Channel Development and Content License Agreement

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY BEFORE USING THE ROKU DEVELOPMENT KIT. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND ROKU. IF YOU ARE DEVELOPING AN APPLICATION ON BEHALF OF A THIRD PARTY WHO IS NOT YOUR EMPLOYER YOU SHOULD INFORM SUCH THIRD PARTY ABOUT THIS AGREEMENT. THIS AGREEMENT WILL ALSO BE BINDING ON SUCH THIRD PARTY AND BY AGREEING TO THE TERMS HEREIN YOU ARE ACKNOWLEDGING THAT YOU ARE THEIR AGENT AND LEGALLY ABLE TO BIND THEM.

By clicking the "Agree" button, you ("Developer") are entering into this Channel Development and Content License Agreement ("Agreement"), as of the Click-through date (the "Effective Date"), with Roku, Inc., a Delaware corporation with its principal office at 12980 Saratoga Avenue, Suite D, Saratoga, California 95070 ("Roku").

Overview

The purpose of this Agreement is to set forth terms governing Developer's rights to use the Roku Software Development Kit (SDK) to develop one or more Channel Applications for Roku's Players, and to provide the necessary license rights for the distribution of Content. In order to create a Channel Application, Developer must create a Developer Account by using the Channel Developer Site. If Developer is entering into this Agreement on behalf of a company or organization, Developer must have the authority to bind such company or organization to the terms and conditions of this Agreement and the Program Requirements. Developer may be limited by the account creation process to one account per email address. Developer will be issued a password for accessing the APIs and managing the Developer Account. Developer may only access the Developer Account with the password issued to Developer, and Developer may not share Developer's password with any person or entity other than Authorized Developers in Developer's company or organization who have agreed to keep the password confidential. Access to the Developer Site may not always be available. Developer is fully responsible for all activities that occur using Developer's password, regardless of whether such activities are undertaken by Developer or a third party. Developer is responsible for maintaining up-to-date and accurate information (including a current email address and other required contact information) for Developer's Account. Failure to do so may jeopardize Developer's participation in the Program, Developer's right to use the SDK to develop one or more Channel Applications, Developer's right to enable end users to access Developer's Channel Application, and this Agreement.

1.   <u>Definitions</u>.

Whenever capitalized in this Agreement, the following terms and any other terms defined elsewhere in this Agreement shall have the specified meanings:

"Agreement" means this Channel Development and Content License Agreement and any additional Program Requirements.

"APIs" means the Application Programming Interface(s) installed by Roku on the Player, access to and use of which is authorized only pursuant to the terms and conditions of this Agreement.

"Authorized Developers" means Developer and Developer's employees, contractors, and agents whom Developer warrants to be bound by the terms and conditions of this Agreement pursuant to paragraph 7A(ii), below.

"Channel Application" means one or more software programs developed by Developer using the SDK (including Updates) to provide End Users access to Content.

"Channel Developer Site" means the website maintained by Roku for Authorized Developers at

www.roku.com/developer.

"Channel Information" means Developer Trademarks, screen shots, images, artwork, icons and/or any other text, descriptions, representations or information relating to the Channel Application that are displayed on or in connection with the user interface of the Player.

"Channel Store" means the on-screen menu on the Player which permits end users to browse and install selected channel applications on their Player.

"Content" means English language content originating in the United States, or other content approved in writing by Roku, that is owned or licensed by Developer and made available by Developer to be accessed by and/or performed and displayed for End Users by means of the Channel Application and the Player.

"Developer Account" means an account created by Developer by means of registration at www.roku.com/developer for the purpose of accessing the SDK and developing Channel Applications.

"Developer Trademarks" means all trademarks, logos, designs and other designations or brands provided by Developer in connection with the Channel Application, whether owned by Developer or licensed from third parties.

"Documentation" means any technical information or other specifications or documentation that Roku may provide to Developer, whether as part of the SDK or otherwise, for use in development of a Channel Application.

"End User" means an end user of a Player who is authorized to access the Content.

"Grace Period" means the sixty (60) day period from Developer's receipt of notice from Roku of a change in the Documentation or the Program Requirements.

 "Player" means the Roku-branded or Roku co-branded products made generally available by Roku during the Term that enable televisions to play digital content distributed to end users over the internet. For the avoidance of doubt, Player excludes any product marketed as a private label product.

"Private Channel" means a Channel Application that is posted on the Channel Developer Site but not offered on the Channel Store, and is made available to end users via their Roku Accounts using a code provided to them directly by an Authorized Developer.

"Program" means the Roku Channel Developer Program.

"Program Requirements" means the technical, human interface, marketing and publicity requirements, and other criteria and requirements specified by Roku for channel applications, as they may be modified from time to time by Roku. The current version of the Program Requirements is available at http://www.roku.com/docs/program_requirements.

