and collectively the “**Parties**” to this Agreement.) This Agreement consists of this cover page and the Terms and Conditions attached hereto. The Parties hereby agree to the following:

Content/Property:	
Content Destination Site(s):	_____.com (the “ Content Site(s) ”)
Territory:	Worldwide
Revenue Share:	
Integration Sales Share	
Ancillary Revenue Share:	
[Advance:]¹	

Effective Date:	
Initial Term:	

Producer:	
Producer Address:	
Producer Phone:	
Producer Email:	
Producer Contact:	

IN WITNESS WHEREOF, the Parties hereto, have executed this Agreement as of the Effective Date:

XYZ

Producer:

Name (Print)

Title

Date

Name (Print)

Title

Date

¹ DRAFTING NOTE: DELETE IF NO ADVANCE

Terms and Conditions - Distribution of Producer Content by XYZ

1. Definitions.

“**Affiliate**” means an individual or entity that, directly or indirectly, controls, is controlled by, or is under common control with a Party.

“**XYZ Network**” means the network of XYZ and XYZ distribution partner sites, devices and platforms where users access and view video content. The XYZ Network includes sites, devices and platforms available in any medium whereby end users interact with the XYZ Network via an Internet enabled device or platform, including without limitation, mobile, convergence devices, tablet devices, embedded software, and IPTV. For the avoidance of doubt, during the Term, the Content Site(s) will be deemed to be part of the XYZ Network for purposes of this Agreement. The XYZ Network does not include (i) paid a la carte or paid subscription downloads; (ii) DVD or other physical media; (iii) theatrical distribution; or (iv) traditional television.

“**Content**” means the Content/Property specified on the cover page to this Agreement (together with the Content Site(s)), including any and all editorial and video, narrative content, audio and audiovisual materials, metadata, data, logos, images, files, hypertext links, scripts and enhancements contained therein.

“**Net Advertising Revenues**” means aggregate cash amounts collected and recognized as revenue under generally accepted accounting principles by XYZ arising from the sale of the pre-roll, mid-roll, post roll or overlay advertisements included within the Content, less third-party commissions and revenue shares and less reasonable and customary costs incurred by XYZ in hosting the Content, selling advertising against the Content, and serving advertising against the Content. These costs may include ad serving fees, commissions actually paid, analytics software costs and bandwidth costs.

“**Net Ancillary Revenues**” means aggregate cash amounts collected and recognized as revenue under generally accepted accounting principles by XYZ arising from an Ancillary Exploitation, less (i) third-party commissions and revenue shares, and (ii) production and other reasonable and customary costs relating to the Ancillary Exploitation that are reimbursed or paid by XYZ.

“**Net Integration Revenues**” means aggregate cash amounts collected and recognized as revenue under generally accepted accounting principles by XYZ arising from an Integration, less (i) third-party commissions and revenue shares, (ii) production costs relating to the Integration reimbursed or paid by XYZ, and (iii) reasonable and customary costs incurred by XYZ in hosting the Content, selling advertising against the Content, and serving advertising against the Content. These costs may include ad serving fees, commissions actually paid, analytics software costs and bandwidth costs.

2. Authorization.

2.1 Content. During the Term and throughout the Territory, Producer hereby, on an exclusive basis: (i) authorizes XYZ, its Affiliates, vendors and distribution partners to sell advertising in, on and against the Content; and (ii) grants to XYZ, its Affiliates, vendors and distribution partners a license to use, reproduce (as server or database copies), stream, create derivative works (such as promotional videos, “thumbnail” images, or by transcoding or formatting solely for the purposes of streaming the Content via the XYZ Network) of, distribute, exhibit, publicly perform, publicly display, transfer, transmit, distribute and publish the Content via the XYZ Network. During the Term and

throughout the Territory, XYZ's rights to distribute the Content via the XYZ Network and to sell advertising against the Content distributed via the XYZ Network are exclusive. For the avoidance of doubt, and without limiting the generality of anything else contained herein, during the Term XYZ will have the exclusive right to sell display advertising inventory on the Content Site.

2.2 Ancillary Rights. During the Term and throughout the Territory, Producer hereby, on an exclusive basis grants to XYZ the right to exploit (and to license third parties to exploit) in any and all media the Property and all Marks, logos, copyrights and other intellectual property embodied in or relating to the Property, including, without limitation, in connection with (i) television, film, home video and other dramatizations; (ii) merchandise of any kind; (iii) games, including, without limitation, video games; and (iv) books, magazines and other publishing materials (each of the foregoing exploitations, an “**Ancillary Exploitation**”). XYZ shall consult with Producer with respect to all Ancillary Exploitations and, to the extent practicable, shall use its commercially reasonable efforts to afford Producer the opportunity to be attached in an appropriate capacity to each project involving an Ancillary Exploitation.

2.3 Tracking. During the Term, all viewers of Content on the XYZ Network shall be attributed to XYZ for comScore and all other relevant viewer tracking purposes and the Parties agree to take all such actions as may be necessary to enable the tracking of such viewers and such viewer attribution to XYZ. Without limiting the generality of the foregoing, (i) Producer will provide to XYZ a standard comScore Traffic Assignment Letter for the Content and (ii) comScore and other appropriate tracking code shall be embedded in the Content such that viewers of Content on the XYZ Network can be measured and reported. XYZ's advertising tags and any necessary code will be incorporated in the Content so as to enable XYZ to serve advertisements as contemplated by this Agreement.

2.4 Ownership. XYZ acknowledges and agrees that: (a) as between Producer on the one hand, and XYZ on the other, Producer owns all right, title and interest in the Content; and (b) nothing in the Agreement confers on XYZ or any of its Affiliates any right of ownership in the Content.

2.5 No Editing. Except to the extent authorized elsewhere in this Section 2, XYZ shall not edit, excerpt or alter the Content or combine or “mash-up” Content with any other content.

2.6 Removal of Content. If at any time during the Term, Producer receives a third party claim relating to the Content which, if true, would violate Producer's representations and warranties under this Agreement, Producer will promptly notify XYZ and XYZ will use its commercially reasonable efforts to take-down the affected episode of the Content promptly after XYZ's receipt of Producer's notice (provided, however, that XYZ cannot ensure removal of Content from any third party site, device or platform).

2.7 Trademark License. In connection with XYZ's exercise of its rights pursuant to Section 2.1, Producer grants to XYZ a non-exclusive, royalty-free license to use the trade names, trademarks, and service marks of Producer and any third party tradenames, trademarks and service marks provided by Producer to XYZ (collectively, the “**Marks**”), in each case in the form provided to XYZ by Producer. XYZ acknowledges the ownership right of Producer (or applicable third party) in the Marks and agrees that all use of the Marks will inure to the benefit, and be on behalf, of Producer (or such applicable third party).

3. **Delivery.** Publisher shall encode and deliver the Content to XYZ in accordance with XYZ's delivery specifications as communicated by XYZ to Producer from time to time.

4. **Revenue Share.**

4.1 XYZ. During the Term, for each 1000 ad-supported video views of Content on the XYZ Network, XYZ shall pay to Producer the Revenue Share.

4.2 Integration Sales Share. XYZ shall pay to Producer the Integration Sales Share of the Net Integration Revenues.

4.3 Ancillary Revenue Share. XYZ shall pay to Producer the Ancillary Revenue Share of the Net Ancillary Revenues.

The amounts payable to Producer pursuant to Sections 4.1, 4.2, 4.3, 4.4 and 4.5 shall be paid without duplication and are collectively referred to as the "**Producer Payments**".

4.4 [Advance. Within five (5) business days after full execution of this Agreement, XYZ will pay to Producer a one-time, fully recoupable and returnable Advance. The Advance will be paid by wire transfer to such bank account as Producer shall specify by written notice to XYZ. The Advance will be recouped by XYZ from the Producer Payments made under this Agreement, by means of automatic deduction from the Producer Payments. Upon expiration or termination of the Term for any reason, or if Producer ceases to produce the Content prior to expiration or termination of the Term, the then-unrecouped portion of the Advance, together with any interest accrued and unpaid thereon, will become immediately due and payable by Producer to XYZ and, without limiting any other rights or remedies that XYZ may have (whether under this Agreement, applicable law or otherwise), may be offset by XYZ or its applicable Affiliate against 100% of any payments owed by XYZ or any of its Affiliates to Producer or any of its Affiliates, whether under this Agreement, any other agreement between the Parties or their respective Affiliates, or otherwise.]²

4.5 Payment. XYZ will pay the Producer Payments [(after deducting any then-unrecouped portion of the Advance)]³ to Producer within sixty (60) days following the end of the month in which the related ad-supported video views occurred or Net Advertising Revenues and/or Net Integration Revenues were received. XYZ may reduce Producer Payments for bad debt, chargebacks, and refunds.

