EXHIBIT 10.2  
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 MUSICMUSICMUSIC INC.  
 FRANCHISE AGREEMENT  
  
  
 MUSICMUSICMUSIC INC.  
 FRANCHISE AGREEMENT  
  
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 MUSICMUSICMUSIC INC.  
 FRANCHISE AGREEMENT  
  
THIS AGREEMENT, made and entered into this 26 day of January, 2000 (this  
"Agreement") by and between musicmusicmusic, inc., a Delaware corporation  
("Franchisor"), and IDARA, a company registered in Abu Dhabi in the United Arab  
Emirates ("Franchisee"). (All capitalized terms used in this Agreement shall  
have the meanings attributed to them herein.)  
  
 WITNESSETH:  
  
WHEREAS, Franchisor, as the result of the expenditure of time, skill, effort,  
and money has developed and is the sole and exclusive owner of a unique system  
comprised of a digital music database, infrastructure and expertise to deliver  
or "stream" high quality audio programs over the Internet to users worldwide  
(hereinafter the "System");  
  
WHEREAS, the distinguishing characteristics of the System, all of which may, in  
accordance with the provisions hereof, be changed, improved, or further  
developed by Franchisor from time to time, include, without limitation:  
  
 A. Tradenames, trademarks, service marks, and logos, including, without  
 limitation, "xxxxxxxxxxxxxxx.xxx," "RadioMoi," "NewMusicJukebox," the  
 "Web-Bar Player," "DDA," and such other tradenames, trademarks,  
 service marks, brand names, and logos as are now designated (and may  
 hereafter be designated by Franchisor in writing) as part of the  
 System (hereinafter collectively referred to as the "Proprietary  
 Marks");  
  
 B. A digital music database that contains a comprehensive and which have  
 been digitized into more than 210,000 music files providing for  
 delivery of music over the Internet in various high quality modes (the  
 "Franchisor Digital Music Database");  
  
 C. An interactive entertainment website known as RadioMoi ("RadioMoi  
 Website") that publicly performs sound recordings over the Internet  
 from the Franchisor Digital Music Database ("Webcasting") and  
 generates revenues through advertising, sponsored promotions, artist  
 and record industry services, and merchandise and CD sales on the  
 site's RadioMoi giftshop;  
  
 D. A stand-alone unit which permits customers in record stores to sample  
 selections from CDs via the Internet and enables the Franchisor to  
 generate income from the Franchisor Digital Music Database access and  
 cross advertising ("The Web Bar Listening Post");  
  
 E. Trade secrets and other proprietary rights and technologies of  
 Franchisor including source and object code used in RadioMoi, know-how  
 and execution rights with respect to Webcasting technology (the  
 "Webcasting Technology"), proprietary software to access the RadioMoi  
 Web Site (the "Proprietary  
  
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 Software"), proprietary technology for operation of the Web Bar  
 Listening Post (the "Proprietary Technology"), patent applications  
 (the "Patents Pending"), and related copyrights (the "Copyrights", and  
 together with the Webcasting Technology, the Franchisor Digital Music  
 Database, Proprietary Software, Proprietary Technology, Proprietary  
 Marks, Patents Pending and Copyrights as they currently exist are  
 hereinafter collectively referred to as the "Franchisor Intellectual  
 Property");  
  
 F. Technical standards and specifications and technical operational  
 procedures as prescribed in the Franchisor's technical work-in-  
 progress confidential manual, as may be completed and thereafter  
 amended from time to time (the "Technical Manual"); and  
  
 G. Advertising, marketing, and promotional programs.  
  
WHEREAS, Franchisee owns and maintains a Web site known as "Xxxxxxx.xxx"  
("Franchisee Website") primarily designed to distribute music from a music  
database (the "Franchisee Database") and other related Web based businesses and  
services to a Middle Eastern and sub-continental audience;  
  
WHEREAS, Franchisee desires to obtain the benefits of the System by being  
granted an exclusive franchise and license in the territory (the "Territory")  
set forth in Exhibit A attached hereto, and to provide and operate a business  
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under the System using such of the Franchisor's Intellectual Property set forth  
on Exhibit B, attached hereto, in accordance with the Technical Manual, as well  
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as to receive training and other assistance provided by Franchisor in connection  
therewith;  
  
WHEREAS, Franchisee intends to utilize the System and operate the Franchise  
Business in and as part of the Franchisee Website, such that a portion of the  
Franchisee Website will be devoted to utilizing the System and operating the  
Franchise Business ("Franchisee RadioMoi Web Site"), and the remaining portion  
of the Franchisee Website will be devoted to providing and operating other  
businesses and services of the Franchisee;  
  
WHEREAS, Franchisor is prepared to grant Franchisee such a franchise and license  
pursuant to the terms and conditions of this Agreement; and  
  
WHEREAS, Franchisor desires to obtain the benefits of the Franchisee Database in  
connection with the System and Franchisee is prepared to grant Franchisor a  
license to use the Franchisee Database pursuant to the terms and conditions of  
this Agreement.  
  
NOW THEREFORE, the parties, in consideration of the undertakings and commitments  
of each party to the other party set forth herein, hereby mutually agree as  
follows:  
  
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1. GRANT  
  
1.1 Franchisor Grant  
  
 1.1.1 Franchisor hereby grants to Franchisee, pursuant to the terms and  
 conditions in this Agreement, and Franchisee undertakes the  
 obligation and accepts from Franchisor, an exclusive and, subject  
 to the provisions of Sections 13.1 to 13.2, nontransferable right  
 and franchise to operate a business utilizing the System in the  
 Territory (the "Franchised Business").  
  
 1.1.2 Franchisor hereby grants to Franchisee, pursuant to the terms and  
 conditions of this Agreement, and Franchisee hereby accepts from  
 Franchisor, an exclusive, and subject to the provisions of Section  
 13.1 and 13.2, non-transferable right and license to use the  
 Franchisor Intellectual Property in the Territory for the purpose  
 of providing and operating the Franchised Business. The Franchisee  
 Business shall include any and all of Franchisor's Enhancements (as  
 hereinafter defined) to (a) the Webcasting Technology, the  
 Franchisor Digital Music Database, the RadioMoi Web site, the Web  
 Bar Listening Post, the patents pending and (b) the Proprietary  
 Marks, Proprietary Software, Proprietary Technology and Copyrights  
 and all other Intellectual Property as they relate to the  
 foregoing. Franchisee shall not be entitled under any circumstances  
 to make any Enhancements to the Franchisor Intellectual Property  
 unless specifically provided otherwise herein. "Enhancements" means  
 any and all changes, updates, improvements or modifications made  
 to, or derivative works created from, any of the Franchisor  
 Intellectual Property. References to "Franchisor Intellectual  
 Property" herein shall include any and all Enhancements thereto.  
  
 1.1.3 Franchisee shall have no rights in or license to use any Franchisor  
 intellectual property not specifically included in the Franchisor  
 Intellectual Property or any enhancement thereto (the "Nonlicensed  
 Franchisor Intellectual Property"). Franchisee's rights or license  
 to use Nonlicensed Franchisor Intellectual Property shall be  
 subject to Franchisee and Franchisor entering into one or more  
 separate agreements for same. Franchisee will be provided with a  
 right of first refusal ("First Refusal") with respect to rights of  
 deployment or delivery in the Territory of any such Nonlicensed  
 Franchisor Intellectual Property. In the event and to the extent  
 that the parties do not enter into any such agreements, Franchisor  
 shall be free to sell, license or transfer or otherwise deal with  
 the Nonlicensed Franchisor Intellectual Property as Franchisor  
 chooses, in the Territory and elsewhere. Notwithstanding the  
 foregoing, Franchisee shall have one (1) right to match on  
 identical or better terms (the "Matching Right") the most recent  
 written offer (which may be in the form of a term sheet or other  
 preliminary memorandum) made to Franchisor with respect to a  
 license, transfer or other dealing regarding the Nonlicensed  
 Franchisor Intellectual Property in the Territory, which Matching  
 Right counteroffer must be made by Franchisee and received by  
 Franchisor within five (5) business days of Franchisee's receipt  
 thereof, or such Matching Right shall otherwise be forfeit. Such  
 right of First Refusal and the Matching Right  
  
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 shall be subject in each case to the Company's reasonable  
 determination that Franchisee possesses, or can reasonably acquire  
 in a timely manner, any and all prerequisite technical, marketing,  
 financing and/or other capability required with respect to such  
 Nonlicensed Franchisor Intellectual Property. In the event  
 Franchisee does not exercise its Matching Right or does not make a  
 counteroffer to the Franchisor which is equivalent to or better  
 than the proposed terms and conditions underlying the proposal for  
 deployment of Nonlicensed Franchisor Intellectual Property  
 underlying such Matching Right, Franchisee shall have no further  
 matching rights nor rights of review at any time regarding such  
 transaction involving the Nonlicensed Franchisor Intellectual  
 Property. Franchisor shall in no event attempt, directly or  
 indirectly, to introduce a new Internet business which "competes"  
 (as defined in Section 11.3) with the Franchised Business.  
  
 1.1.4 Notwithstanding the territorial limitations with respect to the  
 foregoing grant of the Franchised Business, the parties understand  
 and agree that, because the Internet is available globally and is  
 not capable of being limited to specific territories, the foregoing  
 territorial limitations and any and all other territorial  
 limitations hereunder imposed on Franchisee shall only apply to  
 Franchisee's delivery of System services and businesses which are  
 currently capable of being limited to the Territory, such as,  
 without limitation, sale of advertising space and the sale of Web  
 Bar Listening Posts. Accordingly, Franchisee shall not be in breach  
 of this Agreement solely by reason of offering any persons or  
 entities access to (or any persons or entities actually accessing)  
 the Franchisee RadioMoi Website from outside the Territory, nor  
 shall Franchisee be in breach of this Agreement for delivering  
 System services or businesses outside of the Territory if the same  
 are not capable of being limited to the Territory, such as, without  
 limitation, use of the RadioMoi radio station and/or the  
 NewMusicJukebox. Further, with respect to all System services and  
 businesses that are capable of being limited to a particular  
 territory, Franchisee shall promptly refer any requests therefor  
 which originate outside of the Territory to Franchisor and,  
 similarly, Franchisor shall (and shall cause its other franchisees  
 to) promptly refer any such requests received by Franchisor (or any  
 of its franchisees) which originate from within the Territory to  
 Franchisee; save and except that with respect to merchandising,  
 Franchisee and Franchisor shall each be entitled to fulfill the  
 respective orders they receive, regardless of where the order  
 originates or where the merchandise is to be delivered.  
  
1.2 Franchisee Grant  
  
 1.2.1 Franchisee hereby grants to Franchisor, pursuant to the terms and  
 conditions of this Agreement, and Franchisor hereby accepts from  
 Franchisee, during the Term of this Agreement, an exclusive right  
 and license to use, and to license its other franchisees of the  
 System to use, the Franchisee Database in the System in the  
 locations (the "Locations") set forth in Exhibit C annexed hereto  
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 and made a part hereof (the "Franchisor License").  
  
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2. TERM AND RENEWAL  
  
2.1 Unless sooner terminated pursuant to Section 15, the term of this Agreement  
shall commence on the date first set forth above and shall expire three (3)  
years from such date (the "Term").  
  
3. DUTIES OF FRANCHISOR  
  
3.1 Franchisor, within a reasonable period following the date of this  
Agreement, shall commence and complete delivery and installation at Franchisee's  
principal office in Abu Dhabi such of the Franchisor Intellectual Property  
necessary for Franchisee to launch, commence and fully operate the Franchised  
Business. Such reasonable period contemplates the following:  
  
 (a) All third-party parts and materials necessary for the installation of  
the Franchised Business ("Third Party Materials") shall be ordered by Franchisor  
promptly following execution of this Agreement. It is expected that the Third  
Party Materials will be received within four weeks of being ordered.  
  
 (b) Within one week following delivery to Franchisor's principal office in  
Canada of all Third-Party Materials necessary for the installation of the  
Franchised Business, Franchisor shall commence programming and otherwise prepare  
for installation all such Third-Party Materials ("Pre-Installation  
Preparations");  
  
 (c) The Pre-Installation Preparations are expected to take approximately  
two weeks following commencement of such action and are in no event expected to  
take longer than four weeks;  
  
 (d) Following completion of Pre-Installation Preparations and upon  
confirmation of Franchisee's operational Internet connectivity installation of  
at least T-1 line capacity, Franchisor shall promptly ship to Franchisee the  
Third Party Materials and any other parts, items or software reasonably expected  
to be required for installation and operation of the Franchised Business  
(collectively with the Third Party Materials, the "Franchise Materials"). It is  
expected that the Franchise Materials will take approximately one week from the  
date of shipment to be delivered to Franchisee's bonded warehouse.  
  
 (e) Within two weeks following confirmed receipt by Franchisee of the  
Franchise Materials at the Franchisee's principal office in Abu Dhabi,  
Franchisor shall commence local installation at Franchisee's principal office in  
Abu Dhabi of the Franchise Materials and other Franchisor Intellectual Property  
necessary for Franchisee to launch, commence and operate the Franchised  
Business, which installation is expected to take no longer than two weeks.  
  
3.2 Franchisor shall provide Franchisee with on-line access to the current  
version of the work-in-process Technical Manual, and all subsequent amendments  
thereto, as more fully described in Section 8 hereof, and which is contemplated  
to be continually updated and made available on-line.  
  
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3.3 Franchisor shall provide Franchisee and Franchisee's employees, at  
Franchisee's principal office in Abu Dhabi, with reasonable and prompt  
assistance in launching and initial training in respect of the Franchisor  
Intellectual Property and in the development, management, sales and operation of  
the Franchised Business (the "Initial Training Program"). The Initial Training  
Program shall consist of (i) one year of database software support, which shall  
be promptly provided by fax, phone, online or in-person as reasonably determined  
in the circumstances by Franchisor (the "Initial Software Support"), commencing  
upon installation at the place of business of Franchisee of the Franchisor  
Intellectual Property and (ii) during the two week period commencing as of even  
date therewith, provision of one individual who is an expert and highly  
experienced technician in the Franchised Business and provision of one  
individual who is an expert and highly experienced staff trainer in the  
Franchised Business, each such individuals to be available for a reasonable  
number of hours per week during usual and customary business hours of  
Franchisor.  
  