"Roku Account" means an account created by an End User at www.roku.com.

"Roku Trademarks" means all Roku owned trademarks, logos, designs and other designations or brands used by Roku in connection with the Player and the Channel Store.

"Roku Trademark Guidelines" means the guidelines available at http://www.roku.com/docs/trademark_policy as may be amended by Roku from time to time.

"SDK" (Software Development Kit) means the Documentation, applications, sample code, tools, libraries, APIs, data, files, and materials provided by Roku in its sole discretion for use by Developer in connection with Developer's development of the Channel Application, and includes any Updates that may be provided by Roku to Developer pursuant to this Agreement.

"Territory" means the United States, its possessions and territories.

"Term" means the period described in Section 14.

"Updates" means updates, modifications, supplements, and new releases or versions of the SDK or any part of the SDK that are generally offered to all developers. For the avoidance of doubt, "Updates" does not include any unique modifications or versions offered to a particular developer or partner pursuant to Roku's contract with that developer or partner.

2.   Grant of Rights, Related Requirements, and Restrictions.

    A.   License to Developer.   Subject to the terms and conditions of this Agreement, Roku hereby grants to Developer, during the Term, a limited, non-exclusive, revocable, royalty-free, fully paid-up, and non-transferable worldwide(except as set forth in Section 17.A) license to:

        i.   use the SDK to develop, test, and package for uploading one or more Channel Applications;

        ii.   access and use the Roku Channel Developer Program site to upload one or more Channel Applications to enable End Users access to such Channel Application(s) via the Channel Store;

        iii.   copy the Documentation for internal use only;

        iv.   use and modify the sample code provided to Developer as part of the SDK, and incorporate it or any derivative work thereof into the Channel Application;

        v.   install on a Player the Channel Application and access and perform the functionalities of the APIs on the Player for the sole purpose of testing the Channel Application; and

        vi.   reproduce and display the Roku Trademarks in connection with any of Developer's authorized advertising campaigns and the subscription service (if any) related to the availability of the Channel Application on the Player. Any use of the Roku Trademarks will be in accordance with the Roku Trademark Guidelines and approved in writing by Roku. Roku may change the Roku Trademark Guidelines at any time provided that Developer shall only be required to comply with such changes following reasonable written notice to Developer.

    B.   Required Notices on Copies of Documentation and Sample Code. Developer agrees to retain and reproduce in full the Roku copyright, disclaimers and other proprietary notices exactly as they appear on the Documentation and in the sample code, on all copies of the Documentation and sample code (whether or not modified) that Developer is permitted to make under this Agreement.

    C.   Restrictions on Developer's Rights.   Developer may not use the SDK or any part of it for any purpose not expressly permitted by this Agreement. Except as otherwise permitted by law or otherwise permitted under this Agreement, Developer may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works based on, redistribute, perform, display, or in any way exploit the SDK in whole or in part. Developer may not reverse engineer, decompile, disassemble or reverse compile the APIs or the Player firmware.

    D.   License to Roku. Developer hereby grants to Roku a non-exclusive, non-transferrable (except as set forth in Section 17.A) royalty-free, fully paid-up license in the Territory (unless otherwise agreed in writing by Roku and Developer) during the Term to:

        i.   use, reproduce, display, and distribute via the Channel Store, the Channel Application (including any Developer modifications to the sample code) and the Channel Information;

ii.   decode and display the Content to End Users, via the Channel Application and the Player;

iii.   permit End Users in the Territory to download the Channel Application and Channel Information to their Players in order to access and display the Content;

iv.   display excerpted portions of the Channel Information on the user interface of the Channel Store or in the Channel Application in connection with the display of the End User's search results; and

v.   reproduce and display the Developer Trademarks in connection with Roku's advertising and marketing purposes related to the Player and the Channel Application.

E.   Delivery and Maintenance. Developer shall deliver, at Developer's sole cost and expense, the Channel Application, the Content and the Channel Information.

F.   Consent to Collection and Use of Data. Developer agrees that Roku may gather non-personally identifiable data on the usage of the Channel Application and share with third parties such usage data aggregated with data regarding other channel applications, provided that Roku agrees to maintain the specific, segregated data regarding the Channel Application confidential.

3.   Modifications/Change in Terms.

A.   Modifications/Updates to the SDK. Roku may extend, enhance, or otherwise modify the SDK at any time without notice. If Updates are made available, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license, in which case the terms of that license will govern. An Update may have APIs, features, services or functionality that are different from those found in the SDK licensed hereunder.

