EXAMPLE, INC.

PRODUCT LICENSE AGREEMENT

This Product License Agreement (“**Agreement**”) is made and entered into as of \_\_\_\_\_\_\_\_ \_\_, 202\_ (“**Effective Date**”) between EXAMPLE, INC., a Delaware corporation, with its principal place of business at STREET ADDRESS, CITY, STATE, ZIP CODE (“**EXAMPLE INC**”),and EXAMPLE, LLC., a Delaware limited liability company, with its principal place of business at STREET ADDRESS, CITY, STATE, ZIP CODE (“**Licensee**”). The parties agree as follows:

# DEFINITIONS

## “**Affiliate**” of a party means an entity that is controlled by the party, where “control” means beneficial ownership (direct or indirect) of at least 50 percent of the shares of such entity entitled to vote in the election of directors (or in the case of an entity that is not a corporation, for the election of corresponding managing authority).

## “**Client Software**” means software provided by EXAMPLE, INC. to Licensee hereunder for use in Devices, as identified in **Exhibit A.**

## “**Device**” means a hardware apparatus that is either a personal computer Device (“**PC Device**”) or a set-top box Device (“**STB Device**”) that contains either Client Software or software licensed by EXAMPLE, INC. to another licensee that would be Client Software if it were licensed to Licensee hereunder and is configured and deployed to receive data from EXAMPLE, INC.-licensed content distributors.

## “**Documentation**” means documentation provided by EXAMPLE, INC. to describe formally the use, function, or technical details of Licensed Products for the benefit of EXAMPLE, INC. licensees (e.g. installation guides, reference manuals, support manuals, and training manuals).

## “**Error**” means a failure of a Licensed Product to perform substantially in accordance with the applicable material technical specifications set forth in the Documentation pertaining to that version of the Licensed Product (excluding faults in the Documentation).

## “**Licensed Product(s)**” means each and/or both of Client Software and Server Software.

## “**Maintenance & Support Services**” means the maintenance and support services specified in **Exhibit B**.

## “**Malicious Code**”means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or maliciously interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or maliciously interfere with the operation of the software, or (ii) any device, method, or token that permits any person to circumvent the normal security of the software or the system containing the code.

## “**Release**” means a Maintenance Release, Minor Release, or Major Release.

### “**Maintenance Release**” means a new version of a Licensed Product that incorporates Error corrections or new transparent features. EXAMPLE, INC. designates Maintenance Releases with a change to the third number in version designation (i.e., from version x.xx.x to x.xx.y).

### “**Minor Release**” means a new version of a Licensed Product that incorporates support for new platforms or enhancements to existing features, including updates. EXAMPLE, INC. designates Minor Releases with a change to the second number in version designation (i.e., from version x.xx.x to x.yy.x).

### “**Major Release**” means a new version of a Licensed Product that provides new features, including upgrades. EXAMPLE, INC. designates Major Releases with a change to the first number in version designation (i.e., from version x.xx.x to y.xx.x).

## “**Public Software**” means any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (A) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL), (B) the Artistic License (e.g., PERL), (C) the Mozilla Public License, (D) the Netscape Public License, (E) the Sun Community Source License (SCSL), (F) the Sun Industry Standards License (SISL), (G) the BSD License, and (H) the Apache License.

## “**Server Software**” means software provided by EXAMPLE, INC. to Licensee hereunder for use on dedicated server(s) and/or hard drive(s), as identified in **Exhibit A**.

## “**Sublicense Agreement**” means an agreement that meets the requirements of Section 2.5(b).

## “**Sublicensee**” shall have the meaning set forth in Section 2.5.

## “**Term**” shall have the meaning set forth in Section 5.1.

## “**Unauthorized Use**” means any use, reproduction, distribution, disclosure, sale, offer to sell, lease or rental, possession, examination, or other activity involving any part of the Licensed Products or Documentation that is not expressly authorized under this Agreement or otherwise in writing by EXAMPLE, INC..

# GRANT OF RIGHTS; MAINTENANCE & SUPPORT

## License to Server Software. Subject to the provisions of this Agreement, EXAMPLE, INC. grants to Licensee a non-exclusive, non-transferable (except as provided in Section 9.2), non-sublicensable (except as provided in Section 2.5) worldwide license during the Term to use the Server Software solely in the form and on the hardware provided by EXAMPLE, INC. to Licensee (or configured by EXAMPLE, INC. for Licensee) and solely to distribute data to Devices. This license is limited to the number of copies of the Server Software paid for by Licensee.

## Delivery of Server Software. EXAMPLE, INC. will procure and deliver Server Software, in the quantities set forth in **Exhibit A**, to Licensee on dedicated servers and/or hard drives customized by EXAMPLE, INC. to operate the Server Software, as follows:

### EXAMPLE, INC. will procure such dedicated servers and/or hard drives for Licensee, as between Licensee and EXAMPLE, INC.; any attempt by Licensee to physically or electronically open, modify, or in any way examine the workings of a dedicated server and/or hard drive shall result in immediate termination of Licensee’s rights under this Agreement; provided, however, that EXAMPLE, INC. shall be responsible for any and all configuration, installation, maintenance and other services that may require that the servers be physically or electronically opened, modified or examined;

### Licensee agrees that once configured by EXAMPLE, INC. the servers and/or hard drives will be used for no purpose other than to operate the Server Software in accordance with this Agreement, and any attempt by Licensee to physically or electronically open, modify, or in any way examine the workings of a dedicated server and/or hard drive shall result in immediate termination of Licensee’s rights under this Agreement.

