



“I Want My MTV Ukraine”

Risk Management in Changing Markets

GREEN PAPER V. 1.2

Please send comments by e-mail to casestudies@griffincap.ch

A final version of this study will be available at:

<https://www.griffincap.com/wp-content/uploads/2020/05/MTV-Ukraine-Case-Study.pdf>

This Green Paper provides an initial analysis of risk management in changing markets.

*The exploratory case study presented in this document is **research in progress**. The case study analyzes a broad range of management issues, by way of narrative and documents related to MTV Ukraine, in order to achieve a deeper understanding of risk management and media franchises.*

With the exception of the narrative provided by the authors, all information contained in this case study is publicly available or was provided unconditionally and directly by MTV Networks Europe or MTV Networks International, both affiliates of MTV Networks, a unit of Viacom Inc.

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Risk Management in Changing Markets

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¹ In the interests of fair disclosure, one of the authors of this case study was involved in some of the events set forth herein as an advisor and minority equity holder.

² Actual names are used in this case study except where indicated. Pseudonyms are used only when the underlying name is not already a matter of generally-available public information.

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Money for Nothin'

(aka "I want my MTV")

Now look at them yo-yo's
that's the way you do it
You play the guitar on the MTV
That ain't workin'
that's the way you do it
Money for nothin'
and your chicks for free
Now that ain't workin' that's the way you do it
Lemme tell ya them guys ain't dumb
Maybe get a blister on your little finger
Maybe get a blister on your thumb.

Dire Straits, from "Brothers in Arms", 1985

Introduction

I should've learned to play the guitar. Instead, I was warming my boots with a fellow shareholder at Charly's Tea Room and Confiserie in Gstaad. Not exactly heavy rotation.

But as a corporate gig, it was as good a place as any for our first and last AGM.

Peering through the window at the skating rink outside, we could see the pistes were iced as the arid sky offered precious little snow the final week of 2006. Finding a table wouldn't be easy among the crush of would-be skiers, *les riches* and almost-famous.

Pondering the events of the past year constituted the agenda of the AGM. We weren't even a quorum. The majority shareholder and General Director remained holed up in his new flat in Kiev, the controlling owner of a once and former MTV licensee now worth something considerably less than zero.

It had all been so promising twelve months ago.

Experienced management, an iconic American media brand and a large European media market emerging from decades of Stalinist rule represented the risk-reward combination we thrived on – just like in Russia ten years earlier.

The last place we expected to find systemic risk was within Viacom's MTV unit. Among the questions we pondered were:

- 1) What risks do brands face when extending their global footprint?
- 2) How – and why – did MTV's franchise model go so completely wrong in Ukraine?
- 3) How does this case illustrate the 'principal-agent problem' when a principal offers compensation unduly favorable to an agent?
- 4) Why did MTV host a press conference announcing the launch of MTV Ukraine when MTV's management knew its licensee's investors hadn't agreed terms?
- 5) What happened to the one million dollars advanced to pay MTV's licensing fee?
- 6) What was achieved at a midsummer night's EGM at an unidentified hotel in Kiev?
- 7) Was MTV Ukraine a *de facto* affiliate of MTV, or simply an arms-length licensee?
- 8) Did Viacom neglect to assess its licensee's governance and financial management? How might MTV revise its license agreement to ensure funds aren't misallocated?
- 9) What risks did MTV face when intermediating a three-way deal between itself, as licensor, a follow-on Ukrainian licensee and a new investor?
- 10) Why didn't Ukraine's tax authorities pursue the "new" MTV Ukraine for unpaid salaries, pensions and social insurance payments left by the first?
- 11) If you were the former General Director and controlling shareholder of MTV Ukraine, would you have sold out to your minority shareholders? At what price?
- 12) How can content mills capture and monetize the growth of digital media?
- 13) Can shares of a listed company such as Viacom or News Corporation ever be fully valued if senior management indirectly control the majority of shares?

Internet Killed the Video Star: MTV Twenty-Five Years On

MTV flickered into life in 1981 to the sound of “[Video Killed the Radio Star](#)” by The Buggles. Riding the phenomenal popularity of cable TV, a new way of distributing music was launched without reliance on radio, DJs or “payola”.

The VJ, or “Video Jockey”, was born into the exciting world of cable broadcasting.

The crown jewel of the Viacom media empire⁵, MTV accounted for about 70% of Viacom’s over \$9.6 billion (2005) revenue and more than 90% of its earnings.

But as MTV celebrated its 25th anniversary, a new generation of digital media had emerged including the internet, video on-demand and mobile *i*-phone downloads.

Analysts and investors began to question the prospects of established media as it struggled to learn how to market its content in an increasingly networked world. After all, hot



⁵ Viacom Inc. is a leading multiplatform, pure play content company, with prominent and respected brands in focused demographics. It engages audiences through television, motion pictures and digital platforms. Viacom seeks to reach its audiences wherever they consume content.

MTV Networks (“MTVN”) is a unit of Viacom. MTVN owns and operates advertiser-supported basic cable television program services around the world.

Outside the US, MTV Networks owns and operates, participates in as a joint venturer, and licenses third parties to operate, over 95 MTV Networks program services, including MTV, VH1, Nickelodeon, TV Land and Paramount Comedy among others.

MTV Networks Europe (“MTVNE”), a division of MTVN, is among Europe’s most widely distributed cable and satellite networks, comprising more than 65 individual music, kids and comedy channels. As of July 2005, the leading MTV Networks program services reached approximately 132 million households and 157 million households in Europe (excluding Russia) and Asia (including Australia), respectively, and approximately 154 million households in the rest of the world (including the United States) through a combination of DTH satellite operators, cable and terrestrial distribution.

For the third quarter 2006, MTVN affiliate fees increased \$53.9 million, or 12%, including increases across all domestic channels and various MTV Network international channels. Affiliate revenue growth was driven domestically by subscriber and rate increases.

International affiliate revenues, principally earned in Europe, increased \$19.3 million, or 30%, reflecting new channel launches and the consolidation of Nick UK as well as Latin America.

For the nine months ended September 30, 2006, affiliate fees increased \$142.4 million, or 10%, including a 17% growth in international markets driven principally by the consolidation of Nick UK and new channel launches in France. Domestic affiliate growth increased 10% principally a result of subscriber and rate increases.

content in 2006 included the hanging of Sadaam Hussein, broadcast free over the internet from a camera phone hidden beneath his gallows somewhere in Iraq.

By then, consumers had successfully forced the hand of media companies that not too long ago had retained power themselves. Consumers were now able to take direct control of what they watched, and when and where they watched it. This had an extremely adverse impact on the ratings-based spot advertising revenue model of content shops.

By early 2007, the media industry's established business models had been completely overturned by new forms of digital distribution and content production. Long-term agreements with content producers or technology partners, such as Apple, were increasingly contentious. Television networks and studios began stockpiling scripts to prepare for another strike by – of all people – the Writers Guild!

But after the downloading of ringtones became a multi-billion dollar industry, no one was able to predict whether other nascent businesses that provided only a trickle of revenue today might become dominant streams a few quarters hence.

The “ringtone business” was simply a low-bandwidth mobile ad channel. It enabled record companies to intermediate and monetize a desirable demographic database held by mobile phone companies, an addressable database coveted by advertisers.

Record libraries missed the beat the first time when they signed away polyphonic rights to ringtone companies for ten percent of revenues. But as teenaged mobile users converted to master tones, the record companies demanded half the revenue or, more often, a direct relationship with mobile phone operators.

It was all happening again with video clips and streaming video as bandwidth expanded and the cost of device memory declined.

Record companies weren't about to let the lessons of ringtones be repeated. Their resolve wasn't asymmetric either, as ringtone companies sought to become content providers – offering games and voice tones. This too was presaged in ancient times when middleman cable companies like HBO had resolved to become leading content providers.

Same as it ever was, the dawn brought unheard of new entrants like MySpace and YouTube.



“When Britney Spears shot to stardom with her chart-topping 1999 debut album, ...*Baby One More Time*, few could have realized that her success would mark the end of an era. Spears and boy bands such as Backstreet Boys and N'Sync would prove to be the last major pop acts to generate multiplatinum sales based on the traditional formula of record-company promotion, heavy rotation on Top 40 radio and repeated exposure on MTV. Napster and other peer-to-peer file-sharing programs made it easy for music fans to download music for free, and the record business has yet to recover; MTV, meanwhile, is less interested in showing videos than it ever has been.”

Forbes Magazine

The cable network sales that propelled MTV’s content business had begun to slow in the US and elsewhere after decades of double-digit growth. At the same time, a brand synonymous with youth culture was struggling to remain relevant in an internet era that has spawned an entire constellation of new stars.

Among the brightest star in the new media firmament was [MySpace](#), the social networking site acquired for \$580 million under Viacom’s nose by Rupert Murdoch, aka the “[Dirty Digger](#)”, and head of archrival News Corp. It would grow to become one of the world’s biggest digital music stores – and coveted databases of highly addressable demographics driving advertising rates.