3.4 Franchisor shall promptly provide Franchisee with annual software support  
by phone, fax, online or in-person as reasonably determined in the circumstances  
by Franchisor, which support shall include all improvements and upgrades to the  
Webcasting Technology, the Franchisor Digital Music Database updates and on-line  
support and all other Enhancements (the "Annual Software Support").  
  
3.5 Franchisor shall promptly provide Franchisee with such other reasonable  
on-going technical consulting services and support during the Term by phone,  
fax, online or in-person as reasonably determined in the circumstances by  
Franchisor, with respect to standard problem solving and repair of any  
malfunction or defect in any of the Franchisor Intellectual Property licensed  
hereunder.  
  
3.6 Franchisor shall promptly provide Franchisee with such other reasonable  
on-going marketing and sales consulting services and support during the Term, by  
phone, fax, online or in-person, as reasonably determined in the circumstances  
by Franchisor.  
  
3.7 Franchisor shall provide a forum, in the manner and at such times as  
Franchisor deems reasonably advisable, to discuss future Enhancements, marketing  
efforts and sales systems for the Franchised Business.  
  
3.8 Franchisor shall make available to Franchisee and Franchisee's employees  
during each year of the Term a reasonable number of training programs,  
conferences, and seminars, free of charge. All continuing training programs  
shall be conducted by fax, phone, online or in-person as reasonably determined  
in the circumstances by Franchisor at such locations as Franchisor may  
reasonably designate.  
  
3.9 All services to be rendered by Franchisor pursuant to Sections 3.1 to 3.8  
shall be rendered by individuals who are experts and highly experienced in such  
matters. Further, with respect to any such services, in the event there is a  
major technical issue or problem that cannot reasonably be resolved via fax,  
phone, or remote online support, Franchisor shall, within a reasonable period of  
time, send to the principal site of the Franchised Business, an expert who is  
highly  
  
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knowledgeable and experienced with respect to the particular problem(s)  
identified by Franchisee, which expert shall promptly examine and attempt to  
resolve such problem(s).  
  
3.10 Franchisor shall use reasonable efforts to remain competitive and to make  
Enhancements to the System throughout the Term. Franchisor shall be obligated to  
promptly provide Franchisee with any and all Enhancements in accordance with the  
other terms and conditions of this Agreement within a reasonable time after  
implementation of such Enhancements by Franchisor.  
  
3.11 Franchisor shall continue to develop its Franchisor Digital Music Database  
by adding a minimum of 1,000 sound recordings thereto each month. Franchisor  
shall at all times during the Term provide Franchisee with full and complete  
streaming online access to the Franchisor Digital Music Database as well as the  
digital music database of its current and future franchisees, including all  
updates, without any royalties or other payments due therefor by Franchisee,  
except as specifically provided herein in Section 5.3. For certainty, it is  
acknowledged and agreed by the parties that it is the parties' intention that  
access to the Franchisor Digital Music Database and delivery of services or  
businesses which require such access will be, for the most part, from  
Franchisor's servers located in the United States.  
  
3.12 Franchisor shall on a monthly basis during the Term provide Franchisee  
with full and complete reports regarding the amount and type of usage of the  
Franchisor Digital Music Database, including, without limitation, detailed song  
play information, as well as ancillary marketing information provided by  
listeners (e.g., age, gender, etc.) if such information is made available to  
Franchisor and if Franchisor is permitted under relevant privacy laws to share  
such information.  
  
3.13 Franchisor shall, upon Franchisee's request for digitization of sound  
recordings, within two weeks after Franchisor's receipt of such recording,  
thereafter digitize or cause to be digitized all such sound recordings that  
Franchisor has approved for inclusion in the Franchisee Database.  
Notwithstanding the foregoing, Franchisee shall not be obligated to use  
Franchisor's services to digitize recordings, provided, however, that any and  
all such recordings digitized other than by Franchisor must nonetheless be made  
at the quality and standard acceptable to Franchisor, which acceptance shall not  
be unreasonably withheld.  
  
3.14 Franchisor shall use reasonable efforts throughout the Term to continue to  
develop its marketing and sales systems.  
  
3.15 Franchisor shall provide Franchisee with all such software (i) as is  
reasonably necessary for Franchisee to maintain accurate records of subscribers,  
songs, artists, authors, record labels and publishers with respect to the  
Franchised Business, as reasonably deemed necessary by Franchisor from  
time-to-time, and (ii) as may be required by Franchisee for purposes of  
compliance with the mandates of performing arts societies and/or any regulatory  
regime specifically applicable to the use of Franchisor Intellectual Property in  
any part of the Territory. Notwithstanding the foregoing, Franchisor shall not  
be required to provide any software with respect to any other ordinary course of  
business activities and/or other legal compliance requirements of Franchisee.  
  
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3.16 Franchisor shall keep track of, collect and shall pay and shall be  
responsible for all royalties and/or fees due to third parties such as  
publishers, artists and performers in connection with Franchisee's use of the  
Franchisor Digital Music Database, and shall, upon reasonable request from  
time-to-time, provide Franchisee with a statement that all such royalties due  
and payable have been paid by Franchisor.  
  
3.17 Franchisor shall comply with all laws, rules and regulations in the  
Territory (applicable to the Franchisor) and elsewhere so that Franchisee shall  
be able to enjoy without interruption the full and proper development and  
operation of the Franchised Business in the Territory, and Franchisor shall  
timely obtain and maintain any and all permits, certificates, and licenses in  
connection therewith, including, without limitation, any and all licenses or  
other agreements to allow Franchisee to use the Franchisor Digital Music  
Database and all other elements of the System, provided, however, that  
Franchisor shall not be in breach of this provision if Franchisor's  
non-compliance with any such laws, rules and regulations does not have a  
material adverse affect on the Franchised Business.  
  
3.18 Franchisor hereby undertakes, in accordance with the terms and conditions  
set forth herein, to promptly exercise any and all reasonable efforts to provide  
for fully reliable operation of the System. Notwithstanding the foregoing,  
Franchisor shall not be in breach of this Agreement (but shall nevertheless  
comply with the provisions of the first sentence of this Section) in the event  
the System fails to perform properly as a result of any defects with respect to  
third party products, services, personnel (including Franchisee personnel) or  
materials over which Franchisor has no reasonable control. For purposes of the  
foregoing, "fully reliable operation of the System" shall mean performance of  
the System during 95% of ordinary course of business operation, consistent with  
past day-to-day practice of the System as it has been used and maintained from  
inception up to and including the date of this Agreement. For purposes of  
clarity, any and all scheduled "downtimes" of the System for purposes of  
maintenance and upgrading of the System shall not be construed as affecting the  
fully reliable operation of the System, provided such "downtimes" are of a  
reasonable duration and frequency and that Franchisor gives Franchisee  
reasonable prior notice thereof.  
  
3.19 Franchisor agrees to sell to Franchisor such equipment, products, programs  
or services, or any components thereof, including, without limitation, software,  
netware, hardware, Web services, and the Web Bar Listening Post, which  
constitute or are part of the Franchisor Intellectual Property (the "Franchisor  
Products") that Franchisor deems reasonably necessary for Franchisee to operate  
the Franchised Business, whether for resale or for Franchisee's own use at a  
price of no more than the cost of such Franchisor Products plus 10%, excluding  
shipping, handling, customs and similar third party fees (the "Preference  
Pricing"). In addition, in the event that Franchisor shall sell any of the  
Franchisor Products to any other franchisee during the Term of this Agreement at  
a price lower than the Preference Pricing, the Preference Pricing shall be  
adjusted so that with respect to such of the Franchisor Products thereof as are  
sold at such lower price, Franchisee shall pay no more than such lower rate for  
such Franchisor Products (the "Most Favored Nations Pricing"). Notwithstanding  
the foregoing, at such time as the pricing for any Franchisor Products with  
respect to any other Franchisor franchisee is subsequently revised, rescinded or  
otherwise no longer in effect, the price of such Franchisor Products as  
previously  
  
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reduced in cost as per Most Favored Nations Pricing shall revert to the  
Preference Pricing. The foregoing shall in no event require Franchisor to pay  
any refund to Franchisee with respect to any Franchisor Products which are sold  
and delivered to any other Franchisor franchisee after the sale and delivery of  
any such Franchisor Products to Franchisee. Franchisor undertakes to use  
reasonable efforts to obtain the best price on Franchisor Products and shall use  
its best efforts to negotiate reasonable and customary representations,  
warranties and where possible, options for extended service contracts, on  
Franchisor Products for the benefit of Franchisee, and shall, upon request,  
provide Franchisee with a copy of any such contract of purchase.  
  
3.20 (a) If any defect occurs which causes any Material Interruption (as  
defined below) in the deployment or operation of the System by Franchisee, and  
such Material Interruption is not in any month attributable to any third party  
products, services, personnel (including Franchisee personnel) or materials  
outside of Franchisor's reasonable control, Franchisor shall refund and/or  
credit to Franchisee such pro-rata fees and royalties as are due or have been  
paid to Franchisor with respect to such month, which pro rata calculation shall  
be (i) the fees and royalties due for such month multiplied by (ii) a fraction,  
the numerator of which shall be the duration of the Material Interruption in  
such month, over a denominator which shall be the total time for such month  
during which the System was expected to be operable (such obligation, the  
"Downtime Refund"). Franchisee undertakes to promptly notify Franchisor of any  
incident which is or could with the passage of time constitute a Material  
Interruption ("Downtime Incident" and the notice thereof, "Defect Notice").  
Franchisor undertakes to use reasonable efforts to promptly cure any such  
Downtime Incident, which it shall do at its sole cost and expense. The  
determination of whether a Material Interruption has occurred in any given month  
shall be made from the date and time a Defect Notice is received by Franchisor,  
provided that if a Material Interruption continues from one month to another, it  
shall not be necessary for Franchisee to provide Franchisor with another Defect  
Notice for the second or any subsequent months over which the Material  
Interruption continues. For purposes of the determination whether a Material  
Interruption has occurred, personnel affiliated with Franchisee shall not be  
deemed to be under the control of Franchisor, and any products, services, and/or  
materials belonging to Franchisee shall not be deemed to be under the control of  
Franchisor except where Franchisor has been expressly granted control thereof in  
writing by Franchisee.  
  
(b) For purposes of this Agreement, "Material Interruption" shall mean a  
material inability of the System to perform less than 95% of the time during any  
monthly period in which the System is expected to operate in the ordinary course  
of business consistent with past day-to-day practice as the System has been used  
and maintained from inception up to and including the date of this Agreement,  
Franchisor hereby acknowledging that the System has from its inception up to the  
date of this Agreement been operating without material interruption or material  
defect of any kind. For purposes of clarity, any and all scheduled "downtimes"  
of the System for purposes of maintenance and upgrading of the System shall not  
be construed as Material Interruption of the System, provided such "downtimes"  
are of a reasonable duration and frequency and that Franchisor gives Franchisee  
reasonable prior notice thereof.  
  
4. DUTIES OF FRANCHISEE  
  
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4.1 Franchisee acknowledges that every detail of the System is important to  
Franchisor in order to develop and maintain the standards and public image of  
the System. Franchisee agrees to conduct the Franchised Business in strict  
compliance with this Agreement.  
  
4.2 Franchisee shall devote a reasonable number of Web pages of the Franchisee  
Website to RadioMoi (the "Franchisee RadioMoi Web Site") which shall not be less  
than the number of Franchisor's of RadioMoi Web pages at the date hereof. The  
design, position, size, prominence and other details of such pages shall, except  
as otherwise agreed by Franchisor, be substantially the same as Franchisor's  
RadioMoi pages at the date hereof as set forth on Exhibit D annexed hereto and  
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made a part hereof, except for Arabic translations, elements, font selections  
and culturally acceptable adaptations, logos, and design changes therewith  
("Arabic Customization"). The Arabic Customization shall be subject to prior  
approval by Franchisor, which approval shall not unreasonably be withheld.  
Franchisee shall provide and be responsible for all reasonable costs associated  
with Arabic Customization.  
  
4.3 (a) Franchisee, whether directly or indirectly, during the Term, shall  
conduct and transact any and all Internet types of primarily music-related  
activity or business whatsoever, whether branded or not, through and only  
through the Franchisee RadioMoi Web Site. Primarily music-related activity or  
business for the purposes of this Agreement shall mean, (i) the streaming of  
live or recorded music, recitations of narratives, poetry and/or any other aural  
form of music on the Internet, (ii) so called "music videos" or other motion  
pictures that primarily feature the musical performances of an artist or group,  
(such as an Internet concert Webcast); (iii) other like-types of primarily  
music-related products or services over the Internet; (iv) pointers or links or  
deemed links to or from any other Web page or Internet Site offering access,  
sale or delivery of any of the foregoing items set forth in clauses (i) or (ii)  
above (except for any Internet site of Franchisor or other franchisees of  
Franchisor as authorized in writing by Franchisor); or (v) the marketing or  
merchandising of any of the foregoing items set forth in clauses (i) or (ii). It  
being understood and agreed to by Franchisee that Franchisor shall be entitled  
to collect Royalties (as defined below) pursuant to Section 5 on any and all  
income generated by Franchisee during the Term through the Franchisee Website  
from any Internet type of primarily music related business or activity on the  
Internet. Notwithstanding the foregoing, nothing shall prevent the sale of CDs  
(or any other similar recorded media configuration now known or hereafter  
developed) or any household items or products (including, without limitation,  
stereos, VCRs computers (including hardware and software), cameras, DVDs radios,  
television, monitors) by Franchisee and any revenues derived by Franchisee  
therewith shall not be within the scope of this Agreement. In the event  
Franchisee intends to purchase non-Arabic CDs for resale, Franchisee agrees to  
first negotiate in good faith with Franchisor with respect to the terms of  
supply, and delivery to Franchisee of such CDs. Similarly, in the event  
Franchisor intends to purchase Arabic CDs (or any other record configuration now  
known or hereafter developed) for resale, Franchisor agrees to first negotiate  
with Franchisee with respect to the terms of supply, and delivery to Franchisor  
of such CDs. For purposes of clarity, such negotiation shall not as of the date  
of this Agreement constitute a binding contract with respect to the supply of  
any such CDs unless and until one or more separate agreements are reached  
between Franchisee and Franchisor.  
  