### EXAMPLE, INC. will promptly repair or replace any malfunctioning dedicated server and/or hard drive pursuant to the terms of the Maintenance & Support Services attached hereto as **Exhibit B**.

## License to Client Software. Subject to the provisions of this Agreement, EXAMPLE, INC. grants to Licensee a non-exclusive, non-transferable (except as provided in Section 9.2), non-sublicensable (except as provided in Section 2.5) license during the Term to reproduce, without modification, executable object code copies of the Client Software solely for the purpose of installing them on Devices; install executable object code copies of the Client Software solely on Devices; use the Client Software solely in connection with the authorized consumption of content via a Device and grant customers the a sublicense to use the Client Software solely to view content on the Devices. This license is limited to the number of copies of the Client Software paid for by Licensee.

## License to the Documentation. Subject to the provisions of this Agreement, EXAMPLE, INC. grants to Licensee a non-exclusive, non-transferable (except as provided in Section 9.2), non-sublicensable (except as provided in Section 2.5) license during the term of this Agreement to reproduce, without modification, and internally use copies of the Documentation solely in connection with Licensee’s use of the Licensed Products in accordance with this Agreement.

## Limited Permission to Sublicense

### Permitted Sublicensees. Subject to the provisions of this Agreement, including without limitation Section 2.5(b), Licensee may sublicense to an entity (“**Sublicensee**”) the rights EXAMPLE, INC. has granted to Licensee in Section 2.1, to enable Sublicensee to distribute data on Licensee’s behalf to Devices; in Section 2.3, to enable Sublicensee to reproduce, distribute, install, and use Client Software on Devices on Licensee’s behalf; and in Section 2.4, to enable Sublicensee to reproduce and make internal use of the Documentation. Licensee may grant such sublicenses only to (x) its Affiliates and (y) independent contractors engaged by Licensee for the purpose of implementing a EXAMPLE, INC.-licensed content delivery system and who are approved in writing in advance by EXAMPLE, INC..

### Sublicense Agreements. In order for a Sublicensee to obtain any rights from Licensee, such Sublicensee must first execute a written agreement (“**Sublicense Agreement**”) that  is no less protective of EXAMPLE, INC.’s rights and proprietary interests than is this Agreement;  requires Sublicensee to comply with the applicable terms of this Agreement;  names EXAMPLE, INC. as an intended third-party beneficiary with the right to enforce the terms of the Sublicense Agreement;  disclaims any and all warranties and indemnification on behalf of EXAMPLE, INC. and disclaims, to the maximum extent permitted by applicable law, EXAMPLE, INC.’s liability for any damages, whether direct, indirect, incidental, or consequential, arising in connection with the Licensed Products (provided, however, that Licensee shall retain all of its rights under this Agreement and shall have the right to bring claims against EXAMPLE, INC. for any damages suffered by any Sublicensees resulting from a breach of this Agreement by EXAMPLE, INC.);  requires the sublicensee to comply fully with all relevant export laws and regulations;  prohibits sublicensing by Sublicensee of the rights obtained under the Sublicense Agreement; and ;  terminates upon the termination of this Agreement. Licensee shall provide a copy of each Sublicense Agreement to EXAMPLE, INC. promptly after execution of it by Sublicensee [THIS IS SUBJECT TO FURTHER REVIEW AS WE DETERMINE OUR POTENTIAL CONTRACTORS].

### Enforcement of Sublicense Agreements. Licensee shall  diligently enforce each Sublicense Agreement; notify EXAMPLE, INC. of every material breach of a Sublicense Agreement (of which Licensee becomes aware) that might affect EXAMPLE, INC., its other licensee, or customers; and  cooperate with EXAMPLE, INC. in any legal action to prevent or stop Unauthorized Use of Licensed Products by Sublicensees or others.

## No Sale of Licensed Products. The Licensed Products are licensed, not sold, by EXAMPLE, INC. to Licensee, and nothing in this Agreement shall be interpreted or construed as a sale or purchase of the Licensed Products. EXAMPLE, INC. shall be responsible, in accordance with the Maintenance & Support Services, to maintain each server and/or hard drive provided by it to Licensee in good working order and in conformance with all specifications. Licensee shall keep the Licensed Products installed on such equipment free of security interests, liens, and other encumbrances. Under no circumstance may Licensee permit any security interest, lien, or other encumbrance to be created in the Licensed Products or Documentation.

## Reservation of Rights. Licensee shall not have or acquire any rights in or to the Licensed Products except as expressly granted in this Agreement. EXAMPLE, INC. reserves to itself all rights to the Licensed Products not expressly granted to Licensee under this Agreement. EXAMPLE, INC. retains all intellectual property rights in and to the Licensed Products. Licensee acknowledges that the Licensed Products, all copies of the Licensed Products, and any know-how and trade secrets related to the Licensed Products are the sole and exclusive property of EXAMPLE, INC. and contain EXAMPLE, INC.’s confidential and proprietary information and materials. Licensee is not authorized to make derivative works of the Licensed Products or Documentation, but should Licensee inadvertently or otherwise create any derivative work, Licensee hereby irrevocably assigns to EXAMPLE, INC. all right, title, and interest in and to all such derivative works.