MySpace reported more than 100 million registered users by year-end 2006. The ability of Murdoch’s MySpace to siphon off MTV’s core youth market was an immediate and direct threat to Viacom.

And in November 2006, Murdoch’s vision was validated when [Universal Music](#) sued MySpace for unauthorized distribution of its artists’ songs and video among its users.

Murdoch’s response was simple – and devastating.

In January 2007, News Corp. announced at the MIDEM music market in Cannes a new initiative with the Global Independent Sector – Indie music companies representing a third of the world’s music market – to create Merlin, a digital licensing agency that served as a one-shop for artists such as The White Stripes, Arctic Monkeys and Tom Waits.

Meanwhile, [YouTube](#), launched in February 2005, along with numerous other social networks, had become wildly popular by allowing users to post self-produced video on the web.

According to Comscore World Metrix, YouTube's audience soared from 2.8 million unique users in 2005 to 72 million users in August 2006.

So it was only the price, in a converging world, which surprised analysts when [Google](#) acquired [YouTube](#) months later for \$1.65 billion in shares.

Later that same year, in an attempt to capture more young consumers who were spending time on niche sites and blogs affiliated with Google, and to extend the ratable audience viewing its content, MTV Networks announced a content sharing deal with Google to cash in on the irresistible pull of internet adspend.

“Our brands are great navigation tools for our audiences, and this deal with Google will enable us to follow and lead them to new places.” - Judy McGrath, Chief Executive Officer, MTV Networks

Some of the content MTV made available included video clips from MTV’s *Laguna Beach* reality program and its popular video music awards show as well as the Nickelodeon cartoon [SpongeBob SquarePants](#).



The internet was the irresistible undertow drawing adspend to the web. Google and MTV agreed to share revenue from advertising sold alongside its iconic videos. The deal reflected the popularity of internet video as fast broadband connections made it easier for fixed – and mobile – audiences to download television programs, “webisodes” and other content.

The Google deal represented a strategic shift for MTV Networks. MTV’s internet efforts had been focused on its own branded video sites, such as [MTV Overdrive](#) which was widely regarded as an unqualified flop.

The arrangement with Google marked the first time MTV Networks ceded some control over its content by making it available to other websites and blogs.

As part of the deal, MTV Networks agreed to sell episodes of its programs through Google’s video store. Google had already made similar revenue sharing agreements with AOL and Apple’s iTunes.

Yet on 2 February 2007, only a few months after announcing the deal with Google, MTV demanded that all its branded clips be removed from YouTube’s servers. Media reports suggested lengthy negotiations broke down over the splitting of advertising revenues and over which company – Google or Viacom – would make those sales.

Youth-oriented MTV had been criticized for its tentative embrace of social networking, user-generated content and other new media phenomenon. Dramatic management changes within Viacom and MTV were the result.

In early August 2006, a year after losing the auction of MySpace to Murdoch, Viacom's Chairman and indirect majority shareholder Sumner Redstone fired Viacom CEO [Tom Freston](#) after barely eight months at Viacom's helm.

Freston was MTV's co-founder and head of Viacom's MTV Networks.

After dismissing Paramount's couch-jumping, marquee star [Tom Cruise](#) a month before firing Tom Freston, Redstone made it clear why he lost out to arch-rival Rupert Murdoch in the battle to acquire MySpace.

"Tom let MySpace get away! We lost that deal because Tom was too slow. That was the problem with Tom. This distinguished him from the way Les [Moonves, head of CBS] would've done that deal, or the way I would have."

Sumner Redstone, Vanity Fair, December 2006

[The MySpace debacle was an epiphany for MTV executives.](#) "Connecting with our consumers on every platform they love is at the heart of our digital strategy," declared Judy McGrath, paraphrasing the recently departed Freston with whom she co-founded MTV.

"But I'm not counting on our television business going stale. I really believe that as advertisers look to put their money into things that are more engaging and more relevant, our multiplatform play is our unique selling proposition and competitive advantage."

Tom Freston, Hollywood Reporter, 15 December 2005

MTV's executives were particularly keen to master the emerging mobile business because their young audience was already spending considerable time on their TV phones, a distribution channel MTV could not directly offer its advertisers.

MTVN's television networks, including MTV, Nickelodeon and Comedy Central, specialized in producing precisely the short-form content that had been most popular on the small screen, particularly in Europe where web-TV was becoming widely available on mobile "3G" devices thanks to its uniform mobile data standard.

So MTV Networks decided to establish a new division to deliver content to mobile platforms. The so-called Mobile Media Group would be responsible for developing ringtones, games, videos and other content from its various brands for supply to mobile phone carriers.

MTV management's push reflected the dawning realization among traditional media companies that mobile platform services would form an important component of evolving digital businesses.

At the same time, mobile phone carriers were looking to new revenue streams from data services, such as games and video content, as a way to offset the pressure on their traditional voice revenue.

As a result, by the end of 2006, MTV claimed to have content sharing deals in place with all the big mobile carriers. MTV also claimed to be the leading supplier of video content to mobile phone carriers – publishing more than 600 clips and 30 hours per month in the US. Its management was particularly excited about the multimedia possibilities of a new service, Mobile Junk 2.0, launched with Sprint, in which user-generated content from the internet would be beamed to customers' phones.

Those customers would in turn use their phones to vote for their favorite clips, to be broadcast on MTV Networks nationally and internationally.

Regardless of these new initiatives, MTV's ability to monetize its content in the melee of potentially fickle youth-oriented social networks and complex mobile distribution arena ultimately depended on its ability to execute a coherent plan. And they weren't alone among the other media giants going into the New Year.

Just up the road in Davos, the 2007 annual meeting of the World Economic Forum was themed "[*The Shifting Power Equation*](#)", focusing on the growing power of consumers and individuals over business and institutions.

The broad subject was choice, how it was exercised and who captured the benefits. And in the world of digital media, when anyone could mix, mash and, hours later, broadcast her video to the world over YouTube, why bother watching NBC's television comedy [*30 Rock*](#)?

A rehash itself, the "original" comedy was set behind the scenes of a fictional television show reminiscent of NBC's [*Saturday Night Live*](#), whose first season was MC'd by George Carlin – in October 1975. Anyone who could recall "SNL" was hardly a desirable demographic in 2007.

The fact was that NBC, owned by American industrial giant GE, had not one *but two* "behind-the-scenes-at-Saturday Night Live" shows on its schedule – Tina Fey's [*30 Rock*](#) and Aaron Sorkin's [*Studio 60 on the Sunset Strip*](#) – said something about media navel gazing.

MTV was hardly alone among traditional media giants, but its approach to new distribution channels and markets was widely regarded as reactive rather than anticipatory.

Like its uptown rivals at Rock Center and Columbus Circle, MTV management was seen to be experimenting with ways to find a "walk around" to YouTube and other digital outlets, flailing about in an attempt to remain king of the media hill.

Fortunately for Viacom, 90% of MTV's core earnings still came from its traditional business of video content distribution throughout an expanding global footprint.

Over the decades, MTV had nurtured a creative culture which consistently produced a broad range of new content and shows targeting desirable demographics. Leading shows included *Beavis and Butt-head*, *Southpark*, *I'm from Rolling Stone* and *MTV Cribs*. “Cribs” was a reality TV show that featured tours of the new homes and mansions of the latest celebrities from media and sport, kickin’ it widda’ Kings o’ Bling.



Never thin-skinned when it came to taking risks, MTV’s Comedy Central, a 24 hour, all-comedy channel, even sanctioned a DVD of an uncensored [mock MTV Cribs video](#) featuring Comedy Central star [Dave Chappelle](#).

But [Chappelle’s show was suspended](#) when he walked away from his \$50 million two-season contact in April 2005 – to “chill”.

The uncensored DVD set “[Chappelle’s Show Season One](#)” was the best-

selling DVD television show ever, selling over 3 million copies for MTV’s Comedy Central.

In early 2007, going from strength to strength, Bill Roedy’s MTV Networks International launched Comedy Central in Germany, a 24-hour German-Speaking comedy channel, it’s first in Germany.

"2007 will probably end up being the year of digital media. The technology's ready and media companies are rushing to experiment with new ways to reach an audience through the web. But the power is in the hands of the content owners, and they're cagey. When it comes to digital video, most have licensed out their rights only temporarily, keeping the power to reassume control and, potentially, charge a higher price for the same content in the future."

Vince Tobkin, Head of Bains & Co's
Technology and Telecoms Practice
The Financial Times, 24 January 2007

With its iconic content, strong and continuously evolving brands and seasoned management, MTV was well positioned to extend its core licensing business into large emerging markets such as Russia, India and China, each of which promised huge growth opportunities.

Among these large markets, Ukraine remained the only large European country not licensed by MTV Networks.

In early 2005, with growth of Viacom's core earnings in mind, Ukraine's 46 million westward looking consumers began to look very appealing to executives at MTV headquarters and the advertisers they served.

It was only a matter of applying its tested licensing model before [MTV Ukraine](#) would become the latest member of the MTV family.

