

## OPTIONAL STANDARD LICENSING TERMS AND CONDITIONS

Users who enter into a Content License Agreement on the Site with another User are free to agree to these Optional Standard Licensing Terms and Conditions in whole or in part, or to agree to different or additional terms for their Content License Agreement(s). However, if and to the extent that the Users who are party to a Content License Agreement have not agreed to different terms, then they agree to incorporate these Optional Terms. Users may not, by agreement amongst themselves, alter the rights or responsibilities of Muvi or agree to any terms that would violate the Terms of Service. Neither Muvi nor any affiliate of Muvi is a party to any Content License Agreement by or between Users regardless of whether these Optional Terms are incorporated.

You acknowledge and agree that Users have discretion whether to contract with each other and will negotiate and determine the specific terms of their Content License Agreement with each other. The Optional Terms is a sample only, which may not be appropriate for all Content License Agreements and which may be adjusted and added to as Users deem appropriate. Users choose whether to use the Optional Terms in whole or in part.

**1. Parties.** Licensor and Licensee identified on the Site under the Content License Agreement are the parties to the Content License Agreement. The address of each Party is the address entered under the tax information on the Site. Muvi is not a party to the Content License Agreement.

**2. Restrictions on Use of License.**

2.1. This Agreement is made between independent contractors and nothing in the Agreement is intended to create or shall operate to create an employment relationship, partnership or joint venture between Licensor and Licensee in respect of the Content, Licensed Property, or otherwise, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way or to hold itself out in any manner which would indicate or imply any such relationship with the other. Licensor shall not be bound by any representation, act or omission of Licensee not specifically required or permitted by the Agreement.

2.2. All rights in the Licensed Property, other than as expressly set forth in this Agreement, are reserved to Licensor absolutely, and nothing in the Agreement shall prevent Licensor from dealing with them in any way or for any purpose whatsoever, without restriction or limitation and without further obligation of any kind or nature to Licensee.

2.3. Licensee may not utilize the Licensed Property or any other material in which underlying rights vest in Licensor, whether or not such material is or has been supplied to Licensee by Licensor, for any purpose other than to fulfil its obligations under the Agreement.

2.4. The Agreement shall not be construed as an assignment or grant to Licensee of any title in the intellectual property constituting or associated with the Licensed Property.

**3. Royalty Payments.**

3.1. Royalties payable pursuant to the Agreement shall be calculated at the end of each Royalty Accounting Period. If the end of the Term does not coincide with the end of a Royalty Accounting Period, Royalties shall additionally be calculated as at the end of the Term. "Royalty Accounting Period" shall mean the three months ended on each of March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>st</sup> and December 31<sup>st</sup>.

3.2. A statement of the amount of Royalties due to Licensor shall be prepared by Licensee thirty (30) days after the end of each Royalty Accounting Period (each, a "Royalty Due Date").

3.3. By each Royalty Due Date, Licensee shall pay to Licensor the amount of Royalties earned during the immediately preceding Royalty Accounting Period.

3.4. On termination of the Agreement however caused, except for the breach of a material term of the Agreement by Licensor, all unpaid Royalties due to Licensor shall be immediately payable in full, regardless of any Royalty Due Dates specified herein.

3.5. All amounts due to Licensor under the Agreement shall become due and payable to Licensor upon the dates specified irrespective of whether Licensee is able or willing to fulfil its obligations or to exercise its rights under the Agreement and regardless of any circumstances whatsoever that are beyond the control or influence of Licensee, except for a breach of a material term of the Agreement by Licensor.

3.6. No Royalties shall be payable on copies of the Content supplied free of charge to Licensor in accordance with the Agreement or on quantities supplied free of charge to others for the purpose of promoting the Content as approved in writing by Licensor.

**4. Accounting and Reporting.**

4.1. Licensee shall keep full and proper records and accounts and shall report to Licensor all Royalties generated under the Agreement within thirty (30) days of the end of each Royalty Accounting Period. If the end of the Term does not coincide with the end of one a Royalty Accounting Period, then also within thirty (30) days of

the end of the Term.

