



**FLIXFLING**

PRESENTS



**iNDIEFLING**

| MOVIE SUBMISSION PACKET |



## TABLE OF CONTENTS

Introduction .....	3
FAQ .....	4
Requirements .....	6
Submission Form .....	8
Metadata Form .....	9
Contract .....	10



## **FLIXFLING'S INDIEFLING**

We are big fans of independent filmmakers here at FlixFling, and we are excited to announce that we will now be opening up our system and giving filmmakers the opportunity to distribute their film on one of the most robust digital movie systems there is, putting your film in the hands of millions of users on iPhone, iPad, Android, PC, Facebook, Roku, Boxee and much more!

Brought to you by FlixFling – IndieFling is the perfect place for Independent filmmakers to stream their movie online and make some coin! For a small fee of \$100.00 filmmakers can submit their film\* to FlixFling and have it available online for rental or purchase by the general public.

Miss that deadline for the Film Festival? Didn't get picked for Sundance? Just want to get your movie out there? It's the perfect outlet for the independent filmmaker. Your film will be made available for rent or purchase under IndieFling in the FlixFling Channels section.

\*All submitted films will go through a strict screening process after which they will be uploaded to our site for everyone to enjoy.



## FAQ

### **Q - Will my movie be available to subscribers?**

A - Your film will only be available to users as a rental or purchase and will have a special IndieFling tag explaining this to our subscribers. This will help you better monetize your film.

### **Q - Is it possible to have my film available to subscribers?**

A - This is not possible under your current license agreement with FlixFling. If we see that your film is performing well we may opt to fully license your film for use across the entire FlixFling system. This will be determined on a case-by-case basis.

### **Q - How often will I receive royalty payments from my film?**

A - You will receive a royalty statement with any money due monthly starting 60 days after your movie goes live.

### **Q - Why do you charge \$100.00 to submit films to FlixFling?**

A - Every movie submitted must go through an approval process to be included on the FlixFling system. This includes reviewing your film to be sure it meets our content guidelines, creating your account, reviewing your contract, encoding and entering your film into the system. This takes time and resources that we need to be sure are covered.

### **Q - Will my submission fee be refunded if the film is not accepted?**

A - Submission fees are not refundable.

### **Q - Is this an exclusive deal?**

A - FlixFling gives you the freedom to distribute your film anywhere you like outside of our system.

### **Q - Do you own my film?**

A - No we are simply licensing your film to make it available on the FlixFling system. You retain all copyright and ownership of your film.

### **Q - How long will my movie stay on FlixFling?**

A - Our license with you is for one year and will automatically renew for another year unless you inform us in writing that you no longer want to license your film to us.

### **Q - Are your terms negotiable?**

A - No

### **Q - Will you advertise or market my movie?**

A - It is your job to promote your movie on the FlixFling system, we may however, from time to time, and at our sole discretion, highlight films that we feel would appeal to our users. We want your film to be successful on the FlixFling system and have included in this document marketing tips including some free tools on the FlixFling system to help you promote your film.



**Q - Does my film have to be completely original?**

A - YES, When you create something original, you own the copyright for it. Likewise, when other people create content, they may have a copyright to it. As a creative community, it's essential that everyone on FlixFling respect the copyrights of others. If you're not sure if something will violate someone's copyright, the safest thing to do is to create something completely original, with images and audio you've created. If it's all yours you never have to worry about copyright—you own it. If you've recorded something from a DVD, videotaped your TV screen, or downloaded a video/song online, don't submit it unless you have permission, your film will be rejected if we feel your film violates the copyrights of others.

**Q - Do you accept films with sex and nudity?**

A - Yes and No. Generally if a film is intended to be sexually gratuitous, it is less likely to be acceptable to FlixFling. There are exceptions for educational, documentary, scientific, and artistic content, but only if that is the sole purpose of the film and it is not gratuitously graphic. This really comes down to common sense, we do not accept "Pornographic" films. Submission requirements are on the next page.

**Q - Do you accept shorts?**

A - We are currently only accepting feature length films, While we don't have a specified time to define the length, as a general rule 60 minutes or greater would be a good reference point.

**Q- Can I submit multiple films?**

A- You may submit as many films as you wish but each film requires the \$100 fee. If you have multiple films, we recommend that you contact one of our aggregators who can help you to distribute your films in a more efficient manner. Their contact information is as follows:

Roger Baker  
Director of Business Development  
Giant Interactive  
rbaker@giant-interactive.com  
88 10th Ave. Ste 6W  
New York, NY 10011  
212-675-7300 ext 493

Steve Kramer  
The Picture Palace, Inc.  
stevenkramer@picpal.com  
27 Washburn Place  
Caldwell, NJ 07006  
973-652-9965

For any further questions please e-mail [IndieFling@FlixFling.com](mailto:IndieFling@FlixFling.com)



## **REQUIREMENTS:**

The following requirements **MUST** be included with your submission of your film or your film will be rejected. Please mail the following to the address below :

**IndieFling**  
**1600 N 5th Street**  
**Philadelphia PA 19122**

1. (1) Check or money order made out to FlixFling in the amount of \$100
2. Completed Submission Form
3. (2) Signed copies of Contract - One will be for our records and the other we will sign and mail back to you.
4. (1) Self addressed envelope with proper postage
5. (1) Copy of your film
  - a. Films should be sent on an uncopyrighted, unprotected, playable DVD. Note: this is NOT a data disc. This is a disc that can be played in a DVD player.
6. (1) Trailer of your film.
  - a. Can be included on the same DVD as your film or on a separate DVD.
7. Movie Metadata
  - a. Metadata for your film should include the following: title, director(s), actor(s), synopsis, genre(s), release year, MPAA rating (If applicable), and total run time (we are currently only accepting feature length films). An electronic version of this information should be delivered in a word document or an excel spreadsheet on a data disc.
8. (2) Images - these should be included on your data disc.
  - a. One must be a Hi-Res image of movie poster artwork or DVD cover art.
  - b. One must be a movie poster image sized 170 x 240 pixels.
9. Any copyright documentation - if applicable

Please note that if any of the aforementioned requirements are missing, we will not be able to process your submission and as a result it will not go up on our site. All discs sent to us will not be returned.