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 (b) For purposes of this Agreement, "directly or indirectly" shall mean,  
in the case of Franchisee, any action by the Franchisee or any of its  
subsidiaries or affiliates, or any of its or their shareholders ("Franchisee  
Entities"), and in the case of Franchisor, any action by the Franchisor or any  
of its subsidiaries or affiliates; provided, however, that nothing contained in  
this Section shall be deemed to prohibit the Franchise Entity from acquiring or  
holding, solely for investment, publicly traded securities of any corporation  
some or all of which activities are primarily music related products or services  
on the Internet so long as such securities do not, in the aggregate, constitute  
more than ten percent (10%) of any class or series of outstanding securities of  
such corporation.  
  
 (c) For purposes of this Agreement, the Internet and all references  
thereto shall include the Internet as currently in use and as hereafter enhanced  
or further developed (the "Internet"), virtual private networks ("VPNs"  
including, but not limited to, satellite delivery systems), and any and all  
successor technologies to the Internet and VPNs.  
  
4.4 Franchisee, directly or indirectly, shall not use any of the Franchisor  
Intellectual Property licensed hereunder or any part thereof as premiums, in  
combination sales, as give-aways, as charitable contributions or dispose of same  
under similar methods of merchandising or other transfer without the prior  
written consent of Franchisor not to be unreasonably withheld or unduly delayed.  
  
4.5 Franchisee shall, commencing on the date hereof, develop the Franchisee  
Database with a minimum of 850 regional (Arabic and/or other music related to  
the Territory) and 150 other digitized sound recordings (which may be in any  
language) each month during the Term, all of which recordings must be approved  
by Franchisor not to be unreasonably withheld or unduly delayed provided that  
any such non-arabic recordings have not been digitized or scheduled to be  
digitized by Franchisor at or prior to such request, it being agreed to and  
understood that Franchisor at all times shall have absolute approval rights as  
aforesaid over the content of the Franchisee Database, subject to culturally  
acceptable adaptations provided for in Section 4.2 above. Franchisee shall at  
all times provide Franchisor and all current and future franchisees of  
Franchisor with full and complete online and other access to and availability of  
the Franchisee Database, including all updates, without any royalties or other  
payments due therefor.  
  
4.6 Franchisee shall at all times during the Term provide Franchisor with full  
and complete online access to and availability of all data associated with the  
operation of the Franchised Business.  
  
4.7 Franchisee shall keep track of, collect and shall pay and be responsible  
for all royalties due to third parties such as publishers, artists and  
performers in connection with Franchisor's or other franchisees' use of the  
Franchisee Database, and shall provide Franchisor with a monthly report thereof  
by the 28th day of each month for the preceding calendar month of all such  
royalties paid.  
  
4.8 Franchisee shall staff the Franchised Business with reasonably competent  
technical, sales and marketing personnel pursuant to Franchisor's suggested  
level of staffing.  
  
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4.9 Franchisee shall use its reasonable efforts to provide state-of-the-art  
hardware, netware and Webware to ensure proper operation of the Franchised  
Business.  
  
4.10 Franchisee agrees to purchase from Franchisor any and all Franchisor  
Products as contemplated in Section 3.19. Franchisor represents that prior to  
the date hereof, Franchisor has provided Franchisee with a complete list of the  
Franchisor Products (as well as the purchase price thereof) required by  
Franchisee to operate the Franchised Business, and Franchisee acknowledges  
receipt of such list. Franchisee shall not be obligated to purchase any  
additional Franchisor Products from Franchisor except as specifically  
contemplated in Section 8.1. The purchase price for the Franchisor Products  
shall be due and payable within 30 days of invoicing.  
  
4.11 Subject to Section 8.2, Franchisee shall conduct the technical operation  
of the Franchised Business in conformity with the technical standards, policies,  
methods, and techniques as Franchisor acting reasonably may, from time to time,  
prescribe in the Technical Manual. Franchisee shall refrain from deviating from  
the Technical Manual, or otherwise operating the Franchised Business except in  
strict compliance with this Agreement.  
  
4.12 Franchisee shall comply with all laws, rules and regulations in the  
Territory, and shall timely obtain any and all permits, certificates, and  
licenses necessary for the Territory for the full and proper development and  
operation of the Franchised Business in the Territory; provided, however, that  
Franchisee shall not be in breach of this provision if Franchisee's  
noncompliance with any such laws, rules and regulations does not have a material  
adverse affect on the Franchised Business.  
  
4.13 Franchisee shall comply with all of Franchisor's requirements existing at  
the date hereof and of which Franchisee has been notified concerning the types  
of services and products that may be delivered, promoted or advertised by the  
Franchised Business.  
  
4.14 Franchisee shall pay all Fees, Expenses and Royalties (as such terms are  
defined below) pursuant to Section 5 and shall comply with all other  
requirements set forth in this Agreement.  
  
4.15 If any defect occurs which causes any Material Interruption in the  
deployment of such portions of the Franchisee Database to be made available to  
Franchisor in any month, and such Material Interruption is not attributable to  
any third party products, services, personnel (including Franchisor personnel)  
or materials outside of Franchisee's reasonable control, Franchisee shall refund  
and/or credit to Franchisor such pro-rata royalties as are due or have been paid  
to Franchisee with respect to such month in accordance with the calculation of a  
Downtime Refund as applied to Franchisor pursuant to Section 3.20. Franchisor  
undertakes to promptly notify Franchisee of any Downtime Incident. Franchisee  
undertakes to use reasonable efforts to promptly cure any such Downtime  
Incident, which it shall do at its sole cost and expense. The determination of  
whether a Material Interruption has occurred in any given month shall be made  
from the date and time a Defect Notice is received by Franchisee. For purposes  
of the determination whether a Material Interruption has occurred, personnel  
affiliated with Franchisor shall not be deemed to be under the control of  
Franchisee, and any products, services, and/or materials belonging to Franchisor  
shall not be deemed to be under the control of Franchisee except where  
Franchisee has been expressly granted control thereof in writing by Franchisor.  
  
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For purposes of clarity, Franchisee shall, in addition to the foregoing, be  
responsible for any and all costs and expenses related to reliable operation and  
maintenance of the System, the Franchised Business and the Franchisee Database  
within the Territory which are not expressly assumed by Franchisor elsewhere in  
this Agreement.  
  
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5. FEES, EXPENSES AND ROYALTIES, REVENUE SHARING  
  
5.1 In consideration for this Agreement, the services provided hereunder and  
the franchise and license granted herein, Franchisee shall pay to Franchisor  
such fees (the "Fees") and expenses (the "Expenses") set forth in Exhibit E  
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annexed hereto and made a part hereof.  
  
5.2 Fees shall be paid at such times as are set forth in Exhibit E and all  
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Expenses shall be paid within 30 days of invoicing.  
  
5.3 Franchisee shall also pay to Franchisor on-going royalties (the  
"Royalties") during the Term as set forth in Exhibit F annexed hereto and made a  
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part hereof.  
  
5.4 Franchisor shall pay to Franchisee Royalties in connection with the  
Franchisor License during the Term as set forth in Exhibit F.  
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5.5 All Royalties shall be paid within 60 days after the end of each month with  
respect to Gross Income or Gross Advertising Income (as such terms are  
hereinafter defined), as the case may be, recorded in that month. "Gross Income"  
shall mean all revenues, excluding advertising revenues, earned from licensed  
activities hereunder without any deductions whatsoever. "Gross Advertising  
Income" shall mean all advertising revenues earned from licensed activities  
hereunder without any deductions whatsoever.  
  
5.6 Except as otherwise specified in writing from time-to-time, all Fees,  
Expenses, Royalties and any other payments (collectively, "Payment Obligations")  
due to Franchisor hereunder shall be payable in United States currency and, with  
respect to payments to Franchisee, in the currency as specified from  
time-to-time by Franchisee, in each case by wire transfer of funds pursuant to  
written instructions provided by each party to the other party. Any overdue  
Payment Obligations which are late by more than a 60 day grace period following  
the due date ("Grace Period") shall bear interest at the rate of 1.9% per month  
(based on a 360 day year) or the maximum rate permitted under applicable laws,  
whichever is less. Should any Franchisee or Franchisor Payment Obligation be  
late more than twice during the Term of this Agreement by more than 10 days from  
its respective due date, the right of Grace Period hereunder shall terminate  
immediately and interest shall accrue on any unpaid Payment Obligations as of  
the respective due date at the foregoing rate.  
  
5.7 With respect to each of Franchisor and Franchisee, except as otherwise set  
forth herein, there shall be no deduction from Royalties for uncollectable  
accounts, or for taxes, fees, assessments or other expenses of any kind which  
may be incurred in connection with: (i) royalty payments; (ii) manufacturing,  
sales, distribution or advertising; or (iii) the transfer of funds or royalties  
or the conversion of any currency. It shall be the sole responsibility and at  
the sole expense of the Franchisee to obtain the approval of any authorities  
with respect to its operation of the System within the Territory; to take  
whatever steps may be required to effect the payment of funds from abroad; to  
minimize or eliminate the incidence of foreign taxes, fees or assessments which  
may be imposed; to commence or continue doing business in any foreign territory;  
and to comply in any and all material respects with all applicable laws and  
regulations. It shall be the sole responsibility and at the sole expense of the  
Franchisor to obtain the approval  
  
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of any relevant authorities outside of the Territory with respect to its  
operation of the System; to take whatever steps may be required to effect the  
payment of funds from abroad; to minimize or eliminate the incidence of foreign  
taxes, fees or assessments which may be imposed; to commence or continue doing  
business in any foreign territory; and to comply in any and all material  
respects with all applicable laws and regulations.  
  
5.8 Each party shall furnish the other party, at the same time it makes  
payment of Royalties, with a full and complete statement, duly certified by an  
officer to be true and accurate, showing all Gross Income and/or Gross  
Advertising Income, as the case may be, received during the month in question,  
the amount of royalties due with respect to such income, and a breakdown by  
category and country of where such income was earned, together with such other  
pertinent information as either party may reasonably be requested from time to  
time. All figures and monetary amounts shall first be stated in the currency in  
which the sales were actually made. If several currencies are involved in any  
reporting category, that category shall be broken down by each such currency.  
Next to each currency amount shall be set forth the equivalent amount stated in  
United States Dollars, and the rate of exchange used in making the required  
conversion calculation. The rate of exchange shall be the actual rate of  
exchange obtained on the date of payment. Each of the parties shall use  
reasonable efforts to collect their respective accounts receivable which are  
included within the subject matter of this Agreement.  
  
5.9 Franchisor agrees that all advertising revenues generated directly or  
indirectly by Franchisor or Franchisor's franchisees (including Franchisee)  
shall be allocated and distributed in accordance with Exhibit F.  
  
5.10 (a) Franchisee acknowledges that the bandwidth requirements with respect  
to digital deliveries into the Territory are substantial and therefore  
Franchisee agrees to defray such of Franchisor's bandwidth costs in an amount  
proportionate to the percentage which the aggregate material from the Franchisor  
Digital Music Database and databases of other Franchisor franchisees that are  
delivered into the Territory each calendar month represent as a portion of  
Franchisor's total bandwidth costs for each such month, which defrayment amounts  
shall offset and be deducted from Royalties due from Franchisor to Franchisee  
upon presentation of usage information, relevant bandwidth invoices and  
specification of the foregoing allocation of costs thereof, and (b) Franchisor  
acknowledges that the bandwidth requirements with respect to digital deliveries  
from the Territory are substantial and therefore Franchisor agrees to defray  
such of Franchisee's bandwidth costs in an amount proportionate to the  
percentage which the aggregate material from Franchisee's Digital Music Database  
delivered from the Territory to Franchisor and other franchisees each calendar  
month represents as a portion of Franchisee's total bandwidth costs for each  
such month, which defrayment amounts shall offset and be deducted from Royalties  
due from Franchisee to Franchisor upon presentation of usage information,  
relevant bandwidth invoices and specification of the foregoing allocation of  
costs thereof.  
  
5.11 Franchisor acknowledges that Franchisee is engaged in other businesses,  
including, but not limited to other businesses conducted on the Internet and  
that, in particular, the Franchisee RadioMoi Web Site shall only constitute a  
portion of Franchisee's Website. Revenues of Franchisee which are not derived in  
connection with Franchisee RadioMoi Web Site and/or  
  
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which are derived outside of the scope of the Franchised Business shall not be  
subject to the terms of this Agreement.  
  
6. FRANCHISOR INTELLECTUAL PROPERTY  
  
6.1 Franchisor represents with respect to the Franchisor Intellectual Property  
that:  
  
 6.1.1 Franchisor is the exclusive owner throughout the world of all  
 right, title and interest in and to the Franchisor Intellectual  
 Property, except any portions thereof for which it may be a duly  
 authorized user and/or licensee of a third party ("Licensed  
 Portions"). With respect to the Licensed Portions, Franchisor is  
 and shall be throughout the Term duly licensed to use, and to  
 permit Franchisee to use, the Licensed Portions, without any  
 limitations or conditions, save and except for any such  
 limitations or conditions provided in this Agreement. Franchisor  
 has the right to grant all rights and benefits being granted to  
 Franchisee hereunder. Franchisee's use of the System and/or any  
 element thereof as contemplated herein will not violate the rights  
 of any nature or kind of any third party, including, without  
 limitation, any copyright, trademark or other intellectual  
 property rights of any nature or kind.  
  