Ukraine: “Another Brick in the Wall”

MTV's programming consists of youth-oriented programs including music videos, music-based programming, music and general lifestyle information, reality-based programming, comedy and dramatic series, animated programs, news specials, interviews and documentaries. Internationally, MTVN owns and operates, participates in as a joint venturer, and licenses third parties to operate, approximately 90 MTV's program services. These include online, broadband, wireless and interactive television services.

Most of MTV's international program services are regionally customized for the particular viewers through the inclusion of local music, programming and on-air personalities, and use of the local language. Local language dubbing is a necessary, but not sufficient, condition to deliver eyeballs media buyers demand.

MTVNE is among Europe's most widely distributed cable and satellite networks, comprising 57 individual music, kids and comedy channels. As of April 2005, leading MTV program services reached approximately 134 million households in Europe through a combination of DTH satellite operators, cable and terrestrial distribution.

Each such network operates under license from MTVNE.

With a population of approximately 46 million, Ukraine would soon become the final European market to be licensed by MTVNE.



The Pitch

With its successful and established business model, introducing MTV to Ukraine promised to be relatively straightforward in an otherwise chaotic emerging market.

President Viktor Yuschenko, a former central banker committed to economic reform, had led his country in a democratic and peaceful triumph over an authoritarian regime in the widely lauded Orange Revolution. He then struggled to hold his own in a post-revolutionary fight with his former ally, the charismatic populist Yulia Tymoshenko whom he had sacked from his government during the summer of 2006.

When the Yuschenko and Tymoshenko factions failed to rebuild their former Orange alliance, Yuschenko established a coalition government with former rival Viktor Yanukovich and his Regions Party. Tymoshenko had overplayed her hand and remained in the opposition camp at Christmas 2006.

Under these circumstances, a bright young star at MTV headquarters was well suited to capture Ukraine's promising high-growth TV adspend. Gennadiy M. Borisov was Vice President of the Advanced Products Group at MTV International in New York.⁶

Borisov was born in Kiev, received his Bachelor of Science degree from Ukraine Technical State University and a Bachelor of Science from Thomas A. Edison College in the US. He was also fluent in Russian and his native Ukrainian and spoke thoroughly American English.

Borisov was well qualified as agent to develop MTV's Ukrainian licensee. It would be only the third instance in 25 years Viacom had licensed the MTV brand to a Viacom insider who was a national of the target country.

On 5 October 2005, Borisov appointed an advisor to assist in financing his undertaking.

The agreement was signed by Borisov's at his office at MTV's headquarters. Though he was in fact an employee, he signed the agreement as a director of a holding company he had previously established for the purpose of launching MTV Ukraine.

The agreement was later amended on 28 October 2005.

⁶ Borisov previously held positions as Senior Director of New Technologies at MTV International and Director of Media Products and Services at the MTVi Group working with divisions of MTV Networks worldwide. As a key member of the Business Development and Information Systems and Technology groups he was involved in day-to-day activities at MTVN (domestically and internationally), Viacom Digital Media, many of company-wide business and technology projects as well as strategic product and partner development. Over the years, he helped MTV Networks to negotiate and implement some of the largest content and technology driven deals, launch new ventures, achieve multimillion-dollar savings and bring new products to market. Prior to his establishing MTV Ukraine, he reported directly to the Senior Vice President of Interactive Services and Programming MTV Networks, the Chief Technology Officer of MTV International and the Senior Vice President of Strategy and Operations MTV Networks.

In order to preserve working capital for the new licensee, the amended agreement provided for a grant of shares to Borisov’s advisor in lieu of a cash fee. The shares granted would be on terms *pari passu*⁷ with the first round participant.

While still an employee of MTV, Borisov was now actively seeking to raise \$13 million for the launch of MTV Ukraine, a company in which he was a director and the controlling shareholder.

Nevertheless, during all his presentations to investors, whether at MTV headquarters, London, Kiev or elsewhere, he also presented himself as an MTV employee. His business cards and contact details in his presentations always referred recipients to his office at MTV’s headquarters at 1515 Broadway in New York.

During several meetings with investor groups hosted at MTV headquarters, Borisov stated he intended to allocate the \$13 million as follows:

<i>Proposed Application of Proceeds</i>	<i>Account</i>
MTV Europe Brand Fee	\$361,500
MTV Europe License Reserve	\$843,500
Other Licenses and Rights (Uplink, etc)	\$502,000
Playout, Archive, Equipment and Service	\$1,800,000
Programming (Dubbing, Local Prod and Online)	\$2,464,000
Contract Research, People Meters, Media Planning	\$291,000
Sales, General and Administrative Expense	\$3,038,000
Working Capital Reserve	\$3,000,000
Transaction Expenses	\$700,000
Total	\$13,000,000

The multi-hat situation embodied fundamentally conflicting roles for Borisov as employee, as director/principal for himself and as agent for his employer, MTV.

MTVNE condoned this situation and in fact encouraged its employees to participate directly in the ownership of licensee entities.

As long as the MTV employee holds, solely for “investment purposes”, *not more than 3%* of any such entity, such a holding was acceptable to MTVNE.

Though a classic example of the principal-agent problem, MTVNE management actively supported Borisov while he wore three hats. His first hat was that of an employee and Vice President of MTV. His second hat was as the agent of MTVNE to develop the Ukrainian licensee. Borisov’s third hat was that of a director and shareholder of the MTVNE licensee in Ukraine.


Unfortunately, Borisov controlled over 90% of the licensee *dba* MTV Ukraine through a company he established – with MTV’s consent - in the US state of New Jersey.

⁷ “Pari passu” means “of equal step” in Latin. In the present context, it means that the shares granted to MTV Ukraine’s advisor have the same rights and privileges as the shares granted to the first round participant – the investor.

The pathfinder document “MTV Ukraine: Description of Participation” presented by Borisov to investors during meetings at MTV’s headquarters and elsewhere states:

“The Company’s management team is lead by the Vice President of Advanced Products at MTV Networks in New York.”


The first page of the MTV Ukraine pathfinder approved by Borisov is shown below.



MTV Ukraine: Description of Participation

Issuer: Accella Group Inc., a corporation registered in the state of New Jersey, USA (“Accella”, “Issuer”) and controlled by Gennadiy M. Borisov, Vice President, Advanced Products Group at MTV Networks in New York.

The Issuer and its subsidiaries were established to explore the opportunity and extend under license MTV Networks’ iconic portfolio of TV, mobile and broadband content into the Ukraine (pop: c. 48 million), the last European market to be served by MTV Networks.



Accella owns 92.5% of OOO Action Media Group, a company registered in Ukraine (“AMG”). AMG in turn owns 100% of OOO MRIYA TV, a media and broadcasting company registered in Ukraine (“MRIYA”).

Accella, AMG and MRIYA are together referred to as the “Company”.

The Business: The Company, to be *dba* “MTV Ukraine”, will own, operate and manage advertiser supported multi-platform content delivery services and systems under license by MTV Networks.

Licensee: MRIYA. This is only the third time in 25 years Viacom has licensed the MTV brand to a Viacom insider who is a national of the target country.

Licensor: MTV Europe, a division of MTVN International, itself a unit of MTV Networks (“MTVN”). MTVN owns and operates advertiser-supported basic cable television program services in the United States and internationally.

MTVN is a unit of US\$50 billion (market cap) Viacom International Inc. (NYSE: VIA: VIA.B), one of the world’s leading creators of programming and content across all media platforms.

MTVN, with more than 100 channels worldwide, owns and operates the following television programming services: MTV: Music Television, MTV2, VH1, mtvU, Nickelodeon, Nick at Nite, Comedy Central, TV Land, Spike TV, CMT, Noggin, LOGO, MTVN International and The Digital Suite from MTV Networks, a package of 13 digital services, all of these networks are trademarks of MTV Networks.

The pathfinder identified the issuer as being controlled by an MTV employee:

“Accella Group Inc., a corporation registered in the state of New Jersey, USA (“Accella”, “Issuer”) and controlled by Gennadiy M. Borisov, Vice President, Advanced Products Group at MTV Networks in New York. Borisov is President, founder and 92.5% shareholder of Issuer”.

The pathfinder further stated that:

“Accella owns 92.5% of OOO Action Media Group, a company registered in Ukraine (“AMG”). AMG in turn owns 100% of OOO MRIYA TV, a media and broadcasting company registered in Ukraine (“MRIYA”).”

It was thus with MTV’s consent, and while still their employee, that Borisov established several Ukrainian companies, *dba* MTV Ukraine, to own, operate and manage advertiser supported multi-platform content delivery services and systems under a ten year license he obtained from his employer, MTV Networks Europe.

That license, known as the “Trademark and Television Programming Agreement for MTV Ukraine”, was formally executed on 13 January 2006 by Borisov on behalf of MRIYA TV and AMG, its Borisov-controlled guarantor.

Borisov also persuaded the National Committee for Radio and Television Broadcasting of Ukraine to issue a ten (10) years broadcasting license to MRIYA TV *dba* MTV Ukraine on 18 January 2006. The license had to be activated within twelve months or it was void.