4.6 Video Views. Video views of Content under this Agreement will be based upon the reports of XYZ's advertising server, subject to normal month end adjustments. Notwithstanding anything else contained herein, a play of Content shall only be counted as a "view" if an advertisement [for such play is reflected in the reports of XYZ's advertising server as having been available to be]⁴ [is]⁵ served for such play.

4.7 Integrations. During the Term, XYZ will have the exclusive right to monetize the Content via product placements, brand integrations, sponsorships, endorsements and other similar transactions

² DRAFTING NOTE: DELETE IF NO ADVANCE

³ DRAFTING NOTE: DELETE IF NO ADVANCE

⁴ DRAFTING NOTE: DELETE SHADED LANGUAGE FOR FIRST DRAFT --USE ONLY AS FALL BACK IF NEGOTIATED

⁵ DRAFTING NOTE: DELETE IF SHADED LANGUAGE IS INCLUDED

(collectively “**Integrations**”) and XYZ will include the Content in XYZ’s regular sales efforts with advertisers and sponsors with respect to Integrations. Notwithstanding XYZ’s exclusive rights hereunder, Producer may from time to time present specific Integration opportunities to XYZ for its approval, and if XYZ approves such Integrations, Producer will be entitled to receive the Integration Sales Share (for Net Integration Revenues arising out of such Integration) applicable to sales originating from Producer. The form of each Integration will be mutually agreed by XYZ and the Producer, and may include host reads, sponsored segments, calls to action, product placement, “presented-by” language and other types of Integrations. Producer will execute and deliver all agreed-upon Integrations in the timeframe required. XYZ will reimburse Producer for the production costs for each Integration to the extent such costs exceed Producer’s costs to create Content without the Integration. Producer will submit a detailed production budget for each Integration for XYZ’s approval prior to execution of the Integration.

4.8 Advertising Practices. XYZ will use reasonable efforts, in accordance with its usual practices, to sell advertisements against the Content as contemplated by this Section 4, but will not be deemed to be in breach of this Agreement by reason of any inventory remaining unsold. XYZ may (but shall not be obligated to) utilize unsold advertising inventory to run promotions for Content or other shows. Producer agrees to opt the Content into all available XYZ advertising products. XYZ utilizes forms and formats of advertising that are generally accepted within the video industry and will use its reasonable efforts, including adhering to generally accepted practices within the video industry, so as not to run advertisements within and against the Content that unreasonably interfere with the user experience.

5. Term and Termination.

5.1 Term. This Agreement shall commence on the Effective Date and continue for the Initial Term as stated on the cover page of the Agreement. This Agreement shall automatically renew for additional one (1) year periods (each, a “**Renewal Term**”) unless either Party provides written notice of its intent not to renew this Agreement a minimum of ninety (90) days prior to the expiration of the then current Term. Each such Renewal Term shall be on the same terms and conditions contained herein. The Initial Term and the Renewal Terms are collectively referred to as the “**Term.**”

5.2 Termination. Either Party may terminate this Agreement at any time in the event (a) of a material breach by the other Party of this Agreement or any other agreement between the Parties, in each case which remains uncured after thirty (30) days’ written notice thereof, or (b) the other Party ceases to do business in the normal course, becomes or is declared insolvent or bankrupt, is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) calendar days or makes an assignment for the benefit of creditors.

5.3 Effect of Termination. Any termination pursuant to this Section 5 will be without any liability or obligation of the terminating Party, other than with respect to any breach of the Agreement prior to termination, and the Parties agree that upon termination: (i) XYZ will promptly cease all use of Marks; (ii) all rights granted herein shall revert to their original owners; (iii) XYZ will promptly cease all use, reproduction, exhibition, distribution and display of the Content. Sections 2.3, 4.7, 5.3, 6, 9, 10 and 11 of these Terms and Conditions (and any definitions used in such Sections) shall survive the expiration or termination of this Agreement.

6. Representations and Warranties.

6.1 By Both Parties. Each Party represents and warrants to the other Party that: (i) such Party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (ii) the execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder, do not and will not violate any agreement to which such Party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

6.2 By Producer. Producer represents, warrants and covenants that at all times during the Term: (i) the Content does not and will not (A) infringe on the proprietary or intellectual property rights of any third party, including, without limitation, copyrights, trademark rights and rights of publicity and privacy; (B) violate any U.S. or foreign Federal, State or local law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (C) contain any material that is defamatory, trade libelous, threatening or harassing; (D) contain any material that is obscene, pornographic, indecent or offensive; (E) contain any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (F) contain any material uploaded without the copyright owner's explicit permission; or (G) contain any advertising or Integrations except for those inserted pursuant to this Agreement or otherwise approved by XYZ in writing; and (ii) Producer will be responsible for obtaining all required clearances from and making all required payments to actors, producers, guilds and all other royalty participants in respect of the distribution of the Content as contemplated hereunder and will obtain (and make all required payments under) all reproduction and synchronization licenses with respect to any sound recordings and compositions embodied in the Content, to the extent required for the distribution of the Content as contemplated by this Agreement.

7. Additional Covenants.

7.1 XYZ Branding. Producer will include XYZ branding within the Content as requested (and in the form furnished) by XYZ, either in the form of a 1-3 second video "bumper" that precedes the Content, and/or a XYZ "bug" in a reasonable size and location as requested by XYZ.

7.2 Marketing. The Content will be included in XYZ's marketing and promotion efforts across the XYZ Network.

7.3 Development Plan. XYZ and Producer will work together to develop and execute (i) an audience development plan for the Content to further build the community around it, and to increase video views and engagement on the XYZ destination site, the Content Site(s), and on third-party destinations; and (ii) a plan for the Content to diversify video views to destinations that use the XYZ player. XYZ will use its reasonable efforts to assist Producer with its diversification efforts and, to the extent permitted by applicable law and contractual restrictions, to share best practices. XYZ will assist Producer in the creation of branded channels on the XYZ destination site for Content.

7.4 No Material Production Changes. Producer shall not make any material changes in its production of the Content, including without limitation canceling, ending, or placing the Content on hiatus, without first [(i)] giving XYZ not less than ninety (90) days' prior written notice of the change[; and (ii)]

repaying to XYZ any then-unrecouped portion of the Advance.]⁶ XYZ and Producer will work together in good faith to minimize the impact of any such change on advertising inventory and/or pre-sold Integrations.

8. Protective Provisions.

8.1 No Properties Similar to the Content. Notwithstanding anything else contained in this Agreement, during the Term, without XYZ's prior written consent, Producer shall not (and shall cause its respective principals and Affiliates not to) develop any New Property that is similar to (e.g. by reason of similar plot lines, characters or premise), or likely to be confused with, the Content, including, without limitation, any spin-off, prequel or sequel to the Content.

8.2 No Frustration. During the Term, Producer shall not (and shall cause its principals and Affiliates not to) take any action that is designed or intended to frustrate (or prevent XYZ from achieving the full benefit of) XYZ's exclusivity or other rights under this Agreement.

9. Confidentiality. Each Party acknowledges that Confidential Information may be disclosed to the other Party during the course of this Agreement. Each Party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, during the term of this Agreement, and for a period of three (3) years following expiration or termination of this Agreement, to prevent the disclosure of the other Party's Confidential Information, other than to its officers, directors, shareholders, employees, Affiliates, auditors or other agents who must have access to such Confidential Information for the recipient Party's internal reporting purposes or to enable the recipient Party to perform its obligations or exercise its rights hereunder. Notwithstanding the foregoing, XYZ may also disclose Producer's Confidential Information to any distribution partner, potential investor or financier, or any potential acquirer of all or substantially all of the assets or equity of XYZ, provided such party is bound by written obligations of confidentiality. As used herein, "**Confidential Information**" shall mean any information relating to or disclosed in the course of the Agreement, which is, or should be reasonably understood to be, confidential or proprietary to the Party, including, but not limited to, Net Advertising Revenues, Net Integration Revenues and other unpublished financial information, product and business plans, projections and marketing data. Confidential Information shall not include information (a) already lawfully known to or independently developed by the receiving Party, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from any third party. The terms of this Agreement will be "Confidential Information" of XYZ.