 6.1.2 Franchisor shall take all steps reasonably necessary to preserve  
 and protect the ownership and validity in and to the Franchisor  
 Intellectual Property.  
  
 6.1.3 Except as otherwise provided herein, the Franchisor Intellectual  
 Property is as of the date hereof free and clear of any and all  
 Encumbrances whatsoever. For purposes of the foregoing,  
 "Encumbrances" means mortgages, charges, pledges, security  
 interest, liens, encumbrances, actions, claims, demands and  
 equities of any nature whatsoever or howsoever arising and any  
 rights or privileges capable of becoming and is the foregoing.  
 During the Term of this Agreement, Franchisor undertakes that the  
 Franchisor Digital Music Database shall not become subject to  
 Encumbrances except with respect to loans which may be made to  
 Franchisor through recognized international institutional lenders  
 and/or such Encumbrances which may granted by Franchisor as  
 security in an offering of Franchisor's public indebtedness.  
  
 6.1.4 To the best knowledge of Franchisor after reasonable  
 investigation, none of the software included as part of the  
 Franchisor Intellectual Property contains any known virus, Trojan  
 horse, worm, software lock, drop dead device or any other limiting  
 routine that would intentionally erase data or render such  
 software to become incapable of being used.  
  
 6.1.5 All software included as part of the Franchisor Intellectual  
 Property (i) shall be able to accurately process date data  
 including, without limitation, calculating, comparing and  
 sequencing from, into and between the 20th and 21st centuries,  
 including leap year calculations; and (ii) is fully capable of  
 operating as required to accommodate the year 2,000 and beyond.  
  
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6.2 With respect to the Franchised Business, Franchisee agrees that:  
  
 6.2.1 [Intentionally omitted].  
  
 6.2.2 Franchisee shall not make any Enhancements to the Franchisor  
 Intellectual Property.  
  
 6.2.3 Subject to Section 1.14, Franchisee shall use the Franchisor  
 Intellectual Property only in connection with the operation of the  
 Franchised Business in the Territory.  
  
 6.2.4 During the Term of this Agreement, Franchisee shall, where  
 reasonably possible, identify Franchisor as the owner of the  
 Franchisor Intellectual Property, including, but not limited to,  
 on invoices, order forms, receipts and contracts related to the  
 System, and at such conspicuous location on Franchisee's RadioMoi  
 Web Site pages allocated to RadioMoi, all products and hardware  
 related to the System and locations of the Franchised Business'  
 premises as are related to the System, as Franchisor shall  
 reasonably request. Such identification shall be in the form which  
 specifies Franchisor's name, followed by such other identification  
 as shall be approved by Franchisor.  
  
 6.2.5 Franchisee's right to use the Franchisor Intellectual Property is  
 limited to such uses as are authorized under this Agreement, and  
 any material unauthorized use thereof shall constitute an  
 infringement of Franchisor's rights.  
  
 6.2.6 Franchisee shall not use the Franchisor Intellectual Property to  
 incur any obligation or indebtedness on behalf of Franchisor.  
  
 6.2.7 Franchisee shall not use some or all of the Franchisor  
 Intellectual Property as part of its corporate or other legal  
 name, without the prior written consent of Franchisor.  
  
 6.2.8 Franchisee shall promptly comply with Franchisor's reasonable  
 requests and instructions for filing and maintaining any requisite  
 trade name or fictitious name registrations, and shall execute any  
 reasonable documents or instruments reasonably deemed necessary by  
 Franchisor to obtain protection for the Franchisor Intellectual  
 Property or to maintain their continued validity and  
 enforceability of any and all direct or indirect rights thereof,  
 provided, however, that any and all fees, costs and expenses  
 incurred by Franchisee on behalf of Franchisor with respect to the  
 foregoing shall be at the sole cost and expense of Franchisor.  
  
 6.2.9 Franchisee shall include correct trademark, trade name, copyright,  
 trade secrets and patent notices for the Franchisor Intellectual  
 Property on all System related materials and equipment where  
 appropriate, and shall not remove, alter, cover, obfuscate or  
 otherwise deface any trademark, trade name, patent, trade secret  
 or  
  
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 copyright notice on any promotion or advertising material used,  
 directly or indirectly, in conjunction with or for Franchisor  
 Intellectual Property.  
  
 6.2.10 Franchisee shall not market or deliver access to the Franchisee  
 Database from a particular jurisdiction of the Territory unless  
 and until all regulatory approvals, licenses and permits required  
 by the applicable performing arts societies ("Rights Society") of  
 such jurisdiction or any court of competent jurisdiction,  
 governmental body or regulatory agency (a "Regulatory Body") have  
 been obtained, and, Franchisee, at its sole cost and expense,  
 shall prepare and submit any and all appropriate applications,  
 data and other information required by such Rights Society or  
 Regulatory Body in such jurisdiction and have obtained all  
 requisite approvals, licenses and permits for authorized and  
 compliant operation of the Franchisee Database in such  
 jurisdictions. Notwithstanding the foregoing, Franchisor  
 undertakes to provide reasonable assistance, by means of letter,  
 telephone, fax, e-mail or similar communication, on behalf of  
 Franchisee with respect to facilitating the acquisition of any  
 requisite regulatory approvals, licenses and/or permits required  
 by such Rights Societies, including (a) performing rights, (b)  
 master rights, (c) artist rights, (d) ephemeral rights and (e)  
 mechanical rights.  
  
 6.2.11 Franchisee, at its sole cost and expense, shall be responsible and  
 shall promptly pay, any and all royalties and other fees,  
 assessments, taxes or charges imposed by any Regulatory Body or  
 Rights Society with jurisdiction for the Territory with respect to  
 operation of the Franchised Business in each jurisdiction within  
 the Territory and undertakes to assure on-going legal compliance  
 with the requirements of applicable copyright law within the  
 Territory, any Rights Society and each Regulatory Body with  
 relevant jurisdiction thereof, including, but not limited to, the  
 timely filing of any reports required by any such applicable rule,  
 law or entity. At the request of Franchisor, Franchisee shall  
 promptly provide copies of documentation evidencing compliance  
 with the foregoing requirements and copies of any and all such  
 filings.  
  
6.3 Franchisee expressly understands and acknowledges that:  
  
 6.3.1 As between the parties hereto, Franchisor is the owner of all  
 right, title, and interest in and to the Franchisor Intellectual  
 Property and the goodwill associated with and/or embodied or  
 symbolized by them.  
  
 6.3.2 The Proprietary Marks are valid and serve to identify the System  
 and those who are franchised to use the System.  
  
 6.3.3 Franchisee shall not directly or indirectly contest the validity  
 or the ownership of the Franchisor Intellectual Property.  
  
 6.3.4 Franchisee's use of the Franchisor Intellectual Property pursuant  
 to this Agreement does not give Franchisee any ownership interest  
 or other interest in or  
  
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 to the Franchisor Intellectual Property, except the franchise and  
 license granted herein.  
  
 6.3.5 Any and all goodwill arising from Franchisee's use of the  
 Franchisor Intellectual Property in the Franchised Business shall  
 inure solely and exclusively to the benefit of Franchisor, and  
 upon termination of this Agreement and the franchise and license  
 herein granted, no monetary amount shall be assigned as  
 attributable to any goodwill associated with Franchisee's use of  
 the Franchisor Intellectual Property.  
  
 6.3.6 The right and license of the Franchisor Intellectual Property  
 granted hereunder to Franchisee is exclusive only in the  
 Territory, and Franchisor thus may:  
  
 6.3.6.1 Itself use, and grant franchises to others to use, the  
 Franchisor Intellectual Property outside of the  
 Territory.  
  
 6.3.6.2 Subject to Sections 1.1.2, 1.1.3 and 18 establish,  
 develop, and franchise other systems, different from the  
 System franchised herein, without offering or providing  
 Franchisee any rights in, to, or under such other  
 systems.  
  
 6.3.6.3 Itself use, and grant franchises to others to use, the  
 Franchisee Database outside of the Territory during the  
 Term.  
  
6.4 Franchisee shall, upon learning thereof, promptly notify Franchisor of any  
unauthorized use of the Franchisor Intellectual Property, any challenge to the  
validity of the Franchisor Intellectual Property, or any challenge to  
Franchisor's ownership of, or Franchisee's right to use, the Franchisor  
Intellectual Property. Franchisee acknowledges that Franchisor has the sole  
right to direct and control any administrative proceeding or litigation  
involving the Franchisor Intellectual Property, including any settlement  
thereof. Franchisor has the obligation, to take action against uses by others  
that may reasonably constitute material infringement of the Franchisor  
Intellectual Property.  
  
6.5 Provided Franchisee is not in material breach of this Agreement, Franchisor  
will defend, at Franchisor's expense, against any third party claim, suit, or  
demand involving the Franchisor Intellectual Property licensed hereunder and  
arising out of Franchisee's use thereof, provided, that Franchisor is promptly  
notified in writing and is given complete authority and information required for  
defending or settling any such claim, suit or demand and, further provided, that  
Franchisee is not in material breach of this Agreement. If, within a reasonable  
time Franchisor does not assume active control of such third party claim, suit,  
or demand (each, an "Action"), Franchisee may assume authority over such Action,  
and upon written notice to Franchisor of the assumption of such authority,  
Franchisor shall therewith be responsible to pay for any and all reasonable  
legal or other expenses incurred by Franchisee in connection with the defense of  
the Action. Franchisor shall not, without the prior written consent of  
Franchisee, settle or compromise or consent to the entry of any judgment in any  
pending or threatened Action, suit or proceeding in respect of which  
indemnification may be sought hereunder unless such settlement,  
  
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compromise or consent includes an unconditional release of Franchisee from any  
and all liability arising out of such Action.  
  
6.6 In the event of any litigation or administrative proceeding relating to the  
Franchisor Intellectual Property, Franchisee shall execute any and all  
reasonable documents and do all reasonable acts as may, in the reasonable  
opinion of Franchisor, be necessary to carry out such defense or prosecution,  
including, but not limited to, becoming a nominal party to any legal action.  
Except to the extent that such litigation is the result of Franchisee's use of  
the Franchisor Intellectual Property in a manner inconsistent with the terms of  
this Agreement, Franchisor agrees to reimburse Franchisee for its out of pocket  
costs in performing such acts. Notwithstanding the foregoing, Franchisor shall  
not pay for ordinary course of business expenses of Franchisee during any such  
defense or prosecution, including, but not limited to, the salary costs of  
Franchisee employees.  
  
6.7 The provisions of Section 6.5 and 6.6 (collectively, the "Franchisor Action  
Provisions") shall survive termination of this Agreement for a period of two  
years (the "Franchisor Action Extension Period"), it being understood that if  
notice of any Action under the Franchisor Action Coverage Provisions is made  
within the Franchisor Action Extension Period, such Franchisor Action Coverage  
Provision shall survive until such Action is definitively settled or a court of  
competent jurisdiction shall have finally determined that such Action shall not  
exist to the extent claimed by the other party.  
  
6.8 To ensure that Franchisee will have access to such of the Franchisor  
Intellectual Property as may be necessary to permit it to use the System as  
contemplated by this Agreement, Franchisor agrees to provide to an escrow agent,  
the identity of which is satisfactory to Franchisor and Franchisee, a copy of  
all source code and object code used in, or in connection with the System,  
concurrently with the deployment or delivery of the System by Franchisee to  
Franchisee. Said escrow agent will hold such code in escrow, and release it if  
and only if it is permitted to do so pursuant to the terms and conditions of the  
Escrow Agreement appended hereto as Exhibit G. The parties shall execute an  
Escrow Agreement substantially in the form of Exhibit G concurrently with the  
execution of this Agreement. If Franchisee is entitled to receive any source  
code or object code pursuant to said Escrow Agreement, (i) Franchisor will be  
deemed to automatically have granted to Franchisee a non-exclusive and  
irrevocable license during the remainder of the Term and throughout the  
Territory to use such elements of the System (and all required underlying  
Franchisor Technology) as are necessary solely to obtain the same level of  
operability, delivery and deployment of the Franchised Business as contemplated  
by this Agreement.  
  
7. FRANCHISEE DATABASE  
  
7.1 Franchisor represents with respect to the Franchisee Database that:  
  
 7.1.1 Franchisee is the exclusive owner throughout the world of all  
 right, title, and interest in and to the Franchisee Database.  
  
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 7.1.2 Franchisee shall take all steps reasonably necessary to preserve  
 and protect the ownership and validity in and to the Franchisee  
 Database.  
  
7.2 Franchisor expressly understands and acknowledges that:  
  
 7.2.1 Franchisor shall use the Franchisee Database only in the manner  
 authorized and permitted hereunder by Franchisor and only during  
 the Term.  
  
 7.2.2 Franchisor shall use the Franchisee Database only outside of the  
 Territory and shall only use the Franchisee Database in or as part  
 of the System.  
  
 7.2.3 During the Term of this Agreement, Franchisor, where reasonably  
 possible, shall identify Franchisee as the owner of the Franchised  
 Business and/or at such times and places as Franchisor references  
 the Franchised Business or the Franchisee Database.  
  
 7.2.4 Franchisor's right to use the Franchisee Database is limited to  
 such uses as are authorized under this Agreement, and any material  
 unauthorized use thereof shall constitute an infringement of  
 Franchisee's rights.  
  
 7.2.5 Franchisor shall not use the Franchisee Database to incur any  
 obligation or indebtedness on behalf of Franchisee.  
  