## **FILM CONTENT:**

All films submitted must be feature length films. For the time being we will not be accepting shorts. Films can be documentary, informative, scientific, fictional, etc. but must be original works and must not contain pornography. FlixFling will not accept any film that contains pornography. It is at the sole discretion of FlixFling to decide whether or not your film contains pornographic material. Nudity IS allowed within the context of the film but films whose sole purpose is sex will not be accepted. If we deem your film to have gratuitous amounts of sex and/or nudity it will not be accepted to FlixFling. Exceptions will be made for educational, informative, scientific and artistic purposes.

## **COPYRIGHT:**

All material within your film must be original. If material is not original (ex. the use of a popular song or well known product) you must provide documentation of permission of use. If you cannot provide documentation for use of a name brand product/company etc. we will not put your film on our site. All films submitted will go through a



screening process to ensure that no copyright laws have been violated.

## **PAYMENTS AND REPORTING**

We require a non-refundable \$100 processing fee for each film submitted. This fee should be in the form of check or money order made out to FlixFling. **DO NOT SEND CASH!**

FlixFling allows you the freedom to choose your own price points for the rental and digital purchase of your movie. It can be rented for \$1.99, \$2.99, or \$3.99. It can be purchased for \$7.99, \$8.99, or \$9.99. From these you will receive a 50% revenue share of the total rentals/purchases of your film per month. Each month you will receive a report indicating the number of times your film was rented/purchased and your percentage of the revenue share.

## **MARKETING:**

Self-promotion of your film on FlixFling will be important to its success. FlixFling will not provide any marketing for your film, but we may choose to feature your film on our homepage or banners if it receives a positive response from our users.

You will be free to use any form of marketing your own film on FlixFling that you choose. Since social networking is an integral part of FlixFling, it's a great way to market your film. We will provide you with a direct link to your movie page so that you can post the link on Twitter, Facebook, Blogs or anything else you may use. We also have a share button on each of our movie page that easily allows you to share the link with all of your friends. FlixFling has a handy application in Facebook where users can watch a movie and rate it right in their Facebook window. This is a simple and easy way to direct your friends to your movie. They can even sign up for a FlixFling account right in Facebook! You can also post right on our Facebook page [www.facebook.com/flixfling](http://www.facebook.com/flixfling) about your movie as soon as it goes live on our site.

FlixFling is also supported on several mobile devices including iPad, iPhone and Android. The applications for these devices are easy to find, download and use and can also serve as a portal to your film for FlixFling users. As a convenience to you and to aid you in the promotion of your film on FlixFling, our marketing team will keep you up to date on promotional developments once your film is live. We will inform you of any additional promotional opportunities you may take advantage of to lead viewers to your film. Although we will not directly promote your film, we will do our best to provide you with resources to help make your film a success.

Below are some general marketing tips to help you market your film:

- Use social networking sites such as Facebook, Twitter, blogs, etc. to generate word of mouth about your film. The more people you get talking about your film, the more people will want to see it.
- Use niche marketing. For example, with the film Sin Nombre, they targeted Latino audiences. Milk was aimed at the LGBT community.
- Start partnerships. For example, if you have a documentary about animals, then you should partner with Animal Planet to get the word out.
- If people aren't buying your movie, consider refining your trailer. The trailer should reflect the best aspects of your movie, without giving away everything. It should target your intended audience. If you're missing the mark, re-cut. Also, make sure you include a trailer on YouTube with a back link to your movie on FlixFling.



**INDIEFLING SUBMISSION FORM:**

Please detach and include in the same package as your film. PLEASE PRINT.

*Note : The address used on this submission form will be the address that all payment checks will be mailed to.*

Name: \_\_\_\_\_

Company (if applicable): \_\_\_\_\_

Name of Copyright Holder: \_\_\_\_\_

Date of Birth \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Address of Copyright Holder: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Home Number: \_\_\_\_\_ Cell Number: \_\_\_\_\_

SSN or EIN: \_\_\_\_\_

Why do we need this? We are required by law to report to the government any payments that exceed a certain amount as they may be deemed a source of income.

Title of Film: \_\_\_\_\_

Length of film: \_\_\_\_\_ minutes Genre(s): \_\_\_\_\_

Producer(s): \_\_\_\_\_

Director(s): \_\_\_\_\_

Writer(s): \_\_\_\_\_

**PRICE POINTS: CIRCLE ONE**

For Rental:            \$1.99            \$2.99            \$3.99

For Purchase:        \$7.99            \$8.99            \$9.99





**METADATA FORM**

You may fill out this form by hand or download our Excel Spreadsheet.

Title : \_\_\_\_\_

Actor(s) : \_\_\_\_\_

Director(s) : \_\_\_\_\_

Genre(s) : \_\_\_\_\_

Total Run Time : \_\_\_\_\_

MPAA Rating (if applicable) : \_\_\_\_\_

Release Year : \_\_\_\_\_

Synopsis : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## LICENSE AGREEMENT FOR DOWNLOAD-TO-OWN, VIDEO-ON-DEMAND DELIVERY

This License Agreement (“Agreement”) is entered into as of March 15, 2011 (the “Effective Date”) by and between Invincible Pictures, LLC, a Pennsylvania limited liability company (“Licensee”) and \_\_\_\_\_ (“Distributor”).