# RESTRICTIONS AND OBLIGATIONS

## General Restrictions. Except as expressly provided in this Agreement or as may be expressly permitted by applicable law, Licensee shall not, and shall not permit or authorize third parties to:  reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the Licensed Products or Documentation;  rent, lease, or sublicense the Licensed Products or the use of them;  provide, disclose, make available, or permit the use of the Licensed Products or Documentation by or for any third party;  alter, encode, copy, distribute, or transmit any data using the Licensed Products without obtaining all necessary copyright and other permissions;  circumvent or disable any technological features or measures in the Licensed Products;  attempt to access, remove, or alter any Licensed Products or the hardware upon which they have been provided; or  install, distribute, or use the Client Software on a Device that Licensee reasonably believes is susceptible to modification that permits end-user access or other unauthorized access to the Client Software.

## Access to Ensure Security. Licensee shall ensure at all times during the Term that each copy of the Server Software is accessible by EXAMPLE, INC. via a secure network connection (such as a VPN) in a manner reasonably approved in writing by EXAMPLE, INC.. Licensee acknowledges that EXAMPLE, INC. may use this connection solely and only to the limited extent necessary to monitor the security of the Server Software and its environment, to ensure that unauthorized copies of the Server Software or Client Software have not been made, and to deliver Maintenance & Support Services to Licensee. Licensee acknowledges that if this connection is lost for more than 14 days the Server Software may cease to operate. In addition if EXAMPLE, INC. should become aware that such connection has been lost and if EXAMPLE, INC. should report the same to Licensee, Licensee shall respond to such report within twenty-four (24) hours and shall exercise commercially reasonable efforts to reestablish such connection with forty-eight (48) hours.

## Proprietary Rights Notices. Licensee shall neither alter nor remove any copyright notice or other proprietary rights notices that may appear on any part of the Licensed Products or Documentation. In addition, when reproducing any part of the Licensed Products or Documentation in accordance with this Agreement, Licensee shall include all copyright and other proprietary rights notices as are currently contained on each part of the Licensed Products and Documentation or as may be reasonably specified from time to time by EXAMPLE, INC..

## Compliance with Laws. Each party shall maintain high standards of professionalism and shall at all times comply with all applicable laws, statutes, ordinances, regulations, and, in the case of Licensee, instructions from EXAMPLE, INC. regarding use of the Licensed Products and Documentation. Each party shall refrain from any unethical conduct or any other conduct that may damage the reputation of the other party or the other party’s products.

## Export and Import. Licensee shall at all times comply with all applicable export and import control laws and regulations and shall not export and/or import the Licensed Products or Documentation without EXAMPLE, INC.’s prior written consent.

## No Warranties. Licensee shall not make or publish any representations, warranties, or guarantees concerning the Licensed Products on behalf of EXAMPLE, INC. without EXAMPLE, INC.’s prior written consent.

## Protection Against Unauthorized Use. Licensee acknowledges that the Licensed Products, Documentation, and other materials furnished to Licensee by EXAMPLE, INC. comprise, include, and/or relate to valuable proprietary rights of EXAMPLE, INC.. Licensee shall take all appropriate steps and precautions to protect the Licensed Products and Documentation. Without limiting the generality of the foregoing, Licensee shall exercise commercially reasonable efforts to prevent any Unauthorized Use and shall immediately notify EXAMPLE, INC. in writing of any possible Unauthorized Use that comes to Licensee’s attention. In the event of any Unauthorized Use by anyone who obtained access to the Licensed Products or Documentation directly or indirectly through Licensee or any of its Sublicensees or any of their employees, agents, representatives, or contractors, Licensee shall take all commercially reasonable steps necessary to terminate such Unauthorized Use and to retrieve any copy of the applicable Licensed Products and Documentation in the possession or control of the person or entity engaging in such Unauthorized Use. In the case of any Unauthorized Use resulting from Licensee’s fault, Licensee shall provide to EXAMPLE, INC. such cooperation and assistance as EXAMPLE, INC. may reasonably request.

## Facilitation of Infringement. Licensee shall not knowingly use or permit the use of any Licensed Products or Documentation to facilitate the infringement of copyrights or other proprietary rights.

## Indemnification. Each party shall defend, indemnify and hold the other party, the other party’s Affiliates and the officers, directors, shareholders, agents, employees and assigns of each, harmless from and against any and all claims, demands, suits, judgments, losses, or expenses of any nature whatsoever (including attorneys’ fees) arising directly or indirectly, in whole or part, from or out of any breach of its representations, warranties or agreements as set forth herein. The indemnification obligations shall not be limited by the insurance requirements and shall extend to claims occurring after the Agreement has terminated as well as while the Agreement is in force. The provisions of this section shall survive the expiration or early termination of this Agreement.

# FEES AND PAYMENT

## Fees and Payment Terms

### Licensee shall pay EXAMPLE, INC. the license fees and any other amounts owing under this Agreement, as specified in **Exhibit A**, plus any applicable sales, use, excise, or other taxes and shipping charges from EXAMPLE, INC.’s location. Unless otherwise specified in **Exhibit A**, Licensee shall pay all amounts due within 30 days of the date of the applicable invoice. EXAMPLE, INC. reserves the right to revise the fees specified in **Exhibit A** following the initial Term upon thirty (30) days written notice to Licensee.