Like Starbuck’s, MacDonal’d’s and any other established franchise business, MTV Ukraine owner/managers would simply apply the proven MTV brand to a traditional advertising model for cable television and an evolving model for mobile content services.

The success of the MTV franchise would ultimately depend on the development of (i) Ukraine’s advertising market; (ii) the share of TV and cable advertising within the total advertising market; and (iii) the Company’s share of total local TV and cable adspend.

These Ukrainian market risks had been successfully addressed by another pioneering media company, [Central European Media Enterprises](#), founded by [Ron Lauder](#). In fact, CME’s Ukrainian operation was among its most profitable – it had captured almost one-third of Ukraine’s television adspend.

MTV Ukraine’s original business model was prepared by MTV staff and by Borisov during the fall of 2005. The resulting proforma business model would ultimately find itself attached as an exhibit to the licensing agreement between MTVNE and Borisov’s licensee entity MRIYA TV.

The Excel spreadsheets on the following pages were presented to several investors, including a Mr. Everett Slim⁸, in October 2005.

Like other investors, Mr. Slim was reassured by the simple fact that the presentation and the financial and operating plans were produced by MTV executives, badged with the MTV logo and presented by MTV's impressive Vice President Borisov.

Nevertheless, Slim and his advisors began their customary due diligence.

The first proforma financial plan for MTV Ukraine, shown on the following pages, was presented to several investors by Borisov while he was employed by MTV through 2005.

During his presentations to Slim, Borisov emphasized that the license agreement with MTV would be completed soon.

But Borisov continued to be unwilling, or unable, to present the latest draft of MTV's license agreement to Slim or Slim's advisors.

Borisov did note however, that the most recent draft license would require an "Initial Marks and Programming Fee" of US\$1,000,000 be paid by his entity MRIYA TV (the licensee) to MTVNE as licensor upon execution of the license agreement.

The original project schedule Borisov presented Slim and investors contemplated "Formation of the Entity" MRIYA TV and completing his licensing arrangements by 31 December 2005.

⁸ "Everett Slim" is a pseudonym. He's also simply referred to as "the investor".

TIME PLAN
START-UP



MTV Ukraine Pre and Launch Calendar

	Spring	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2006 Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2007 Jan	
MTV Ukraine launching																						
Investors																						
Negotiations of the financing																						
MTVN Europe:																						
Negotiations on the agreement terms																						
Negotiations, agreement signing																						
Consultations with MTV Europe																						
Materials from MTV Europe																						
MTV UA Administrative:																						
Formation of the entity																						
License and permits acquisition																						
MTV UA Programming:																						
Program acquisitions from MTVNI																						
Local productions																						
Launching event preparations																						
New Year with MTV																						
MTV UA Marketing:																						
PR announcement																						
Active Phase PR																						
Marketing (launching campaign)																						
MTV UA Distribution:																						
MTV Ukraine News distribution																						
MTV Ukraine Mobile distribution																						
MTV Ukraine channel distribution																						
MTV UA Technical:																						
Equipment acquisition																						
Equipment testing and preparations																						
MTV UA Sales:																						
Sales announcement campaign																						
Sales																						
MTV UA Human resources:																						
Key staff employment																						
Key staff working																						
Full staff employment																						
Full staff working																						

With time was running short, Borisov urged Slim to consider an advance on the licensing fee due MTV as he anticipated completing that agreement in early December.

Borisov stated that he could lose this deal if he couldn't assure MTV that the "money's in the bank." Reassured by MTV's clear endorsement of the project, Slim assured Borisov that he would make such an advance as a down-payment on the licensing fee.

Having obtained the requested advance from Slim, Borisov and Dean Possenniskie, MTV's Vice President and General Manager for Emerging Markets, announced the launch of the new network at a media event in Kiev on 10 February 2006.

But at some point in the six weeks between 31 December 2005 and MTV's launch announcement, Borisov took it upon himself to revise downward the financial and operating proforma for MTV Ukraine.

By January 2006, it became apparent to Slim and his financial advisors that Borisov's changes to the previously agreed proforma business plan for MTV Ukraine had dramatically diminished the enterprise value previously demonstrated by Borisov in reliance on MTV's "house" franchise model.

The Business: A License to Bill

MTV regards itself as a “content power play”. This makes essential a license agreement which reflects the competing claims of content rights holders, digital media distributors and the demands of advertisers and content consumers.

A savvy private equity investor, Mr. Slim had appointed a leading investment bank to conduct due diligence on MTV Ukraine. As an established “franchise” business the due diligence focused on management, the business plan and the content licensing agreement.

The operative MTV license agreement was negotiated between Borisov, while he was an employee of MTV, and an affiliate of his employer as represented by Dean Possenniskie.

The content license was executed by the parties on 13 January 2006.

Yet for some unexplained reason, immediately after signing the license agreement, Borisov revised the “Agreed Business Plan” which was attached as Schedule 5 to the license agreement.

The result was a substantial reduction in value.

As a practical matter, the diminished business could no longer support the large “up front” disbursement of cash required by the license agreement.

Yet in spite of the reduced enterprise value, the licensing fee Borisov agreed to pay MTVNE while he was an employee remained unchanged.

Dean Possenniskie was clearly pleased and treated the MTV Ukraine license fee as a receivable in his budget for 2006. The license agreement provided, in part:

2.9 As part consideration of the rights and licences granted to the Licensee hereunder, Licensee shall pay to MTVNE the Initial Marks and Programming Fee in two equal instalments. Upon either the Commencement Date or the 30th March 2006, whichever is the later date, the Licensee shall immediately pay to MTVNE the first instalment of the Initial Marks and Programming Fee in the sum of five hundred thousand United States dollars (US\$500,000.00.) and thereafter shall pay the second instalment of five hundred thousand United States dollars (US\$500,000.00) on or before the 30th June 2006. This sum shall be non-refundable notwithstanding any failure to comply with any of the remaining conditions precedent set out above and/or notwithstanding the expiration or early termination of this Agreement, howsoever terminated.

Whether or not the business plan could support the originally budgeted \$1 million license fee remained to be determined as the enterprise value had diminished dramatically.

In any event, Slim would remain supportive of the funding required to expand MTV’s global footprint to Ukraine. However, he would naturally expect a larger share allocation against a diminished pre-money valuation. Whether or not this was acceptable to Borisov remained to be seen.

The Switch

Shortly after negotiating the licensing agreement as an MTV employee, and as agent for his holding company, Borisov resigned from MTV.

He simultaneously executed the licensing agreement on behalf of the licensee he owned, MRIYA TV. He also executed the licensing agreement on behalf of MRIYA's guarantor. With the consent of his former employer MTVNE, Borisov next revised the proforma financial and operating projections.

Though no longer an MTV employee, Borisov was still struggling to serve two masters – himself as manager and his holding company as owner of MTV's Ukrainian licensee.

The revised proforma was prepared by Borisov as the General Director of MRIYA TV, MTV's Ukrainian licensee. His deliberations over the revised plan were naturally eased by the fact that he was formerly an employee of MTV and that the negotiation was with his former colleague, Dean Possenniskie, Vice President of MTVNE Emerging Markets.

Borisov also revised the project timeline, but neglected to inform his investor, much less his advisor. The launch itself was now to occur one month earlier, in August rather than September 2006. But MTV's big PR announcement would now occur two months later, in February 2006 rather than December 2005.

The revisions Borisov made resulted in a substantial reduction in the enterprise value which had been previously agreed by Borisov and his investor. Yet there was no known change to the commercial or regulatory environment and no explanation offered for the revised plan.

Perhaps Borisov oversold the commercial prospects to Slim and to his former bosses at MTV. Perhaps Borisov was dicing the entire enterprise to renegotiate the licensing fee with MTVNE's Dean Possenniskie. Perhaps he was caught up in post-revolution euphoria.

Whatever he was doing, the reduction in enterprise value would be severely dilutive to Borisov and had little if anything to do with market fundamentals or events in Ukraine.

Meanwhile, as his advisors continued their due diligence, Slim became increasingly uncomfortable with the \$30 million implied pre-money value of the license he had agreed to underwrite.

His anxiety increased when he learned that MTV would announce the launch of MTV Ukraine at a press conference in Kiev on 10 February 2006. Without his investment, the network couldn't launch. The negotiations for value and funding were unfinished.

Slim had previously urged Borisov and MTV's Dean Possenniskie to postpone the press announcement until everything had been finalized, but the MTV publicity machine was in full gear.

According to the bank advising MTV Ukraine's investor, the revised business model was unbankable given reasonable metrics and assumptions about the growth and pricing of Ukraine's media market.

The licensing fee would have to be reduced along with the diminished enterprise value.

The proforma enterprise value was about 30-40% lower than agreed by Slim in December.

The licensing terms negotiated by Borisov, as MTV employee and licensee, and his then-fellow MTV employee Dean Possenniskie, representing the licensor, made the entire business untenable.

Yet the licensing fee provided to MTVNE had not been reduced in the new business plan.

No explanation was offered by Borisov, Possenniskie or anyone else at MTVNE.

The business plan was no mere piece of paper.