4.2. Such reports shall show the number and price of Content sold during the applicable Royalty Accounting Period, Licensee's Net Sales therefrom, the applicable Royalty Rate and the Royalties due to Licensor thereon.

4.3. Licensor or its duly authorized representatives shall have the right, exercisable up to twice each calendar year upon giving five days' notice, to examine during regular business hours the accounts, records, documents and related materials in the possession of or under the control of Licensee with respect to the subject matter and terms of the Agreement and to make copies thereof. Licensee will cooperate with Licensor or its duly authorized representatives during such examination and shall make available such personnel and facilities as may reasonably be required in connection with the examination. Such rights shall extend for one year beyond the Term of the Agreement.

4.4. If any such examination discloses that monies due and payable to Licensor for a past period are greater than the monies actually paid to Licensor for that period, Licensee shall pay to Licensor within ten business days following the receipt of notice thereof from Licensor the amount of such deficiency plus interest payable at ten percent (10%) per annum from the day on which the deficiency first became due until its actual date of payment.

**5. Approvals and Samples.** Prior to making any of the Content available for distribution or sale within the Territory, Licensee shall obtain written approval from Licensor in accordance with the following terms conditions and procedures:

5.1. Licensor shall obtain prior written approval of Licensor of all print materials and Content created under the Agreement, including without limitation text, cover designs, advertising and marketing materials, graphics, and digital content prior to release of any Content. All artwork for inclusion in or on the Content or its associated packaging, or for promotional and publicity material for the Content, shall conform to the standard images depicted in Licensor's standard styles consisting of artwork reference material and descriptions defining and governing the appearance and characteristics of the Content (the "Style Guide") to be supplied by Licensor to Licensee. The Style Guide shall at all times remain the property of Licensor and shall not be copied reproduced or used other than in accordance with the terms of the Agreement.

5.2. Licensor shall be consulted regularly by Licensee during the design and development process for the Content, and Licensor reserves the right to establish and maintain its own policies and to withhold approval of any design or Content where in its absolute judgment the design or Content may be detrimental to Licensor's standing and reputation or business.

5.3. Licensee shall follow the reasonable directions of Licensor in respect of the use of the License Property and the overall tone and character of the Content, and Licensee shall at all times ensure that each of the Content manufactured, distributed or sold shall conform in all respects with the design and samples approved by Licensor.

5.4. For physical (as opposed to digital) Content, Licensee shall submit for the written approval of Licensor prior to the distribution or sale of the Content within the Territory a design or prototype for each of the Content (together with its proposed packaging) in stages, as follows ("Stages"):

- Stage 1: initial artwork or concept;
- Stage 2: artwork layout;
- Stage 3: pre-production sample, strike off or color proof; and
- Stage 4: final production sample (one sample of each Content in finished form, packaged and ready for distribution and sale).

In addition, Licensee shall submit for Licensor's written approval any promotional materials (for all Content - whether digital or physical) as follows:

- proposed written copy with color concept showing proper placement of logos, trademarks and copyright;
- final color art; and
- finished printed sample prior to commencement of distribution.

This approval process may be subject to addition and/or variation in relation to specific Content (upon written notice to Licensee) where Licensor, in its sole discretion, considers additional approvals and/or variation of these Stages necessary.

Licensor will give its approval or otherwise within five (5) business days of receipt of submitted materials. Licensee shall not proceed to the next Stage of development unless Licensor has given written

approval.

In the event that Licensor requires changes, Licensee shall effect any changes required by Licensor at each Stage and re-submit designs for Licensor's approval. Licensee shall not proceed with further development unless and until Licensor approves any re-submitted material.

5.5. If final approval as specified in Section 5.4 above shall be withheld with respect to any of the Content, Licensee shall not proceed with further manufacture, distribution or sale thereof unless and until Licensee has re-submitted an amended design prototype and obtained the written approval of Licensor in accordance with these provisions.