### Recitals

Licensee is an entertainment service providing its users with access to motion pictures, television and other digital entertainment products.

Distributor is in the business of distributing certain Titles.

Licensee and Distributor desire to enter into an agreement whereby Distributor will grant Licensee a [limited, non-exclusive/exclusive] license to distribute those Titles set forth in Schedule A within the United States, its territories, commonwealths and possessions (including without limitation the 50 States, the District of Columbia and Puerto Rico) (collectively, the “Territory”), all in accordance with the terms and conditions set forth below.

### Agreement

In consideration of the mutual promises contained herein and such other good and valuable consideration, the parties hereto agree as follows:

#### 1. Definitions

- 1.1 “Approved Devices” means a Personal Computer, Portable Device, Set-Top Box or Other Device that in each instance implements the DRM required pursuant to Section 8.1 (“Approved DRM”), is capable of accessing the Licensee Service, and belongs to or is in the possession of an Authorized User.
- 1.2 “Authorized User” means an account holder authorized by Licensee to receive Titles and other motion pictures, television and other entertainment products (including without limitation on a limited, free trial subscription basis) and solely for personal, non-commercial use.
- 1.3 “Customer Transaction” means each transaction whereby an Authorized User orders and Licensee receives payment for and delivers a Title for DTO or VOD distribution from the Licensee Service to the Authorized User for viewing from an Approved Device and storage either on such device or on the Licensee secured servers.
- 1.4 “Download-To-Own” or “DTO” means the encrypted electronic or other non-tangible exhibition and/or distribution of a program or programs on a program service pursuant to which a consumer has the right to download and retain a permanent copy of such program for unlimited future retrieval and viewing at times chosen by the consumer in the consumer’s sole discretion and where such consumer is required to pay a separate, discrete fee for the right to receive such program.
- 1.5 “High Definition” shall mean a scanning line structure greater than DVD quality (greater than 720x480 NTSC or 720x576 PAL).



- 1.6 “Licensee Service” shall mean the content distribution service presently entitled “Flixfling” and presently owned and operated by Licensee, that provides Authorized Users with access to motion pictures, television and other entertainment products in a variety of formats, including without limitation High Definition, on an SVOD, DTO and VOD basis via the Permitted Means.
- 1.7 “Marks” shall mean trade names, trademarks, service marks, logos, domain names, marks or other business identifiers of any entity.
- 1.8 “Other Device” means an Internet-connected television, Internet-connected DVD player, game console, media extender, Internet-connected audio visual receiver with HDMI/HDCP video switching or similar device, each implementing the Approved DRM.
- 1.9 “Permitted Means” means the encrypted transmission of a Title by means of the Internet or any other form of digital transmission utilizing internet or any successor protocol, whether now existing or hereafter developed, including without limitation, traditional and TCP/IP protocols, from Licensee secured servers (utilizing optical fiber, DSL, coaxial cable or any other Internet delivery system), to an Authorized User’s individual Approved Device located within the Territory, using the Approved DRM.
- 1.10 “Personal Computer” means an IP-enabled desktop or laptop computer implementing the Approved DRM with a hard drive, keyboard and monitor, and shall not include any other IP-enabled devices such as Portable Devices, personal video recorders, Set-Top Boxes, or the like.
- 1.11 “Portable Device” means a handheld audio/video playback device (e.g., iPods, iPads), cellular phone, “Smartphone”, pager, camera, personal digital assistant (including Androids, Blackberrys and Treos and any successors thereto) and other mobile devices now known or hereafter devised that implements the Authorized DRM and is capable of intelligibly playing back or exhibiting a Title, by being connected to the Internet or any other device (i.e., on a “side load” or “tethered” basis).
- 1.12 “Progressive Download” means the transmission of a program that allows customers to being view ing the program while a digital file of such program is still downloading to a device.
- 1.13 “Set-Top Box” means an Internet-connected set-top device, including without limitation a device that offers a general web-browser interface, which implements the Approved DRM. “Set-Top Box” shall not include a Personal Computer or Portable Device.
- 1.14 “Source Material” shall mean with respect to a Title the source files for such Title, its artwork, musical cue sheets, metadata, Advertising Materials (as defined below) and, as available, its trailers, the specifications for which are detailed in **Schedule B**.
- 1.15 “Start Date” means the date a Title is first available for distribution on the Licensee Service as set forth on **Schedule A**.
- 1.16 “Subscription Video-On-Demand” or “SVOD” means the encrypted electronic or other non-tangible exhibition and/or distribution of a program or programs on a program service on a download or streamed basis, including by Progressive Download pursuant to which a consumer may elect to view programming on a subscription fee basis at a time of the consumer’s choosing and for which no “per transaction” or “per exhibition” charge is made.



