

TERMS AND CONDITIONS OF SERVICE

These are the Terms and Conditions of Service applicable under the Streaming Media Hosting Service Agreement (“Agreement”) entered into by and between Dedicated Hosting Services, Inc., a California corporation d/b/a Streaming Media Hosting (“Streaming Media Hosting” or “SMH”), and the Client (“Client”) set forth in the Agreement with respect to the Media Distribution and all related Services provided by SMH under the Agreement (“the Services”):

PAYMENT. SMH will only accept MasterCard, Visa, or American Express for accounts with monthly billing under \$1000 per month (see Payment Method). For accounts with monthly billing over \$1000 per month, credit card, or invoice due upon receipt is acceptable. All Services will be billed within the first week of any given month for that month. Billing for services commences immediately upon the day that the Client’s service commences; bills for partial periods are prorated. For Clients that exceed their most recent, mutually agreed-upon Committed Rate, SMH reserves the right to bill the Client an additional amount (the Over-Committed or Overage Rate) for the actual amount of data transferred. Likewise, SMH reserves the right to bill clients who exceed the number of concurrent streams that have been allocated to them at a higher, mutually agreed-upon rate for the additional streams. SMH will not, however, increase Client’s Committed Rate without mutual agreement.

TAXES. All fees are in United States dollars and exclude any applicable taxes. Client shall pay, indemnify and hold SMH harmless from all sales, use, value-added or other taxes of any nature, other than taxes on SMH’s net income, including penalties and interest, and all government permit or license fees assessed upon or with respect to any fees due under this Agreement (except to the extent Client provides SMH with a valid tax exemption certificate). If any applicable foreign law requires Client to withhold amounts from any payments to SMH hereunder: (a) Client shall affect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish SMH with tax receipts evidencing the payments of such amounts and (b) the Sum payable by Client upon which the deduction or withholdings is based shall be increased to the extent necessary to ensure that after such deduction or withholding, SMH receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount SMH would have received and retained in the absence of such required deduction or withholding.

SERVICES. SMH will provide Client the Services as specified in the Order Form included as part of this Agreement

ASSUMPTION OF RISK. Client hereby assumes any and all risks associated with Client’s, its agents’ (including contractors and sub-contractors) or employees’ use of the Services and shall indemnify, defend, and hold harmless SMH from any and all claims, liabilities, judgments, causes of action, damages, costs, and expenses (including reasonable attorneys’ and experts’ fees), caused by or arising in connection with such use.

PROMOTIONS. Clients that receive free month(s) of Services via promotional offer or other reason will receive the free month(s) as a credit to their account. In order to receive such credit, a valid credit card must be on file with SMH, any set up fees associated with the account must be paid and the account must be current. SMH may discontinue any special offers prospectively at any time at its sole option.

LIMITATION OF LIABILITY. Streaming Media Hosting provides services to Client on an “AS IS” basis. SMH expressly disclaims any and all warranties, including the warranties of merchantability and fitness for a particular purpose. SMH shall not be liable for any loss of business, lost profits, lost data, lost savings, failure of security or any or all indirect, incidental or consequential damages, however characterized, whether or not such damages are foreseeable. Under no circumstances, including negligence, will SMH be liable for any indirect,

incidental, special or consequential damages that result from the use or inability to use the services, including but not limited to loss of revenue or loss of profits, or damages that result from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission, failure or performance, theft, destruction or unauthorized access to SMH's records, programs or services, even if such party has been advised of the possibility of such damages. Under no circumstances shall SMH's liability to Client exceed the amount paid to SMH by Client during the previous one month.

SMH REPRESENTATIONS. Streaming Media Hosting hereby represents and warrants that it holds the requisite licenses to deliver the contracted services. Further SMH represents Client shall bear no liability under contracts entered into by SMH with various third parties for the provision of services pursuant to execution of this contract. SMH shall indemnify, defend and hold Client harmless from any and all claims, suits, expenses, losses, damages, and liabilities, including but not limited to reasonable attorney's fees, arising from or relating to any claim that the technology patent rights of any third party are infringed upon by SMH in the delivery of the services provided to Client under this agreement.