5.6. If at any time after receiving final approval Licensee wishes to change the design of a Content or packaging and promotional materials, the approvals process specified in Section 5.4 above shall be adhered to prior to making the redesigned Content available for distribution or sale.

5.7. Upon written request from Licensee, Licensor may, at its discretion, agree to waive the rights of approval herein stated at any or all Stages of the process, provided that no such waiver shall constitute or imply a waiver of the rights of approval over any other Content or over any other Stage not so specified.

5.8. All approvals and waivers pursuant to the Agreement shall be valid only if in writing and signed by a duly authorized representative of Licensor unless otherwise agreed to by the parties.

5.9. Except as otherwise provided herein, all details as to the manner of production, release, promotion, distribution and sale of the Content shall be at the sole discretion of Licensee.

5.10. Upon first offering any physical Content for distribution or sale or following a material (and validly approved) design change in the Content or associated packaging, Licensee shall immediately supply to Licensor three samples of each physical Content free of charge. If more samples are required by Licensor, such samples shall be supplied to Licensor on request at cost on the understanding that such Content shall be for promotional use only and not for re-sale.

## **6. Artwork and Other Materials and Clearance.**

6.1. Licensee shall request Licensor to supply any or all artwork required for the depiction of the Licensed Property and any characters or images in or on the Content and associated packaging. If Licensor is unable or unwilling to supply such artwork, Licensee may create or arrange for the creation of artwork ("Artwork") at Licensor's expense subject to such Artwork being approved by Licensor in accordance with Section 5.4 above before use and thereafter not used by Licensee for any purpose other than pursuant to the terms of the Agreement.

6.2. Licensee hereby assigns to Licensor (and to the extent applicable, hereby agrees to procure said assignment from any third party) as a present assignment of future copyright (and to the extent applicable any registered or unregistered design rights or other intellectual property rights) with full title guarantee for the full period of copyright (or any design rights or other intellectual property rights) including all renewals, extensions and reversions thereof and thereafter, all right, title and interest, including without limitation copyright, throughout the world in and to any Artwork and any other material based on or derived from the Licensed Property.

6.3. Except for any material provided by Licensor which is marked as being pre-cleared, Licensee shall be responsible for and shall obtain all third party consents and approvals that may be required in order to produce the Content and/or advertising and promotional material.

6.4. Licensee acknowledges and agrees that where any music and/or original voices of talent from the program relating to the Licensed Property, and/or any other content not provided by Licensor, are featured or included in the Content or in the promotion of the Content (or any part thereof), clearances for the inclusion of such music/voices must be obtained by Licensee directly from the owner thereof and/or talent concerned prior to the inclusion of such music/voices in the Content (or any part thereof).

## **7. Copyright Notice and Acknowledgements, Protection of Intellectual Property.**

7.1. Licensee shall include in its designs the copyright notice and/or such other notices and acknowledgements that are reasonably required and made available by Licensor and shall place such notices in a prominent place on every unit of the Content and on all packaging and promotional material.

7.2. Licensee accepts and agrees that, except in accordance with any express provision of the Agreement, the use of copyright notices marks and approvals does not entitle Licensee to represent any endorsement by Licensor of the Content, and no authorized promotion of the Content shall express or imply any such endorsement by Licensor of the Content or of any other goods or services rendered by Licensee whether in connection with the Content or otherwise.

7.3. Subject to the terms and conditions of the Agreement, Licensor hereby grants to Licensee a non-exclusive License to use its marks on the Content and associated packaging and promotional material as required hereunder. No other use of such marks shall be permitted in any circumstances whatsoever unless expressly

agreed in writing by a duly authorized officer of Licensor.

7.4. In the event of any claim, demand, action, proceeding or threatened proceeding which alleges that the Content or artwork included in or on the Content breach or may breach any representation or warranty of Licensor to Licensee, the party who first gains knowledge of the dispute will give written notice to the other as soon as possible and no event more than fourteen (14) days after the event becomes known.