The financial and operating proforma attached as Schedule 5 to the Trade Mark and Television Programming Agreement for MTV Ukraine (see Case study Section IV: "The Pitch") was a material contractual obligation of the licensee.

Unfortunately, neither Borisov nor Possenniskie chose to respond to the drumbeats from Slim and his advisors.

Now that Borisov and MTVNE had Slim's million, he was being ignored, or worse.

Under the circumstances, on the day of the press conference, Slim notified Possenniskie's boss, [Simon Guild, the CEO of MTV Networks Europe](#), of his objections to the launch announcement.

-----Original Message-----

From: Slim, E

Sent: 10 February 2006 9:16

To: 'guild.simon@mtvne.com'

Subject:

Dear Mr. Guild

As you know myself and my personal investment company have been in negotiations with Mr. Borisov for a potential investment and financing for a new MTV channel in the Ukraine.

Mr. Borisov advised us and sent us a copy of the Licence agreement between MTV Europe and the new Ukrainian company signed on the 13th January. As you know this licence agreement has been thoroughly analysed by our lawyers and Mr. Borisov informed you that it will need a few changes to make the project bankable and financeable. Of particular concern is MTV Europe's call option after 5 years without a prefix pricing formula. Mr. Borisov told us that MTV Europe would consider a change and asked us for suggestions and we thank you for your flexibility. We will revert with suggestions as soon as possible.

In December we pre-funded Mr. Borisov with 1 million dollars against a share participation in the holding company and Ukrainian companies. Certain aspects of the licence agreement have somewhat changed the financing case and we particularly encounter a problem with a downward adjustment of the financial forecasts.

I therefore have mandated a leading investment bank to represent me and my Investment Company in this very interesting project. A bank representative will meet Mr. Borisov in Kiev on Tuesday and it would be extremely helpful if they could meet with you on Monday in order to gain a good understanding of how MTV Europe looks at the project as a whole and at the co-operation with outside investors.

The Gentlemen in MTV Europe handling this project are Mr. Thomas Ehr and Mr. Ian Possenniskie. I would highly value the opportunity to have a dialogue with you as we assume that Mr. Borisov will now leave the employment of MTV and we therefore need another contact. The gentleman at my investment advisor is Mr. ~ under the direction of Mr. ~. I am sorry to ask for an appointment at such short notice but as MTV announced their intentions today - I think it is important to move matters forward and come to conclusions as soon as possible.

With Best Regards,

Everett Slim

The responsibility for responding to Slim's query regarding the license and the business plan was delegated by Simon Guild – to none other than Dean Possenniskie, Vice President Emerging Markets.

Over nine months passed before Slim was summoned to a meeting with Simon Guild at MTV's London headquarters on 23 November 2006.

By then, the original MTV Ukraine was long gone, along with Slim's million dollar advance. Slim's 48 shares would ultimately become worthless.

It all came down to control.

If Slim funded the full \$13 million Borisov originally requested against an agreed pre-money of \$30 million (\$0.65/POP), Slim's revised shareholding in MTV Ukraine, based on Borisov's revised enterprise value, would likely exceed 50%.

The original share capital of £2,020 was divided in 2,020 shares of £1 at 15 December 2005.

Following receipt of \$1 million from Slim, Borisov's entity was allocated 1,360 shares and Slim 48 shares. MTV Ukraine's financial advisor received 40 shares.

Unfortunately for Borisov, by revising the financial plan for MTV Ukraine, he'd completely undermined the basis for his control of the business.

Borisov's original share allocation would be severely diluted due to the lower pre-money value he would now have to concede to Slim in a renegotiated investment agreement.

Furthermore, the imminent dilution of his shares would restrict Borisov's ability to control MTV Ukraine. Specifically, he would not be able to dictate the terms of his employment contract which had not, to Slim's knowledge, been approved by MTV Ukraine's two directors – Borisov himself and his childhood friend and house counsel.

Furthermore, in a world where barter trade and exchange of assets and shares is customary, the increase in Slim's share due to the revised business plan would dramatically erode Borisov's ability to distribute a portion of his shareholding as "consideration" to third parties whose involvement was essential to the success of MTV Ukraine.

This outcome would encourage Borisov to renege on promises to third parties in order to limit further erosion of his control of MTV Ukraine.

The completion of due diligence by Slim's advisors revealed conditions which may have

threatened Borisov's position in the opaque commercial and regulatory environment prevalent at the time in Ukraine. After all, if Borisov failed to deliver on promises to Ukrainian broadcast licensing authorities, the entire enterprise could fail.

One can only speculate why Borisov initiated the revisions to the proforma business plan without first conferring with Slim.

“Failure to Launch”

On 10 February 2006, the launch of MTV Ukraine was announced at a formal press conference in Kyiv. The event itself was hosted by MTV Networks’ Dean Possenniskie and MTV Ukraine’s Gennadiy Borisov.

By that date, one might reasonably assume Borisov was no longer wearing the hat of an MTV employee.

Borisov was by then probably wearing only two hats, one in his capacity as General Director of MTV Ukraine and another as 92.5% owner of MRIYA TV, licensee of MTVNE.

Upon reading the announcement in the [Kiev Post of 16 February 2006](#), it became clear why Borisov and Possenniskie were so secretive about the owners and investors behind MTV Ukraine.

Their actions had by then completely alienated Mr. Slim who was not accustomed to being ignored.

One might also ask: “How was the media event paid for if the investor had already funded the \$1 million due MTVNE under the Trade Mark and Television Programming Agreement for MTV Ukraine?”

After further reading the *Kiev Post* article, it was also difficult to explain why Borisov refused to address the reporter’s question as to why his registered office housed an office for a construction company, not the licensee. This sort of behavior was hardly unprecedented, though it was more common in Yeltsin’s Russia.

Lesya Ganzha of Telekritika, a web-based Ukrainian media watchdog, observed that such secretive behavior is more typical of local television companies – most of whom are reluctant to disclose information about their Ukrainian owners or investors.

She added: “There has been a hope that once Western players [like MTV Networks] enter the market this would change.”

But at the press conference that day, MTVNE Vice President Dean Possenniskie appeared unconcerned that the behavior of MTV’s licensee might evoke the opaque and murky conduct of the regime of former Ukrainian president Leonid Kuchma, ousted in the Orange Revolution.

What was ironic in the extreme was that a more media savvy team might have anticipated Lesya Ganzha’s widely held perception.

Borisov and Possenniskie might have been more forthcoming in their response to reporters’ questions. But they had other plans.

“Running on Empty”

Three days before the press conference to announce the debut of MTV Ukraine, Borisov requested his financial advisor return to the market in order to recapitalize MTV Ukraine.

He was now seeking \$12 million.

By then, Borisov concluded that the revised terms likely to be acceptable to his first-round financier, Everett Slim, might be improved upon by second round participants.

Borisov felt the fact that he'd obtained a license from both MTVNE and Ukraine's broadcast authorities would reduce the perception of risk facing the enterprise and would result in an accelerated closing of a second round of funding.

But Borisov's conclusion was flawed. He was desperate to attract financial backing before the press announcement scheduled by MTV's Dean Possenniskie for 10 February in Kiev.

What Borisov failed to mention to his advisor was that none of the money advanced by Slim had been paid to MTVNE as provided in the agreement he struck with Slim.

Borisov also failed to recognize that it was a small world. Any investor would insist on knowing from a direct interview why Slim was reluctant to “complete” the first round or participate in a second round only sixty days into the game. Unless Borisov sold down his shareholding substantially, the secondary offering would never withstand due diligence.

Nevertheless, Borisov insisted his advisor resume discussions with a handful of institutional participants. Yet Borisov was unable, or unwilling, to produce the capitalization table requested by his advisor. He'd withheld any documents which might enable the advisor to do so independently including, most importantly, a share register showing Slim's interest.

It had begun to dawn on the advisor that a pre-money enterprise value had never been agreed with Mr. Slim. It became clear that the MTV license payment was delinquent when, on 10 February, Borisov approved for his advisor's review the following application of proceeds for a secondary offering:

<i>Proposed Application of Proceeds</i>	<i>Account</i>	
MTVNE Brand License	\$ 1,000,000	Included are all expenses for 2006 unless noted otherwise.
Minimum Override Payment to MTVNE	\$ 1,840,000	
Local Satellite and Broadcasting License and Fees	\$ 18,000	Expenses are rounded up to the nearest \$1,000.
Video and Publishing Content License	\$ 10,000	
Uplink	\$ 276,000	In order to minimize the risk of jeopardizing the MTVNE license, we've also included as a reserve the 2007 minimum license payment of \$840,000.
Playout, Archive, Equipment and Service	\$ 1,000,000	
Programming (Dubbing, Local Production and Online)	\$ 1,993,000	
Contract Research, People Meters, Media Planning	\$ 200,000	
Sales, General and Administrative Expense	\$ 5,053,000	
Transaction Expenses	\$ 610,000	Includes 2007 budgeted expenditures.
Total	\$ 12,000,000	

The first line item “MTVNE Brand License” was budgeted at \$1 million.

What had happened to the million dollars previously advanced by Slim?