10. Indemnification.

10.1 Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its officers, directors, agents, Affiliates, distributors, franchisees and employees from any and all loss and third party claims, demands, liabilities, costs or expenses, including without limitation reasonable attorneys' fees and expenses resulting from a Party's breach or alleged breach of any representation, warranty, covenant or agreement contained in this Agreement. Each Party will give the other Party prompt written notice of any third party claim, suit or action which is subject to indemnification hereunder; provided, however, that the failure to give prompt notice will not relieve an indemnifying Party of any liability for indemnification, except to the extent such Party has suffered actual material prejudice by such failure.

⁶ DRAFTING NOTE: DELETE IF NO ADVANCE

11. Miscellaneous.

11.1 Notice. Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in writing and will be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by confirmed facsimile and followed up delivery by mail; (ii) on the delivery date if delivered personally to the Party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. In the case of XYZ, such notice will be provided to the address of XYZ set forth in the first paragraph of this Agreement. In the case of Producer, the notice address shall be the address for Producer set forth on the cover page to this Agreement.

11.2 Press Releases. Notwithstanding anything to the contrary in this Agreement, each Party will submit to the other Party, for its prior written approval, any press release or other public statement regarding the transactions contemplated hereunder, provided that factual statements by either Party to the existence of a business relationship between the Parties shall not require approval of the other Party. Notwithstanding the above, either Party shall have the right to identify the other Party as a partner without prior written approval, including use of the other Party's logo or other trademarks for such purpose.

11.3 Disclaimer. WITH RESPECT TO ITS SERVICES HEREUNDER, XYZ EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL XYZ BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST DATA OR LOST PROFITS, EVEN IF IT HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. PRODUCER ACKNOWLEDGES AND AGREES THAT THE INTERNET IS NOT AN ERROR FREE NETWORK AND THAT TRANSMISSIONS MADE ON THE INTERNET MAY NOT BE COMPLETED OR MAY CONTAIN ERRORS OR OMISSIONS. THE INTERNET, OR PORTIONS THEREOF, MAY ALSO BECOME INACCESSIBLE OR INOPERABLE, IN WHOLE OR IN PART, AT ANY TIME OR FROM TIME TO TIME.

11.4 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative or partner of the other Party. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

11.5 Force Majeure. Neither Party shall be liable for, or be considered in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any external causes or conditions which are beyond such Party's reasonable control and which such Party is unable to overcome by the exercise of reasonable diligence. In the event that a Party intends to invoke this force majeure provision, such Party shall provide prompt notice to the other Party as soon as possible after the occurrence of the event giving rise to the claim of force majeure and will use reasonable efforts to minimize the impact of such force majeure event

11.6 Assignment. Neither Party can assign, delegate or transfer this Agreement or any right, interest or benefit under this Agreement, or allow this Agreement to be assumed by, any third party

without the prior written consent of the other Party and such assignment, delegation, transfer or assumption without a Party's prior consent shall be wholly void and invalid. Notwithstanding the foregoing, without the consent of Producer, XYZ may assign this Agreement to an Affiliate, or to a third party in the case of a merger, asset purchase, stock purchase or similar transaction, and may sublicense its rights under this Agreement, in whole or in part, to non-exclusive distribution partners. Subject to the foregoing, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

11.7 Terms of Use. The XYZ Terms of Use ("**Terms of Use**") are located at <http://www.XYZ.com/tos/> and are incorporated herein by reference. This Agreement and the Terms of Use shall be construed, wherever possible, so as to give full effect to their respective provisions, but in the event that any provision of the Terms of Use cannot be construed so as not to conflict with any provision of this Agreement, this Agreement shall control.

11.8 Interpretation. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of _____ except for its conflicts of laws principles, and each Party irrevocably consents to the exclusive jurisdiction of the courts situated in New York over all claims and all actions to enforce such claims or to recover damages or other relief in connection with such claims.

11.9 Complete Agreement; Waiver; Amendment No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. This Agreement sets forth the entire agreement and supersedes any and all prior agreements of the Parties (whether written or oral) with respect to the transactions set forth herein. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by the Party subject to enforcement of such amendment. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision.

11.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Delivery of an executed signature page to this Agreement by PDF or facsimile shall be effective to the same extent as if such Party had delivered a manually executed counterpart.

Terms of Use

Terms of Use

If you have any questions or concerns about these Terms of Use please don't hesitate to contact us at info@XYZ.tos. Thank you!

USER OBLIGATION

If you are seeking to upload material to this site or to engage in any activities within the site other than passively viewing site content, you must register and become a site member. As part of the registration process, you will be asked to ACCEPT these Terms of Use. On doing so, you will be deemed to have consented to and you will be bound by these Terms of Use.

Visitors to the site merely wishing to view content do not need to register and become members. However, any use of this site (which includes but is not limited to simply viewing the site's content) constitutes your acknowledgement and acceptance of these Terms of Use, which takes effect the moment you first use the site.

XYZ.net reserves the right at any time to change the terms, conditions and notices under which its services are offered, including but not limited to these Terms of Use, by posting such changes online. It is your responsibility to refer to and comply with these updated terms and conditions upon accessing the site. Your continued use of this site after changes are posted constitutes your acceptance of these terms and conditions as modified.

If these Terms of Use are not accepted in full, you do not have permission to access the contents of this site or to upload content to this site and you should cease using this site immediately.

If there is any conflict between these Terms of Use and rules and/or specific terms of use appearing on this site relating to specific material, then the latter shall prevail.

ABILITY TO ACCEPT TERMS OF SERVICE

You affirm that you are either more than 18 years of age or possess legal parental or guardian consent, and are competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in these Terms of Use, and to abide by and comply with these Terms of Use.

You must be 18 years or over or possess legal parental or guardian consent to register as a member of this website. If we discover or have any reason to suspect that you have not reached 18 years of age or that you do not have legal parental or guardian consent, then we reserve the right to suspend or terminate your membership to this site immediately and without notice.

Children and young people under 18 are entitled to access this site to view its content but are not presently able to register as members and actively participate — i.e., upload content. Certain parts of the site (e.g., those containing films with adult language and/or content) may be unsuitable for younger viewers. XYZ.net offers user-managed content ratings, but we do not independently vet or verify these ratings and therefore we cannot and do not guarantee the accuracy of these content ratings.

PASSWORD, SCREEN NAME AND SECURITY

When you register as a member of XYZ.net, you will be asked to select a Screen Name and we will provide you with a Password which you are then free to change to your own original Password. Your Screen Name and Password allow you to access your account and, as we continue to enhance the site, log on to areas of the site that are reserved for members only.

You accept that it is your sole responsibility to maintain the confidentiality of your Password and Screen Name and that you are responsible for all activity that occurs under them. XYZ.net is unable to check the identity of people using the site and will not in any way be liable where your Password or Screen Name are used by someone else. You agree to notify XYZ.net immediately of any unauthorized use of your Password or Screen Name and any other breach of security as soon as you become aware of it.

Any private information and/or data relating to your membership to XYZ.net or your uploaded content that you are asked to supply or that you supply voluntarily as part of the registration process and as part of the upload/download process, will only be used by XYZ.net, our subcontractors, employees, agents and advisors, including legal advisors, as part of the process of administering your membership and when making decisions whether any material you seek to upload onto the site should be accepted or rejected. In addition, we may, at our sole discretion, disclose this information to the police, regulatory bodies or any legal advisers in connection with any suspected or alleged criminal activity or offense or suspected breach of these Terms of Use, including but not limited to any claim of infringement by you, or otherwise where required by law. Otherwise, this information will be kept private and confidential and will not be passed on to third parties without your express consent.

HOLD HARMLESS AND INDEMNIFICATION

You agree to hold harmless and indemnify XYZ.net, its employees, agents, representatives and third-party content, distribution, advertising or other strategic partners from and against any third-party claim arising from or in any way related to your use of the XYZ.net site, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys fees, of every kind and nature. If XYZ.net receives notice of such a claim from someone other than the member whose use of the site is in question, XYZ.net will provide that member with written notice of such claim, suit or action, at the email address provided by that member at the time of registration.

GRANT OF LICENSE

When you upload or post content to XYZ.net, that content becomes public content and will be searchable by and available to anyone who visits the XYZ.net site. XYZ.net does not claim ownership of the materials you post, upload, input or submit to the XYZ.net site. However, by posting, uploading, inputting, providing or submitting your content to XYZ.net, you are granting XYZ.net, its affiliated companies and partners, a worldwide, revocable, royalty-free, non-exclusive, sub-licensable license to use, reproduce, create derivative works of, distribute, publicly perform, publicly display, transfer, transmit, distribute and publish that content for the purposes of displaying that content on XYZ.net and on other Web sites, devices and/or platforms. Content that you upload to XYZ.net will generally be available to the public in RSS feeds designed to allow for the automatic syndication of content throughout the Web — XYZ.net is an open platform and designed for the free exchange of content and ideas.