7.5. If Licensee learns of any actual, threatened or suspected infringement of Licensor's intellectual property rights by a third party, or it is alleged that the rights granted herein (including Licensor's intellectual property) infringes any rights of any third party, Licensee shall notify Licensor in writing giving full particulars of such circumstances, and Licensee shall make no comment or admission to any third party in respect of such circumstances. Licensor shall have the conduct of all proceedings relating to the foregoing and shall in its sole discretion decide what action (including without limitation litigation, arbitration or compromise) if any to take in respect of any infringement or alleged infringement or passing off or any other claim or counterclaim brought or threatened in respect of the foregoing. Licensor shall not be obliged to bring or defend any proceedings whether for infringement or otherwise if it decides in its sole discretion not to do so, and Licensee shall not be entitled to bring or threaten to bring any action regardless of any such decisions. Licensee will, at the request of Licensor, cooperate with Licensor (including providing documentation and making relevant people available, and lending its name to proceedings) in any action, claim or proceedings brought or threatened in respect of the foregoing.

7.6. All expenses incurred by Licensee in cooperating with Licensor shall (unless the parties agree otherwise) be borne by Licensor. All damages recovered from third parties shall be the exclusive property of Licensor.

7.7. Licensee agrees and undertakes that:

7.7.1. it shall not have any ownership or interest in or goodwill in or associated with the Licensed Property or Licensor's intellectual property arising from the operation of the Agreement; any goodwill arising from the exploitation of the Licensed Property in relation to the Content enures to Licensor exclusively;

7.7.2. it shall not register or attempt to register in Licensee's own name, or in any other name, anywhere in the world, any form of Licensor's intellectual property or any form of intellectual property which would or might be confused with Licensor's intellectual property;

7.7.3. it shall not represent or assert any claim of ownership to Licensor's intellectual property, or use any of Licensor's intellectual property as part of a trade name or corporate name of Licensee; and

7.7.4. it shall not knowingly infringe or assist any third party in the infringement of Licensor's intellectual property.

7.8. For the purposes of the Agreement, Licensor's intellectual property includes, but is not limited to, registered and unregistered trademarks, service marks, logos, corporate names, business names, company names, domain names, copyright, registered design rights, unregistered design rights, database rights or any other right of a similar nature and any applications for the protection or registration of these rights and all renewals, revivals and extensions thereof throughout the world.

7.9. Licensee shall not remove the trademark(s) or copyright notice(s) or any other agreed notices or acknowledgements from the Content or add any mark other than its own marks (provided no credit or copyright lines or mark of Licensor is deleted or obscured) or Licensor's marks as permitted under the Agreement. Licensee may not combine or associate its marks with those of Licensor and shall comply with Licensor's directions as to proper placement of logos, trademarks and copyright notices as provided in Section 5.4 above.

## **8. Content Liability and Withdrawal of Content/Property.**

8.1. Licensee hereby represents and warrants and undertakes that the Content and all packaging and promotional material issued or used in connection with the Content shall not infringe the rights of any person or entity and shall conform with all applicable laws and statutes and codes of practice and regulations from time to time in force within the Territory. Licensee indemnifies Licensor and undertakes to defend Licensor against and hold Licensor harmless from all claims, actions, loss (including loss of goodwill and reputation) or liability, including the legal costs of Licensor, arising from Licensee's exercise of its rights hereunder including but not limited to claims based upon alleged defects in the Content and associated packaging or promotional material and any other materials issued or used in connection with the Content. In the event of a claim, Licensee shall inform Licensor as soon as reasonably practicable. Licensor shall have the right at its sole discretion and expense to defend any such claim using counsel of its own choice.

8.2. Licensee shall maintain general liability including product liability insurance providing protection against any and all claims, demands and causes of action arising out of any alleged defects in the Content sold during the Term (or any agreed extension or renewal) or any use thereof in an aggregate amount of not less than \$2,000,000.