### All amounts payable under this Agreement are denominated in United States dollars, and Licensee shall pay all amounts in United States dollars. Licensee shall promptly notify EXAMPLE, INC. of any laws that Licensee is aware of that will prohibit Licensee from making payment in United States dollars.

## Taxes. Other than federal and state net income taxes imposed on EXAMPLE, INC., Licensee shall bear all taxes, duties, and other governmental charges (collectively, “**taxes**”) due in connection with this Agreement and the transaction contemplated hereby.

## Audit. During the Term and for one year thereafter, Licensee shall keep current, complete, and accurate records regarding the reproduction, distribution, and use of Licensed Products and Documentation. Licensee shall provide such information to EXAMPLE, INC. and certify that it has paid all fees required under this Agreement within fifteen business days of any written request to do so, provided that EXAMPLE, INC. shall make no more than one such requests each year. Licensee shall, after reasonable prior notice from EXAMPLE, INC., provide EXAMPLE, INC. reasonable access during standard business hours to Licensee’s premises, records, and personnel solely and to the limited extent required for EXAMPLE, INC. to audit and confirm that Licensee has complied and is complying with this Agreement; provided, however, that such an audit shall not occur more than once per year. If an audit reveals any reproduction, distribution, or use of the Licensed Products or Documentation that is not compliant with this Agreement, Licensee shall promptly correct and remedy such noncompliance and shall make such additional payments as are contemplated in this Agreement. If the amount of the underpayment to EXAMPLE, INC. is five percent or greater, Licensee shall promptly reimburse EXAMPLE, INC. for its costs of conducting such audit.

# TERM AND TERMINATION

## Term. The term of this Agreement (“**Term**”) will commence upon the Effective Date and continue for a period of one (1) year unless earlier terminated as provided in this Agreement; the Term shall renew on an annual basis for additional one (1) year periods provided that the parties mutually agree.

## Notice of Material Breach or Default. If either party commits a material breach or default in the performance of any of its obligations under this Agreement, the nondefaulting party shall give the defaulting party written notice of the material breach or default and the nondefaulting party’s intention to terminate the Agreement pursuant to Section 5.3 if the material breach or default is not cured within thirty (30) days after the defaulting party’s receipt of such written notice (or such later date as may be specified in writing by the nondefaulting party).

## Post-Termination Obligations. If this Agreement is terminated for any reason, Licensee and its Sublicensees shall immediately cease all reproduction, distribution, and use of the Licensed Products and the Documentation;  all licenses granted by EXAMPLE, INC. and obligations assumed by EXAMPLE, INC. hereunder shall immediately terminate;  Licensee shall promptly pay to EXAMPLE, INC. any fees, reimbursable expenses, compensation, and other amounts that have accrued prior to termination, and all liabilities accrued by Licensee prior to termination shall survive;  Licensee and its Sublicensees shall, within five (5) days of termination, (i) return to EXAMPLE, INC. all copies of the Server Software (along with the servers and/or hard drives upon which they were provided); (ii) return to EXAMPLE, INC. or destroy all copies of the Client Software in its possession or control (and irretrievably destroy by electronic means all copies of the Client Software installed in Devices); (iii) return to EXAMPLE, INC. all copies of the Documentation; each party will return to the other party all copies and other embodiments of the other party’s Confidential Information not otherwise specifically addressed in this Section 5.5 (and irretrievably destroy all electronic copies and embodiments of such Confidential Information); and each party will provide the other party with a written certification signed by an officer setting forth the manner in which it has complied with the requirements of this Section 5.5. In the event that some but not all licenses granted by EXAMPLE, INC. to Licensee hereunder are terminated for any reason, the provisions of this Section 5.5 shall apply *mutatis mutandis* to the Licensed Products, Documentation, Confidential Information, amounts due, and liabilities relating to such terminated licenses.

# WARRANTIES AND DISCLAIMER

## Mutual Warranties. Each party represents and warrants to the other that  this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms;  no authorization or approval from any third party is required in connection with such party’s execution, delivery, or performance of this Agreement; and  the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

## **Ownership and Use**. EXAMPLE, INC. represents, warrants and covenants that it is either the owner of, or authorized to use the License Products.

## (b) **Performance**. EXAMPLE, INC. represents, warrants and covenants that the Licensed Products and all other software, equipment, materials and other items it provides or uses under this Agreement, whether owned by EXAMPLE, INC. or licensed from a third party, will perform in conformance with its documentation and specifications and will provide the functions and features and operate in the manner described therein.

## **Malicious Code**. EXAMPLE, INC. shall use industry best practices and take prudent actions and precautions to identify, screen and prevent the introduction and proliferation of, any Malicious Code into Licensee’s environment or any system used by EXAMPLE, INC.. Without limiting EXAMPLE, INC.’s other obligations under the Agreement, EXAMPLE, INC. covenants that, in the event any Malicious Code is found in its software or systems, EXAMPLE, INC. shall promptly notify Licensee in writing of the Malicious Code and shall at no additional charge promptly eliminate, and reduce the effects of the Malicious Code and, if the Malicious Code causes a loss of operational efficiency, loss of data or results in stolen or unauthorized access to Licensee Information, use diligent efforts to mitigate the effects of such losses and unauthorized access and restore any lost data using generally accepted data restoration techniques. EXAMPLE, INC. shall indemnify Licensee for all losses incurred by Licensee as a result of such Malicious Code; provided, however, that such obligation will not be applicable with respect to Malicious Code that EXAMPLE, INC. demonstrates was introduced by Licensee, its employees, agents or contractors. EXAMPLE, INC. will cooperate with and assist Licensee to facilitate any required reporting related to any such loss of or stolen data or unauthorized access.