When you upload or post content to the XYZ.net site, you grant XYZ.net a license to distribute that content, either electronically or via other media, to users seeking to download it through the XYZ.net site or for purposes of other services provided by XYZ.net and to display such content on XYZ.net affiliated sites. This license shall apply to the distribution and the storage of your content in any form, medium, or

technology now known or later developed as necessary for us to provide the XYZ.net services as they now exist or are developed in the future.

To the extent reasonable and possible, XYZ.net will give you control over distribution of your content to third-party Web sites, devices and platforms through the XYZ.net Dashboard, which is available at <http://XYZ.net/prefs/>.

XYZ.net respects the fact that your content is yours, and will not sell advertising on your content or sell your content without your permission. For more information on this, see the ADVERTISING section of these Terms.

When you upload content to XYZ.net you will be asked to select a secondary copyright license, which is additional to the license you grant to XYZ.net and its affiliated companies and partners. This license will govern how third parties may use your content. You can designate this license to be a Creative Commons License (see <http://www.creativecommons.org>) or an "All Rights Reserved" license (you also have the option of selecting "public domain," in which case you are disclaiming all copyright to the work for the benefit of the public at large). You agree that XYZ.net may make your content available to third parties, subject to such third parties abiding by the terms of this secondary license. While XYZ.net will advise its third-party content partners of the secondary license you select and request that the terms of such license be and is observed, you acknowledge that it is not XYZ.net's responsibility to enforce this secondary license and XYZ.net cannot guarantee that your secondary license will in fact be observed by any third parties.

You may remove content you have posted on XYZ.net at any time. When you delete content from XYZ.net, such deleted content, while not available to the viewing public and other XYZ.net users, will remain on the XYZ.net server until such time as you make a specific request to XYZ.net for permanent deletion of such content from the XYZ.net server. Such requests must be made in writing, via email, to XYZ.net customer service at the following address: support@XYZ.net. When you do remove your content, the license described above will automatically expire. We cannot guarantee that content deleted from XYZ.net or permanently deleted from our servers will be deleted from the Web sites or systems of third parties. If you would like your content removed and/or permanently deleted from any Web sites other than XYZ.net, you will be required to contact such Web sites directly, and we cannot guarantee any outcome, action or result with respect to any such request by you.

COPYRIGHT AND OTHER INTELLECTUAL PROPERTY

The content on the XYZ.net site, including without limitation, the text, software, graphics, photos, and videos, is owned by or licensed to XYZ.net, subject to copyright and other intellectual property rights under United States Copyright Act and trademark laws, foreign laws, and international conventions. XYZ.net reserves all rights not expressly granted in and to the website and said content. Other than as expressly permitted, you may not engage in the unauthorized use, copying, or distribution of any of said content.

All copyright, trademarks, service marks and other intellectual property rights in this site (including the design, arrangement, and look and feel) and all material or content supplied as part of the site, other than user-generated content, shall remain at all times the property of XYZ.net, its affiliates, associated companies, and/or licensors.

The names, images and logos identifying XYZ.net are proprietary marks of XYZ.net, its associated companies and/or affiliates. Nothing contained herein shall be construed as conferring by implication,

estoppel or otherwise any license or right under any trademark or service mark of XYZ.net, its associated companies and affiliates, or any third party unless expressly stated otherwise.

You shall be solely responsible for your own content and the consequences of posting or publishing said content. In connection with all content that you upload to XYZ.net, you affirm, represent and/or warrant that: (i) you own, or have the necessary licenses, rights, consents, and permissions to use and authorize XYZ.net to use, all patent, trademark, trade secret, copyright or other proprietary rights in and to said content, including without limitation any musical recordings contained therein; and (ii) you have the written consent, release, and/or permission of each and every identifiable individual person in any uploaded video to use the name or likeness of each and every such identifiable individual person in the manner contemplated by the website and these Terms of Use.

In addition to posting your own content on XYZ.net, you can also enjoy the many videos uploaded by others in the XYZ.net community. The XYZ.net site includes a combination of content that we license from third party partners and content that is created and posted by our users. All of the content on the XYZ.net site is protected by the copyright of one or more of the following: XYZ.net, our partners or our users. Materials uploaded to XYZ.net may be subject to posted limitations on usage, reproduction and/or dissemination. You are responsible for adhering to such limitations if you download the materials.

As a creator of content uploaded to XYZ.net or as a passive user of the XYZ.net site, you may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works of, distribute, publicly perform, publicly display, or in any way exploit any of the content on the XYZ.net site in whole or in part outside of the specific usage rights granted to you by each license. If you download or print a copy of any XYZ.net content for personal use, you must retain all copyright and other proprietary notices contained therein. You may not otherwise use, reproduce, display, publicly perform, or distribute such content in any way for any public or commercial purpose unless such use is expressly granted by a particular license.

If you believe that any of your intellectual property rights have been violated (e.g., your copyright or trademark infringed) by material available on the XYZ.net, you will need to provide, at a minimum, the following information immediately:

The nature of your complaint and an exact description of where the material about which you complain is located within the site;

In the case of a copyright/trademark dispute, identification of the copyrighted/trademarked work that you claim has been infringed and a statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright/trademark owner, its agent, or the law;

Your name, address, telephone number, and email address;

A statement by you that the above information is accurate and, in the case of a copyright/trademark dispute, that you are the owner of the copyright/trademark involved or are authorized to act on behalf of that owner; and

Your electronic or physical signature.

It is our policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act. For directions and more information on our copyright policy and procedure for reporting alleged copyright infringement, please [click here](#).

Any rights not expressly granted herein are reserved.

ADVERTISING REVENUE SHARE

XYZ.net shares ___% of the net advertising revenues that are actually received by XYZ.net and generated by user content with the user who uploaded the content. Revenue sharing is performed on a quarterly basis, with revenues remitted to users via PayPal or check (at XYZ.net's sole discretion) who have accumulated a balance of \$25 or more. Participation in the revenue sharing program requires that the user have a PayPal account and share their PayPal username with XYZ.net at <http://XYZ.net/prefs/payment/>. In certain cases, XYZ.net may be required to report your earnings through the advertising revenue share program to the Internal Revenue Service or other government authorities. In such a case, XYZ.net may reserve payment until appropriate reporting information (i.e. Social Security Number, address) has been provided to make such reporting possible.

XYZ.net reserves the right to withhold advertising payment to any user who is found to have used the XYZ.net service in a way disallowed by these Terms of Use (i.e. uploading content they do not own). Violation of the XYZ.net Terms of Use automatically disqualifies a user from participation in the revenue share program.

Advertising on XYZ.net is "opt-in". In order to participate in the advertising program, users must indicate that they wish to have advertisements run against their content (and the format of the advertisements they'd like to have run) at <http://XYZ.net/dashboard/advertising/>.

XYZ.net reserves the right to run advertisements on any page on XYZ.net, but will not run advertisements in-stream or directly adjacent to user videos without the opt-in of the user who uploaded the video. There is an exception, however: If the user's account is set to allow the inclusion of their videos in a XYZ.net Channel then advertisements may be run against the relevant XYZ.net Channel(s) that the user's videos are aggregated in, regardless of the advertising preferences attached to the user's XYZ.net account. In such a case, ___% of the adjusted gross revenues from such advertisements as may be directly related to the user's video will be credited to the user's revenue sharing account.

Net advertising revenues means, for any period of determination, the actual revenues received by XYZ after third-party commissions and revenue shares from the sale of Video Advertisements that are viewed on the user content less reasonable and customary costs incurred by XYZ in hosting the user content, selling advertising against the user content, and serving advertising against the user content. These costs may include ad serving fees, commissions actually paid, analytics software costs, and bandwidth costs. XYZ.net does not include its own overhead in calculating net advertising revenues.

Advertisements run against videos on XYZ.net may be sold and served by XYZ.net or any of its many advertising partners.

SHOW SOLD ADVERTISING

If you would like XYZ.net to run advertisements that you have sold, you may request that we do so. You will be charged a fee. XYZ.net's DIY advertising services are provided without representation or warranty of any kind, and are provided on an as-is basis.

PRIVACY

XYZ.net respects the privacy of its users. Everyone always says these things in these documents, but we really mean it.