 7.2.6 Franchisor shall not market or deliver access to the Franchisee  
 Database from any jurisdiction outside of the Territory unless and  
 until all regulatory approvals, licenses and permits required by  
 the applicable Rights Society of any such jurisdiction and/or the  
 applicable Regulatory Body have been obtained, and, Franchisor, at  
 its sole cost and expense, shall prepare and submit any and all  
 appropriate applications, data and other information required by  
 any such Rights Society or Regulatory Body in such jurisdiction,  
 and have obtained all requisite approvals, licenses and permits  
 for authorized and compliant delivery of the Franchisee Database  
 in such jurisdiction. Notwithstanding the foregoing, Franchisee  
 undertakes to provide reasonable assistance, by means of letter,  
 telephone, fax, e-mail or similar communication, on behalf of  
 Franchisor with respect to facilitating the acquisition of any  
 requisite regulatory approvals, licenses and/or permits which  
 involves the Franchisee Database and which may be required by such  
 Rights Societies outside of the Territory, including for (a)  
 performing rights, (b) master rights, (c) artist rights, (d)  
 ephemeral rights and (e) mechanical rights.  
  
 7.2.7 Franchisor, at its sole cost and expense, shall be responsible for  
 and shall promptly pay, any and all royalties and other fees,  
 assessments, taxes or charges imposed by any Regulatory Body or  
 Rights Society having jurisdiction with respect to operation of  
 the System outside of the Territory and for delivery of, and  
 access to, the Franchisor Digital Music Database outside of the  
 Territory, and  
  
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 Franchisor undertakes to assure on-going legal compliance with the  
 requirements of applicable rules and laws with respect to  
 operation of the System and the Franchisor Digital Music Database  
 outside of the Territory, including, but not limited to, the  
 timely filing of any reports required by any Rights Society or  
 Regulatory Body with jurisdiction thereof. Upon execution by  
 Franchisee of Franchisor's customary non-disclosure agreement,  
 Franchisee shall be permitted reasonable access to Franchisor's  
 books and records evidencing Franchisor's compliance with the  
 foregoing.  
  
 7.2.8 The right and license of the Franchisee Database granted hereunder  
 to Franchisor is exclusive only outside of the Territory, and  
 Franchisee thus may:  
  
 7.2.8.1 Subject to Sections 13 and 18 herein, itself use, and  
 grant franchises to others to use, the Franchisee  
 Database within the Territory.  
  
 7.2.8.2 Subject to Sections 1.1.2, 1.1.3, 13 and 18, establish,  
 develop, and franchise other systems, different from the  
 System franchised herein, without offering or providing  
 Franchisor any rights in, to, or under such other  
 systems.  
  
 7.2.8.3 Subject to Sections 13 and 18, itself use, and grant  
 franchises to others to use, the Franchisee Database  
 within the Territory during the Term.  
  
 7.2.9 As between the parties hereto, Franchisee is the owner of all  
 right, title, and interest in and to the Franchisee Database and  
 the goodwill associated with and/or embodied or symbolized  
 therein.  
  
 7.2.10 Franchisor shall not directly or indirectly contest the validity  
 or the ownership of the Franchisee Database.  
  
 7.2.11 Franchisor's use of the Franchisee Database pursuant to this  
 Agreement does not give Franchisor any ownership interest or other  
 interest in or to the Franchisee, except the license granted  
 herein.  
  
7.3 Franchisor shall, upon learning thereof, promptly notify Franchisee of any  
unauthorized use of the Franchisee Database, any challenge to the validity of  
the Franchisee Database, or any challenge to Franchisee's ownership of, or  
Franchisor's right to use, the Franchisee Database. Franchisor acknowledges that  
Franchisee has the sole right to direct and control any administrative  
proceeding or litigation involving the Franchisee Database, including any  
settlement thereof. Franchisee has the obligation to take action against uses by  
others that may reasonably constitute material infringement of the Franchisee  
Database.  
  
7.4 Provided Franchisor is not in material breach of this Agreement has used  
the Franchisee Database in accordance with this Agreement, Franchisee will  
defend at Franchisee's expense  
  
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against any third party claim, suit, or demand involving the Franchisee Database  
licensed hereunder and arising out of Franchisor's use thereof, provided, that  
Franchisee is promptly notified in writing and is given complete authority and  
information required for defending or settling any such claim, suit or demand  
and, further provided, that Franchisor is not in material default or breach of  
this Agreement. If, within a reasonable time Franchisee does not assume active  
control of such third party claim, suit, or demand (each, an "Action"),  
Franchisor may assume authority over such Action, and upon written notice to  
Franchisee of the assumption of such authority, Franchisee shall therewith be  
responsible to pay for any and all reasonable legal or other expenses incurred  
by Franchisor in connection with the defense of the Action. Franchisee shall  
not, without the prior written consent of Franchisor, settle or compromise or  
consent to the entry of any judgment in any pending or threatened Action, suit  
or proceeding in respect of which indemnification may be sought hereunder unless  
such settlement, compromise or consent includes an unconditional release of  
Franchisor from any and all liability arising out of such Action.  
  
7.5 In the event of any litigation or administrative proceeding relating to the  
Franchisee Database, Franchisor shall execute any and all reasonable documents  
and do all reasonable acts as may, in the reasonable opinion of Franchisee, be  
necessary to carry out such defense or prosecution, including, but not limited  
to, becoming a nominal party to any legal action. Except to the extent that such  
litigation is the result of Franchisor's use of the Franchisee Database in a  
manner inconsistent with the terms of this Agreement, Franchisee agrees to  
reimburse Franchisor for its out of pocket costs in performing such acts.  
Notwithstanding the foregoing, Franchisee shall not pay for ordinary course of  
business expenses of Franchisor during any such defense or prosecution,  
including, but not limited to, the salary costs of Franchisor employees.  
  
7.6 The provisions of Section 7.4 and 7.5 (collectively, the "Franchisee Action  
Coverage Provisions") shall survive termination of this Agreement for a period  
of two years (the "Franchisee Action Extension Period"), it being understood  
that if notice of any Action under the Franchisee Action Coverage Provisions is  
made within the Franchisee Action Extension Period, such Franchisee Action  
Coverage Provision shall survive until such Action is definitively settled or a  
court of competent jurisdiction shall have finally determined that such Action  
shall not exist to the extent claimed by the other party.  
  
8. CONFIDENTIAL MANUAL  
  
8.1 Franchisee shall at all times treat the Technical Manual, all supplements  
and revisions thereto, any other manuals created for or approved for use in the  
operation of the Franchised Business and the information contained therein as  
confidential, and shall use all reasonable efforts to maintain the  
confidentiality of such information. Franchisee shall not at any time, without  
Franchisor's prior written consent, copy, duplicate, record, or otherwise  
reproduce the foregoing materials, in whole or in part, nor otherwise make the  
same available to any unauthorized person. Franchisee may disclose such  
information and materials only to such of Franchisee's employees, agents, or  
others who must have access to it in connection with their employment or the  
operation of the Franchised Business, in which event Franchisee shall obtain the  
agreement of such persons and entities to maintain the confidentiality thereof.  
The Technical Manual shall remain at all times the sole property of Franchisor.  
  
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8.2 Only Franchisor, acting reasonably, may, from time to time, revise the  
contents of the Technical Manual, and Franchisee expressly agrees within a  
reasonable period, to promptly comply with each new or changed standard,  
provided the same is reasonable, is necessary to improve quality in order to  
more efficiently and better serve customers and does not result in Franchisee  
having to incur material additional expenses and/or purchase new material  
equipment or software. Franchisor shall advise Franchisee of any and all changes  
to the Technical Manual. Franchisor shall at all times ensure that Franchisee  
has reasonable access to the on-line version of the Technical Manual and  
Franchisee, agrees to keep current with respect to Technical Manual mandates. In  
the event of any dispute as to the content of the Technical Manual, the terms of  
the master copy of the Technical Manual maintained on-line by Franchisor shall  
be controlling.  
  
9. CONFIDENTIAL INFORMATION  
  
9.1 Franchisee shall not, during the Term of this Agreement or thereafter for a  
period of one (1) year, communicate, divulge, or use for the benefit of any  
other person, persons, partnership, association, or corporation any confidential  
information, knowledge, technology, know-how or other data concerning the  
System, the operation of the Franchised Business, or the Franchisor Intellectual  
Property (the "Confidential Information"), which may be communicated to  
Franchisee, or of which Franchisee may be apprised, by virtue of Franchisee's  
operation under the terms of this Agreement. Franchisee shall divulge  
Confidential Information only to such of Franchisee's employees or agents as  
must have access to it in order to operate the Franchised Business. Confidential  
Information shall not include information which Franchisee can demonstrate came  
to Franchisee's attention prior to disclosure thereof by Franchisor, or which,  
at or after the time of disclosure by Franchisor to Franchisee, had become or  
later becomes a part of the public domain, through publication or communication  
by others, or which Franchisee is required by law to disclose.  
  
9.2 Franchisee acknowledges that the provisions in this Section 9 are and have  
been a primary inducement to Franchisor to enter into this Agreement, and that  
any failure to comply with the requirements of Section 9.1 may cause Franchisor  
irreparable injury without an adequate remedy at law. Franchisee agrees that  
Franchisor shall be entitled, in addition to any other remedies that may be  
available in law, equity or otherwise, to obtain specific performance of, or an  
injunction against any violation or threatened violation of, the requirements of  
Section 9.1.  
  
9.3 Franchisor shall not, during the term of this Agreement or thereafter for a  
period of one (1) year, communicate, divulge, or use for the benefit of any  
other person, persons, partnership, association, or corporation any Confidential  
Information which may be communicated to Franchisor, or of which Franchisor may  
be apprised, by virtue of Franchisor's operation under the terms of this  
Agreement. Franchisor shall divulge Confidential Information only to such of  
Franchisor's employees or agents as must have access to it in order to operate  
the System. Confidential Information shall not include information which  
Franchisor can demonstrate came to Franchisor's attention prior to disclosure  
thereof by Franchisee, or which, at or after the time of disclosure by  
Franchisee to Franchisor, had become or later becomes a part of the public  
  
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domain, through publication or communication by others, or which Franchisor is  
required by law to disclose.  
  
10. ACCOUNTING, RECORDS AND REPORTING  
  
10.1 Record Keeping and Reports by Franchisee; Audit Rights of Franchisor  
  
 10.1.1 Franchisee shall keep complete and accurate records and books of  
 account containing all information necessary for the computation  
 and verification of the amounts to be paid by Franchisee to  
 Franchisor hereunder. Said records and books shall be kept for a  
 period of three years following the end of the accounting period  
 to which the information pertains.  
  
 10.1.2 Franchisee shall submit to Franchisor (i) the monthly report  
 pursuant to Section 4.7, and (ii) the monthly statement pursuant  
 to Section 5.8.  
  
 10.1.3 Franchisor or its designated agents shall have the right at a  
 reasonable time upon reasonable notice to examine and copy, at  
 its expense, all of Franchisee's books, records, and tax returns  
 related to the Franchised Business and Franchisee's audited  
 financial statements; to confer with Franchisee's independent  
 auditor concerning the details of Franchisee's financial reports  
 and condition; and to have an independent audit made. If an  
 inspection or audit should reveal that payments have been  
 understated in any report to Franchisor, then Franchisee shall  
 immediately pay to Franchisor the amount understated upon demand,  
 in addition to interest from the date such amount was due until  
 paid, at one and one half percent per month or the maximum rate  
 permitted by law, whichever is less. If an inspection discloses  
 an underpayment to Franchisor of ten percent or more of the total  
 amount that should have been paid to Franchisor during any six-  
 month period, Franchisee shall, in addition to repayment of such  
 understated amount, with interest, reimburse Franchisor for any  
 and all costs and expenses incurred in connection with the  
 inspection or audit (including, without limitation, reasonable  
 accounting and attorney's fees). The foregoing remedies shall be  
 in addition to any other remedies Franchisor may have, including,  
 without limitation the remedies for default.  
  
10.2 Record Keeping by Franchisor; Audit Rights of Franchisee  
  
 10.2.1 Franchisor shall keep complete and accurate records and books of  
 account containing all information necessary for the computation  
 and verification of the amounts to be paid by Franchisor to  
 Franchisee hereunder and also with respect to the Revenue  
 Sharing. Said records and books shall be kept for a period of  
 three years following the end of the accounting period to which  
 the information pertains.  
  
 10.2.2 Franchisor shall submit to Franchisee the monthly statement  
 pursuant to Section 4.7 and 5.8.  
  
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 10.2.3 Franchisee or its designated agents shall have the right at a  
 reasonable time upon reasonable notice to examine and copy, at  
 its expense, only such of Franchisor's books and records as are  
 specifically related to the Franchised Business, the Revenue  
 Sharing and any other matter specifically providing for such  
 examination hereunder. Upon execution of Franchisor's customary  
 and reasonable non-disclosure agreement, Franchisee shall have  
 the right to confer with Franchisor's independent auditor  
 concerning the details of Franchisor's financial reports and  
 condition; and to have an independent audit made (at Franchisee's  
 sole cost and expense). If an inspection should reveal that  
 payments have been understated in any report to Franchisee, then  
 Franchisor shall immediately pay to Franchisee the amount  
 understated upon demand, in addition to interest from the date  
 such amount was due until paid, at one and one half percent per  
 month or the maximum rate permitted by law, whichever is less. If  
 an inspection discloses an underpayment to Franchisee of ten  
 percent or more of the total amount that should have been paid to  
 Franchisee during any six-month period, Franchisor shall, in  
 addition to repayment of such understated amount, with interest,  
 reimburse Franchisee for any and all costs and expenses incurred  
 in connection with the inspection (including, without limitation,  
 reasonable accounting and attorney's fees). The foregoing  
 remedies shall be in addition to any other remedies Franchisee  
 may have, including, without limitation the remedies for default.  
  
11. ADVERTISING AND MARKETING  
  
11.1 Recognizing the value of advertising and the importance of the  
standardization of advertising programs to the furtherance of the goodwill and  
public image of the System, the Franchisee agrees that all advertising by  
Franchisee, with respect to the System in any medium shall be conducted in a  
dignified manner, shall be of the highest caliber and shall conform to such  
other reasonable standards and requirements as Franchisor may specify from time  
to time in writing, provided, however, that the foregoing advertising  
requirements shall be subject to culturally acceptable adaptation by Franchisee  
and Franchisor's approval of such adaptation shall not unreasonably be withheld  
or unduly delayed. Franchisee shall provide Franchisor with all advertising and  
promotional materials it intends to use to promote the Franchised Business and  
with English translations of all such materials at its sole expense. Franchisor  
reserves the right to disapprove upon written notice to Franchisee any  
advertising or promotional materials used by Franchisee, if in Franchisor's  
reasonable judgement, such materials appear to have a material adverse effect  
upon the System, infringe upon the proprietary rights of others, violate any law  
or regulation, or subject Franchisor to any legal liability. Franchisee shall  
immediately discontinue use of any disapproved advertising upon receipt of such  
written notice.  
  