## **Public Software**. EXAMPLE, INC. shall notify Licensee of any Public Software components that are part of any Licensed Products as of the Effective Date. During the Term of this Agreement, EXAMPLE, INC. will notify Licensee if it intends to add any new Public Software component to the Licensed Products. In the event that the Licensed Software (as it is currently configured and as it may be configured in the future) includes or is distributed with any Public Software, EXAMPLE, INC. represents and warrants that (a) there are no provisions in any licenses covering the Public Software that would require the disclosure of any software or other technology of Licensee, its affiliates or contractors, and (b) to the extent that any such disclosure provisions become applicable to any Public Software included in or distributed with the Licensed Products in the future, Licensee’s (and its Affiliates’s) use of the Licensed Products under this Agreement will not require such a disclosure.

## Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS Agreement, neither party MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. LICENSEE AND ITS SUBLICENSEES DO NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF EXAMPLE, INC. TO ANY SUBLICENSEE, END-USER, OR OTHER THIRD PARTY.

# LIMITATIONS OF LIABILITY

## Disclaimer of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY, LICENSEE’S SUBLICENSEES, OR ANY END-USERS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.

## .Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY EXAMPLE, INC. TO LICENSEE AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

# CONFIDENTIALITY

## “Confidential Information” means the trade secrets of each party, and any other information disclosed by either party to the other party during the Term, or otherwise in connection with the Agreement, that the other party knows or has reason to know is confidential, whether such information is of a technical, business, or other nature (including, without limitation, information relating to such party’s technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, licensees, prospects, or other affairs). For purposes of clarity, the Licensed Products and Documentation are the Confidential Information of EXAMPLE, INC.. Confidential Information does not include any information that, as evidenced by the recipient’s written records:  was known to recipient prior to receiving the same from the discloser;  is independently developed by the recipient without use of or reference to information of the discloser; or is or becomes part of the public domain through no fault or action of the recipient.

## Restricted Use and Nondisclosure. During and after the Term, the recipient shall:  use the discloser’s Confidential Information solely for the purpose for which it is provided (and if no purpose is specified, then solely to perform its obligations or exercise its rights under this Agreement);  not disclose the discloser’s Confidential Information to any third party other than as expressly provided for under this Agreement; and  protect the discloser’s Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

## Required Disclosure. If either party is required by law to disclose the other party’s Confidential Information or the terms of this Agreement, it must give prompt written notice of such requirement before such disclosure and assist the other party in obtaining an order protecting the Confidential Information from disclosure.

## Return or Destruction of Materials. Upon the termination of this Agreement (as more particularly set forth in Section 5), or upon earlier request, each party shall deliver to the other party or destroy all of the other party’s Confidential Information that it may have in its possession or control.

# GENERAL

## Relationship. Each party hereto shall be and act as an independent contractor (and not as the agent or representative of the other) in the performance of this Agreement. This Agreement shall not be interpreted or construed as  creating or evidencing any association, joint venture, partnership, or franchise between the parties;  imposing any partnership or franchise obligation or liability on either party; or  prohibiting or restricting EXAMPLE, INC.’s work with or performance of any services for any third party. Licensee must not represent to anyone that Licensee is an agent of EXAMPLE, INC. or is otherwise authorized to bind or commit EXAMPLE, INC. in any way without EXAMPLE, INC.’s prior written consent.

## Assignability. Licensee may not assign its rights, duties, or obligations under this Agreement without EXAMPLE, INC.’s prior written consent except to 1) an Affiliate, or 2) a third party in connection with the transfer of Licensee’s video on demand project presently referred to as “PRODUCT”. If consent is given, this Agreement shall bind Licensee’s successors and assigns. Any attempt by Licensee to transfer its rights, duties, or obligations under this Agreement, including in connection with a change of control of Licensee, except as expressly provided in this Agreement is void and is a material breach of this Agreement.

## Nonsolicitation. During the Term and for a period of one year thereafter, neither party shall, directly or indirectly, employ or solicit the employment or services of an employee or independent contractor of the other party without the other party’s prior written consent.

## Notices. All notices, requests, demands and other communications to either party hereunder shall be in writing and shall be given to such party at its address set forth below or such other address as such party may hereafter specify in writing in accordance with the requirements of this section for the purpose of notice to the other party. Each such notice, request or other communication shall be effective upon actual delivery to the party by registered or certified mail, return receipt requested or by any other means (including, without limitation, hand delivery or reputable nationally recognized overnight courier service) when delivered at the address specified pursuant to this section and signed for by the intended receiving party.

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| To EXAMPLE, INC.: |
| EXAMPLE, INC. |
| Street Address |
| City, State, Zip Code Country |
| ATTN: Contracts Administration |
|  |
|  |
| To Licensee: |
| EXAMPLE, LLC |
| Street Address |
| City, State, Zip Code Country |
| Attn: INDIVIDUAL |
|  |
| With a copy to: |
| EXAMPLE, LLC |
| Street Address |
| City, State, Zip Code Country |
| Attention: INDIVIDUAL |

## Either party may change its address for receipt of notice by notice to the other party in accordance with this Section.

