

CONTRACT FOR THE USE OF AUDIOVISUAL WORKS IN DIGITAL INTERACTIVE NETWORKS

In Madrid, on the 1st Day of January 2017

BETWEEN

DAMA (Derechos de Autor de Medios Audiovisuales), a collecting society, duly authorized by the Ministry of Culture of Spain (Official Bulletin – B.O.E. no. 85 of 9 April 1999), with registered offices at Gran Vía 63, 2º Dcha., 28013 Madrid (Spain), represented by Mr. Víctor Romano Blasco, with DNI nº 78742824-R, in his capacity as General Director, (hereinafter referred to as **DAMA**);

AND

..., a company ..., located at ..., provided with VAT number, represented by, with ID number, in his capacity as (hereinafter, "**USER**"),

The Service also includes making available extracts and/or or so-called "trailers" of audiovisual works on a streaming basis.

WHEREAS

- I. **USER** operates and/or commercializes a video-on-demand service known as "... " (hereinafter the "Service") addressed to the Spanish marketplace, whereby audiovisual works are made available to members of the public residing in the Kingdom of Spain (hereinafter the "Spanish Public"). The Service also includes extracts commonly known as trailers of the audiovisual works offered to the Spanish Public.
- II. **USER** is therefore obliged to pay an equitable remuneration (hereinafter the "Equitable Remuneration") to the authors of the audiovisual works made available to the Spanish Public through the Service pursuant to section 90.4 of the Spanish Copyright Act (hereinafter the "SCA") that Equitable Remuneration being mandatorily subject to collective management under section 90.7 of the SCA.
- III. **DAMA** is a collective management organization duly authorized by the Spanish Ministry of Culture for, among other things, the collection of Equitable Remunerations on behalf of the directors and the authors of literary parts of audiovisual works for the making available of said audiovisual works to the Spanish Public. **USER** and **DAMA** have negotiated and agreed to the terms and conditions whereby **USER** will pay the Equitable Remuneration to **DAMA** corresponding to the directors and authors of literary parts of all and any audiovisual works made

available by **USER** to the Spanish Public through the Service said terms and conditions being set forth in this document.

Now THEREFORE, the parties hereto mutually acknowledge, in the capacity in which they act, the necessary legal status for the execution of this agreement in accordance with the following.

PROVISIONS

First.– *Scope of this Agreement*

1. The scope of this Agreement is the payment by USER to DAMA of the Equitable Remuneration corresponding under section 90.4 of the SCA to the directors and the authors of literary parts of audiovisual works for the making available of their audiovisual works to the Spanish Public carried out by the USER through the Service.
2. For the avoidance of doubt, the term “literary parts” shall include screenplays, plots, dialogues, translations, adaptations and any pre-existing works in the form of texts (such as novels, dramatic plays and such other protected material having been used for the creation of audiovisual works).
3. For the avoidance of doubt, no musical works and/or musical contributions -whether with lyrics or not-, which are embodied in audiovisual works are covered by this Agreement and are expressly excluded from this contract. For the purposes of this agreement the term “audiovisual works” shall embrace all and any audiovisual works as such term is defined by section 86 of the SCA with the exclusions set forth by section 90.6 of the SCA.

Second.– *Territory*

The Territory covered by this Agreement shall be the Kingdom of Spain.

Third.– *Third party rights*

Nothing in this agreement shall affect any third party rights such as those corresponding to authors and/or publishers of musical works (whether with or without lyrics) and/or neighboring rights corresponding to performing artists, musicians, phonographic producers, audiovisual producers and broadcast entities. USER shall be solely responsible for obtaining any licenses from those third parties and for the payment of any fees, levies or equitable remunerations to those third parties.

Fourth.– Moral rights

USER shall respect the moral rights of authors in its exploitation of audiovisual works.

Fifth.– Remuneration

1. Throughout the Term (as such term is defined below) of this agreement USER shall pay to DAMA the Equitable Remuneration referred to in clause First.1 above.
2. USER and DAMA have agreed to a tariff of _____ (%) (hereinafter the “Tariff”) of USER’s Revenues (as such term is defined below). The parties to this agreement express that the Tariff above is the result of a negotiation. Both parties understand that the Tariff is a fair and equitable price for the Equitable Remuneration rights managed by DAMA with respect to the Service which reflects the economic value of those rights in reasonable market terms.
3. The Equitable Remuneration to be paid by USER will be calculated as follows:
$$\text{Equitable Remuneration} = \text{Revenues} \times \text{Tariff}$$

Where Revenues include all and any incomes obtained by USER from the operation and/or commercialization of the Service to the Spanish Public in form of subscription fees, pay-per-view fees or any other fees, as well as any advertising revenues. Revenues do not include Value-Added Taxes collected by USER.