B.   Changes to Program Requirements and Documentation.

i.   Roku may change the Program Requirements and/or the Documentation at any time. In order to continue using the SDK following any such changes, Developer must accept and agree to the new Program Requirements or Documentation within the Grace Period. If, within the Grace Period, Developer does not (1) agree to the new Program Requirements or Documentation and (2) modify any existing non-compliant Channel Applications to comply with the new Program Requirements or Documentation, Roku may: (a) terminate this Agreement; (b) suspend or terminate Developer's use of the SDK and Developer's Developer Account; and/or (c) remove Developer's non-compliant Channel Application from the Channel Developer Site, the Channel Store (if applicable) and from the Players of end users who have downloaded it. Developer agrees that Developer's acceptance of such new Program Requirements may be signified electronically, including without limitation, by Developer's checking a box or clicking on an "I Agree" or similar button.

ii.   Roku reserves the right to charge one or more fees for the right to participate in the Program or for certain types of channel applications, including but not limited to channel applications that generate revenue for Developer or third parties. Roku will provide sixty (60) days' notice of any new or change in fees.

iii.   Roku reserves the right to suspend or terminate all or part of the Program in its entirety.

4.   Ownership. Roku owns, and will continue at all times to own all right, title and interest in and to the Documentation, the Roku Trademarks, and the SDK (including but not limited to the sample code). Roku shall have no ownership right in or to any software code or documentation created by Developer in connection with or included in the Channel Application(s). As between the parties, Developer shall be the sole and exclusive owner of the Developer Trademarks, the Channel Application (other than unmodified sample code included therein), the Channel Information and the Content and retains all rights thereto, except as expressly provided herein.

5. Channel Application Restrictions and Requirements; Rights to Code.

A. Subject to the Grace Period, the Channel Application must at all times comply with (i) the Documentation; (ii) all applicable terms and conditions of this Agreement; and (iii) all of the Program Requirements.

B. The Channel Application may not use any open source software in a manner that grants, or purports to grant, to any third party, any rights or immunities under intellectual property rights, including by using any open source software in a manner that requires, as a condition of use, that other software incorporated into, derived from or distributed with such open source software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) be redistributable at no charge or for a nominal charge.

C. Developer must own and, for so long as the Channel Application is available on the Player, continue to own all right, title, and interest in and to, or have an appropriate license that includes the right to sublicense, the Content, the Developer Trademarks, and the software code used in the Channel Application.

D. Developer is not permitted to use the SDK to (i) enable the installation of third party channel applications, or (ii) to create Developer's own version of a Channel Store.

E. Developer may not, without prior written approval from Roku, offer a Channel Application with search functionalities across multiple Roku channel applications.

F. In the event the Channel Application becomes unusable by Roku users (for instance if Developer's server goes down), the Channel Application will contain a mechanism to detect this problem that will generate and publish a message on the user interface of the Channel Application telling End Users that the Developer service is down and recommending that they come back later. Where the Channel Application is subscription based or contains one or more transactional "for purchase" offerings (whether such subscriptions or billing arrangements are managed by Roku or otherwise), the message must also provide an email or phone number associated with and monitored by Developer where the End User can obtain more information about the outage.

6. Revocation/Take Down Policy/ DMCA Procedures.

A. Developer agrees that Roku may: (1) cease distributing the Channel Application via the Channel Store (if applicable), (2) revoke Developer's Authorized Developer status, and/or (3) remove the Channel Application from the Channel Developer Site as well as the Players of end users who have downloaded it if: (a) Roku has been notified or otherwise has reason to believe that the Channel Application, Developer Trademarks, or the Content violates, misappropriates, or infringes the rights of a third party; (b) Roku has reason to believe that the Channel Application contains any (i) disabling mechanism or protection feature designed to prevent its use including any clock, timer, counter, computer virus, worm, software lock, drop dead device, Trojan horse routine, trap door, time bomb or (ii) any other codes or instructions that may be used to access, modify, replicate, distort, delete, damage or disable any computer systems or any other software or hardware; (c) Roku has reason to believe that the Channel Application or the Content do not comply with the Program Requirements or the terms of this Agreement, including but not limited to the Content and Channel Application restrictions of Section 8; (d) any information or documents provided by Developer to Roku are false or inaccurate; (e) any representation, warranty or certification provided by Developer to Roku in this Agreement or in connection with Developer's Developer Account is untrue or inaccurate; (f) Roku has been informed or determines in its sole discretion that the quality of video or other images in the Content does not meet the Program Requirements or other reasonable quality standards established by Roku; (g) Roku is required by law, regulation or other governmental or court order to take such action; (h) Roku becomes aware of any circumstance enumerated in Paragraph 14B, below; or (i) Roku has reason to believe that such action is prudent or necessary. Developer may not resubmit or re-enable under the same or a different Authorized Developer name a Channel Application that has been taken down by Roku.