- 1.17 “Titles” shall mean all versions, including without limitation English, Spanish and such other subtitled original language versions as available to Distributor of those motion pictures, television and other digital entertainment products listed on Schedule A, as such list may be updated from time to time by mutual written agreement of both parties. For the avoidance of doubt, no advertising or sponsorship shall be included in Titles as provided by Distributor.
- 1.18 “Title License Period” shall mean with respect to a Title the period beginning upon the Start Date and ending as of the End Date set forth for such Title on Schedule A.
- 1.19 “Video-On-Demand” or “VOD” means the encrypted electronic or other non-tangible distribution and/or exhibition of a program or programs on a program service on a download or streamed basis, including by Progressive Download pursuant to which a consumer may elect to view programming at a time of the consumer’s choosing, in each case one or more times during its Viewing Period, and where such consumer is required to pay a separate, discrete fee for the right to view such program.
- 1.20 “Viewing Period” means, with respect to each Title ordered pursuant to a VOD Customer Transaction, a period commencing upon the distribution of such Title to the Authorized User and expiring on the earlier to occur of (a) 72 hours thereafter, or (b) the expiration of the Title License Period for such Title.

## **2. Grant of License and Restrictions**

- 2.1 Distributor hereby grants to Licensee (and its authorized third party subcontractors as necessary to encode and otherwise enable the Titles to be delivered by means of the Licensee Service) with respect to each Title a [limited, non-exclusive/exclusive] and, subject to the permitted assignment of this Agreement pursuant to Section 12.6, non-assignable license to:
- 2.1.1 copy, install, encode, encrypt, display, use, cache, store, transmit, exhibit and distribute the Title (and associated Source Material) for purposes of distribution of an unlimited quantity of such Title by the Permitted Means to Authorized Users within the Territory during its Title License Period on an VOD and DTO basis via the Licensee Service for receipt and viewing on Approved Devices as well as for customary, legitimate and limited market testing and demonstration purposes with focus groups, consumer electronics manufacturers and limited sub-groups of Authorized Users;
- 2.1.2 authorize each Authorized User to whom a Title has been distributed hereunder for exhibition on an VOD or DTO basis to (i) transfer a single copy of such Title among up to a total of 10 Approved Devices and (ii) to fast-forward, pause, or rewind such Title during exhibition;
- 2.1.3 authorize each Authorized User who has ordered a Title for DTO distribution to (i) create a back-up of the digital copy of such Title to recordable DVD-ROM media for playback on the Approved Devices, and to (ii) obtain from Licensee during the Title Licensee Period for such Title an additional download of a digital copy in order to replace a lost or damaged digital copy as initially downloaded by means of DTO distribution; and
- 2.1.4 distribute and utilize such promotional and advertising materials as Distributor may have available as to such Title solely to promote the availability of such Title on the Licensee



Service to current and potential Authorized Users in the Territory (“Advertising Materials”). Distributor shall make available, at a minimum and at no cost to Licensee, those Advertising Materials set forth on Schedule D with respect to each version of each Title delivered hereunder. Licensee is hereby granted during the Term and in the Territory a limited, non-exclusive, non-transferable (subject to the permitted assignment of this Agreement pursuant to Section 12.6) license to use, reproduce, publish, display, distribute and transmit Distributor’s Marks in connection with the marketing and promotion of the Licensee Service (including the availability of the Titles therein). Distributor will promote the Licensee Service (including the availability of the Titles thereon) in at least the same manner and capacity as Distributor promotes the services of any third party licensee of DTO and/or VOD distribution rights to Distributor’s content, subject to Licensee’s approval of such promotion.

- 2.2 Distributor reserves all rights not expressly granted to Licensee hereunder. It is explicitly understood that the entering into of this Agreement shall not be construed as granting to Licensee any interest in the copyright or any other right (other than the licenses expressly granted to Licensee hereunder) in the Titles and other picture materials provided by Distributor, and nothing contained in this Agreement is intended to convey or will convey to Licensee any ownership or other proprietary interests in the Titles and other picture materials other than the rights expressly granted herein.
- 2.2.1 Licensee shall have no right to modify, edit, translate, alter or create derivative works based on the Titles, except as necessary to encode, encrypt, format and/or configure the Titles for the purpose of distributing and/or exhibiting the same to Authorized Users in accordance with the terms of this Agreement.
- 2.2.2 Licensee’s use of Advertising Materials shall comply with all guidelines and restrictions Distributor provides to Licensee in writing upon delivery of such materials.
- 2.2.3 Without Distributor’s prior written consent, Licensee shall not, and shall not authorize any third party to, place any third party commercial messages or advertising in any Title or on any web pages of the Licensee Service that offer or promote the availability of the Titles on an SVOD, DTO or VOD basis.
- 2.2.4 This Agreement grants Licensee the right to distribute Titles in Standard Definition. In addition, in the event Distributor so elects in its sole discretion on a per Title basis to make a Title available for distribution, or on a per Title basis otherwise makes a Title available for distribution by a third party, in High Definition to the general public (including a limited portion of the general public, e.g. subscribers of a service) in a non-tangible version (including without limitation via DTO, all forms of VOD (whether delivered via television or the Internet or otherwise). Licensee shall have the right to distribute such Title in High Definition hereunder.
- 2.2.5 Licensee shall require that each Authorized User has affirmatively acknowledged and agreed to be bound by and comply with Licensee terms and conditions associated with the use of the Licensee Service and all Titles available in connection therewith (“Terms of Use”). The Terms of Use shall, at a minimum, contain terms and conditions that govern the permitted use of Titles by an Authorized User, consistent with the rights granted or restrictions set forth herein, including without limitation the number of Approved Devices



upon which an Authorized User may view a Title. Licensee will establish commercially reasonable procedures in accordance with prevailing industry standards to provide for appropriate action to be undertaken, in Licensee's good faith discretion, with respect to any Authorized User who violates the Terms of Use. Notwithstanding the foregoing, Distributor reserves all of its rights and remedies under law and equity against any Authorized User and any other third parties who infringe, violate or otherwise misappropriate any of Authorized User's rights in and to the Titles.