XYZ.net will not share personally identifiable information about you with any third-party except as required by law, or as is necessary to fulfill its obligations under these Terms (i.e. to facilitate advertising revenue share payment).

XYZ.net's service includes a demographic data collection system. As part of this system XYZ.net may ask you questions about yourself (like your age, interests or zip code). Your answers to these questions may be stored on your computer and transmitted to XYZ.net from time to time. XYZ.net will never store this information on its servers in a way that's relatable to you or your identity, instead the information will only be stored and operated on in an aggregate way. That said, XYZ.net may transmit some of your answers to its advertising partners at the time advertisements are served to you. We do this in order to deliver the most relevant advertisements possible.

In addition to specific questions we may ask you, we will also record information about your use of the site that may include your IP (Internet Protocol) address and the pages and videos you have visited. This information may be shared with other users and our partners in an aggregate form that is designed to not be individually identifiable.

PROHIBITED CONTENT

Our goal is to promote the free-flowing exchange of expression relating to members interests, activities and hobbies while maintaining high standards of respect and decency. In order to attain this goal, and in addition to the other content and/or action restrictions set forth in these Terms of Use and elsewhere on the XYZ.net website, the following content is prohibited on XYZ.net:

- Content involving nudity, including but not limited to, nudity or partial nudity of children of any age.
- Content that exploits children or minors or that discloses any personally identifying information beyond a first name about persons under the age of 18.
- Content that disseminates personal information about another individual for malevolent purposes, including libel, slander, defamation or harassment.
- Content that has as its sole or primary purpose to advertise a particular product or service that, in the sole judgment of XYZ.net, does not otherwise have redeeming value to the community. XYZ.net may allow the uploading of some such content for a fee, at its sole discretion. Such advertising content may be treated differently than other content (i.e. through indications that it is an advertisement, or exclusion from some indices or searches).
- Content that is or may be deemed to be grossly offensive to the online community, including but not limited to, blatant expressions of bigotry, prejudice, racism, hatred and profanity.
- Content promoting or providing instructional information about illegal activities.
- Content depicting cruelty to animals.
- Copyrighted content or material that is used without the express permission of the owner.
- Content intended to abuse, harass, stalk, threaten or otherwise violate the legal rights of others (such as the rights of privacy and publicity).
- Content that contains software or other material protected by intellectual property laws unless you own or control the rights thereto or have secured all necessary consents and/or licenses.
- Content or other material that contains viruses, corrupted files, or any other similar software or programs that may damage the operation of XYZ.net servers or another users computer.
- Content that violates any applicable laws or regulations not specifically referenced herein.

As a condition of your use of the XYZ.net site, you warrant that you will not use the services offered on the site for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may

not use the XYZ.net site in any manner which could damage, disable, overburden, or impair the XYZ.net site or interfere with any other parties use and enjoyment of the XYZ.net site. You may not obtain or attempt to obtain any materials or information, including but not limited to, software and other XYZ.net proprietary materials, through any means not intentionally made available or provided for through the XYZ.net site.

XYZ.net has no obligation to monitor the content which has been uploaded to the Web site for compliance with the foregoing. However, XYZ.net reserves the right to review materials uploaded to XYZ.net and to remove any materials in its sole discretion for any reason or no reason, at any time, with or without notice to you. XYZ.net reserves the right to terminate your access to any or all of the services offered by XYZ.net at any time without notice for any reason whatsoever.

XYZ.net does not control or endorse the content, messages or information found in any user-generated content or uploaded material and, therefore, XYZ.net specifically disclaims any liability with regard to such user-generated content or uploaded material and any actions resulting from such user-generated content or uploaded material.

You agree to use the services provided by XYZ.net only for their intended, lawful purposes and in accordance with all applicable laws. You agree not to use XYZ.net in any manner that interferes with its normal operation or with any other users use and enjoyment thereof. You further agree that you will not access, or cause others to access, XYZ.net through an interface or in a manner that would interfere with the monetization of XYZ.net-hosted content or the honoring of copyright licenses attached to XYZ.net-hosted content. You also agree that you will not access XYZ.net from any territory where its contents are illegal.

XYZ.net does not endorse any user-generated content or any opinion, recommendation or advice expressed therein, and XYZ.net expressly disclaims any and all liability in connection with user-generated content. If notified by a user or a third party of uploaded material that allegedly does not conform to these Terms of Use, XYZ.net may investigate the allegation and determine in good faith and in its sole discretion whether to remove the user-generated content.

THIRD PARTY SITES/LINKS FROM XYZ.NET

XYZ.net may contain links to other websites (Linked Sites). The Linked Sites are not under the control of XYZ.net and XYZ.net is not responsible for the contents of any Linked Site, including without limitation, any link contained in a Linked Site, or any changes or updates to a Linked Site. XYZ.net is not responsible for webcasting or any other form of transmission received from any Linked Site. XYZ.net is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by XYZ.net or any association with its operators.

If you decide to visit any Linked Site, you do so at your own risk and it is your responsibility to take all protective measures to guard against viruses or other destructive elements. XYZ.net does not endorse and is not responsible or liable for any content, advertising, products, services or information on, or available from, third party websites or material. XYZ.net is not responsible for any damage, loss or offense caused by, or in connection with, any content, advertising, products, services or information available on such websites or material. Any terms, conditions, warranties or representations associated with such dealings are solely between you and the relevant provider of the service. XYZ.net does not claim any legal authorization to use any trademark, trade name, logo or copyright symbol displayed in or accessible through a Linked Site.

XYZ.net disclaims all liability for any legal or other consequences (including claims for infringement of third party rights) of links made to this site on websites not affiliated with XYZ.net.

COMMERCIAL AGGREGATION

XYZ.net is designed to be technically compatible with the universe of third-party aggregation software to the greatest extent possible, and we are committed to building an open platform. Unless otherwise stated, however, you may not distribute, transmit, broadcast, commercially exploit or modify in any way material or content or permit or assist any third party in doing the same. You may not aggregate, embed or "deep-link" content on XYZ.net from your own Web site, service or platform for commercial purposes in a systematic way without the prior written consent of XYZ.net. You must at all times respect the copyright licenses attached to XYZ.net content (i.e. Creative Commons licenses) while aggregating, embedding or deep-linking XYZ.net content.

PROFESSIONAL ACCOUNTS

XYZ.net offers its users the ability to purchase "professional accounts" that confer on the bearer additional and advanced functionality for a fee. XYZ.net may, at its discretion, cancel a user's professional account or underlying account for any reason, including violation of these Terms of Use. Under such circumstances XYZ.net will refund to the account holder a pro-rated portion of their paid professional account fees, rounded to the nearest unused whole month.

WARRANTY DISCLAIMER

Please note that the information, software, products and services included in, or available through, the XYZ.net website are continually being updated and upgraded. XYZ.net does not represent that they are reliable, accurate, complete, or otherwise valid. ACCORDINGLY, THE SITE IS PROVIDED AS IS WITH NO WARRANTY OF ANY KIND AND YOU USE THE SERVICE AT YOUR OWN RISK. XYZ.NET EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SITE OR ITS CONTENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY OF SATISFACTORY PURPOSE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY AND ACCURACY. Some states do not allow the exclusion of warranty, so the above exclusions may not apply to you.

The information and other materials included on this site may contain inaccuracies and typographical errors. XYZ.net does not warrant the accuracy or completeness of the information and materials or the reliability of any statement or other information displayed or distributed through the site (including, without limitation, the information provided through the use of any software or any user-generated content). You acknowledge that any reliance on any such statement or information shall be at your sole risk. XYZ.net reserves the right, in its sole discretion, to correct any errors or omissions in any part of the site and to make changes to the site and to the materials, products, programs, services or prices described in the site at any time without notice.

XYZ.net does not warrant that the functions contained in this site will be uninterrupted or error free, that defects will be corrected or that this site or the server that makes it available are free of viruses or bugs. XYZ.net does not represent the full functionality, accuracy or reliability of any material. XYZ.net may terminate, change, suspend or discontinue any aspect of this site, including the availability of any features of the site, at any time without notice or liability.

LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL XYZ.NET AND/OR ITS EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE XYZ.NET WEBSITE, WITH THE DELAY OR INABILITY TO USE THE XYZ.NET WEBSITE OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH THE XYZ.NET WEBSITE, OR OTHERWISE ARISING OUT OF THE USE OF THE XYZ.NET WEBSITE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF XYZ.NET OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you. If you are dissatisfied with any portion of the XYZ.net website, or with any of these Terms of Use, your sole and exclusive remedy is to discontinue using the XYZ.net website and services provided therein.