11.2 Franchisee shall use its reasonable efforts, at its own expense, to  
distribute, sell, advertise, promote and derive significant revenues from the  
sale of products or services related to the Franchised Business.  
  
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11.3 At all times during the Term, Franchisee shall not, directly or  
indirectly, place any of Franchisor's competitor's advertising banners,  
promotional buttons, promotional links or other promotional materials or content  
on any Web site owned or controlled by Franchisee or any affiliate of  
Franchisee. Except as to Franchisor, Franchisee or any other of Franchisor's  
franchisees, "competitor" shall mean any person or business entity engaged in  
any enterprise, whether for profit or not, for (i) the streaming of live or  
recorded music on the Internet, (ii) production and/or sale of the Web Bar  
Listening Post or similar device for sampling music via the Internet and placed  
in retail record stores; (iii) provision of broadcast quality music files via  
the Internet to radio stations and/or other businesses requiring digital music  
files; (iv) provision of "canned" music programs to businesses via the Internet;  
(v) marketing, sale or merchandising of any of items (i) to (iv) excluding, for  
certainty, CDs and household items and products (such as, without limitation,  
stereos, VCRs, computers (hardware and software), cameras, DVDs, radios and  
televisions); (vi) providing any pointers or links, which in the sole and  
reasonable opinion of Franchisor, are linked to or from any other Web page or  
Internet Site offering access, sale or delivery of any of the foregoing items  
via the Internet. Notwithstanding the foregoing, Franchisee may, upon written  
consent of Franchisor which will not be unreasonably withheld, sell advertising  
on the Franchisee Web Site from companies which sell music products, provided  
however, that such company does not focus a substantial portion of its marketing  
program on music or derive a substantial portion of its sales from music or  
music-related services or products (for example, Xxxxxx.xxx may be granted such  
approval, but not XX0.xxx).  
  
11.4 Within 90 days of the execution of this Agreement, and on or before each  
one-year anniversary of the commencement date of this Agreement, the Franchisee  
shall provide Franchisor with a written marketing plan with respect to the  
Franchised Business. Each such marketing plan shall include a marketing  
timetable, sales projections, channels and methods of distribution, nature and  
amount of advertising and advertising expenditures, and any other information  
which Franchisor may ask Franchisee to include. Each marketing plan shall  
contain specific information for the one-year period immediately succeeding its  
submission and general estimates or projections for subsequent periods during  
which this Agreement remains in effect.  
  
12. RESTRICTIONS ON AND MANNER OF EXPLOITATION; WITHDRAWAL  
  
12.1 The Proprietary Marks will not be used in conjunction with or commingled  
with any other name, character, symbol, design, likeness, or literary or  
artistic material, unless any such use is expressly permitted under this  
Agreement or otherwise in writing by Franchisor.  
  
12.2 Franchisor will have the right, by giving written notice to Franchisee, to  
withdraw from the Franchised Business any element of the Franchisor Intellectual  
Property if legal counsel of Franchisor delivers a written opinion that the use  
or continued use of such element will violate or infringe the rights of any  
third party ("Third Party Rights"), violate any law or regulation, or subject  
Franchisor to any legal liability, and a copy of such opinion shall be forthwith  
delivered to Franchisee. Nothing in this provision shall be construed to obviate  
any representation or warranty of Franchisor which speaks as of the date hereof.  
Upon the occurrence of any of the foregoing events, Franchisee shall have the  
right, but not the obligation, to terminate this Agreement. In the event of any  
termination due to Third Party Rights, Franchisor shall promptly  
  
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refund to Franchisee any and all fees paid to Franchisor on a pro-rata basis  
with respect to any remaining period of the Term of this Agreement following  
such termination date.  
  
13. ASSIGNMENT, TRANSFER OR CONVEYANCE  
  
13.1 Neither party shall during the Term, either voluntarily or by operation of  
law, assign, transfer, convey or encumber this Agreement or any right or  
interest thereunder without first obtaining the written consent of the other  
party, and any such assignment, transfer, conveyance or encumbrance without such  
written consent shall be null, void and of no force and effect. If Franchisee is  
a corporation, the capital stock thereof shall not during the Term be sold,  
assigned, pledged, mortgaged or transferred without the prior written consent of  
Franchisor. Either party's written consent to any assignment, transfer,  
conveyance or encumbrance shall not be unreasonably withheld or unduly delayed.  
Franchisor's or Franchisee's written consent to any such assignment, transfer,  
conveyance or encumbrance shall, however, be conditional upon any such assignee,  
transferee, conveyee or encumbrancee being of good moral character and  
reputation, having both a credit rating and competent business qualifications  
reasonably satisfactory to Franchisor or Franchisee, as the case may be. In the  
event that either party consents in writing to any such assignment, transfer,  
conveyance or encumbrance, Franchisee or Franchisor, as the case may be, shall  
remain fully liable for the performance of all obligations under the terms and  
conditions of this Agreement unless any such purchaser, assignee or transferee  
shall fully agree to enter into a similar agreement with Franchisee or  
Franchisor, as the case may be, or fully assume the entire obligations of  
Franchisee or Franchisor, as the case may be, under this Agreement and any other  
written agreements then existing between Franchisee and Franchisor. In the event  
of any written consent by either party to any assignment, transfer, conveyance  
or encumbrance by the other party, whether voluntarily or by operation of law,  
the assigning party shall reimburse the consenting party for all reasonable fees  
and expenses, including attorney's fees, incurred by the consenting party, as a  
result of such assignment, transfer, conveyance or encumbrance. Upon the  
reasonable request of Franchisor, Franchisee shall promptly provide to  
Franchisor a list of stockholders or other equity holders of ownership interests  
in Franchisee. In addition, the written consent of the other party shall not be  
unreasonably withheld or delayed with respect to any loans made to the  
requesting party by or through recognized international institutional lenders,  
which loan by its terms imposes a security interest or other Encumbrance on such  
party's Digital Music Database.  
  
13.2 Notwithstanding anything to the contrary contained in this Agreement, the  
transfer of less than an aggregate of 10% equity interest in Franchisee in a  
single or series of transactions, which does not have the affect of transferring  
control, shall not require the prior approval of Franchisor; provided that  
Franchisee notifies Franchisor in writing of such transfer(s) within 30 days  
following such transfer and; further provided that no transfer, together with  
other previous, simultaneous, or proposed transfers, shall have the effect of  
transferring a controlling interest in the Franchisee. For the purposes of this  
Section 13.2, "control" shall mean the possession, direct or indirect, of the  
power to direct or cause the direction of the management and policies of a  
person, corporation or other business entity, whether through the ownership of  
voting securities, by contract, or otherwise.  
  
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13.3 Upon the death or mental incompetence during the Term of a person owning  
all or any interest in Franchisee, the executor, administrator, or personal  
representative of such person shall transfer within three months after such  
death or mental incompetence his interest to a third party approved by  
Franchisor, which approval shall not be unreasonably withheld or unduly delayed.  
Such transfers, including, without limitation, transfers by devise or  
inheritance, shall be subject to the same conditions as any inter vivos  
transfer. However, in the case of transfer by devise or inheritance, if the  
heirs or beneficiaries of any such person are unable to meet the conditions in  
this Section 13 for any reason, the personal representative of the deceased  
shareholder shall have reasonable time to dispose of the deceased's interest in  
the Franchisee, which disposition shall be subject to all the terms and  
conditions for transfers contained in this Agreement. If the interest is not  
disposed of within nine months, Franchisor may immediately terminate this  
Agreement by giving Franchisee written notice thereof.  
  
14. RIGHT OF FIRST REFUSAL  
  
If, during the Term, Franchisee shall receive a bona fide offer to purchase  
during the Term the Franchised Business from a bona fide purchaser or purchasers  
then, in such event, Franchisor shall have the first right (hereinafter called  
the "Right of First Refusal") to purchase the Franchised Business at the same  
price and under the same terms and conditions as any such bona fide offer.  
Franchisee shall submit to Franchisor in writing, the complete details of any  
such bona fide offer and the name of any such bona fide purchaser or purchasers  
together with any additional facts or details concerning any such bona fide  
offer or bona fide purchaser or purchasers that Franchisor may request.  
Franchisor shall have 30 days after the receipt of such complete details from  
Franchisee or from the written receipt of any such requested additional facts or  
details from Franchisee, to purchase the Franchised Business for the same price  
and under the same terms and conditions of any such bona fide offer received by  
Franchisee from any such bona fide purchaser or purchasers. If Franchisor elects  
not to exercise its Right of First Refusal as provided herein, then, in such an  
event, Franchisee may accept any such bona fide offer from any such bona fide  
purchaser or purchasers subject, nevertheless, to the terms and provisions of  
Section 13, it being the intention and express understanding of the parties  
hereto that nothing contained in this Section 14 shall either abrogate or take  
precedence over the terms and provisions of Section 13, or Franchisor's right  
expressly contained therein to consent, in writing, to any assignment, transfer,  
conveyance or encumbrance of this Agreement or right or interest thereunder. For  
purposes of clarity, the Franchisee's enterprises and companies other than the  
"Franchised Business" shall not be subject to this provision, and in the event  
any bona fide offer to purchase such other enterprises or companies encompasses  
the Franchised Business, Franchisor's rights hereunder shall be limited only to  
the extent of the Franchised Business and reasonable pro-rata determinations  
shall be made to accommodate any Right of First Refusal arising under any such  
circumstances.  
  
15. TERMINATION  
  
This Agreement shall terminate upon the occurrence of any of the following  
events:  
  
15.1 By either party if the other party is in breach of any provision of this  
Agreement and fails to fully cure such breach within 30 days after receiving  
notice thereof from the non-breaching party, then the non-breaching  
  
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party shall have the right to immediately terminate this Agreement by giving the  
breaching party written notice of termination.  
  
15.2 By either party if the other party breaches any material third party  
obligation and fails to fully cure such breach within 30 days after receiving  
notice thereof from the non-breaching party, then the non-breaching party shall  
have the right to immediately terminate this Agreement by giving the breaching  
party written notice of termination.  
  
15.3 By Franchisor or Franchisee, as the case may be, during the Term, if the  
other such party (the "Insolvent Party"), whether voluntarily or compulsory, is  
adjudged a bankrupt or makes an assignment for the benefit of creditors or files  
any petition for arrangement or reorganization or suffers the appointment of a  
receiver or custodian over its business or assets, or if a final judgement  
against the Insolvent Party remains unsatisfied or of record for 90 days or  
longer, or if the Insolvent Party is liquidated or dissolved or takes steps to  
cease or ceases its business, or if execution is levied against any asset of the  
Insolvent Party, or suit to foreclose any lien or mortgage against any asset of  
the Insolvent Party is instituted against Insolvent Party and not dismissed  
within 90 days, or if any asset of the Insolvent Party is sold after levy. The  
non-Insolvent Party, at its option, after the occurrence of any of the foregoing  
events, may immediately terminate this Agreement by giving the Insolvent Party  
written notice of termination.  
  
15.4 By Franchisor or Franchisee, as the case may be, during the Term, if the  
other such party (the "Convicted Party"), during the Term is convicted of a  
felony or any other crime or offense that is reasonably likely to adversely  
affect the System, the Franchisor or Franchisee Intellectual Property as the  
case may be, the goodwill associated therewith or the respective interest  
therein.  
  
15.5 By Franchisor immediately upon giving Franchisee written notice of  
termination if within three months of the execution of this Agreement,  
Franchisee has failed to take good faith steps to exploit the rights granted to  
it herein.  
  
15.6 By Franchisor giving Franchisee written notice of termination in  
accordance with Section 13.3.  
  
15.7 By Franchisor giving Franchisee written notice of termination in  
accordance with Section 16.  
  
15.8 By Franchisee if within 45 days after delivery to Franchisor of a Defect  
Notice to cure any Material Interruption (as defined in Section 3.19 above) with  
regard to operation of the System, which Material Interruption is not  
attributable to any third party products, services, personnel (including without  
limitation, Franchisee personnel) or materials outside of Franchisor's  
reasonable control, and if within such 45 day period such Material Interruption  
has not been substantially remedied to the reasonable satisfaction of  
Franchisee, then the Franchisee shall have the right to immediately terminate  
this Agreement by giving Franchisor written notice of termination ("Defect  
Termination") and Franchisor shall refund and/or credit to Franchisee on a  
pro-rata basis such fees as previously paid by Franchisee hereunder which are  
attributable to the Term of this Agreement following the date of the Defect  
Termination.  
  
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15.9 By Franchisor if within 45 days after delivery to Franchisee of a Defect  
Notice to cure any Material Interruption (as defined in Section 3.19 above) with  
regard to operation of the Franchised Business, which Material Interruption is  
not attributable to any third party products, services, personnel or materials  
outside of Franchisee's reasonable control, and if within such 45 day period  
such Material Interruption has not been substantially remedied to the reasonable  
satisfaction of Franchisor, then the Franchisor shall have the right to  
immediately terminate this Agreement by giving Franchisee written notice of  
termination ("Defect Termination").  
  
15.10 By Franchisor, at its sole and unique discretion, upon payment to  
Franchisee of $2,000,000 dollars, which payment shall not be refused by  
Franchisee.  
  