B.   DMCA Procedures.   Pursuant to the Digital Millennium Copyright Act (17 U.S.C. § 512), Roku has implemented procedures for receiving written notification of claimed copyright infringement. Roku has also designated an agent to receive notices of claimed copyright infringement. Developer agrees to the procedures as follows:

     i.   Notice of Infringement. If any third party believes in good faith that all or any part of the Channel Application, the Channel Information, or the Content infringes their copyright ("Complainant"), they may submit a notice of claimed copyright infringement to Roku's designated agent. The forms, format and procedures for submitting a notice are available at www.roku.com/about/DMCA. Upon receipt of the notice containing the required information, Roku may:

     a.   Forward the written notification to Developer, along with the contact information of the Complainant, and advise Developer that, within 24 hours of receipt of the notice, it must respond by either removing the allegedly infringing Content or filing a Counter-Notice as described below;

     b.   Remove or disable access to the material that is alleged to be infringing if no Counter-Notice is received within 24 hours of the aforementioned notification;

     c.   Take reasonable steps to promptly notify Developer that Roku has removed or disabled access to the allegedly infringing material; and

     d.   In the case of persistent and/or repeat infringement, terminate the Channel Application and remove it from all Players on which it was installed.

     ii.   Counter-Notice. If Developer believes that a notice of copyright infringement has been improperly submitted against Developer, Developer may submit a Counter-Notice, pursuant to Sections 512(g)(2) and (3) of the Digital Millennium Copyright Act. The forms, format and procedures for submitting a notice are available at www.roku.com/about/DMCA. To be effective, a Counter-Notice must be a written communication provided to Roku's designated agent and must contain:

     a.   Developer's physical or electronic signature;

     b.   Identification of the material removed or to which access has been disabled;

     c.   A statement under penalty of perjury that Developer has a good faith belief that removal or disablement of the material was a mistake or that the material was misidentified; and

     d.   Developer's name and telephone number, and a statement that Developer consents to the jurisdiction of the Federal District court (i) in the judicial district where Developer's address is located if the address is in the United States, or (ii) in Santa Clara County, California, if Developer's address is located outside the United States and that Developer will accept service of process from the complaining party.

Upon receipt of a Counter-Notice containing the required information, Roku will:

     a. Promptly provide the Complainant with a copy of the Counter-Notice;

     b. Inform the Complainant that it will not remove the material or cease enabling access to it unless, within ten (10) business days, the Complainant provides Roku's designated agent with notice that Complainant has filed an action seeking a court order to restrain Developer from engaging in infringing activity.

C. <u>Content Distribution Rights Disputes</u>. Developer agrees to bear ultimate responsibility for any and all liability, losses, damages, claims, judgments, fines or penalties (including but not limited to attorneys' fees and expenses) incurred by Roku as a result of any and all disputes arising in any way or from any party over whether Developer has the necessary rights to distribute the Content.

7. <u>Warranties and Representations</u>.

A. Developer warrants, represents and agrees that:

i. The signatory to this Agreement has the right and authority to enter into this Agreement and to legally bind Developer to the terms and obligations of this Agreement;

ii. Developer will fulfill Developer's obligations under this Agreement and Developer agrees to monitor and be responsible for the Authorized Developers' use of the SDK and their compliance with the terms of this Agreement;

iii. Developer will be solely responsible for all costs, expenses, taxes, losses and liabilities incurred, and activities undertaken by Developer and the Authorized Developers in connection with the SDK, the Program, the Channel Applications (whether or not the Channel Application is accepted by Roku), the Channel Information, and the Content, including but not limited to, any related development effort, network and server equipment, and Internet services, as well as all royalties, ASCAP license fees, public performance fees, music synchronization license fees related to the Content, and the costs associated with any other hardware, software or services used by Developer in connection with the development of the Channel Applications and the provision of the Content;

iv. The Channel Application and Content will be subject at all times to a privacy policy that complies with all applicable legal requirements;

v. Developer will not act in any manner that conflicts or interferes with any existing commitment or obligation Developer may have, and no agreement previously entered into by Developer will interfere with Developer's performance of Developer's obligations under this Agreement;

vi. No portion of the Channel Application, the Channel Information or the Content contains or will contain (i) any disabling mechanism or protection feature designed to prevent its use including any clock, timer, counter, computer virus, worm, software lock, drop dead device, Trojan horse routine, trap door, time bomb or (ii) any other codes or instructions that may be used to access, modify, replicate, distort, delete, damage or disable any computer systems or any other software or hardware;

vii. All Content, Channel Information, software code not provided by Roku and used by Developer in the Channel Application, and Developer Trademarks are owned by Developer or subject to licenses or clearances from the owner(s) of the same which include all rights necessary for Roku and End Users to exercise the rights set forth in Section 2D;

viii. Subject to the Grace Period, all Content, the Channel Applications and the Channel Information will comply at all times with the Channel Application Restrictions and Requirements and the Content and Channel Information Restrictions of this Agreement, the Documentation, and the Program Requirements; and

ix. All information provided by Developer in connection with Developer's Developer Account is and will at all times be truthful, complete, accurate and up to date, and include a current email address.