Borisov told his advisor he’d “reallocated” Slim’s funds, but didn’t explain further.

On 13 February, MTV Ukraine’s financial advisor met with London solicitors for MRIYA TV and its affiliates *dba* MTV Ukraine.

No capitalization table was forthcoming that evening and the solicitor effectively discouraged Borisov’s advisor from going forward if doing so required referring to Mr. Slim’s interest. The entire initiative had become untenable.

Within a week, Borisov proposed voiding the amended fee agreement with his advisor. Borisov also disputed the 40 shares his advisor held in MTV Ukraine’s holding company though they’d been registered by MRIYA’s solicitors on 18 December 2005.

From: "G.M. Borisov" <gmb@~.com>
Subject: RE: Moving Ahead
Date: Sun, February 19, 2006 11:39 pm
To: rob@capital.co.uk
Cc: "GG" <gg@earthlink.net>

Rob,

I appreciate your understanding and time to discuss recent event and turns taken by this project. As you correctly noted, we need to move forward and be proactive, precise and maintain the initiative. Prior to next steps, I would like to confirm details of our conversation regarding our mutual agreement to void the Amendment to the Original Agreement discussed in the previous emails.

Please note that our London based counsel will have limited availability over the next few weeks and TS could be prepared mostly by GG and I with your participation, if of course you would be so kind as to continue working with us.

Best, Genna

-----Original Message-----

From: Rob [<mailto:rob@capital.co.uk>]
Sent: Saturday, February 18, 2006 14:00
To: gmb@~.com
Subject: Moving Ahead

Genna: Thanks for the call yesterday. I'm glad we had a chance to speak at length about the events of the past few weeks.

As we move ahead, it's important that we be responsive to QP's who've requested a term sheet. They can move quickly, so under the circumstances, producing the term sheet should probably be a greater priority than updating the pathfinder.

Having issuer's counsel produce the term sheet enables you to maintain the initiative in negotiations with one - or several - QPs. The term sheet will enable you not only to address the legal and economic terms on offer.

It also defines terms relating to corporate governance, the selection of board members, voting rights, rights of founders or management shareholders, pre-emptive rights, restrictions on transfers, change of control, information rights, registration rights and other non-financial matters such as conformance with the MTV license which are of material significance to you.

We're available to participate with your solicitors and directors to complete these documents at any time.

Best regards,

Rob

Though he sought to negate the existing engagement agreement and the grant of shares, Borisov produced no new amendment nor proposed consideration for a new arrangement.

Two days later, Borisov revealed he'd lined up participants for the second round financing. Though he did not identify them, he asserted they were exempt from the engagement agreement with his advisor. Borisov appeared to be in the process of retaining another advisor or making other funding arrangements directly.

From: "G.M. Borisov" <gmb@~.com>
Subject: RE: Public Disclosure
Date: Tue, February 21, 2006 6:16 pm

Rob,

Thank you for the note. As of today there are two investors /shareholders and they are "Western, apolitical, and very powerful" - both Mr. Slim and my holding company fit this definition. The license is absolutely of no worries and KievPost is not an official trade publication and its opinion is not a "qualified" opinion, the author is just a journalist (generalist) with not all things correctly quoted and some misinterpreted.

Rob, we have opened discussions with new and some old parties who were interested in the venture before we went exclusive with Mr. Slim, and before we can move forward with parties referred by you we need to clarify positions that we have discussed in our phone conversation last week. I have not received the email from you confirming our agreements and look forward to the confirmation.

Best,
Genna

-----Original Message-----

From: Rob [mailto:rob@capital.co.uk]
To: gmb@~.com
Subject: Public Disclosure

Dear Genna:

The Kiev Post of 16 February quoted you as saying Mriya's backed by investors who are "... Western, apolitical, and very powerful".

Whether or not you're referring to the three shareholders listed in the pathfinder letters approved by your director, any second round QP will want to know with whom they're bunking up.

Unfortunately, the Post article may also be cited by QPs concerned about the defensibility MRIYA-TV's license granted by the NTRC. Addressing this matter may consume more time in due diligence by QPs.

As to timing, several other groups have now requested the pathfinder and the term sheet. We can get this round done quickly, but we must be ready to respond at least as quickly as we expect QPs to respond to us.

We're ready to meet with your transaction counsel to discuss draft documents at any time.

Borisov then went silent.

It would take Borisov an entire month to surface. During that time, the marketing effort he had asked his advisor to undertake was effectively dead in the water. By the time Borisov reappeared, it was difficult to see how his advisor or anyone else could be of assistance without clarification of some fundamental issues.

Then on 23 March, Borisov informed his advisor that he was concluding matters with Mr. Slim for a recapitalization of his holding company and its affiliates and that a secondary offering would soon be concluded with an unidentified investor.

Borisov was in fact foundering.

By early April, he and his childhood friend from Kiev, MRIYA TV's second director and corporate counsel, were trying to figure out how to void the agreement with MRIYA's original financial advisor and nullify the grant of 40 shares.

This initiative to declare void MRIYA's agreements was limited to a few verbal denials, but was ultimately abandoned.

In early May, MRIYA's director and corporate counsel resigned. Borisov's top employees were not being paid. It was clear that Borisov was struggling to keep MRIYA going as he sought further funding. He needed MTV's help or at the very least, their forbearance. Yet Borisov had failed to pay the MTV the licensing fee due five months earlier.

On 7 June, solicitors for MRIYA's financial advisor delivered a notice of arbitration to MTVNE's Dean Possenniskie for unpaid fees and expenses due under the agreements signed by Borisov on behalf of MTV Ukraine and MRIYA TV.

Dean wrote MRIYA's advisor to say it was "... good to have visibility of where things are at."

Less than a month passed when it became clear Borisov was still struggling to pay MRIYA's bills. By now, some of his employees had resigned. Dean suggested a meeting with MRIYA's advisor at MTV's London headquarters on Wednesday 5 July.

“Night Moves”

It wouldn't be the first time in 2006 that an important company announced a delay in delivering financial statements to its shareholders. Nor would it be the last.

Seven days after Dean Possenniskie first met MTV Ukraine's financial advisor, and minority shareholder, it was clear that serious financial irregularities could quickly emerge at MRIYA TV and its affiliates.

From: "Gennadiy M. Borisov" <gmb@mtv.ua>
Subject: RE: Query
Date: Wed, July 12, 2006 9:54 am
To: Rob <rob@capital.co.uk>

Rob,

Sorry for delay. We have not produced any financial statements except for the Ukrainian operational companies. We plan to close the Q2 in about 2 weeks and I will send you copies of Q2 statements of Ukrainian operations.

Best,
Gennadiy

----- Original Message -----

From: "Rob" <rob@capital.co.uk>
Reply-To: <rob@capital.co.uk>
Date: Fri, 7 Jul 2006 15:58:48 +0200

Dear Genna:

We just had a partners meeting during which I was asked about MTV Ukraine. I need to assign a book value to our 2.5%.

Can you provide a statement of stockholder's equity or a capitalization table for the holding company? Alternatively, a set of financial statements would be fine, in whatever standard is provided for in the articles of inc. I assume something's been prepared, at least for the first quarter since inception.

Thanks in advance and best wishes,

Rob

MOB: +44 78 1234 5678

One week later, more issues arose. This time it concerned shareholders' pre-emptive rights as provided by the Articles of Association of MRIYA's holding company. Resolving this matter may well have been a condition of closing for Borisov's second round investor.

The re-emergence of the pre-emptive rights issue may have explained why Borisov had earlier sought to invalidate, then claw back, the 40 shares granted to his financial advisor.

On 18 July, Possenniskie noted in an e-mail to MRIYA's advisor that another MTV licensee and consultant had observed Slim in Kiev. Though Slim had other business there, something might be up. If so, MRIYA's advisor and minority shareholder had not been invited to what was shaping up as a possible meeting of MTV Ukraine's shareholders.

From: possenniskie.dean@mtvne.com
Subject: RE: Interesting ...
Date: Tue, July 19, 2006 2:18 pm
To: Rob <rob@capital.co.uk>

Good to know, lets see how the next day pans out and talk then.
Thanks
Dean

-----Original Message-----

From: Rob [mailto:rob@capital.co.uk]
Sent: 19 July 2006 1:06
To: possenniskie.dean@mtvne.com
Subject: RE: Interesting ...

Yes. This will be more attractive if we aggregate the networks within one holding.

We're available to talk any time. I'm in NYC this week.

Rob

----- Original Message -----

From: possenniskie.dean@mtvne.com
Date: Tue, 18 Jul 2006 13:46:10 +0100

Rob,

If we can step away from the saga on MTV Ukraine for a few moments...

I am currently looking for investors for MTV services in:
Romania - MTV Romania (launched in June 01)
Adria (Slovenia, Croatia, Serbia, Bosnia) - MTV Adria (launched in Sept 05)

Adria in particular is a very exciting prospect where MTV Adria is the only pan-regional channel across the from Yug states and in bringing music and culture development to a new level there. Office is already set up in Ljubljana with marketing offices in Zargreb and Belgrade but we are Thinking to move HQ to Belgrade in coming years due to the size and growth of this market. Niall would hold the license for this channel.