2.2.6 This Agreement only grants Licensee the right to distribute Titles via Permitted Means to Approved Devices.

### 3. Delivery

- 3.1 Source Material. Distributor shall, at its sole cost and expense, create and deliver the Source Material for each Title to Licensee at the address provided by Licensee no earlier than ninety (90) calendar days and no later than thirty (30) calendar days prior to the Start Date for such Title or such other date as mutually agreed upon by the parties. Simultaneously with each such delivery, Distributor shall email a completed version of the metadata form attached hereto as **Schedule C** to Licensee at sarah@invinciblepictures.com. Source Material will not be returned Distributor.
- 3.2 Specifications. All Source Material shall be provided to Licensee in accordance with the specifications set forth in Schedule B. For the avoidance of doubt, in the event that Source Material is provided to Licensee in encrypted format, including for example on DVD, Licensee shall be permitted to de-encrypt such media as necessary prior to encoding and/or encode directly from such media. Distributor covenants that subject to Section 2.2.4 Source Material shall be delivered in the highest quality and resolution available to Distributor and previously made available by Distributor to third party licensees of nontangible distribution rights (including without limitation the right to distribute via DTO, all forms of VOD (whether delivered via television or the Internet or otherwise), including without limitation, but subject to Section 2.2.4, if and to the extent available, High Definition. Distributor further covenants that if, during the applicable Title License Period, a higher quality or resolution version of any Source Material becomes available to, and is in the possession of, Distributor and is made available by Distributor to third party licensees of nontangible distribution rights (including without limitation the right to distribute via DTO, all forms of video-on-demand (whether delivered via television or the Internet or otherwise), Distributor shall provide that version, without cost, to Licensee.
- 3.3 Acceptance. Upon Licensee's receipt of the Source Material for a Title, Licensee shall have thirty (30) calendar days in which to send Distributor written notice of its acceptance ("Notice of Acceptance") or rejection ("Notice of Rejection") of the Source Material for that Title, such acceptance or rejection to be reasonably determined by Licensee. In the event that Licensee fails to provide Distributor with a Notice of Acceptance or Notice of Rejection within such thirty (30) day period or displays or distributes files created from Source Material on or from the Licensee Service prior to issuing a Notice of Acceptance or a Notice of Rejection, then such Source Material shall automatically be deemed accepted by Licensee.



- 3.4 Rejection. Upon Distributor's receipt of a Notice of Rejection with respect to a Title, if any, Distributor shall, without delay and at its sole expense, replace the defective Source Material. In event that Distributor is unable to provide an acceptable Source Material replacement within fifteen (15) business days of its receipt of a Notice of Rejection, Licensee shall be entitled to a refund by Distributor of any portion of the License Fee already paid with respect to such Title (such refund to be paid within thirty (30) days of Distributor's receipt of a Notice of Rejection for such Title) and not be obligated to pay any further portion of the License Fee with respect to such Title, and the parties shall instead negotiate in good faith to replace such Title with a comparable film or program.
- 3.5 Without limiting any of the foregoing, Licensee agrees that each Title exhibited to Authorized Users shall, at Licensee's expense, be secured from unauthorized distribution through an encryption or encoding technology that is in accordance with Section 8.1.

#### **4. Term**

- 4.1 This Agreement shall commence as of the date of execution ("Effective Date") and continue for a period of 12 months. This agreement will automatically renew for consecutive 12-month terms unless terminated in writing 30 days prior to the end of the term.
- 4.2 It is expressly understood and agreed that in the event Licensee breaches any provision of this Agreement, the damage, if any, caused Distributor thereby will not be irreparable or otherwise sufficient to entitle Distributor to injunctive or other equitable relief. Distributor acknowledges that Distributor's rights and remedies in any such event shall be strictly limited to the right, if any, to recover damages in an action at law, and Distributor shall not be entitled by reason of any such breach to rescind this Agreement, or to restrain Licensee's exercise of any of the rights granted to Licensee hereunder, or to enjoin or restrain the exhibition or distribution of any version of a Title hereunder, or any advertising, publicity, or promotion in connection therewith.
- 4.3 Survival. The terms and conditions of this Agreement shall survive expiration of the Term as to any Title that has a Title License Period extending beyond the Term. Following the termination of this Agreement or expiration of the last Title License Period hereunder, Sections 1, 4, 9, 10, 12.1 12.2 and 12.4 through 12.14, inclusive, as well as the rights of Authorized Users with respect to Titles ordered on a DTO basis by such Authorized Users prior to the expiration or termination of the Term, shall survive.

#### **5. License Fees**

- 5.1 In consideration of the license and other rights granted to Licensee hereunder and Distributor's agreements and obligations herein, and subject to the terms and conditions of this Agreement, Licensee shall pay to Distributor the following license fees (collectively, "License Fees").
- 5.1.1 The License Fees shall be paid as follows;
- (i) DTO License Fee: A "DTO License Fee" for each DTO Customer Transaction shall accrue in an amount equal to 50% of the amount, if any, actually received by Licensee in consideration for the DTO Customer Transaction, less third party transaction fees (e.g., Apple iTunes fees), applicable sales taxes or other government imposed fees withheld by Licensee pursuant to Section 12.11.





- (ii) VOD License Fee: A “VOD License Fee” for each VOD Customer Transaction shall accrue in an amount equal to 50% of the amount, if any, actually received by Licensee in consideration for the VOD Customer Transaction, less third party transaction fees (e.g., Apple iTunes fees), applicable sales taxes or other government imposed fees withheld by Licensee pursuant to Section 12.11 of this Agreement.