B. Roku warrants, represents and agrees that:

i.   The signatory to this Agreement has the right and authority to legally bind Roku to the terms and obligations of this Agreement;

ii.   Roku will not act in any manner that conflicts or interferes with any existing commitment or obligation Roku may have, and no agreement previously entered into by Roku will interfere with Roku's performance of its obligations under this Agreement; and

iii.   Roku has the ability and capacity to enter into and perform its covenants and agreements set forth in this Agreement and has obtained any and all necessary rights and approvals, including without limitation, any necessary licenses or rights to provide the SDK, the Roku Trademarks and the services contemplated by this Agreement.

8.   Content and Channel Information Restrictions.

A. The performance and display of the Content and the Channel Information may not infringe the copyright, patent, trademark, trade secret, or other intellectual property right of any third party, or constitute defamation, invasion of privacy, or the violation of any right of publicity or any other right of any party.

B. The Content and Channel Information accessed, displayed and performed via the Channel Application may not:

i.   Be unlawful, harmful, threatening, harassing, defamatory, or invasive of another's privacy or right of publicity;

ii.   Be encouraging of conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law;

iii.   Violate any federal, state, international, or any other child pornography laws, child sexual exploitation laws or laws prohibiting the depiction of minors engaged in sexual conduct; or

iv.   Contain forged headers or manipulated identifiers which disguise the origin of any Content.

C. All Content must be in the English language and originate in the United States unless otherwise agreed by Roku in writing, and Developer may not distribute any internationally produced (non-U.S.) foreign language (non-English) Content without Roku's prior written consent.

9.   Independent Development/Competitive Channels. Except as otherwise set forth in Sections 4 and 17.H and any other terms governing license rights, nothing in this Agreement will impair Roku's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with the Channel Application, the Content, or any other products or technologies that Developer may develop, produce, market, or distribute.

10.   Fees. Developer may, in its sole discretion, charge either a recurring subscription or one-time fee for some or all of its Content. If Developer elects to have Roku provide the payment processing services associated with the collection and remittance of those fees, the parties will enter into a separate services agreement setting forth the terms governing those services.

11.   Limitations on Roku's Obligations/Disclaimers.

A.   No Support.

i.   Roku has no obligation to provide Developer with support, Updates, enhancements, or modifications with respect to the SDK provided however, to the extent Roku offers any Updates, Roku shall offer the same Updates to Developer.

ii.   Roku will not provide End Users with any form of support for the Channel Application. Roku shall be solely responsible for providing support, maintenance and customer service with respect to the functionalities of the Player itself (as provided in the Player warranty statement), the Channel Store and any Roku Account. Developer is solely responsible for providing end user support and any other technical assistance for the Channel Application(s) and the availability or quality of Content. Roku may redirect users and potential users of the Channel Application(s) to the email address provided on Developer's Developer Account for purposes of answering inquiries and support questions related to the Channel Application(s) or the Content.

B.   Enforcement of Restrictions on Distribution or Viewing. Developer shall have sole responsibility for enforcing any restrictions, including without limitation licensing, privacy, geographic or minimum age restrictions related to the Channel Application and the Content, via end user agreements, end user subscription restrictions, geo-filtering of Content delivery, or other means that are adequate to fully comply with any such restrictions or limitations. If Developer offers any Channel Application with age restrictions, Developer must include an age verification screen in the process for an end-user to access the Channel Application.

C.   No Responsibility for Misappropriation of Content. Roku shall have no responsibility or liability for any end user or third party misappropriation of Content. If Developer becomes aware of any such misappropriation, Roku will provide reasonable assistance in any investigation.

D.   Private Channels.   Roku will not provide any pre-publication review of Channel Information, Content, or any other aspect of Private Channels. Roku reserves all rights under this Agreement with respect to Private Channels, including but not limited to the rights set forth in Section 6 and paragraph 14B.