## Force Majeure. Neither party shall be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as such party uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

## Governing Law. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the [STATE OF LICENSEE], U.S.A, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Except as specified in Section 9.7, any action arising out of or in connection with this Agreement shall be heard in the federal, state, or local courts in the county of [CITY OF LICENSEE], and each party hereby irrevocably consents to the exclusive jurisdiction and venue of these courts.

## Arbitration. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any dispute as to the interpretation, enforcement, breach, or termination of this Agreement shall be settled by binding arbitration in [CITY OF LICENSEE], U.S.A under the Rules of the International Chamber of Commerce by three arbitrators appointed in accordance with those rules. All other disputes shall be resolved by a court specified in Section 9.6. Judgment upon an award rendered by the arbitrators may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorneys' fees and costs incurred in connection with any arbitration and/or litigation.

## Foreign Corrupt Practices Act. In conformity with the United States Foreign Corrupt Practices Act and with EXAMPLE, INC.’s corporate policies regarding foreign business practices, Licensee and its employees and agents shall not directly or indirectly make or offer any payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist EXAMPLE, INC. in obtaining, retaining, or directing any such business.

## Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement shall not be a waiver of such party’s right to demand strict compliance in the future, nor shall the same be construed as a novation of this Agreement.

## Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement shall remain in full force and effect. If any material limitation or restriction on the grant of any license to Licensee under this Agreement is found to be illegal, unenforceable, or invalid, the license shall immediately terminate.

## Survival. The provisions of Sections 2.6, 2.7, 3, 5.5, 6, 7 and 8 shall survive the termination of this Agreement for any reason.

## Interpretation. The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits, if any. No ambiguity shall be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of sections contained in this Agreement have been inserted for identification and reference purposes only and may not be used to construe or interpret this Agreement. Whenever required by context, a singular term shall include the plural, a plural term shall include the singular, and the gender of any pronoun shall include all genders. This Agreement is in English only, and all versions, if any, in any other language shall not be binding on the parties. All communications and notices under this Agreement must be provided in English.

## Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts shall be construed as and constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery shall have the same force and effect of an original document with original signatures.

## Entire Agreement. This Agreement, including all exhibits, is the final and complete expression of the agreement between these parties regarding the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No employee, agent, or other representative of EXAMPLE, INC. has any authority to bind EXAMPLE, INC. with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative as of the Effective Date.

|  |  |
| --- | --- |
| **FOR EXAMPLE, INC., INC.** | FOR EXAMPLE, LLC |
| Name: | Name: INDIVIDUAL |
| Title: | Title: EVP, General Counsel |
| Signature: | Signature: |
| Date: | Date: |

EXHIBIT A

LICENSED PRODUCTS AND FEES

1. LICENSE Fees

(a) Revenue Share Fee: Licensee shall pay to EXAMPLE, INC. a quarterly non-refundable fee equal to the Rev Share percentage identified in the table below multiplied by the total Net Revenue received by Licensee during each calendar quarter for movie content delivered by Licensee to each Device on which the Client Software is installed and utilized to secure such movie content(“**Revenue Share Fee**”). “**Net Revenue**” shall be defined as gross revenue received by Licensee for such content rentals, less (a) direct fees payable by Licensee to the applicable studio or content owner for such content, (b) credits issued to customers and (c) tax payments made by customers. The Revenue Share Fee includes maintenance and support services as outlined in Exhibit B. The Revenue Share Fee is calculated each calendar quarter, based on the highest number of Devices which received such content at any point in the quarter?

[Insert License Fee table]

1. Quarterly Reporting:  Licensee shall deliver to EXAMPLE, INC. a written quarterly report (each a “**Report**” and collectively the “**Reports**”) detailing at minimum: (i) the number of copies of Client Software distributed to end users on Devices during the calendar quarter; and (ii) the Net Revenue from such content for the calendar quarter. Such Report shall be delivered to EXAMPLE, INC. within forty-five (45) calendar days following each quarter end, and shall be accompanied by full payment of the total fees due for the quarter. If the calculated Revenue Share Fee is less than $\_\_\_\_\_\_\_ in a given quarter, Licensee shall pay a minimum Revenue Share Fee of $\_\_\_\_\_\_\_ for such quarter.

**WHAT IS THE DEFINITION OF ACTIVE DEVICE??**

(c) Server Software Fee: Licensee shall pay to EXAMPLE, INC. a non-refundable license fee for each server and/or hard drive upon which it wishes EXAMPLE, INC. to install Server Software (“**Server Software Fee**”), and Licensee’s license under this Agreement is limited to the number of such servers and/or hard drives for which it has paid the Server Software Fee. Additional fees will apply if Licensee wishes EXAMPLE, INC. to provide servers and/or hard drives. The Server Software Fee is calculated in accordance with the volume and price per server and/or hard drive terms specified in the table below.

[Insert Server Software Fee table]

(d) Timing of Payments: EXAMPLE, INC. will issue an invoice to Licensee calling for the $\_\_\_\_\_\_\_\_\_ payment associated with the Server Software to be provided above upon receipt by Licensee of such Server Software

1. Professional Service

Licensee shall pay to EXAMPLE, INC. a non-refundable Professional Service fee of $\_\_\_\_\_\_\_\_\_\_\_ for the initial installation and associated project management. EXAMPLE, INC. will invoice separately all reasonable and actual travel expenses incurred while traveling to provide these services.