LAW AND JURISDICTION

These Terms of Use shall be governed by and construed in accordance with the laws of the State of _____. Disputes arising from these Terms of Use or your use of the XYZ.net website shall be exclusively subject to the jurisdiction of the courts of New York. Any cause of action you may have with respect to your use of this site must be commenced within one (1) year after the claim or cause of action arises.

XYZ.net makes no representation that materials on this site are appropriate or available for use at other locations outside of the United States and access to them from territories where their contents are illegal is strictly prohibited. If you access this site from a location outside of the United States, you are responsible for compliance with all local laws.

MISCELLANEOUS

If any of these Terms of Use or any other policies posted by XYZ.net management on the XYZ.net website should be determined to be illegal, invalid or otherwise unenforceable by reason of the law of any state or country in which these Terms of Use are intended to be effective, then to the extent permissible, such Term of Use or policy, or portion thereof, shall be severed and deleted from the remaining terms, conditions and policies, and the remaining terms, conditions and policies shall survive and continue to be binding and enforceable. The failure of XYZ.net to exercise or enforce any right or provision of these terms and conditions shall not constitute a waiver of such right or provision.

The section headings contained in these Terms of Use are included for convenience only, and shall not limit or otherwise affect these terms and conditions.

Calculation Steps for Subsection B of 37
CFR § 385 - "2008 Settlement"

OFFERING TYPE

	Standalone Non-Portable Subscriptions, Streaming Only	Standalone Non-Portable Subscriptions, Mixed Use	Standalone Portable Subscriptions, Mixed Use	Bundled Subscription Services	Free Non-Subscription/Ad-Supported Services
1. Calculate the All-in Royalty Pool, which is the greater of					
a) % of Service Revenue, and	10.5%	10.5%	10.5%	10.5%	10.5%
b) Service Type Minimum	lesser of: (i) \$0.50 per subscriber per month, and (ii) 22% of service's payments to record companies for sound recording rights only, if not pass-through or (iii) 18% of service's payments to record companies for sound recording and mechanical rights together, if pass-through	lesser of: (i) \$0.50 per subscriber per month, and (ii) 21% of service's payments to record companies for sound recording rights only, if not pass-through or (iii) 17.36% of service's payments to record companies for sound recording and mechanical rights together, if pass-through	lesser of: (i) \$0.80 per subscriber per month, and (ii) 21% of service's payments to record companies for sound recording rights only, if not pass-through or (iii) 17.36% of service's payments to record companies for sound recording and mechanical rights together, if pass-through	(i) 21% of a service's payments to record companies for sound recording rights only, if not pass-through or (ii) 17.36% of a service's all-in payments to record companies for sound recording and mechanical rights together, if pass-through	(i) 22% of a service's payments to record companies for sound recording rights only, if not pass-through or (ii) 18% of a service's all-in payments to record companies for sound recording and mechanical rights together, if pass-through
2. Subtract performance royalties paid in connection with the "Offering"					
3. Payable Royalty Pool (\$ payable for all musical works used in the period)	Greater of 1. Step 2 result, and 2. \$0.15 per subscriber month	Greater of 1. Step 2 result, and 2. \$0.30 per subscriber month	Greater of 1. Step 2 result, and 2. \$0.50 per subscriber month	Greater of 1. Step 2 result, and 2. \$0.25 per subscriber month	Step 2 result
4. Allocate Payable Royalty Pool based on the number of plays*	Allocation based on number of plays**	Allocation based on number of plays**	Allocation based on number of plays**	Allocation based on number of plays**	Allocation based on number of plays**
<p>2. Subscriber month for all Offerings except bundled subscription services shall be calculated for the accounting period, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the promo royalty rate. For bundled subscription services, determine with respect to active subscribers (i.e., each end user who made at least one play of a licensed work during such month).</p> <p>3. Per-Play Allocation: Divide the Payable Royalty Pool for an Offering by the total number of plays of all musical works made through the Offering to yield a per-play allocation and multiply the result by the number of plays of each musical work. See 37 CFR § 385.22 with respect to calculating "plays" of downloads.</p> <p>4. The number of plays for a musical work with a playing time of over 5 minutes shall be counted so that each actual play is counted as 1 play plus 0.2 for each for each additional minute or fraction of a minute.</p>					
<p>* NOTE: All calculations pertain to the current accounting period and exclude free trials or promotional uses authorized under the regulations</p>					

Calculation Steps for Subsection C of 37
CFR § 385 - "2012 Settlement"

OFFERING TYPE

	Mixed Service Bundle	Paid Locker Service-Subscription Based	Purchased Content Locker	Limited Offering-Subscription Based	Music Bundles
1. Calculate the All-in Royalty Pool, which is the greater of					
a) % of Service Revenue, and	11.35%	12%	12% of incremental Service Revenue (e.g. advertising on relevant pages)	10.50%	11.35%
b) % of the amount paid to record companies	21% of a service's payments to record companies for sound recording rights only, if not pass-through OR 17.36% of a service's all-in payments to record companies for sound recording and mechanical rights together, if pass-through	20.65% of a service's payments to record companies for sound recording rights only, if not pass-through OR 17.11% of a service's all-in payments to record companies for sound recording and mechanical rights together, if pass-through	22% of a service's incremental payments to record companies for sound recording rights only (above the otherwise applicable payments for PODs), if not pass-through OR 18% of a service's all-in payments to record companies for sound recording and mechanical rights together if pass-through	21% of a service's payments to record companies for sound recording rights only, if not pass-through OR 17.36% of a service's all-in payments to record companies for sound recording and mechanical rights together, if pass-through	21% of a service's payments to record companies for sound recording rights only, if not pass-through OR 17.36% of a service's all-in payments to record companies for sound recording and mechanical rights together, if pass-through
2. Determine Payable Royalty Pool (\$ payable for all musical works used in the period)	Step 2 Result	Greater of 1. Step 2 result and 2. \$0.17 per subscriber per month ₂	Step 2 Result	Greater of 1. Step 2 result and 2. \$0.18 per subscriber per month ₂	Step 2 Result
3. Subtract performance royalties paid in connection with the "Offering"					
4. Allocate Payable Royalty Pool	Allocation based on number of plays	Allocation based on number of plays	Allocation based on number of plays	Allocation based on number of plays ⁴⁴	Allocation based on ratio of standalone prices and number of tracks in each configuration ⁴⁵
<p>1. Service Revenue Allocation subject to a floor of 50% of standalone published price of the licensed music component of the bundle, or 40% of the standalone published price of the licensed music component in the case of a bundle that has (or is reasonably expected to have) 750,000 subscribers or more.</p> <p>2. Subscriber month for all Offerings except bundled subscription services shall be calculated for the accounting period, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the promo royalty rate. For bundled subscription services, determine with respect to active subscribers (i.e., each end user who made at least one play of a licensed work during such month).</p> <p>3. Per-Play Allocation. Divide the Payable Royalty Pool for an Offering by the total number of plays of all musical works made through the Offering to yield a per-play allocation and multiply the result by the number of plays of each musical work. See 37 CFR § 385.22 with respect to calculating "plays" of downloads.</p> <p>4. The number of plays for a musical work with a playing time of over 5 minutes shall be counted so that each actual play is counted as 1 play plus 0.2 for each additional minute or fraction of a minute.</p> <p>5. If a music bundle is distributed by a record company for resale and contains a physical phonorecord, Service Revenue is 150% of the record company's wholesale revenue from the bundle.</p> <p>6. If a music bundle is distributed by a record company for resale and contains a physical phonorecord, 17.36% of the record company's total wholesale revenue from the bundle.</p> <p>7. Per-Work Allocation. Allocate the payable royalty pool determined in step 2 into separate royalty pools for each type of product configuration included in the music bundle (e.g., CD, permanent digital download, ringtone) in accordance with the ratios that the standalone published prices of the products that are included in the music bundle bear to each other. If there is no standalone published price for end users for the most closely comparable product in the U.S. shall be used. If more than one comparable exists, use the average of those prices. Then, divide each product configuration pool by the total number of sound recordings of musical works included in products of that configuration in the bundle and multiply the result by each musical work included in the configuration.</p>					

* NOTE: All calculations pertain to the current accounting period and exclude free trials or promotional uses authorized under the regulations

Summary prepared by the National Music Publisher Association (NMPA)

Regarding Proposed Settlement of CRB Section 115 rates effective 2013

Pending Approval by Copyright Royalty Board as of 12/11/12

Copied from NMPA website 12/11/12

Note: This is a summary only. Please refer to actual settlement for full explanation of rates and terms.