E.   Similar Channel Applications or Content. Many Channel Application developers participate in the Program and some of their applications or content may be similar to or compete with Developer's Channel Application or Content. Roku may also be developing its own similar or competing Channel Application or may decide to do so in the future. Roku expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any information that Developer may provide in connection with the Program, including but not limited to information about Developer's Channel Application or Content. Developer agrees that any such disclosures will be **non-confidential**. Roku will be free to use and disclose on an unrestricted basis any information that Developer discloses, without notifying or compensating Developer. Developer releases Roku from all liability and obligations that may arise from the receipt, review, use, or disclosure of any information disclosed by Developer. Notwithstanding the foregoing, Roku will take reasonable measures to maintain the confidentiality of the Channel Application software code pursuant to the terms of any Non-disclosure Agreement signed by the parties at the time of submission.

F.   No Responsibility for Developer's Costs or Quality.   Roku will not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities Developer may incur as a result of Developer's Channel Application development, use of the SDK, or participation in the Program, including without limitation any adverse consequence or expense incurred by Developer if (a) Developer's Channel Application is not accepted for the Channel Store or (b) Developer's Channel Application is taken down by Roku pursuant to Section 6 or paragraph 14B of this Agreement. Developer is solely responsible for developing Channel Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations. The fact that Roku may have reviewed or accepted a Channel Application for the Channel Store will not relieve Developer of any of these responsibilities.

12.   Marketing Efforts.

In addition to the Promotion Requirement of the Program Requirements, Developer may issue a press release that is limited to an announcement of the availability of Developer's Channel Application for the Player. If Developer makes any reference to any Roku products or technology or uses Roku's

Trademarks, all such references shall be in accordance with the provisions of paragraph 2A(vi). Developer may not make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Roku's prior written approval, which may be withheld in Roku's sole discretion.

13.   Indemnification.

A.   To the fullest extent permitted by law, Developer agrees to indemnify, defend and hold harmless Roku, its directors, officers, employees, independent contractors and agents (each a "Roku Indemnified Party") from any and all third party claims, losses, liabilities, damages, expenses and costs (including without limitation outside attorneys' fees and court costs) (collectively "Losses") incurred by any Roku Indemnified Party as a result of: (i) Developer's breach of this Agreement; (ii) Developer's breach of any certification, covenant, representation or warranty made by Developer in this Agreement; (iii) any claims that the Channel Application, the Channel Information or the Content violate or infringe any third party intellectual property or proprietary rights; and (iv) any End User non-compliance with geographical, age-related or other restrictions on the distribution, viewing or use of the Channel Application or the Content.

B. If an Indemnified Party is entitled to indemnification under this Section13, the Indemnified Party will give Developer prompt written notice of all claims (provided, however, that any delay in notification will not relieve Developer of its obligations under this Agreement except to the extent that the delay impairs its ability to defend) and cooperate reasonably with Developer, at Developer's expense, in connection with the defense and settlement of the claims. Developer will, at Developer's own expense, have sole control of the defense or settlement of the claims; provided, however, that in settling any claim, Developer will not make any admission on behalf of an Indemnified Party or agree to any terms or conditions that do or reasonably could result in any admission by or the imposition of any obligation upon the Indemnified Party without the prior written approval of the Indemnified Party. The Indemnified Party will have the right to participate fully, at its own expense and with counsel of its own choosing, in the defense of any claim.

14. Term and Termination.

A.   Term. The Term of this Agreement will commence upon the Effective Date and will continue for a term of one year, automatically renewing for successive one year terms unless (1) either party gives the other party written notice of non-renewal at least thirty (30) days prior to the renewal date or (2) this Agreement is otherwise terminated under this Section 14.

B.   Termination by Roku. In addition to any other termination rights Roku may have under this Agreement, Roku may terminate this Agreement and all rights and licenses granted hereunder immediately upon written notice to Developer:

i.   if Developer or any of the Authorized Developers fail to comply with any material term or condition of this Agreement and fail to cure such breach within thirty (30) days after notice of such breach;

ii.   if Developer's Authorized Developer status is revoked by Roku;

iii.   if Developer, at any time during the Term, commences any legal action against Roku;

iv.   if Developer becomes insolvent, fails to pay Developer's debts when due, dissolves or ceases to do business, files for bankruptcy, or has filed against it a petition in bankruptcy;

v.   if Developer engages, or encourages others to engage, in any fraudulent, improper, unlawful or dishonest act relating to this Agreement or the Program, including, but not limited to, embezzlement, alteration or falsification of documents, theft, inappropriate use of computer systems, bribery, or other misrepresentation of facts;

vi. if Developer ceases to offer, or loses its right to offer, all or any part of the Content; or

vii. if Developer refuses or fails to accept any new Program Requirements as described in Paragraph 3B(i).