## 5.2 Timing of Payment

5.2.1 Subject to Section 5.1.1 hereof, the License Fees shall be payable as follows:

- (i) DTO License Fee: For each Title for which a DTO Customer Transaction occurs in a calendar month, Licensee shall pay the DTO License Fee as to such Customer Transaction to Distributor within sixty (60) days following the end of such calendar month.
- (ii) VOD License Fee: For each Title for which a VOD Customer Transaction occurs in a calendar month, Licensee shall pay the VOD License Fee as to such Customer Transaction to Distributor within sixty (60) days following the end of such calendar month.

## 6. Reporting

Licensee shall deliver to Distributor, on a monthly basis, an electronic report (“Detail Report”) that sets out on a Title by Title basis the number of DTO and VOD Customer Transactions for each Title during such calendar quarter and in the aggregate (calculated as of such calendar month) during the Title License Period for such Title. Said Detail Reports shall pertain solely to the Titles, be no less detailed than that provided by Licensee to any comparable content providers for the Licensee Service, and shall be provided to Distributor no later than thirty (30) calendar days following the end of each such calendar month.

## 7. Withdrawal of Titles; Claims, Offset

- 7.1 Withdrawal by Distributor. In addition to and not in derogation of its other rights pursuant to the Agreement, including without limitation pursuant to Section 8, Distributor shall have the right to withdraw any Title (a “Withdrawn Title”) from the Licensee Service if the continued distribution of such Title shall, or may in Distributor’s reasonable good faith discretion, create liability for Distributor or Licensee. Licensee will remove any Withdrawn Title within forty-eight (48) hours of receipt of a written or electronic notice to such effect from Distributor.
- 7.1 Without derogating from Distributor’s withdrawal rights in accordance with Section 7.1, if, with respect to any Title, any claim shall be presented against Licensee that is inconsistent with any of the representations, warranties and covenants made by Distributor in this Agreement, and because of such claim, Licensee reasonably deems itself placed in jeopardy of suffering any material liability as a result of such claim, Licensee may thereupon serve written notice upon Distributor containing the full details of such claim as then known to Licensee. Thereafter, until the claim has either been (i) finally adjudicated or settled or (ii) covered by a bond provided by Distributor reasonably related to the amount of such claim and in a form and from a financial





institution both reasonably acceptable to Licensee, Licensee, in its sole discretion, in addition to and without prejudice to any other right or remedy Licensee may have in law or in equity or under this Agreement, may: (a) withhold from all monies becoming due or payable to Distributor with respect to such Title by virtue of Section 5 of this Agreement, such amount to be reasonably related to the amount of such claim; and (b) suspend the Title License Period for such Title until such time as Licensee, in its reasonable business judgment, deems that exploitation of such Title hereunder would not place it in jeopardy of suffering any liability as a result of such claim. Upon written notice to Licensee of the final adjudication, settlement or other final disposition of such claim or the receipt by Licensee of such bond, Licensee shall, within fifteen (15) days disburse all such funds held by it to Distributor or to any other party entitled thereto, in accordance with the terms of any such adjudication, settlement or other final disposition. In no event shall Licensee's suspension of the Title License Period continue beyond the date ninety (90) days after the date upon which Licensee receives written notice of any such final adjudication, settlement or other final disposition of such claim. With respect to any such Title, the Title License Period shall thereafter be extended for a period coextensive with any such suspension; provided, however, if all or a portion of such extension is prohibited due to a pre-existing license agreement otherwise consistent with the terms hereof with respect to such Title, the Title License Period for such Title shall extend only until the date on which Distributor informs Licensee that an applicable exclusive license period or other contractual holdback period will commence under such pre-existing license agreement, and the Licensee Fee paid for such Title shall be reduced and promptly refunded to Licensee on a pro-rata basis (calculated based on the length of Licensee's foregone license period).

## **8. Security and Suspension**

- 8.1 Licensee shall implement geo-filtering, encryption, digital and physical security, and digital rights management (including limitations on the number of Approved Devices per Authorized User upon which a Title may be viewed, which shall be at least as restrictive as set forth in Section 2.1.2 hereunder) technology and procedures as to the distribution and utilization of the Titles no less restrictive and protective than the specifications as to such matters that Licensee employs on the Licensee Service with respect to programs distributed in comparable media that are licensed from any major studio ("Approved DRM").
- 8.2 Licensee shall use industry standard geofiltering technology to restrict access to Titles, via the Licensee Service, from outside the Territory. Such technology shall be no less robust than that used by Licensee with respect to any major studio.

## **9. Representations and Warranties**

- 9.1 Licensee represents and warrants that (i) it has full authority, capacity and ability to execute this Agreement and to perform all of its obligations hereunder, (ii) it shall at all times employ DRM and geofiltering technology in accordance with Section 8.1, and (iii) it shall not distribute the Titles other than as expressly permitted hereunder. Licensee will defend, indemnify and hold Distributor, its directors, officers and employees harmless from any breach of the representations and warranties made herein (including reasonable outside counsel fees and expenses).