CLIENT'S REPRESENTATIONS. Client hereby represents and warrants that it holds the requisite copyright, trademark and/or other intellectual property rights to post Client's media properties and other content to SMH's network. Further, Client represents and warrants that the rights delegated to SMH under this agreement, including the public display, public performance, distribution, and reproduction of Client's media properties and other content on the SMH network, will not violate or infringe upon the copyright, literary, privacy, publicity, trademark, service mark or any other personal or property right of any person or entity and that Client's media properties and other content will not constitute a libel or defamation of any third party. Client represents and warrants that it has met any and all obligations to artists, guilds, authors, composer and/or any other participants in the production of the media properties. Client indemnifies and holds SMH harmless from any breach of these representations and warranties by Client. Client assumes full responsibility for all intellectual properties posted to SMH's servers on Client's behalf, including any trademark, copyright, patent or other intellectual property submitted to SMH for either encoding services and/or straight posting to our servers. SMH reserves the right to remove without notice any material which, in its sole opinion, may result in a violation of intellectual property rights of others or any other applicable federal, state, common, or international laws or regulations.

LICENSE GRANT. By using SMH's services, Client grants SMH a limited, worldwide, non-exclusive right and license to copy, perform, and display Client's media properties solely as necessary for SMH to provide the underlying Services.

PRESS RELEASE. The Parties agree to cooperate to prepare and release a joint press release regarding this Agreement, subject to prior, written approval of each party, which may not be unreasonably withheld or delayed.

MAINTENANCE, SECURITY, BACKUPS. Client understands and agrees that SMH will make every effort to keep its network servers running continuously. However, SMH's servers will, from time to time, be disconnected due to routine maintenance, windows upgrades and other required events. SMH will make its best effort to keep all information on its servers backed up. However, Client assumes responsibility for making a separate backup copy of any information posted to SMH's servers. SMH is not responsible for lost materials or information. Additionally, Client is responsible for testing any changes that SMH makes to Client's media properties at Client's request to make sure that such changes are in accordance with such Client request. SMH will also make the best effort to maintain security on its network of servers. However, the nature of the World Wide Web and the Internet is not secure by default. Client assumes responsibility for the appropriate use of security.

ACCEPTABLE USE. Client agrees to be bound by the SMH Acceptable Use Policy (“AUP”), a current copy of which may be found on the SMH website at <http://www.streamingmediahosting.com/aup.htm>

CANCELLATION. The initial term of this Agreement shall be noted in the Service Order form. If no term is noted in the Service Order form, the initial term shall be twelve (12) months for all accounts. This contract will auto-renew unless notice of cancellation from Client is received at least 30 days prior to the end of the current term. In the event of early cancellation without cause, Client will be required to pay 100% of the most recent agreed-upon monthly charge for the remaining portion of the term. SMH can cancel this Agreement at will at any time with thirty (30) days written notice to the Client. In the event that SMH cancels this Agreement, the Client will have a prorated refund of any unused portion of the billing period. **Set-up fees are non-refundable.**

GENERAL. Each party represents and warrants that it has the right and authority to enter into this Agreement, and that by entering into this Agreement, it will not violate, conflict with or cause a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien or encumbrance to which it is a party or by which it or any of its property is or may become subject or bound. Each party shall, at its own expense, make, obtain and maintain in force at all times during the term of this Agreement, all applicable filings, registrations, reports, licenses, permits and authorizations necessary to perform its obligations under this Agreement. This Agreement shall be governed by the law of the State of California. The only valid forum for any dispute arising under this agreement shall be Orange County, California. Prevailing party in a dispute may enter judgment in any court of competent jurisdiction. Should any provision of this Agreement be judged invalid or unenforceable, the rest of the agreement shall remain in full force and effect. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover costs and attorney’s fees. This Agreement shall constitute the entire agreement between the parties regarding the Services and shall supersede any and all understanding, whether written or oral. This Agreement shall be binding upon Clients successors and assigns. Any waiver of any provision of this Agreement shall not constitute a modification to this Agreement or a permanent waiver of such provision unless it is in writing and signed by an Officer of SMH. Client acknowledges that these terms and conditions are subject to change with thirty (30) days written notice; provided, however, the Client may immediately terminate this Agreement, in its sole discretion, upon such notice. Client’s continued use of SMH constitutes Client’s acceptance of these and any and all modified terms.

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