8.3. Licensors shall have the right to require Licensee upon notice of ten (10) business days to withhold the release (and, as applicable, the manufacture) of the Content or to withdraw any Content from distribution or sale and to withdraw any materials supplied to Licensee by Licensor in connection with such withheld or withdrawn Content where such Content or their use could reasonably be claimed to violate or infringe the rights or safety of any person or if the use or continued use thereof shall in Licensor's reasonable judgement be prejudicial to Licensor's interest and reputation and following the receipt of such notice thereof from Licensor Licensee hereby agrees to withhold or withdraw such Content.

8.4. Licensor shall have the right at any time by giving notice in writing to Licensee to withdraw the Licensed Property from the terms of the Agreement in the event that, in the opinion of Licensor, the Licensed Property becomes unavailable for distribution due to (i) actual or threatened litigation relating to the Licensed Property; (ii) Licensor has been so advised by its legal advisors for reasons including but not limited to restrictions imposed on Licensor by any underlying rights-holders and/or creative participants in the Licensed Property; or (iii) any reason beyond Licensor's control. In the event of any such withdrawal as provided in this clause, Licensor shall give Licensee as much advance notice as reasonably possible whereupon Licensee shall immediately cease distribution of the Content.

8.5. A disclosure of information will be immune from prosecution or civil action under the Defend Trade Secrets Act, 18 U.S.C. Sec. 1832, if it: (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

## **9. Warranties, Undertakings, Indemnities and Associated Terms.**

9.1. Licensor hereby represents and warrants to Licensee that it has full right, power and authority to enter into the Agreement and to grant the rights hereby granted and that to the best of its knowledge and belief the License Property, including any artwork supplied is not known to be violate any rights of a third party.

9.2. Subject to Licensee complying in full with the obligations under Section 7.4 above, Licensor shall indemnify and hold harmless Licensee and its officers, directors, employees, stockholders and agents from any and all claims, demands, damages, liabilities, costs and expenses (including reasonable legal fees and expenses of Licensee) arising from any breach of any representation or warranty of Licensor to Licensee set forth in the Agreement. Licensor shall not be liable for any special or consequential loss or loss of profits. Except as provided in Section 9.3 below, this Section 9.2 states the entire liability of Licensor to Licensee in respect of any claims of any nature whatsoever from any third party claim against Licensee.

9.3. Nothing in the Agreement shall operate to exclude liability for personal injury or death caused by negligence or fraud.

9.4. Licensee hereby represents and warrants and undertakes that, where any material other than artwork supplied by Licensor is used in connection with the Content, such material shall not infringe any copyright or other rights of any person or business entity and is not defamatory or obscene or in any other way unlawful.

9.5. Licensee shall not use or allow the use of Licensor's name or the name for any purpose other than as specified in the Agreement, and Licensee shall make all solicitations and sales and collections solely in Licensee's own name and shall sell the Content in accordance with all applicable laws and regulations.

9.6. Licensee shall not by any act or omission impair, prejudice or damage the copyright or any other rights in the Licensed Property or material supplied by Licensor or violate any moral rights or deal with the Licensed Property or such material in any way such that a third party might obtain a lien or other right of whatever nature incompatible with the rights of Licensor.

9.7. Prior to exercise of the rights granted to Licensee under the Agreement Licensee shall submit the Content to all competent authorities to which they are required to be submitted for censorship and certification and safety certification or other purposes and shall comply with all applicable rules regulations and other formalities relating to the same in any Territory in which the Content are to be distributed or sold.

9.8. Licensee shall indemnify and hold Licensor harmless from and against all claims demands damages liabilities costs and expenses (including the reasonable legal costs and expenses of Licensor) arising directly or indirectly from any breach of any term of the Agreement or any representation or warranty of Licensee to Licensor set forth in the Agreement.