Do you think you could find interested parties to look at this opportunity? If so we can talk in more detail once we get Ukraine resolved.

Thanks
Dean

-----Original Message-----

From: From: Rob [mailto:rob@capital.co.uk]
Sent: 18 July 2006 12:16

To: possenniskie.dean@mtvne.com
Subject: RE: Interesting ...

Dean: I've heard not a peep from Genna or anyone else.

Genna may also have failed to remind you about our agreement which remains in effect. In particular, you should know that the reaffirmation and amendment of our agreement with MRIYA provides that the Participation be on terms "pari passu" with Slim. That document was sent to you on 7 June by our counsel.

You might want to ask MRIYA's solicitor what "pari passu" means before you go too far down the road. If Slim's been invited to the table, we should be too. But we've heard nothing.

We're here to help make MTV UA a success.

Rob

----- Original Message -----

From: possenniskie.dean@mtvne.com
Date: Tue, 18 Jul 2006 11:59:15 +0100

Thanks Rob - has Genna responded about Slim's pre-emptive rights – this would be key.

Have just heard from Niall that Slim has just shown up in Kiev ... Will be an interesting 24hours and I will keep you posted on developments

At dawn in Kiev on 20 July 2006, Borisov e-mailed a notice of an Extraordinary General Meeting - at an unidentified location - to MTVNE's Dean Possenniskie, to Dean's colleague and friend, Niall MacCormick (an MTV producer and licensee who controlled MTV Adria), and to the two minority shareholders of MTV Ukraine's holding company.

According to the notice, the sole purpose of the EGM was to amend the Articles of Association of MRIYA's holding company, controlled by Borisov, deleting the articles regarding "Pre-emption Rights".

Borisov's solicitor first sent the Articles of Association to MRIYA's minority shareholders later that same day. It was a lot to digest and made for interesting reading.

Before midnight in Kiev on 20 July, resolutions were passed to delete pre-emption rights, only 18 hours after the EGM was announced by Borisov to minority shareholders – and to MTVNE executives. Though not shareholders, they did represent the licensor to MRIYA.

Unfortunately for Borisov, the revocation of pre-emption rights was accomplished six hours before the statutory minimum of a one day notice. Twenty-four hour advance notice was required for short-notice EGMs to be effective under the short-notice provisions of the Articles of Association of MRIYA's holding company.

On 24 July 2006, based on the MRIYA directors' failure to comply with the provisions of the Articles of Association, an arbitration claim was filed by solicitors acting on behalf of a minority shareholder against MRIYA and its holding company, both controlled by Borisov.

After MRIYA conceded the validity of the claim, the shareholder's claim was withdrawn on 25 July.

On 26 July 2006, the minority shareholders were notified that they would receive a settlement offer in the next few days.

“Well ... How did I get here?”

Kiev-based fund manager [Horizon Capital](#) was originally the Western NIS Enterprise Fund. It was established by the U.S. Congress and funded by the U.S. government via USAID.

Horizon management was well regarded and had grown to establish a private equity fund devoted to Ukraine. Borisov had been negotiating with them to replace Slim.

Horizon had been informed of the MRIYA EGM, though not invited to participate directly.

As a result, a representative of Horizon was present during the EGM in an adjacent room at a hotel in Kiev.

The “back-to-back” EGM was planned and orchestrated by solicitors to Borisov’s holding company as a way to quickly recapitalize MRIYA and address its liquidity crisis.

However, Horizon was uncomfortable with the claims of MRIYA’s minority shareholders.

As a result, following the EGM, Horizon had extensive correspondence with the minority shareholders of MRIYA’s holding company.

On 28 July, acting through an intermediary, Horizon proposed to buy out both minority shareholders, though on distinctly different terms.

As consideration for his 48 shares of MTV Ukraine’s holding company, Mr. Slim was offered a \$1,000,000 7-year note.

Horizon and its co-investor offered to acquire the 40 shares held by MTV Ukraine’s advisor for cash consideration of \$26,500.

The differential treatment of the two shareholders of MTV Ukraine violated the *pari passu* treatment of such shares agreed by Borisov and MRIYA TV.

Borisov’s agreement to grant shares to his advisor had been in the hands of his solicitors since November. In fact, his solicitor had registered those 40 shares in the name of MRIYA’s advisor in December 2005.

Yet for some unknown reason during all their negotiations with Horizon, Borisov and his solicitors chose to ignore, or simply conceal, the *pari passu* provisions Borisov had previously agreed with shareholders.

In their hit song “[Once in a lifetime](#)”, The Talking Heads’ David Byrne famously pondered:

*“And you may find yourself living in a shutdown shack
And you may find yourself in another part of the world
And you may find yourself behind the wheel of a large automobile
And you may find yourself in a beautiful house, with a beautiful wife*

And you may ask yourself: Well...How did I get here?"

How indeed? Horizon management, headed by Natalie Jaresko, may well have asked the same question after the abortive EGM of MTV Ukraine.

But in Horizon's case, unlike The Talking Heads, the answer was more prosaic. Horizon arrived at this juncture through a short chain of events involving agents acting as principals.

It all began on 7 October 2005, when MTV's then-employee Borisov and the financial advisor for MRIYA TV met in New York with, among others, a representative of a prospective investor other than Mr. Slim.

The meeting was held at the headquarters of MTV Networks where Borisov walked his tightrope, wearing two hats for MTV – one hat as their employee and one hat as their “independent” agent to launch MTV Ukraine.

Some months later, the so-called investor turned agent and had returned with a co-investor. He had gone to Kiev and enlisted Horizon's participation as lead investor to acquire control of MTV Ukraine and MRIYA TV.

But when Horizon and their agent/co-investor became aware of the *pari passu* provisions Borisov failed to disclose, Borisov pre-emptively terminated negotiations with Horizon.

By doing so, Borisov had single-handedly and effectively reinstated the pre-emptive rights of minority shareholders he and his fellow director had contrived to invalidate.

Borisov's only remaining option was to offer the holding company – and its associated liabilities – to the minority shareholders who would recapitalize and re-launch the business.

But the nature and extent of the liabilities proved impossible to describe, much less quantify. Borisov also demanded a golden parachute and a consulting contract.

At the holding company level, the only identifiable liability was £70,000 payable to Borisov's solicitors. They'd threatened to petition to liquidate the company, though they knew there were no assets to liquidate. However, the onerous burden on the holding company's directors, if found to be trading while insolvent, proved sufficient to compel Borisov to pay his solicitors in full and at once.

Acting through their own solicitors, MTV Ukraine's minority shareholders restated their view that winding up of MTV Ukraine's holding company was unnecessary and excessive given the modest liabilities of MTV's Licensee, MRIYA TV.

At the same time, solicitors acting for MTV Ukraine's minority shareholders notified MRIYA's solicitors that they objected to any action winding up the holding company or its affiliates absent any financial statements which set forth assets and liabilities of the group companies.

Presenting such financial statements was a common prior condition any insolvency court would demand before setting a date to hear a winding-up petition.

As Borisov let the days go by, he finally estimated total liabilities at the affiliate level of US\$268,369.16 plus £14,087.94.

The stated liabilities of MRIYA included all unpaid salaries, benefits and rents as well as accounts payable to bona fide vendors like GfK Media Research.

As a potential acquirer of the entities dba MTV Ukraine, Borisov's advisor remained prepared to assume those liabilities at par in exchange for a transfer of all shares held by Borisov's entity – and an indemnity against further claims.

The advisor also offered to fund immediately the \$1,500,000 delinquent Marks and Programming fees cited in MTVNE counsel Neil Miller's termination notice to MRIYA TV.

But a few days later, Borisov stated: "The companies have realized all of their assets and have unpaid liabilities totaling approximately US\$638,000."

As a potential buyer, the minority shareholders objected to the selective discharge of liabilities absent any financial statements for the holding company and its affiliates. Their solicitor advised that such an act could in some instances open them to unlimited liability.

When Borisov declared that neither MRIYA nor its parent had ever hired an accountant or auditor, because Borisov had "more important things to do", it was clear MTV Ukraine's financial statements would not be produced.

In lieu of that, Borisov offered a collection of bank statements, spreadsheets and unaudited statements of accounts payable.

The business was clearly short on cash and struggling to complete construction and kitting out of its studio in Kiev.

Furthermore, Borisov had been summoned by a civil court in Kiev for unpaid wages of employees he had terminated.

*"I can't seem ...
To face up to the facts;
I'm tense and nervous and I can't relax ...
qu'est-ce que c'est ?"*
– The Talking Heads, "Psycho Killer"

A few days later, Borisov declared to his advisor that he'd received a summons to appear before Ukraine's national tax authorities. They weren't likely to be pleased by his failure to fund employee pension accounts or to withhold taxes.

Yet in spite of all his troubles, Borisov somehow found the means to acquire a premium flat in Kiev, rumored to cost over \$250,000.

It was clear that if MTVNE wanted to make good on the promises of their February press conference and launch the channel in 2006, they would have to indemnify any party acquiring Borisov's holding company and its affiliates against a raft of potential claims.