* 1. Timing of Payments: Upon the Effective Date, EXAMPLE, INC. will issue an invoice to Licensee calling for payment of 100% of the total Professional Service fee due for the Term. Licensee shall pay such invoice upon the Effective Date.

(b) The fee associated with the Statement of Work as detailed in **Exhibit C** is $\_\_\_\_\_\_\_\_\_\_, and will be waived by EXAMPLE, INC..

EXHIBIT B

MAINTENANCE & SUPPORT SERVICES

1. GOLD SECURITY MAINTENANCE & SUPPORT SERVICES
   1. Maintenance. EXAMPLE, INC. will provide Licensee with the following services during the Term:
      1. Telephone and Email Support. EXAMPLE, INC. will provide Licensee with 24/7 telephone and email support, excluding holidays observed by EXAMPLE, INC.. Telephone and email support consists of: (a) assistance related to questions on the operational use of the Licensed Products; (b) assistance with identifying and verifying the causes of suspected Errors; and (c) providing workarounds for verified Errors when reasonably available to EXAMPLE, INC.. The maximum response time for SUPPORT SERVICE PROVIDER is four (4) hours.
      2. Licensed Product Corrections. EXAMPLE, INC. will correct (e.g., by providing a workaround or an Error correction) verified Errors with a level of effort commensurate with the severity of the Error as detailed in the table below.

(b) Support Levels. The following support levels define which content security representative is involved with a support incident.

|  |  |
| --- | --- |
| **SUPPORT LEVEL** | **ROLES & RESPONSIBILITIES:** |
| **Level 1** | Initial support of phone calls & emails to:   * Define and isolate an incident * Define the priority of the incident * Troubleshoot via phone or email * Resolve the incident * If required, escalate to Level 2 |
| **Level 2** | Level 2 support of incidents, to:   * Attempt to recreate the incident in a test lab * Advanced troubleshooting, configuration modifications * Resolve the incident * If required, escalate it to Level 3 |
| **Level 3** | Support Engineering support of incidents, such as:   * Code engineering/changes |

(c) Managerial Escalation. If at any time Licensee reasonably believes that a case is not being handled in accordance with the service levels under SUPPORT SERVICE PROVIDER or Licensee wishes to comment on the way a particular case is being addressed by a technician, Licensee may contact the appropriate support team manager.

(d) Technical Escalation. Maximum escalation time frames are determined by the priority assigned the case. Priority definitions are as follows:

|  |  |
| --- | --- |
| **Incident Priority** | **Description** |
| Priority 1: | Critical. Cypher system is inoperable, leaving most content unprotected and/or leaving more than 5% video subscribers without video service. |
| Priority 2: | Major. Significantly impacted video service with reduced performance for more than 10% video subscribers. The system is partially inoperative but still usable by the end user. |
| Priority 3: | Minor. Impairment of video service for less than 10% of subscribers (such as single subscriber issues or non-service affecting issue). |
| Priority 4: | Cosmetic. Intermittent quality issues with viewing content. |
| Priority 5: | Non-incident: Feature requests, configuration questions and administrative tasks. |

(e) Technical Escalation Guidelines. AFTER THE INITIAL RESPONSE, THE ESCALATION TIME FRAMES START ONCE THE LICENSEE PROVIDES THE TECHNICIAN WITH THE PERTINENT DATA (e.g. logs and configuration files) AND/OR SYSTEM ACCESS NEEDED FOR EXAMPLE, INC. TO EFFECTIVELY TROUBLESHOOT THE ISSUE.

|  |  |  |
| --- | --- | --- |
| **Escalation from Level 1 to:** | **Level 2** | **Level 3** |
| Priority 1 | 2 Business Hours | 4 Business Hours |
| Priority 2 | 4 Business Hours | 4 Business Hours |
| Priority 3 | Next Business Day | Next Business Day |
| Priority 4 & Priority 5 | 2nd Business Day | 2nd Business Day |

(ii) Installation of Server Software. EXAMPLE, INC. shall install the Server Software at Licensee’s designated location.

(iii) Hardware Replacement Warranty. EXAMPLE, INC. shall replace any malfunctioning dedicated server and/or hard drive. Replacement hardware or parts may be new, reconditioned, or refurbished. The replaced hardware shall remain the property of EXAMPLE, INC. Licensee will ship any hardware in need of exchange to EXAMPLE, INC. at its own expense and in accordance with the shipping instructions provided by EXAMPLE, INC. EXAMPLE, INC. will pay shipping costs for the hardware being shipped to Licensee, except that Licensee will pay any applicable taxes, duties, or other costs for international shipments. Replacement hardware products or parts will be provided to Licensee at no cost if the malfunction is caused by normal wear and tear of the Licensed Products and not due to use of the Licensed Products contrary to the user manuals, specification or EXAMPLE, INC.’s instructions. Otherwise, Licensee will pay EXAMPLE, INC.’s then current list price for the replacement.

(iv) Patches. Within a reasonable time after general commercial release, EXAMPLE, INC. will make available to Licensee one copy of all patches and all corrections to the associated Documentation at no charge.