16. BLOCKED CURRENCY  
  
16.1 In the event that Franchisee shall be prohibited or restricted from making  
payment of any monies at the time when same are due and payable to Franchisor  
under this Agreement by reason of the laws or currency regulations within the  
Territory, Franchisee shall promptly so advise Franchisor in writing. Franchisee  
shall, upon Franchisor's request, deposit any such blocked funds to the credit  
of Franchisor in a bank or banks or other depository in the Territory designated  
in writing by Franchisor, or pay them promptly to such persons or entities as  
Franchisor shall designate in writing. Franchisor shall have the right to  
immediately terminate this Agreement if Franchisee is unable to make  
arrangements reasonably satisfactory to Franchisor for Franchisor's receipt of  
such blocked funds as contemplated above in this Section.  
  
16.2 In the event that Franchisor shall be prohibited or restricted from making  
payment of any monies at the time when same are due and payable to Franchisee  
under this Agreement by reason of the laws or currency regulations within any  
territory, Franchisor shall promptly so advise Franchisee in writing. Franchisor  
shall, upon Franchisee's request, deposit any such blocked funds to the credit  
of Franchisee in a bank or banks or other depository outside the Territory  
designated in writing by Franchisee, or pay them promptly to such persons or  
entities as Franchisee shall designate in writing. Franchisee shall have the  
right to immediately terminate this Agreement if Franchisor is unable to make  
arrangements reasonably satisfactory to Franchisee for Franchisee's receipt of  
such blocked funds as contemplated above in this Section.  
  
17. OBLIGATIONS UPON TERMINATION  
  
Upon termination of this Agreement, this Agreement and all rights granted  
hereunder to Franchisee shall forthwith terminate, and within 30 days  
thereafter:  
  
17.1 Franchisee shall immediately cease to operate the Franchised Business and  
shall not thereafter, directly or indirectly, represent to the public or hold  
itself out as a present or former franchisee of Franchisor.  
  
17.2 Franchisee shall immediately and permanently cease to use, in any manner  
or medium whatsoever, the Franchisor Intellectual Property, and any identifying  
characteristics or embodiments of the System, including, without limitation, the  
Webcasting Technology, the  
  
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Franchisor Digital Music Database, all confidential methods, procedures and  
techniques, and software, technology or devices associated with the System.  
Franchisee shall promptly remove from its place of business and the Franchisee  
Web Site, and discontinue using for any purpose, any and all signs, fixtures,  
furniture, furnishings, equipment, advertising materials, stationery, supplies,  
forms or other articles or materials in whatever form which display or contain  
any element of the Franchisor Intellectual Property or any distinctive features  
or designs associated with the System.  
  
17.3 Franchisee shall cease from using or disclosing any Confidential  
Information or know-how related to the Franchised Business, the System, or the  
Franchisor Intellectual Property.  
  
17.4 Franchisee shall immediately deliver to Franchisor, and cooperate to  
effect an orderly, expeditious and efficient transfer of the Technical Manual,  
all computer software programs, databases and technologies, and all other  
Franchisor Intellectual Property in whatever medium or form, and all records,  
files, instructions, correspondence, and all other materials provided by  
Franchisor related to the operation of the Franchised Business, and all copies  
thereof in whatever medium (all of which are acknowledged to be Franchisor's  
property), and shall retain no copy or record of any of the foregoing, excepting  
only Franchisee's copy of this Agreement and of any correspondence between the  
parties, and any other documents which Franchisee reasonably needs for  
compliance with any provision of law. Franchisor shall do the same with respect  
to any Franchisee property.  
  
17.5 Franchisor and Franchisee agree to negotiate in good faith for a period of  
60 days commencing on or prior to the termination of this Agreement or a  
reasonable period following termination, but no later than within 60 days after  
termination of this Agreement, with respect to a mutually acceptable arrangement  
pursuant to which Franchisor would license permanent rights to use and access  
the Franchisee Database and/or any and all digitized tracks contained in the  
Franchisee Database. If the parties are unable to agree on any such arrangement  
within such 60 day period, then neither party will have any further obligation  
with respect to negotiating such arrangement.  
  
17.6 Franchisor shall immediately cease to use and cause its franchisees to  
cease to use, in any manner or medium, the Franchisee Database. However,  
Franchisee shall take such action as may be necessary to cancel any assumed name  
or equivalent registration which contains any of the Proprietary Marks or any  
variation thereof or any other service xxxx or trademark of Franchisor, provided  
that Franchisor shall reimburse Franchisee for all reasonable costs, expenses  
and fees incurred by Franchisee in connection therewith and Franchisee shall  
furnish Franchisor with evidence satisfactory to Franchisor of compliance with  
this obligation within 30 days after termination of this Agreement. Franchisee  
hereby grants to Franchisor an irrevocable power of attorney to the full extent  
necessary to cancel any assumed name or equivalent registration which contains  
any of the Proprietary Marks or any variation thereof or any other service xxxx  
or trademark of Franchisor, which power of attorney shall survive the  
termination of this Agreement.  
  
17.7 Franchisee shall promptly pay all sums owing to Franchisor and Franchisor  
shall promptly pay all sums owing to Franchisee hereunder within 60 days of  
termination. In the  
  
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event that termination is due to Franchisee's breach of this Agreement then such  
sums due by Franchisee shall include all damages, costs and expenses, including  
reasonable attorneys' fees, incurred by Franchisor as a result of such breach.  
Franchisor shall have the right within 60 days (but subject to at least 7 days  
prior notice to Franchisee) following termination of this Agreement, to conduct  
a reasonable inspection of Franchisee's offices, and conduct a review and/or an  
audit of Franchisee's books and records, for the purpose, among other things, of  
assuring Franchisee's compliance with the provisions of this Section 17.  
  
17.8 Franchisee shall pay to Franchisor all damages, costs and expenses,  
including reasonable attorneys' fees, incurred by Franchisor subsequent to  
termination of this Agreement in obtaining injunctive or other relief for the  
enforcement of any provisions of this Section 17.  
  
17.9 Franchisee shall comply with all of the provisions of Section 17.  
  
18. COVENANTS NOT TO COMPETE  
  
18.1 Franchisee agrees that, except as otherwise approved in writing by  
Franchisor, Franchisee shall not, during the Term or due to an event  
contemplated in section 11.3 or 15.8, and, except in the situation where  
termination is due to Franchisor's breach of this Agreement, for a continuous  
uninterrupted one year period commencing upon the termination of this Agreement,  
either directly or indirectly compete with Franchisor. For purposes of this  
Agreement, "compete" shall mean engaging in any enterprise for (i) the streaming  
of live or recorded music on the Internet, (ii) production and/or sale of the  
Web Bar Listening Post or similar device for sampling music via the Internet and  
placed in retail record stores; (iii) provision of broadcast quality music files  
via the Internet to radio stations and/or other businesses requiring digital  
music files; (iv) provision of "canned" music programs to businesses via the  
Internet; (v) marketing, sale or merchandising of items (i) to (iv), excluding,  
for certainty, CDs and household items and products (such as, without  
limitation, stereo's, VCR's, DVD, computers (hardware and software), cameras,  
radios, televisions); (vi) pointers or links, which in the sole and reasonable  
opinion of Franchisor, are linked to or from any other Web page or Internet Site  
offering access, sale or delivery of any of the foregoing items via the  
Internet.  
  
18.2 Franchisee agrees not to "compete" with any other franchisees of  
Franchisor or establish customers in their respective exclusive territories for  
one year from the expiration of the Term of this Agreement.  
  
18.3 Franchisee agrees that during the Term of this Agreement, except as  
otherwise approved in writing by Franchisor, Franchisee shall not, either  
directly or indirectly, for itself, or through, on behalf of, or in conjunction  
with any person, persons, partnership or corporation, intentionally divert or  
attempt to divert any business or customer of the Franchised Business or other  
franchisee of Franchisor, to any competitor, or competing business, by direct or  
indirect inducement or otherwise, or intentionally do or perform, directly or  
indirectly, any other act materially injurious or materially prejudicial to the  
goodwill associated with the Franchisor Intellectual Property or the System.  
  
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18.4 Franchisee and Franchisor agree that neither party shall during the Term  
and for a period of one (1) year thereafter seek to employ any person who is at  
that time employed by the other party or otherwise directly or indirectly induce  
such person to leave his or her employment.  
  
18.5 These covenants against competition shall not apply to ownership by  
Franchisee of less than a 10% beneficial interest in the outstanding equity  
securities of any publicly held corporation even if that corporation is in  
competition with Franchisor.  
  
18.6 Franchisee expressly agrees that the existence of any claims it may have  
shall not constitute a defense to the enforcement by Franchisor of the covenants  
described in this Section 18. Franchisee shall pay all costs and expenses  
(including attorneys' fees) incurred by Franchisor in connection with the  
enforcement of these covenants.  
  
18.7 Franchisee agrees that each of the foregoing covenants will be constructed  
as independent of any other covenant or provision. If all, parts or any portion  
of a covenant in this Agreement is held unreasonable or unenforceable by a court  
or agency having valid jurisdiction in an unappealed final decision to which  
Franchisor is a party, Franchisee expressly agrees to be bound by any lesser  
covenant subsumed within the terms of such covenant that imposes the maximum  
duty permitted by law, as if the resulting covenant were separately stated in  
and made a part of this Section.  
  
18.8 Each of these covenants is a separate and independent covenant in each of  
the separate jurisdictions in which they may be enforced. To the extent that any  
covenant may be determined to be judicially unenforceable in any jurisdiction,  
that covenant shall not be affected with respect to any other jurisdiction.  
  
18.9 Franchisee acknowledges that a violation of any of these covenants may  
result in irreparable injury to Franchisor for which no adequate remedy may be  
available, and that it may be difficult to determine the resulting damages to  
Franchisor. Franchisee agrees that Franchisor shall be entitled, in addition to  
any other remedies Franchisor may have in law, equity or otherwise, to obtain  
specific performance of, or an injunction against any violation or threatened  
violation of the requirements of this Section 18.  
  
18.10 Franchisor agrees that it shall not grant any other franchises or similar  
rights within the Territory to any competitor of Franchisee, which franchise or  
rights (a) are related to the System and/or any Enhancements thereto, and (b)  
would become effective during the Term of this Agreement. For purposes of  
clarity, the foregoing covenant shall not apply to any Nonlicensed Franchisor  
Intellectual Property except where separate written agreement with respect to  
such subject matter is made between the parties.  
  
19. TAXES, PERMITS, AND INDEBTEDNESS  
  
19.1 Franchisee shall promptly pay to Franchisor an amount equal to any sales  
tax, gross receipts tax, or similar tax imposed on Franchisor with respect to  
any payments made by Franchisor on behalf of Franchisee if required under this  
Agreement, unless the tax is credited against income tax otherwise payable by  
Franchisor.  
  
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19.2 In the event of any bona fide dispute as to liability for taxes assessed  
or other indebtedness, Franchisee may contest the validity of the amount of the  
tax or indebtedness in accordance with the procedures of the taxing authority or  
applicable law; however, in no event shall Franchisee permit a tax sale or  
seizure by levy of execution or similar writ or warrant, or attachment by a  
creditor, to occur against the Franchised Business or any of its assets.  
  
19.3 Each party shall notify the other party in writing within five days after  
the commencement of any action, suit, or proceeding and of the issuance of any  
order, writ, injunction, award, or decree of any court, agency, or other  
governmental instrumentality which may materially adversely affect the operation  
or financial condition of such respective party's business as it relates to this  
Agreement.  
  
20. INDEPENDENT CONTRACTOR  
  
20.1 It is understood and agreed by the parties hereto that this Agreement does  
not create a fiduciary relationship between them, and Franchisee shall be an  
independent contractor and that nothing in this Agreement is intended to  
constitute either party an agent, legal representative, subsidiary, joint  
venturer, partner, employee or servant of the other for any purpose whatsoever.  
  
20.2 It is understood and agreed that nothing in this Agreement authorizes  
either party to make any contract, agreement, warranty or representation on the  
other's behalf, or to incur any debt or other obligation in the other's name,  
and that neither party shall in any event assume liability for, or be deemed  
liable hereunder as a result of, any such action, or by reason of any act or  
omission of the other party or any claim or judgement arising therefrom. Except  
as provided in Section 21 hereof, the parties hereto, as the case may be, shall  
have no liability with respect to their respective obligations under this  
Agreement or otherwise for indirect, special, incidental, consequential,  
punitive or exemplary damages, whether in contract, in tort or otherwise,  
including, but not limited to, loss of use, revenue or profit.  
  
21. INDEMNIFICATION  
  
21.1 Except as otherwise provided in Section 7.5, Franchisee agrees to  
indemnify and hold harmless Franchisor, and Franchisor's directors, officers,  
employees, shareholders, agents, attorneys, designees, successors and assigns  
from and against any and all claims, costs, damages, liabilities and expenses  
(individually, a "Claim" and collectively, "Claims"), including without  
limitation, reasonable attorneys' fees and expenses resulting from or arising  
out of, directly or indirectly, Franchisee's performance or lack of performance,  
and/or breach or alleged breach of any representation, warranty, or any other  
provision of this Agreement.  
  
21.2 Except as otherwise provided in Section 6.5, Franchisor agrees to  
indemnify and hold harmless Franchisee, its directors, officers, employees,  
agents, attorneys, successors and assigns authorized hereunder, from and against  
any and all Claims, including without limitation, reasonable attorneys' fees and  
expenses resulting from or arising out of, directly or indirectly, Franchisor's  
performance or lack of performance and/or breach or alleged breach of any  
representation, warranty or other provision of this Agreement.  
  
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21.3 Promptly after receipt by an indemnified party of notice of the  
commencement of an action involving any Claim, the indemnified party shall give  
written notice to the indemnifying party, provided, that the failure of the  
indemnified party to give such notice shall not relieve the indemnifying party  
of any of its obligations under this Section 21 except to the extent that the  
indemnifying party is actually prejudiced by such failure. The indemnifying  
party shall assume and control the defense, and all costs thereof, of any Claim  
subject to indemnification hereunder. The indemnified party shall have the  
right, at its own expense to participate in the defense of any Claim against  
which it is indemnified without relieving the indemnifying party of any  
obligation of indemnity hereunder; however, it shall have no right to consent to  
judgement or agree to settle any such Claim. No indemnifying party, in the  
defense of any such Claim, shall, except with the written consent of the  
indemnified party, consent to entry of any judgement or enter into any  
settlement which does not include, as an unconditional term, the grant by the  
claimant, to the indemnified party, of a release from all liabilities in respect  
of such Claim.  
  