4. USER will make quarterly payments of the Equitable Remuneration to DAMA. For that purpose, USER shall deliver to DAMA within the first fifteen calendar days of each calendar quarter a statement of the Revenues received by USER during the previous quarter (hereinafter the “Report”). The Report shall also include a list of all the audiovisual works made available through the Service to the Spanish Public during the quarter included in that specific Report. The Report will be made by USER according to the form included in Annex 1 of this agreement.
5. After receiving the Report DAMA shall issue and send an invoice to the USER for the amount resulting from the application of the Tariff to the Revenues by email to that email addressed provided by USER to DAMA for that purpose. USER shall then have thirty (30) calendar days to pay the Equitable Remuneration. Payments will be made by bank transfer to the bank account provided for by DAMA for such purpose.

Sixth.– USER Obligations

USER hereby undertakes to take commercially reasonable technical measures consistent with standard industry practices to protect against unauthorised access to the Audiovisual Repertoire in USER servers.

Seventh.– Work identification management

USER and **DAMA** emphasise their mutual goal of reaching pan-European and global industry-wide standards for reporting formats and agree to use their respective reasonable endeavours to co-operate in good faith to this effect.

Eighth.– Audit

DAMA shall have the right to check the veracity of all data included in the statements submitted by **USER** by an authorized independent third party certified public accountant, during usual business hours and having provided no less than thirty (30) days written notice, **USER** being obliged to make available to the auditor all accounting books and any other information relating to the Service and, in general, any necessary documentation so as to enable the auditor to duly verify all data concerning the exploitations subject to this agreement.

Ninth.– Term and termination

1. This agreement shall be effective as from January 1st, 2017 and shall continue in force until December 31st 2017 for one (1) year (hereinafter the “Term”). The Term will be automatically extended to further one year periods, unless prior written notice is given by any of the parties hereto to the other party not less than THIRTY (30) CALENDAR DAYS before expiration of the Term and/or any extensions thereof.
2. In addition to any legal grounds for the termination of this agreement, any failure by **USER** in performing its obligation to pay the agreed remuneration, distortion of any data shown in statements of use or the lack of delivery thereof shall be deemed as grounds for the termination of the agreement, subject to **DAMA** providing written notice to **USER** and no less than forty-five (45) days to cure such failure.
3. The termination of the agreement shall not prevent **DAMA** from having the right to request from **USER** the payment of all and any outstanding amounts corresponding to the Equitable Remuneration until the date this agreement is effective. Such remunerations still outstanding at the said termination shall be calculated pursuant to the provisions of this agreement.

Tenth.- Representations and warranties. Indemnity

1. DAMA hereby represents and warrants that it is legally entitled to collect the Equitable Remuneration for all and any Audiovisual Works the **USER** may make available to the Spanish Public through the Service with no exclusion whatsoever and that all and any payments made or to be made by the **USER** to **DAMA** will have the legal effect of extinguishing the legal obligation by the **USER** to pay the Equitable Remuneration referred to in this agreement irrespective to the identity of the authors of the Audiovisual Works, their nationality, the country of origin of their works and any other consideration. DAMA hereby represents and warrants that the execution and fulfilment

by USER of this agreement and the obligations set forth herein are lawful and do not constitute any breach of the law or of any contractual obligations by DAMA and/or the USER and/or any third party whatsoever.

2. Pursuant to the foregoing, DAMA shall indemnify and hold USER harmless from any and all claims against USER by any third parties whatsoever with respect to the Equitable Remuneration covered by this agreement especially from any and all claims that the SOCEIDAD GENERAL DE AUTORES Y EDITORES (hereinafter "SGAE") might have against the USER.
3. This shall include all and any liabilities, actions, demands, settlements, damages, costs and fees, including reasonable attorneys' and professionals' fees and costs in connection with any claim or allegation arising from the collection and/or payment of the Equitable Remuneration granted by section 90.4 of the SCA to the directors and the authors of literary contributions of audiovisual works with no exclusion whose audiovisual works are made available by USER to the Spanish Public via the Service.

Eleventh.– Governing Law and Jurisdiction

1. This Agreement shall be construed and governed by the laws of the Kingdom of Spain.
2. The parties hereto agree that the Courts of the City of Madrid shall have exclusive jurisdiction over any controversy or question arising out between the parties, related or in connection with this Agreement, thus waiving any other jurisdiction that could assist any of such parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, issued in duplicate, at the place and on the date first written above.

For **USER**

For **DAMA**

ANNEX I: USAGE REPORT