- 9.2 Distributor represents and warrants that (i) it has full authority, capacity and ability to execute this Agreement and to perform all of its obligations hereunder, (ii) it has and shall maintain during the Term all right, title, authorizations, consents and interest necessary, including without limitation from all third party rights holders for each Title and/or associated Source Material, to grant the license rights hereunder and, other than with respect to non-dramatic music performance rights, that Licensee's distribution or exploitation as contemplated hereunder shall not violate or infringe any rights of other parties, including any third party providers of content contained in any Title and/or associated Source Material hereunder, (iii) there are no encumbrances against or any claims, actions, suit or other proceedings pending or threatened with respect to any Titles or associated Source Material hereunder that would interfere with Licensee's distribution or exploitation thereof in accordance with the terms and conditions of this Agreement, (iv) the Titles and associated Source Material hereunder will not when exhibited or otherwise exploited in accordance with the terms and conditions of this Agreement give rise to any claim or violate any applicable law, rule or regulation, and (v) neither Licensee nor any subdistributor, licensee, distribution system or service with which Licensee does business shall have any responsibility or liability for any services in connection with the production of any Title, or any responsibility or liability for the making of payments to any person or entity (including, without limitation, any union, guild, actor, director, craftsman, performer or governmental agency) by virtue of the use made of such Title hereunder, any trailers or trailer elements supplied by Distributor or any non-film material supplied by Distributor, all residual and other payments to any such person or entity being the sole responsibility and obligation of Distributor.
- 9.3 Distributor represents, warrants and covenants that the Titles delivered hereunder shall be of good technical quality, reasonably free of defects and otherwise fit for the particular purpose intended hereunder. Distributor shall, without undue delay and at its cost and expense, replace any defective product and deliver such replacement to Licensee.
- 9.4 Distributor represents and warrants that the performance rights in the music contained in the Titles are either: (a) controlled by ASCAP or BMI, or SESAC or by a non-U.S. performing rights organization affiliated with ASCAP, BMI, or SESAC; (b) in the public domain; or, (c) are controlled by Distributor and not available for licensing through the music performance societies. Distributor will defend, indemnify and hold Licensee, its directors, officers and employees harmless from any breach of the representation made in this Section 9.4. In the event that music in (a) above is included in a Title, as between Licensee and Distributor, Licensee shall, at its sole cost and expense, be responsible for obtaining, if and solely to the extent applicable, a license from the entities set forth in (a) above to publically perform such music and will defend, indemnify and hold Distributor, its directors, officers and employees harmless from any public performance by Licensee of such music.
- 9.5 Distributor will defend, indemnify and hold Licensee, its directors, officers and employees harmless from any breach of the representations herein (including reasonable outside counsel fees and expenses).



## 10. Confidentiality

Each party agrees that it shall not disclose to any third party (except for third party income participants, only to the extent necessary and provided such parties are bound to a confidentiality agreement with substantially the same terms as provided herein) other than to such party's agents, attorneys and accountants and to fulfill its obligations under this Agreement any business and technical information provided to it by the other party pursuant to this Agreement, including without limitation any Details Reports provided hereunder ("Confidential Information"). The terms of this Agreement are also to be maintained as Confidential Information except as may otherwise be required to comply with or assist a party to comply with a court order or federal securities laws. Each party shall take every reasonable precaution to protect the confidentiality of such information. This Section 10 shall survive expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the receiving party prior to its receipt from the disclosing party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; (iv) can be shown by documentation to have been developed by the receiving party without reference to any Confidential Information; or (v) that the receiving party becomes legally obligated to disclose to a governmental entity with jurisdiction over it. In addition, each party is entitled to disclose the terms and conditions of this Agreement (vi) as required by law, including applicable securities law, and (vii) to banks, proposed investors and financing sources and their attorneys and accountants, where disclosure is related to securing additional financing for that party.

## 11. Bankruptcy

11.1 Distributor agrees and acknowledges that (i) each Title is a work of authorship protected under Title 17 of the United States Code and is intended to constitute, and does constitute, "intellectual property" within the meaning of sections 101(35A)(E) and 365(n) of Title 11 of the United States Code, as now constituted or hereinafter amended (the "Bankruptcy Code"); (ii) the rights of Licensee hereunder are "rights to intellectual property" within the meaning of such sections; and (iii) the obligations of Distributor set forth in this Agreement shall continue, and shall bind Distributor or any trustee in bankruptcy of Distributor, in the circumstances and to the extent described in subsections (3) and (4) of such section 365(n) of the Bankruptcy Code.

## 12. General Provisions

12.1 Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Philadelphia, Pennsylvania. Distributor hereby waives any objection that it might now or hereafter have to the venue of any such arbitration and irrevocably submits to such jurisdiction in connection therewith, and hereby waives any claim or defense of inconvenient forum. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. This Agreement shall be construed and interpreted according to the laws of New York and each party agrees to submit to the jurisdiction of the Courts located in Philadelphia, Pennsylvania, and to accept service of documents relating to proceedings to enforce any actions by certified or registered mail. The prevailing party shall be awarded its attorney's fees and costs.



- 12.2 This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and any other licensing or distribution agreement, arrangement or understanding between the parties, and supersedes all prior written or oral commitments, arrangements or understandings with respect thereto including without limitation that certain License Agreement between the parties dated as of \_\_\_\_\_ (the “Prior Agreement”), which Prior Agreement shall as of the Effective Date be deemed [null and void ab initio/terminated as to all prospective effect other than with regard to either party’s accrued rights and obligations as of the Effective Date, including without limitation any right of indemnification arising from a breach, act or omission prior to such Effective Date]. This Agreement cannot be amended except by a writing signed by each party.
- 12.3 Notwithstanding anything else herein, Licensee shall only distribute the Titles as expressly provided for herein.
- 12.4 No waiver of any provision of this Agreement shall constitute a continuing waiver, and no waiver shall be effective unless made in a signed writing.
- 12.5 Notices and other communications required or permitted to be given hereunder shall be given in writing and delivered in person, sent via certified mail, or delivered by nationally-recognized courier service, properly addressed and stamped with the required postage, to the person signing this Agreement on behalf of the applicable party at its address specified below and shall be deemed effective upon receipt. Either party may from time to time change the person to receive notices or its address by giving the other party written notice of the change.
- 12.6 Neither party may assign this Agreement or its rights or obligations hereunder without the other party’s prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, each party may assign this Agreement without obtaining the consent of the other party to any parent company or wholly owned and controlled affiliated entity or in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets, or similar transaction.
- 12.7 At no time in the past, present, or future shall the relationship between Distributor and Licensee be deemed or intended to constitute an agency, partnership, joint venture, or a collaboration for the purpose of sharing any profits or ownership in common. Neither party shall have the right, power, or authority at any time to act on behalf of or to represent the other party, but each party hereto shall be separately and entirely liable for its own debts in all aspects.
- 12.8 Except as otherwise provided in Section 4.2, no remedy conferred on either party by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available to either party at law, in equity, by statute or otherwise, and except as otherwise expressly provided for herein, each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or thereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies will not constitute a waiver of the right to pursue any other available remedies.