## **10. Promotions and Sales.**

10.1. Licensor reserves the right to use the Licensed Property for promotions; and

10.2. Nothing shall prevent Licensee advertising or promoting the Content provided that Licensor shall require Licensee to submit for Licensor's prior approval in writing any promotion or other activity associating the Content and/or the Licensed Property with any other product or third party goods, service or organisation including without limitation gift with purchase, on-pack promotions, in-pack promotions or self-liquidating promotions. If Licensor in its absolute discretion approves the promotion, then Licensee shall submit details of any such other

product, third party goods, service or organisation for Licensor's prior approval according to the processes set forth in Section 5 above as if such product, third party goods, service or organization were a Licensed Content.

**11. Creation of Content.** Where Licensee is using a third party to create, manufacture, produce, or develop (the "Developer") the Content, Licensee shall ensure that the Developer is compliance with Licensee's standard vendor policies and with the terms and conditions of the Agreement.

**12. Termination.**

12.1. If at any time during the Term (or any agreed extension or renewal) Licensee: 1) permits stocks of any Content (or any one of them) to cease to be held by it and is unable within three months to satisfy Licensor that it has serious plans to produce or obtain further supplies or 2) ceases to distribute the Content and is unable to satisfy Licensor that it intends to continue to distribute the Content, then Licensor may decide in its sole discretion by written notice to Licensee to terminate the Agreement in relation to such Content or any one of them, or to terminate the Agreement as a whole. In the event of termination by Licensor all the Licenses granted under the Agreement in respect of such Content shall revert to Licensor forthwith and without further notice.

12.2. In the final three months of the Term, Licensee shall not be permitted to manufacture or authorize the manufacture of more than 10% above the amount of the Content produced in the corresponding three month period in the previous calendar year without the prior written consent of Licensor, which consent shall not be unreasonably withheld.

12.3. Licensor may terminate the Agreement on notice to Licensee if:

12.3.1. Licensee fails to make any payment under the Agreement for 30 days after such payment becomes due and payable;

12.3.2. Licensee disputes the validity of any of Licensor's intellectual property rights with respect to the Content.

12.4. Upon expiration or termination of the Agreement, all rights herein licensed shall revert to Licensor without further notice. Upon expiration or termination, Licensee shall destroy the sets plates moulds casts dies reproduction processes and any other items processes or related materials used by or on behalf of Licensee (including without limitation any party licensed by Licensee to effectuate the terms of the Agreement) in connection with the manufacture, creation, or development of the Content (the "Materials") and supply formal certification thereof to Licensor. Within thirty (30) days of the expiration or the earlier termination of the Agreement, Licensee and the Developer (as applicable) shall provide Licensor with a written inventory of all Content currently in its/their stock at the time of the termination or expiration (the "Final Inventory").

12.5. Following receipt of the Final Inventory Licensor may at its sole election require Licensee to deliver all Content in its/their possession to Licensor without charge or alternatively require Licensee to destroy all remaining stock of the Content.

12.6. At any time when Content manufactured under the terms of the Agreement are destroyed by Licensee, Licensee shall within fifteen (15) days of such destruction send to Licensor a destruction certificate signed by a duly authorized representative of Licensee and certified by a notary public detailing all such Content destroyed.

12.7. Any termination of the Agreement howsoever caused shall be without prejudice to any monies due to Licensor under the Agreement and any claims Licensor may have upon Licensee including but not limited to an entitlement to damages or injunctive relief.

12.8. All such clauses as are necessary to the determination of the rights and liabilities of the parties after expiry or termination of the Agreement as the case maybe shall survive such termination or expiration and, for the avoidance of doubt, Sections 3, 8.1, 8.2, 9 12, 13, and 14 shall survive in either event.