(v) Updates. Within a reasonable time after general commercial release, EXAMPLE, INC. will make available to Licensee one copy of all updates to Licensed Products at no charge.

(vi) Maintenance, Minor, and Documentation Releases. EXAMPLE, INC. will, within a reasonable time after general commercial release, make available to Licensee one copy of all Maintenance Releases, Minor Releases and all corrections to the associated Documentation at no charge.

1. LIMITATIONS
   1. Outdated and Discontinued Releases. EXAMPLE, INC. reserves the right, in its sole discretion, to create Major Releases of the Licensed Products. EXAMPLE, INC. will support each Major Release of a Licensed Product for a period of twelve months from the first production ship date of the Major Release that supersedes it or from the discontinuation date, as applicable. Special support prices may apply for the support of outdated or discontinued versions of Licensed Products after the initial twelve-month period, but EXAMPLE, INC. may require immediate installation of Major Releases.
   2. Exclusions
      1. Unless otherwise expressly agreed to in writing by EXAMPLE, INC., EXAMPLE, INC. is not obligated to provide Maintenance & Support Services related to: (1) Licensee’s failure to implement all Releases and Error corrections and workarounds provided by EXAMPLE, INC.; (2) changes to the operating system or hardware environment on which the Licensed Products operate; (3) modification of or addition to the Licensed Products; ; (4) interconnection of the Licensed Products with third party or Licensee software or hardware not furnished by EXAMPLE, INC. or not specified in the Documentation for use with the Licensed Products; or (5) use of the Licensed Products in a manner not expressly authorized in the Agreement.
      2. Unless otherwise expressly agreed to in a separate agreement by EXAMPLE, INC., the Maintenance & Support Services do not include: (1) visits to Licensee’s site; (2) any work with or relating to any third party equipment or software;(3) any configuration, setup, or installation of the Licensed Products; (4) consultation with Licensee’s end users, distributors, or manufacturers; or (5) any professional services associated with the Licensed Products, including without limitation any custom development, training and knowledge transfer, or other services that may be covered in any service agreement with EXAMPLE, INC. or any third party.
2. LICENSEE OBLIGATIONS
   1. Trained Contacts. Licensee will appoint up to two individuals within Licensee’s organization that are trained on the operation of the Licensed Products to serve as primary contacts between Licensee and EXAMPLE, INC. with regards to the Maintenance & Support Services. Licensee must initiate all requests for Maintenance & Support Services through these contacts.
   2. Error Reporting. Licensee will document and promptly report all detected Errors to EXAMPLE, INC. with enough detail to permit EXAMPLE, INC. to reproduce the Error. Licensee will assist EXAMPLE, INC. with recreating and diagnosing each Error.
   3. Installation of Releases. Licensee will promptly implement all Releases and Error corrections and workarounds provided by EXAMPLE, INC.; provided, however, that such corrections or workarounds do not require Licensee to incur any material expenses.
   4. Supervision of the Licensed Product. Licensee must supervise, control, and manage the use of the Licensed Products. In addition, Licensee is responsible for archiving its data to mitigate against losses that may be caused by Errors.
   5. Upgrade Systems. In order to provide Error corrections, workarounds, and Releases, EXAMPLE, INC. may require Licensee to upgrade, at its own cost, its hardware and software systems to EXAMPLE, INC.’s then-current supported versions of system components.
   6. Provide Access to Licensee Personnel and Equipment. Licensee will provide EXAMPLE, INC. with reasonable access to all necessary personnel to answer questions regarding Errors and other problems reported by Licensee. Licensee will also provide EXAMPLE, INC. with reasonable access to its equipment pursuant to Section 3.2 of the Agreement.

**EXHIBIT C: STATEMENT OF WORK and INTEGRATION**

EXAMPLE, INC. may revise, change, or otherwise modify the Statement of Work and Integration (SOW) throughout the development cycle based on requirements captured from Licensee or at EXAMPLE, INC.’s reasonable discretion.

1. **Statement of Work**
2. **[PRODUCT] Integration**

**Version: 0.4**

**Document Status Sheet**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Document Control Number** |  | | | |  |  |  |
| **Revision History** |  | | | |  |  |  |
| **Date** |  |  |  |  | | | |
| **Status** | Work In Progress | Draft | Issued | Closed | | | |
| **Distribution Restrictions** | Author | Internal | Partner / Customer | Public | | | |

**Key to Document Status Codes:**

Status

* Work In Progress – An incomplete document, designed to guide discussion and generate feedback. This may include multiple alternatives for consideration.
* Draft – A document that is, for the most part, complete, but not reviewed. Drafts are susceptible to substantial change.
* Issued – A stable document which has undergone rigorous review and is suitable for product development, cross-vendor interoperability, and certification testing. Signatures must exist at this point
* Public – A static document that has been reviewed, tested, validated and closed to all further change requests. A document that represents the product “AS IS”.

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**1. Purpose**

[Insert Purpose]

**2. General Description / Overview**

[Insert General Description / Overview]

The integration shall support the following actions/tasks:

[List supported actions/tasks]

**3. Development Tasks**

The following development tasks are required for the project:

[Outline of Development Tasks required]

**4. Deliverables**

[Outline list of Deliverables]

# 5. Risks / Concerns

[Insert Risks / Concerns table]

**6. High Level Plan**

[Insert Project Plan]