Scope: All existing rates and terms, currently found under Section 115, Part 385, Subparts A and B, are rolled forward with limited exceptions and new rates and terms are established for five newly created categories of subscription and non-subscription digital music services described below.

Current Rates and Terms: The current rates and terms for physical product, permanent digital downloads, ringtones and the existing subscription and non-subscription interactive streaming categories will be rolled forward with the following exceptions:

- The permitted length of promotional clips is extended from 30 seconds to 90 seconds.
- “Sound Recording Payment Integrity” - The parties have agreed to expansive new language that will ensure that for purposes of computing royalties to publishers based on a service’s payments to record companies (the “TCC” royalty calculation), the royalty base will include anything of value given for the licensed activity, including, without limitation, ownership equity, monetary advances, barter or any other monetary and/or nonmonetary consideration.

Rates and Terms for New Subscription and Non-Subscription Digital Categories

- Basic Rate Structure: The basic rate structure is similar to the current structure for the five interactive streaming categories

Rate is equal to the greater of (i) the percentage of service revenue, (ii) the percentage of amounts paid by digital service to sound recording owners and (iii) a subscriber-based flat rate (under certain categories)

- with the following beneficial changes:
 - NMPA has negotiated an increased percentage of service revenue (11.35% or 12% vs. 10.5%) in 4 of the 5 newly created categories.
 - The percentage of amount paid by a service to sound recording owners (rate of 20.65, 21 or 22%) is uncapped (as compared to the current Subpart B interactive streaming categories), which results in a higher royalty paid to publishers under that calculation.
- New Categories, Rates and Terms:
 - **Paid locker services** (subscription-based locker providing on-demand streaming and downloads)
 - All-in rate (inclusive of PRO fees) is greater of:

- 12% of service revenue;
 - 20.65% of a service's payments to sound recording owners for sound recording rights only; and
 - \$0.17 per subscriber per month flat rate.
- **Purchased content lockers** (a free locker functionally provided to a purchaser of a permanent digital download, ringtone or CD where the music provider and locker have an agreement)
 - All-in rate (inclusive of PRO fees) is greater of:
 - 12% of incremental service revenue (e.g., advertising on relevant pages); and
 - 22% of a service's incremental payments to record companies (above the otherwise applicable payments for the permanent digital downloads) for sound recording rights only.
- **Limited offerings** (subscription-based service offering limited genres of music or specialized playlists)
 - All-in rate (inclusive of PRO fees) is greater of:
 - 10.5% of service revenue;
 - 21% of a service's payments to record companies for sound recording rights only; and
 - \$0.18 per sub per month.
- **Mixed service bundles** (for example, a locker service, limited interactive service, downloads or ringtones *combined with* a non-music product such as a mobile phone, consumer electronics device or Internet service)
 - All-in rate (inclusive of PRO fees) is greater of:
 - 11.35% of service revenue; and
 - 21% of a service's payments to record companies for sound recording rights only.
- **Music bundles** (bundling music products such as CDs, ringtones and permanent digital downloads)
 - All-in rate (inclusive of PRO fees) is greater of:
 - 11.35% of service revenue; and
 - 21% of a service's payments to record companies for sound recording rights only.

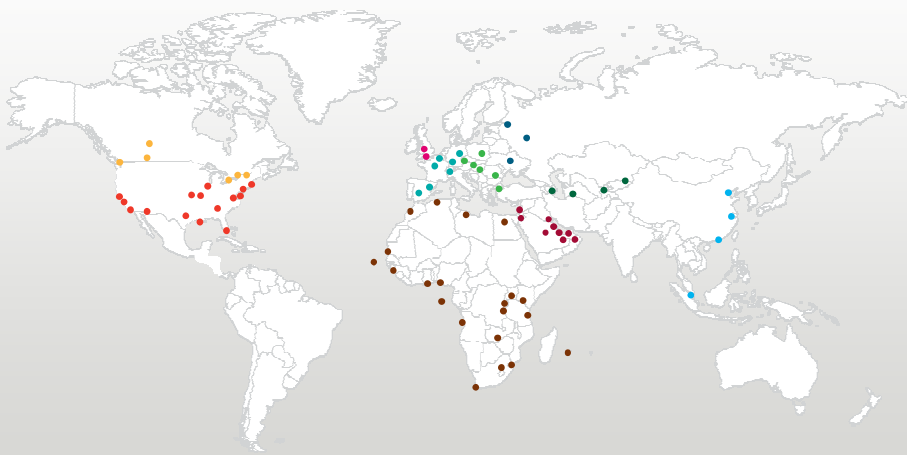
Dentons US LLP
17795513

DENTONS

Copyright Society of the USA: Making the Digital Deal

June 10, 2013

Locations



A world map with colored dots representing office locations. The dots are concentrated in North America (red and orange), Europe (green and blue), and Africa (brown). There are also a few dots in Asia and Australia.

June 10, 2013 Dentons US LLP 17795513 2 DENTONS

Introduction

- After more than a decade of copyright angst over the implications of digital distribution (authorized and unauthorized), digital revenue streams have become essential to content providers across the media and entertainment sector
- Deals are transitioning from exotic to ordinary
- Some statistics:
 - e-books outsold hardcover books in the U.S. in the first quarter of 2012, according to the Association of American Publishers
 - In 2012, 52% of the recorded music industry's revenues in the U.S. came from digital sources, according to the IFPI 2012 Digital Music Report, and music streaming services are reporting consistent quarterly growth in subscribers and revenues

The Issues – What's Left to Argue About?

- Grant of Rights
- Scope of Content Commitment
- Holdback and Takedown Rights
- Indemnification for Infringement
- Data Reporting and Sharing
- Content Security
- Geo-blocking

Grant of Rights

- Which exclusive rights are needed?
 - Analyze business model
 - Analyze technology
- Rights limits = service functionality and business model limits
 - Format limits
 - Device limits
 - Functionality limits
- If grant is made “subject to the other terms, conditions and limitations set forth in this Agreement”, does a breach mean that the Service is liable for copyright infringement (rather than breach of contract)?
- License vs. “authorization” – does it matter?

Example: Grant of Rights

- **Example #1:** During the Term and throughout the Territory, XYZ hereby grants to Company, its Affiliates, vendors and distribution partners a non-exclusive right and license to use, reproduce (as server or database copies), stream, create derivative works (such as promotional videos, “thumbnail” images, or by transcoding or formatting solely for the purposes of streaming the Content via the Service) of, distribute, exhibit, publicly perform, publicly display, transfer, transmit, distribute and publish the Content via the Service.
- **Example #2:** XYZ hereby grants Company the non-exclusive, non-transferable, non-sub-licensable right and authority to exploit the XYZ Materials, in the Territory during the Term solely in connection with the Services, in accordance with the Functionality, Technical and Security Specifications, and subject to the terms, conditions and limitations prescribed elsewhere in this Agreement.

Scope of Content Commitment

- Alignment with owner’s rights in content
 - Geography
 - Term
 - Release dates
 - Types of exploitation
- Commitment to provide “critical mass”
- “Most Favored Nation” (“MFN”)
 - Flexibility for limited “windowing”
 - Flexibility for limited third party exclusives
 - How are the Service’s competitors defined for purposes of the MFN?

Example: Scope of Content Commitment

- Example #1: The XYZ Content delivered to Company shall include all XYZ Content that has been cleared and generally furnished by XYZ to other similarly situated service providers in the same country of the Territory, with the exception of select circumstances, including without limitation, time-limited special projects, promotions, tests or trials conducted by XYZ or its affiliates with another entity (provided such special projects, promotions, tests or trials are entered into in good faith and not with the intent to frustrate the purposes of this Agreement), or where XYZ is not authorized to make certain XYZ Content available to Company.
- Example #2: The XYZ Content delivered to Company shall include XYZ’s entire commercially cleared catalog of [content] in the Territory at such time as XYZ makes the applicable [content] generally available for sale through [type of service] in the Territory. Notwithstanding the foregoing, various releases may be windowed for limited time periods through other services in the Territory in conjunction with specific marketing campaigns, promotions, features and sales initiatives.