**13. Confidentiality.**

13.1. "Confidential Information" means confidential or proprietary data or information of either Party which is disclosed in oral, written, graphic, machine recognizable, sample or any other form, by one Party to the other Party and which is clearly designated or marked as confidential or proprietary. In order for information disclosed orally to be considered Confidential Information, it must be identified as confidential at the time of disclosure and shall be confirmed in writing by the disclosing Party within thirty (30) days after such disclosure. Notwithstanding anything to the contrary herein, the receiving Party shall have no obligation to preserve the confidentiality of any information which was previously known to the receiving Party free of any obligation to keep it confidential; is distributed to third parties by the disclosing Party without restriction; is or becomes publicly available, by other than unauthorized disclosure by the receiving Party; is independently developed by the receiving Party without the use of the disclosing Party's Confidential Information; is received rightfully and without confidential limitation by the receiving Party from a third party.

13.2. The parties agree to keep Confidential Information in confidence and is not to be released to third parties, and to treat the Confidential Information with at least the degree of care and protection with which it treats

its own proprietary and confidential information (which includes, but is not limited to (i) instructing its employees not to release the information to third parties, (ii) taking reasonable security measures to protect such information, and (iii) not making copies of the information, but in any event with no less than reasonable care and protection. Neither party shall use any Confidential Information except for the performance of the Agreement. Further, the receiving Party may disclose Confidential Information to a governmental authority lawfully demanding such Confidential Information; provided however, that the receiving Party provides prior written notice to the disclosing Party, the disclosure by the receiving Party to the governmental authority is limited to the minimum necessary to meet its legal obligations, and confidentiality is otherwise maintained by the Parties after such disclosure.

#### **14. General.**

14.1. Assignment. Neither party shall be entitled to assign the Agreement, in whole or in part to any third party, either voluntarily or by operation of law, without the prior written consent of the other party, and no assignment shall relieve the assigning party of its obligations hereunder except that either party may assign the Agreement or any interest therein to any person, firm, company or corporation partly or wholly owned by or affiliated with it and/or to any person or entity which hereafter acquires control of all or substantially all of its assets, undertakings and obligations.

14.2. Waiver. Any waiver by a party, whether express or implied, of any breach or default by the other party of any of the terms of the Agreement shall not be construed to be a waiver of any other breach or default or of the same breach or default continuing or occurring thereafter, and any waiver shall be without prejudice to all rights and remedies available to a party in respect of each additional or continuing breach or default. In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under the Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.

14.3. Severability. If any of the provisions of the Agreement, and any riders or amendments thereto, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the other provisions of the Agreement, and any riders or amendments thereto, shall continue in force and not be affected and the parties shall negotiate in good faith to amend any such invalid, illegal or unenforceable provisions.

14.4. Entire Agreement. It is hereby acknowledged that the Agreement contains the sole terms and constitutes the entire agreement existing between the parties and that it supersedes all prior agreements, understandings or arrangements made between the parties with respect to the Content and Licensed Property. It is agreed that no party has entered into the Agreement in reliance on any representation, warranty or undertaking of any other party which is not expressly set out or referred to in the Agreement and this clause shall not exclude any liability for or remedy in respect of fraudulent misrepresentation. It is further acknowledged that any amendment, modification, discharge, waiver or variation of the Agreement shall only be binding if made in writing and signed by or on behalf of both Licensor and Licensee.

14.5. Third-party Beneficiaries. Except insofar as the Agreement expressly provides that a third party may in his own right enforce a term of the Agreement, a person who is not a party to the Agreement has no right to rely upon or enforce any term of the Agreement.

14.6. Notice. Any notice or other communication required to be given under the Agreement shall be in writing and sent to the applicable address set forth in the Agreement.

14.7. Counterparts. This Agreement may be executed in counterparts and delivered by each party sending the other party a scanned PDF copy of such executed document via email. Each such document shall be deemed to be an original.

14.8. Governing Law and Jurisdiction. Unless otherwise agreed by the Parties in writing, the Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of law provisions thereof. The jurisdiction and venue for actions related to the subject matter hereof will be the state and federal courts located in San Francisco, California, and both parties hereby submit to the personal jurisdiction of such courts. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.