C. Effect of Termination. Upon the expiration or termination of this Agreement for any reason, Developer's Authorized Developer status, the Channel Application, the Developer Account, Developer's participation in the Program, and any marketing efforts with respect to the Channel Application will terminate immediately. Developer agrees to immediately cease all use of the SDK and to delete and destroy all copies, full or partial, of the sample code, Documentation and any information pertaining to the Program. Roku will remove the Channel Application from the Authorized Developer Site and the Channel Store, if applicable, within three (3) business days of termination and may remove the Channel Application from Players onto which it has been downloaded. Roku reserves the right to retain archival copies of the Channel Application and the Channel Information, which will be maintained in accordance with Roku's standard business practices or as required to be maintained by applicable law, rule or regulation (and Roku shall not have the right to use, display, exhibit or exploit such archival copies or any portions thereof). The following provisions shall survive any expiration or termination of this Agreement: the last sentence of Paragraph 6A, and all of Sections 7, 9, 11, 13, 15, 16, and 17. For the avoidance of doubt, upon any termination of this Agreement, Developer may not make available any Content, functionality, or services through the use of the Channel Application, the Channel Store, or any Player. Termination of this Agreement will be without prejudice to any other right or remedy Roku may have, now or in the future. No termination or expiration of this Agreement shall relieve either party for payment obligations or any liability for breach of, or liability accruing under, this Agreement prior to termination.

15. Warranty Disclaimers.

A. THE SDK, INCLUDING BUT NOT LIMITED TO THE SAMPLE CODE, APIS AND DOCUMENTATION, MAY BE INCOMPLETE OR CONTAIN INACCURACIES OR ERRORS THAT COULD CAUSE FAILURES OR LOSS OF DATA.   IN NO EVENT WILL ROKU OR ITS LICENSORS BE LIABLE FOR ANY ADVERSE CONSEQUENCES OR DAMAGES ARISING OR RESULTING FROM ANY SUCH INACCURACIES OR ERRORS. ROKU MAKES NO REPRESENTATION OR WARRANTY TO ANYONE CONCERNING THE AVAILABILITY OR SERVICE LEVEL OF THE CHANNEL STORE OR TO DEVELOPER CONCERNING THE FUNCTIONALITY OR RELIABILITY OF ANY PLAYER. DEVELOPER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SDK, INCLUDING BUT NOT LIMITED TO THE SAMPLE CODE, APIS AND DOCUMENTATION, AND PARTICIPATION IN THE PROGRAM AND, IF APPLICABLE, THE CHANNEL STORE, ARE AT DEVELOPER'S SOLE RISK AND EXPENSE, AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH DEVELOPER. THE SDK, INCLUDING BUT NOT LIMITED TO THE SAMPLE CODE, APIS AND DOCUMENTATION, ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND ROKU HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ROKU DOES NOT WARRANT THAT THE SDK, INCLUDING WITHOUT LIMITATION THE SAMPLE CODE, APIS AND DOCUMENTATION, WILL MEET DEVELOPER'S REQUIREMENTS; THAT THE OPERATION OF THE SAMPLE CODE, APIS OR THE CHANNEL STORE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; THAT DEFECTS OR ERRORS IN THE SDK, INCLUDING WITHOUT LIMITATION THE SAMPLE CODE, APIS AND DOCUMENTATION, WILL BE CORRECTED; OR THAT THE SDK WILL BE COMPATIBLE WITH FUTURE ROKU PRODUCTS OR SERVICES. SHOULD THE SDK, INCLUDING WITHOUT LIMITATION THE SAMPLE CODE, APIS AND/OR DOCUMENTATION, PROVE DEFECTIVE OR ERRONEOUS, DEVELOPER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF THE CHANNEL APPLICATION.

B.   ROKU RESERVES THE RIGHT TO SUSPEND OR TERMINATE THE CHANNEL STORE, AND IN NO EVENT WILL ROKU OR ITS LICENSORS BE LIABLE FOR ANY ADVERSE CONSEQUENCES OR DAMAGES ARISING FROM OR RESULTING FROM ANY SUCH SUSPENSION. DEVELOPER

EXPRESSLY ACKNOWLEDGES AND AGREES THAT PARTICIPATION IN THE CHANNEL STORE PROGRAM IS AT ITS SOLE RISK AND ROKU DOES NOT WARRANT THAT THE CHANNEL STORE WILL BE COMPATIBLE WITH FUTURE ROKU PRODUCTS OR SERVICES; OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH THE CHANNEL STORE, THE PLAYER, OR ANY ROKU PRODUCT OR SERVICE WILL NOT BE LOST, CORRUPTED OR DAMAGED.

C. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY A PARTY OR THAT PARTY'S AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

16. <u>LIMITATION OF LIABILITY</u>. EXCEPT FOR DEVELOPER'S OBLIGATIONS IN PARAGRAPHS 6C AND 7A(vi) AND DEVELOPER'S OBLIGATIONS TO PAY ANY AMOUNTS UNDER SECTION 13, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, DETRIMENTAL RELIANCE, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND SPECIFICALLY IN THE CASE OF DEVELOPER, DEVELOPER'S USE OR INABILITY TO USE THE SDK (INCLUDING WITHOUT LIMITATION THE SAMPLE CODE, APIS AND DOCUMENTATION), DEVELOPER'S DEVELOPMENT EFFORTS, OR DEVELOPER'S PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL ROKU'S TOTAL LIABILITY TO DEVELOPER FOR ALL DAMAGES EXCEED THE AMOUNT OF FIVE THOUSAND DOLLARS ($5,000.00).

17. <u>General Legal Terms</u>.

A. <u>Assignment</u>. This Agreement may not be assigned by either Party without the other Party's written consent, with such consent not to be unreasonably withheld. Notwithstanding the foregoing, Roku may, without the prior written consent of Developer, assign or transfer this Agreement as part of a corporate reorganization, consolidation, merger or sale of substantially all of its assets or stock, provided that the assignee assumes all of the assignor's obligations under this Agreement.

B. <u>Relationship of Parties</u>. During the Term, Developer and Roku are independent contractors. This Agreement will not be construed as creating any agency relationship, partnership, joint venture, fiduciary duty, or any other form of legal association between Developer and Roku, and neither party will make any representation to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

C. <u>Notices</u>. Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Roku when sent to Developer at the email address or mailing address Developer provides in connection with the Developer Account. Developer consents to receive notices by email and agrees that any such notices that Roku sends Developer electronically will satisfy any legal communication requirements.   All notices to Roku relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Roku address: Roku Channel Application Development, Roku, Inc., 12980 Saratoga Ave., Suite D, Saratoga, CA 95070 or such other address of which Roku may notify Developer in writing.

D. <u>Severability</u>. If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

E. Waiver and Construction. Failure by Roku to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Section and paragraph headings are for convenience only and may not be used in interpreting this Agreement.

F. Dispute Resolution; Governing Law. Any litigation or other dispute resolution between Developer and Roku arising out of or relating to this Agreement, the SDK, the Channel Store, Developer's participation in the Program, or Developer's relationship with Roku will take place in a state or federal court located in Santa Clara County, California, and Developer and Roku hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that county with respect any such litigation or dispute resolution. This Agreement will be governed by and construed as if entered into by residents of California, in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

G. Entire Agreement. This Agreement and any modifications or amendments made applicable hereto constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior understandings and agreements regarding its subject matter. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. If Developer is located in the province of Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English.

H. Confidentiality. Developer agrees that it and its employees and agents will maintain in confidence all technology, data, summaries, reports or information of all kinds, whether oral or written, acquired or devised or developed in any manner from Roku's personnel, files, SDK, or customers if such information is identified by Roku orally or in writing as confidential or proprietary ("Confidential Information"). Developer will not reveal Confidential Information to any third party except: (i) at the written direction of Roku; (ii) to the extent necessary to comply with the law or the valid order of a court of competent jurisdiction, in which event Developer shall so notify Roku as promptly as practicable (and, if possible, prior to making any disclosure) and shall seek confidential treatment of such information; (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, and such parent company, auditors and attorneys agree to be bound by the provisions of this Paragraph 17H; (iv) to an independent auditor or accounting firm in connection with any proceeding or review and such auditors or accounting firms agree to be bound by the provisions of this Paragraph 17H; (v) to independent contractors engaged by Developer who reasonably need to know Confidential Information in order to perform such contracted functions in furtherance of Developer's obligations or rights under this Agreement and such contractors agree to be bound by the provisions of this Paragraph 17H; and (vi) in order to enforce any of its rights under this Agreement and then it shall be filed under seal. Developer further agrees that it is responsible to Roku for any action or failure to act that would constitute a breach or violation of this Paragraph 17H by any person(s) to whom Developer has disclosed Confidential Information and agrees to take all reasonable measures (including, but not limited to, court proceedings) to restrain such person(s) from disclosure or improper use of the Confidential Information. Developer further agrees that it and the person(s) to whom it discloses Confidential Information will not use such Confidential Information for any reason or purpose other than to perform its obligations under this Agreement. Confidential Information shall not include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by Roku; (ii) becomes publicly known and made generally available after disclosure by Roku to Developer through no action or inaction of Developer; (iii) is already in the possession of Developer at the time of disclosure by Roku as shown by Developer's files and records immediately prior to the time of disclosure; (iv) is obtained by Developer from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by Developer without use of or reference to Confidential Information, as shown

by documents and other competent evidence in Developer's possession; or (vi) is required by law to be disclosed by Developer, provided that Developer gives the Roku prompt written notice of such requirement prior to such disclosure and provides Roku with assistance in obtaining an order protecting the information from public disclosure.