Holdback and Takedown Rights

- Windowing and exclusives
- Legal and contractual issues
- Relationship issues
- Time frame/logistics
 - Interplay with indemnity obligations
- Assurance of equal treatment

Example: Takedown Rights

- At all times, XYZ will retain the right to exclude, or to request Company to remove and take-down, any XYZ Materials for bona-fide artist relations, legal and/or contractual reasons on a country-by-country basis; provided that, XYZ shall not use this right to frustrate the purpose of this Agreement or to discriminate against Company vis a vis other similarly situated services. All such take-down requests may be delivered via facsimile, electronic mail or any other effective method of written communication. Within [forty eight (48)] hours following Company's receipt of any such take-down request, Company shall restrict access to the applicable XYZ Materials on or in connection with the Services such that the applicable XYZ Materials are not accessible by End Users on the Services.

Representations, Warranties and Indemnification

- Knowledge Qualifiers
 - Content owner is generally responsible for delivering fully cleared content but may try for “best of knowledge”
- Limitations and Caps
 - Rarely if ever cover indemnification section
 - Never cover intentional breach
- Responsibility for claims of secondary infringement
 - Issue arises in context of UGC mash-ups, exploitation of sound recordings without clearing publishing (or vice versa), services that allow access to both cleared and uncleared content etc.
 - Generally, service will agree to indemnify content owner, but may not always have resources to make good on indemnity

Example: Representations and Warranties

- (a) XYZ hereby represents and warrants to Company that:
- (i) as between Company and XYZ, to the best of XYZ's knowledge, XYZ owns or controls all rights in and to the XYZ Materials necessary for Company to exploit the same materials via the Services to the extent contemplated by this Agreement free from any claims by any Person; and
 - (ii) XYZ shall be responsible for obtaining any and all necessary licenses and consents, and for making all associated payments due to third parties to whom monies fall due, in respect of Company's exploitation of the XYZ Materials via the Services in accordance with the terms and conditions set forth in this Agreement.

Example: Indemnification

- (a) Company will at all times indemnify and hold harmless XYZ and its Affiliates and each of their respective officers, agents, employees, directors, and advisors (collectively, the "XYZ Indemnified Parties") from and against any and all claims asserted by a third party against any of the XYZ Indemnified Parties for damages, liabilities, costs and expenses (including court expenses and reasonable counsel fees) arising out of (x) any breach or alleged breach by Company of any representation, warranty, covenant or agreement made by Company herein, (y) the distribution or operation of the Service, or (z) any claim, reduced to final judgment or settled with Company's consent, that any materials used or exploited by or on behalf of Company in connection with the Service (excluding any claims with respect to Company's authorized use of the XYZ Materials), in whole or in part, directly or indirectly, infringe upon, misappropriate or otherwise violate the rights of any third party.
- (b) XYZ will at all times indemnify and hold harmless Company and its Affiliates and each of their respective officers, agents, employees, directors, and advisors (collectively, the "Company Indemnified Parties") from and against any and all claims asserted by a third party against any of the Company Indemnified Parties for damages, liabilities, costs and expenses (including court expenses and reasonable counsel fees) arising out of (x) any breach or alleged breach by XYZ of any representation, warranty, covenant or agreement made by XYZ herein, or (y) any claims, reduced to final judgment or settled with XYZ's consent, that items of XYZ Materials (but not to the extent arising from the use or exploitation of any copyrighted musical compositions or lyrics embodied therein that requires the acquisition and/or administration of licenses that are Company's responsibility under the Agreement or otherwise) exploited by Company in accordance with the terms, conditions and limitations prescribed elsewhere in this Agreement, infringe upon, misappropriate or otherwise violate the rights of any third party. Notwithstanding the foregoing, XYZ's indemnification obligations hereunder shall not apply to the exploitation by Company of any items of XYZ Materials, on a prospective basis from the effective date of the Take-Down Notice for the XYZ Materials concerned.

Example: Limitation of Liability

- EXCEPT WITH RESPECT TO: (I) THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS; (II) ANY UNAUTHORIZED USE, REPRODUCTION, DISTRIBUTION OR OTHER EXPLOITATION OF ANY XYZ MATERIALS OR ANY BREACH OF [GRANT OF RIGHTS AND RESTRICTIONS SECTIONS] CAUSED BY THE INTENTIONAL OR GROSSLY NEGLIGENT ACT OF COMPANY, (III) ANY INTENTIONAL AND MATERIAL BREACH BY XYZ OF ITS [IP] REPRESENTATIONS, WARRANTIES AND COVENANTS, (IV) DAMAGES TO A PARTY CAUSED BY THIRD PARTY CLAIMS ARISING OUT OF OR RELATED TO BREACHES OF THIS AGREEMENT BY THE OTHER PARTY, AND (V) ANY BREACH BY EITHER PARTY OF [CONFIDENTIALITY SECTION], UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED BY EITHER PARTY.

Data Reporting and Sharing

- Who owns the usage data?
- What data is collected and shared?
 - Do content providers ever ask for/receive access to other content providers' usage data?
 - How do Services address inconsistent requirements for data collection and sharing?
- How often is data shared and how is it accessed?
- How can data be used?
- What are the legal and regulatory issues?
- Treatment of aggregated data and personally identifiable information generally differ...

Example: Data Reporting and Sharing: PII

- To the extent permitted by applicable law and regulation, Company shall use its best efforts to secure a data protection opt-in from End Users, wherever appropriate within the Services but at a minimum during the user registration process, which opt-in shall be crafted by Company so as to constitute informed consent by those End Users for Company to share their contact details paired with Service usage data ("Opt-In Data") with XYZ with a view to such End Users receiving direct communications from XYZ and its Affiliates. Company shall regularly during the Term make available Opt-In Data to XYZ in a mutually agreed format. Company acknowledges and agrees that (i) Opt-In Data shall be jointly owned by XYZ and Company, and (ii) to the fullest extent permitted by the consent provided by the relevant End Users and applicable laws and regulations, XYZ and its Affiliates shall be entitled unilaterally to exploit the Opt-In Data, including for commercial gain. XYZ agrees to include an "unsubscribe" option with every email, SMS or other electronic communication sent to End Users.

Example: Data Reporting and Sharing: Aggregated Data

- Company shall provide access for XYZ to dashboard data during the Term at no additional cost, including online, real-time access to detailed statistics and usage data concerning the use of XYZ Materials on the Services on an aggregate basis.
- if Company provides additional categories of data to any other content providers then Company shall provide such additional data to XYZ on terms and conditions that are reasonably equivalent in all material respects to the terms and conditions governing Company's provision of such additional data to such other content provider.

Content Security, Quality Control and Filtering

- Security requirements differ Service to Service and are generally embodied in a “whitepaper” prepared by the Service
- Do content owners spend resources to monitor/audit security and quality?
- Security solutions are imperfect
 - What are the remedies for breach?
 - How good is “good enough” (cost/benefit analysis)?
- Filtering solutions (for user generated content) are imperfect
 - Will Services agree to (and comply with) service level agreements (SLAs)?
 - Will Services agree to (and comply with) ongoing improvement requirements?
 - How good is “good enough” (cost/benefit analysis)?

Geo-blocking

- Rights may be subject to territorial limits, but internet and mobile distribution are global
- Geo-blocking provisions set forth conventions for “deeming” territorial limits to have been complied with
 - Conventions include location of IP address; credit card billing address etc.
- While imperfect, these proxies are generally accepted as “good enough”

Example: Geo-blocking

- (a) XYZ acknowledges that Company intends to utilize one of the following geographic filtering measures (such applicable measures, the “Geographic Filtering Measures”), as determined by Company at its sole election, to assist Company in determining as far as possible in which country any given End User (or potential End User) of the Services is located for the purposes of this Agreement:
- (i) Company may utilize state-of-the-art IP address look-up technology that is designed to determine whether an End User’s (or potential End User’s) IP address is within the applicable country in the Territory at the time of such individual’s establishment of a User Account for the Service; or
 - (ii) With respect to any End User for whom there is a Registered Payment Method (and regardless of whether that Registered Payment Method is used for the purchase of access to a Service), and prior to such End User’s actual accessing of a Service, Company may, as applicable (I) utilize issuing bank location look-up that is designed to determine whether such issuing bank for the applicable Registered Payment Method is on a listing of financial institutions located within the applicable country in the Territory, or (II) if applicable, utilize information from such End User’s mobile telecommunications provider that is designed to determine whether such End User is registered for access to mobile data/voice services within of the applicable country of the Territory; or
 - (iii) Geo-filtering based on the applicable End User’s billing address of record, as registered by such End User in connection with the establishment of the applicable End User’s User Account, and as verified by cross-checking against any billing address associated with the applicable Registered Payment Method (where available).

XYZ acknowledges that Company shall not be deemed to be in breach of the Territory-specific limitations set forth in this Agreement to the extent that it implements and relies on Geographic Filtering Measures.

Thank you



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