21.4 Any claim for indemnification under this Section 21 shall survive the  
termination of this Agreement for a period of two years (it being understood  
that if notice of any such Claim is made within the applicable time period, such  
Claim shall survive until such Claim is paid in full or a court of competent  
jurisdiction shall have finally determined that such Claim shall not exist to  
the extent claimed by the indemnified party and then until such Claim shall be  
paid to the extent so determined.  
  
22. MUTUAL REPRESENTATIONS AND WARRANTIES  
  
Each party represents and warrants to the other that: (a) it has full power and  
legal right to execute and deliver this Agreement and to perform its obligations  
under this Agreement; (b) the execution, delivery and performance of this  
Agreement have been authorized by all required action, corporate or otherwise,  
and do not violate or conflict with any provisions of its respective charter,  
By-laws or governing documents or any of its contractual obligations or  
requirements of law binding upon it; (c) this Agreement constitutes its legal,  
valid and binding obligation, enforceable against it in accordance with its  
terms; (d) it has and shall maintain in full force and effect throughout the  
Term, all governmental permits, licenses and authorizations required on its part  
to perform its obligations under this Agreement; and (e) there is no pending or,  
to the knowledge of each respective party, any threatened, legal,  
administrative, arbitration or other proceeding or governmental investigation  
which is likely to have a material adverse effect on performance of this  
Agreement.  
  
23. APPROVALS AND WAIVERS  
  
23.1 Whenever this Agreement requires the prior approval or consent of  
Franchisor or Franchisee, as the case may be, the requesting party shall make a  
timely written request to the other such party, and any such approval or consent  
shall be deemed granted only to the extent obtained in writing in response to  
such request. In the case where such prior approval or consent provides that it  
shall not be unreasonably withheld, if the requesting party does not receive a  
response from the other such party within ten (10) business days from the  
confirmed date of receipt of such request by the other such party, such approval  
or consent shall be deemed given by the other such party. For purposes of this  
Agreement, the term "business days" shall mean  
  
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any day on which the principle executive offices of the Toronto Dominion Bank  
located in Xxxxxxx, Xxxxxxx, Xxxxxx, are open for business.  
  
23.2 Except as otherwise provided in this Agreement or any other written  
agreement between Franchisor and Franchisee, Franchisor makes no warranties or  
guarantees upon which Franchisee may rely, as to merchantability and fitness of  
the System for a particular purpose or that the Franchisor Intellectual Property  
as developed and designed will meet any performance requirements of or will  
perform error free or in conformance with the needs or requirements of  
Franchisee or any Franchisee customer.  
  
23.3 No failure of a party to exercise any power reserved to it by this  
Agreement, or to insist upon strict compliance by the other party with any  
obligation or condition hereunder, and no custom or practice of the parties at  
variance with the terms hereof, shall constitute a waiver of such party's right  
thereafter to demand exact compliance with any of the terms herein. Waiver by a  
party of any particular default by the other party shall not affect or impair  
such party's rights with respect to any subsequent default of the same, similar,  
or different nature; nor shall any delay, forbearance, or omission of a party to  
exercise any power or right arising out of any breach or default by the other  
party of any of the terms, provisions, or covenants hereof, affect or impair  
such party's right to exercise the same.  
  
24. NOTICES  
  
All notices, requests, instructions, or other communications which are required  
or permitted to be given hereunder shall be in writing and shall be delivered by  
messenger, sent by certified mail return receipt requested or by a recognized  
international courier, to the other party as set forth below, or to such other  
address as the party to whom notice is to be given may have furnished to the  
other party in writing. Any such communication shall be deemed to have been  
given when (i) delivered, if delivered by messenger, (ii) on receipt, if sent by  
mail, and (iii) on the third business day after dispatch, if sent by a  
recognized international courier and confirmation of receipt is obtained  
therefor by the sender (without limiting the generality of the foregoing,  
Federal Express, DHL and UPS shall be deemed to be recognized overnight couriers  
for purposes of this Agreement).  
  
Notices to FRANCHISOR:  
  
 musicmusicmusic, inc.  
 00 Xxxxxxxx Xxxxxx  
 Xxxxx 000  
 Xxxxxxx, Xxxxxxx X0X 0X0 Xxxxxx  
 Facsimile No.: (000) 000-0000  
 E-mail Address: xxxx@xxxxxxxx.xxx  
  
With a copy to:  
  
 Wuersch & Xxxxxx LLP  
 00 Xxxxxxx Xxxxxx, 00xx Xxxxx  
  
 00  
  
  
 Xxx Xxxx, XX 00000  
 Attention: Xxxxxx X. Xxxxxx  
 Facsimile No.: (000) 000-0000  
 E-mail Address: xxxxxxx@xx-xxx.xxx  
  
Notices to FRANCHISEE:  
  
 IDARA  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Facsimile No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 E-mail Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
With a copy to:  
  
 Xxxx & Berlis  
 Xxxxx 0000 XXX Xxxxx, Xxx Xxxxxxxxxx Tower P.O. Box 754  
 000 Xxx Xxxxxx  
 Xxxxxxx, Xxxxxxx X0X 0X0  
 Attention: Xxxxx Xxxxxxxxx  
 Facsimile No.: 000-000-0000  
 E-mail Address: xxxxxxxxxx@xxxxxxxxxx.xxx  
 -------------------------  
  
Any notice shall be deemed to have been given at the date and time it is  
confirmed to have been received by the other party.  
  
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25. MODIFICATION  
  
This Agreement may not be orally cancelled, changed, modified or amended, and no  
cancellation, change, modification or amendment shall be effective or binding,  
unless in writing and signed by all the parties to this Agreement.  
  
26. ENTIRE AGREEMENT  
  
This Agreement, including all Exhibits and all other documents referred to  
herein which form a part hereof, contains the entire understanding of the  
parties hereto with respect to the subject matter contained herein and therein.  
This Agreement supersedes all prior agreements and understanding between or  
among the parties with respect to such subject matter  
  
27. SEVERABILITY  
  
If any provision of this Agreement is found to be void and unenforceable by a  
court of competent jurisdiction, the remaining provisions of this Agreement  
shall nevertheless be binding upon the parties with the same effect as though  
the void or unenforceable part had been severed and deleted. Any provision of  
this Agreement which is prohibited or unenforceable in any jurisdiction shall,  
as to such jurisdiction, be ineffective to the extent of such prohibition or  
unenforceable without invalidating the remaining provisions hereof, and any such  
prohibition or unenforceability in any jurisdiction shall not invalidate or  
render unenforceable such provision in any other jurisdiction.  
  
28. STRICKEN WORDS OR PHRASES  
  
If any words or phrases in this Agreement shall have been stricken out or  
otherwise eliminated, whether or not any other words or phrases have been added,  
this Agreement shall be construed as if the words or phrases so stricken out or  
otherwise eliminated had never appeared in this Agreement.  
  
29. GOVERNING LAW  
  
All issues concerning the relative rights of the parties hereto and the  
construction, validity and interpretation of this Agreement shall be governed by  
and construed in accordance with the laws of the State of New York, without  
giving effect to conflict of laws that would require the application of the laws  
of any jurisdiction other than the State of New York.  
  
30. ARBITRATION  
  
The parties hereto agree to submit to arbitration any and all matters in dispute  
or in controversy among them concerning the terms and provisions of this  
Agreement or the application thereof. All such disputes and controversies shall  
be determined and adjudged by the decision of an arbitrator (hereinafter  
sometimes called the "Arbitrator") selected by mutual agreement of the parties  
hereto or if the parties hereto fail to reach agreement on the Arbitrator within  
ten days after a party has notified the other of its interest to submit a matter  
to arbitration, the Arbitrator shall be selected by the American Arbitration  
Association upon application made to it for such purpose by the parties.  
Arbitration shall take place in New York, New York or such other place as the  
parties hereto may mutually agree to in writing. The Arbitrator shall reach and  
render a  
  
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decision in writing with respect to the amount, if any, of payment respecting  
the disputed matter. The arbitration proceedings shall be held in accordance  
with the applicable rules of the American Arbitration Association. Any award  
rendered shall be final and conclusive upon the parties and a judgment thereon  
may be entered in the highest court of the forum, state or federal, having  
jurisdiction. The fees and expenses of the Arbitrator and the respective fees  
and expenses of the parties hereto in connection with any such arbitration  
(including, without limitation, reasonable fees and expenses of legal counsel  
and consultants) shall be paid by the party against whom a decision by the  
Arbitrator is rendered. Notwithstanding any other provision herein, this Section  
30 shall survive the termination of this Agreement.  
  
31. RIGHTS AND REMEDIES NOT INCONSISTENT OR IN EXCLUSION  
  
Any and all rights and remedies which either party may have under this Agreement  
or by operation of law, either at law or in equity, upon any breach, shall be  
distinct, separate or cumulative and shall not be deemed inconsistent with each  
other; and no one of them, whether exercised by said party or not, shall be  
deemed to be in exclusion of any other; and any two or more of all such rights  
and remedies may be exercised at the same time, or separately as desired.  
  
32. INTERPRETATION  
  
Notwithstanding any rule of law or custom to the contrary, neither this  
Agreement nor any other agreement or document collateral to or otherwise  
relating to this Agreement shall be interpreted or construed against any party  
merely by reason of the fact that such agreement or document was prepared by or  
at the direction of such party or that such party drafted or caused this  
Agreement to be drafted.  
  
33. CURRENCY REFERENCE  
  
All references to dollars and payments to be made hereunder, including the  
Exhibits attached hereto, shall be references to United States dollars unless  
expressly stated otherwise in the applicable provision.  
  
34. FUTURE COOPERATION  
  
Each party hereto shall cooperate and shall take such further action and shall  
execute and deliver such further documents as may be reasonably requested by any  
other party in order to carry out the provisions and purposes of this Agreement.  
  
35. HEADINGS; NUMBER AND GENDER  
  
The section headings contained in this Agreement are for reference purposes  
only, and shall not affect the meaning or interpretation of this Agreement. All  
terms and words used in this Agreement, regardless of the number or gender in  
which they are used, shall be deemed to include any other number and any other  
gender as the context may require.  
  
 40  
  
  
36. BINDING EFFECT  
  
The provisions of this Agreement shall extend to, bind and inure to the benefit  
of each of the parties hereto and their respective heirs, personal  
representatives, successors and permitted assigns, if any.  
  
37. COUNTERPARTS  
  
This Agreement may be executed in any number of counterparts and delivery via  
facsimile, each of which original or facsimile signature pages when so executed  
and delivered shall be deemed to be an original and all of which together shall  
constitute but one and the same instrument. In the event of execution and  
delivery of this Agreement via facsimile, such party shall promptly deliver to  
the other party an originally executed exemplar therefor in the manner  
prescribed under the provision for Notices set forth above.  
  
 [signature page to follow]  
  
 41  
  
  
 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date  
first above written.  
  
 FRANCHISOR:  
  
 musicmusicmusic, inc.  
  
 By: /s/ Wolfgang Spegg  
 -----------------------------  
 Name:  
 Title: President and CEO  
  
  
  
 FRANCHISEE:  
  
 IDARA  
  
 By: /s/ Xxxx Xxxxxxxx  
 -----------------------------  
 Name: Xxxx Xxxxxxxx  
 Title: Director  
  
 42  
  
  
 EXHIBIT A  
  
 TERRITORY  
  
Franchisee will as part of this Agreement have the right to deliver music to  
RadioMoi subscribers world-wide and to enter into contractual agreements for all  
other Franchisor Products and services in the following countries:  
  
 United Arab Emirates Ethiopia  
 Kuwait Somalia  
 Bahrain Djibouti  
 Qatar Tunis  
 Oman Azerbaijan  
 Yemen Armenia  
 Iraq  
 Iran  
 Syria  
 Jordan  
 Israel  
 Lebanon  
 Turkey  
 Kazakhstan  
 Uzbekistan  
 Turkmenistan  
 Afghanistan  
 Tajikistan  
 Kyrgyzstan  
 Saudi Arabia  
 Morocco  
 Algeria (including Western Sahara)  
 Mauritania  
 Senegal  
 Mali  
 Niger  
 Libya  
 Chad  
 Nigeria  
 Burkina  
 Central African Republican  
 Egypt  
 Sudan  
 Eritrea  
  
 43  
  
  
 EXHIBIT B  
  
 FRANCHISOR INTELLECTUAL PROPERTY  
  
1. Technology, know-how and execution rights with respect to standard  
RadioMoi, including provision of front-end and back-end code,  
  
2. Franchisor brand names in customized Arabic interface (with Franchisee  
providing translations), and, subject to approval of Franchisor not to be  
unreasonably withheld, Font Selection thereof.  
  
3. The names, trademarks, service marks, and copyrights with respect to  
"musicmusicmusic", "RadioMoi", "DDA", "Interactive Jukebox", "New Music  
Jukebox", and the "Web-Bar Listening Post."  
  
4. Content of the Franchisor Digital Music Database as of the date hereof and  
as supplemented from time-to-time by the Franchisor.  
  
5. Supplemental digital files related to access and operation of RadioMoi and  
the Franchisor Digital Music Database, including text, graphics and other  
supporting elements.  
  
6. Know-how and execution rights required for installation and operation of  
the Web Bar Listening Post.  
  
7. Know-how and execution rights with respect to Webcasting Technology  
  
 44  
  
  
 EXHIBIT C  
  
  
 LOCATIONS  
  
  
1. Worldwide, excluding the locations referred to on Exhibit "A".  
  
 45  
  
  
 EXHIBIT D  
  
 FRANCHISEE RADIOMOI PAGES  
  
1. Incorporated by reference to the Franchisor's Website XxxxxXxx.xxx.  
  
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