- 12.9 In the event that any applicable law or regulation prevents Licensee from (i) legally implementing the Approved DRM or substantially complying with Section 8.1 of this Agreement or (ii) implementing alternative and substantially comparable security or copy protection measures to those so affected to the reasonable satisfaction of Distributor, such satisfaction not to be unreasonably or discriminatorily conditioned or withheld, Distributor shall be entitled to terminate this Agreement upon written notice; provided, however, Distributor shall be obligated to refund to Licensee or credit against Licensee payables, at Licensee's option and within thirty (30) calendar days of the date of termination, a prorated amount of all License Fees paid to Distributor, such pro rata amount to be calculated as of the effective date of termination.
- 12.10 If either party shall be prevented from performing under this Agreement, by reason of an event of force majeure, the affected party shall attempt to eliminate the force majeure contingency and such performance shall be excused to the extent that it is prevented by reason of such an event of force majeure. For purposes of this Agreement, an "event of force majeure" in respect of a party shall mean, to the extent beyond control of such party, any governmental action, nationalization, expropriation, confiscation, seizure, allocation, embargo, prohibition of import or export of goods or products, regulation, order or restriction (whether foreign, federal or state), war (whether or not declared), civil commotion, disobedience or unrest, insurrection, public strike, riot or revolution, lack of or shortage of, or inability to obtain, any labor, machinery, materials, fuel, supplies or equipment from normal sources of supply, strike, work stoppage or slow down, lock out, or other labor dispute, fire, flood, drought, other natural calamity, damage or destruction to plant and/or equipment, or any other accident, condition, cause, contingency or circumstance (including, without limitation, acts of God) beyond the control of such party. An event of force majeure does not, however, include any party's financial inability to make any of the payments required to be made under this Agreement, nor shall any event of force majeure relieve Licensee from the obligation to make any payments under this Agreement, provided the Titles are delivered to Licensee.
- 12.11 As between Distributor and Licensee, Licensee will be responsible for determining, collecting, and remitting all taxes that are required by law to be determined, collected and remitted with respect to the distribution of the Titles to Authorized Users. Licensee shall have the right to withhold a portion of any amounts payable by Licensee to Distributor and pay any such amounts over to any appropriate governmental authority.
- 12.12 The division of this Agreement into separate sections, subsections and/or exhibits and the insertion of titles or headings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 12.13 The parties acknowledge and confirm that each of their respective attorneys has participated jointly in the review and revision of this Agreement and that each party has had the benefit of its independent legal counsel's advice with respect to the terms and provisions hereof and its rights and obligations hereunder. Each party hereto stipulates and agrees that the rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor any party against another and that no party shall have the benefit of any legal presumption or the detriment of any burden of proof by reason of any ambiguity or uncertain meaning contained in this Agreement.
- 12.14 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one document



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

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

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

Name: \_\_\_\_\_

Name: Thomas Ashley

Title: \_\_\_\_\_

Title: CEO

Address for Notice: \_\_\_\_\_

1600 North 5th Street

Attn: \_\_\_\_\_

Philadelphia, PA 19122

With a copy to: \_\_\_\_\_

With a copy to: \_\_\_\_\_

**SCHEDULE A**

Title

Title : \_\_\_\_\_

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

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

Length of License : 1 Year

VOD : 50%

DTO : 50%

Submission Fee : \$100



### **SCHEDULE B**

Source Material Requirements and Specifications

### **SCHEDULE C**

Metadata Form

Please attach as Microsoft Word document

### **SCHEDULE D**

Advertising and Promotional Materials

Distributor shall make available, at a minimum and at no cost to Licensee, the following advertising and promotional materials with respect to each version of each Title delivered hereunder:

1. One (1) high resolution CD containing all available and approved photos (but not less than ten (10))
2. Two (2) color posters (so-called one sheets)
3. One (1) high resolution CD containing the original poster art, without type
4. Two (2) sets of adslicks
5. One (1) publicity kit (including press releases, synopses, final end credits and reviews)
6. If available promotional clips.
7. Any additional advertising and promotional materials with respect to each version of each Title as are reasonably available to Distributor, and requested by Licensee, including a reasonable number of brochures, inserts, added value materials, additional press books and publicity kids and promotional video press kits containing cassettes of film clips, featurettes or other background information)
8. Typed end credits

The materials shall be forwarded to Licensee at 1600 North 5th Street, Philadelphia, PA 19122, Attention: Jillian Ashton, or shall otherwise be made accessible to Licensee electronically; provided that no condition applicable to any such electronic access shall modify the terms and conditions of this Agreement.