MTV's Dean Possenniskie was very uncomfortable with this prospect.

He understood better than most what was going on in Kiev. Since the press conference in February, Dean had seconded MTVNE staff to help launch the business.

Now it was all coming to naught.

*"I'm an ordinary guy,
Burnin' down the house.*

*Hold tight, wait 'til the party's over;
Hold tight, we're in for nasty weather.*

*Here's your ticket.
Pack your bags.
Time for jumpin'
... overboard."*

– The Talking Heads, "Burnin' Down the House"

In addition to its national broadcasting license, MTV Ukraine had one unique and valuable intangible asset: a license with MTVNE which needed revisions before Slim, or anyone else, would bank the franchise. And the revised business plan remained unfinished.

If the business was to launch, MTVNE would also have to resist the temptation to terminate the license even though Borisov had never paid the licensing fee due MTVNE in January.

At the beginning of August, MTVNE began to feel it was time to abandon ship.

MRIYA began to appear like a black hole. Peering toward the event horizon, its minority shareholders refused to fund any additional cash without taking over the company and terminating any further role for Borisov.

At the same time, MTVNE management had concluded that terminating the MRIYA TV license and starting over with a new local operator capitalized by Horizon might be a more sensible plan.

Though the revised license terms of offer were acceptable to MTVNE and the minority shareholders who had offered to acquire MTV Ukraine, Borisov rejected the first offer his advisor made for Borisov's 1,360 holding company shares.

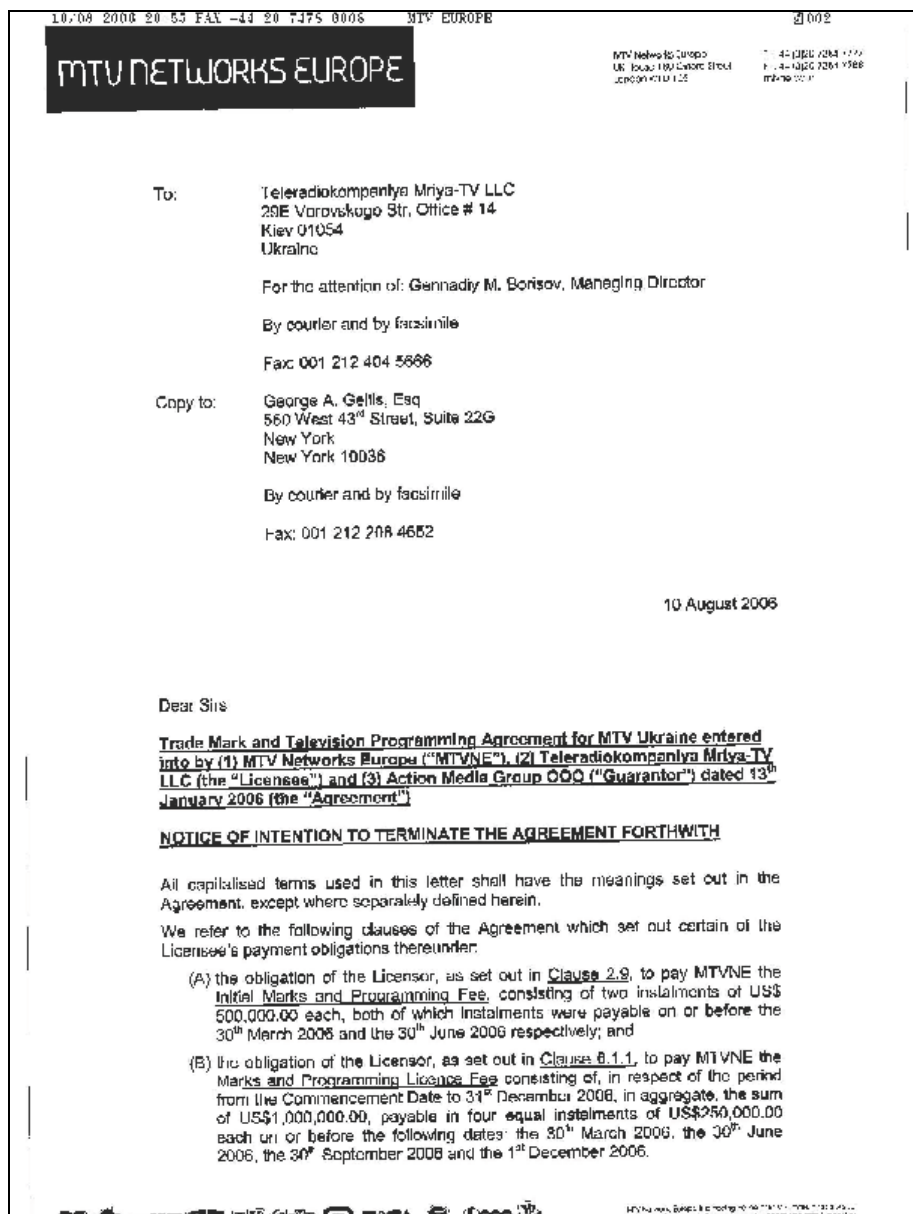
On 7 August 2006, the minority shareholder submitted a second offer to acquire all Borisov's shares in the holding company which controlled MTV Ukraine, subject to the new license proposed by MTVNE's Dean Possenniskie and Niall MacCormick.

The bid was for \$600,000 in three installments.

Three days later, Borisov rejected the second offer from his minority shareholder, though he had no a backup offer.

Borisov's bluff called, MTV Ukraine's lights went out – literally, as MRIYA's landlord had cut electrical power to their new offices and production studio for non-payment of rent.

MTVNE terminated the licensing agreement with MRIYA TV on 10 August 2006.



This sad story was detailed in an interview with a director of MTV Ukraine in the *Kiev Post* on 7 September 2006.

In that interview, Mykhaylo Rudenko, MTV Ukraine's former executive director, stated that Ukrainian company MRIYA TV became the licensee in Ukraine of MTVNE in December 2005, but the network revoked that license in August 2006.

Whatever happened next, it was clear that winding up the licensee would be a loss not only to the MTV family, but to all Ukrainians. That is, with the exception of the most unsavory sorts MTV would never wish to get hold of its license.

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SEPTEMBER 7TH, 2006

Mohyla head not in for politics

By LENA PLENKHANOVA

The president of Ukraine's prestigious Kyiv-Mohyla Academy, Vyacheslav Bryukhovetsky, is a staunch supporter of the Ukrainian language for his students and the country at large. In a Sept. 5 interview to the Post, Bryukhovetsky confirmed his membership of the pro-presidential Our Ukraine party, but denied that his political preferences influence the academy's policies. Bryukhovetsky, 59, recently turned down a seat in the Kyiv City Council, which he said is characterized by petty squabbling.

KP: How did you succeed to your current position as president of Kyiv-Mohyla Academy?

VB: In a certain sense, I became the president by accident. It was in 1991 that I came to understand that it was time to revive Kyiv-Mohyla Academy. At that time I was a politician. I came and issued Decree No 1 on Kyiv-Mohyla Academy, which did not even exist at the time. On Nov. 16, 1991, I became the rector of an academy that didn't exist. From the legal point of view it was nonsense. But at the time it was acceptable.



The president of Kyiv-Mohyla Academy, Vyacheslav Bryukhovetsky, above, says his Our Ukraine membership does not determine his academy's policy. (Konstantin Hironaka)

KP: Is it true that you only recently resigned as a member of the Kyiv City Council?

VB: At first I decided to withdraw my candidacy from Our Ukraine's parliamentary election list, in which I was

number four. Then I agreed to head Our Ukraine's Kyiv Council election list, and took part in the campaign. In my view, the Kyiv City Council is not exactly politics. I didn't go for the Verkhovna Rada because I would have had to leave Kyiv-

Mohyla Academy. Unfortunately, after the first meeting of the Kyiv City Council I understood that it is not possible to work there. There would be quarrels, squabbles and wrangling. I didn't think that it was worth my time. This is not even politics, but pseudo-political squabbles. This is why I resigned my seat.

KP: But are you now a member of the Our Ukraine party?

VB: Officially, yes. But I'm not involved in party activities very much.

KP: Does your political affiliation influence policies at Mohyla?

VB: No, it has nothing to do with the Academy.

KP: Kyiv-Mohyla Academy is well known as an educational institution that fiercely promotes the Ukrainian language.

VB: All the students can speak Ukrainian. But it's another matter as to whether they do speak it. It's up to them whether they want to speak this language in their personal lives. Of course, we encourage them to speak Ukrainian.

see MOHYLA, page 7

MTV project fails amid accusations

By VLAD LAVROV

A plan to give Ukraine its own MTV channel, which was promoted with great fanfare earlier this year, has collapsed amidst accusations of broken promises, misused funds and poor management.

MTV Ukraine was to have been the 122nd channel of London-based MTV Networks Europe - a unit of global cable networks and entertainment brands giant Viacom, and Europe's largest 24-hour music television network - with a target launch date originally scheduled for sometime this month.

MTV Networks Europe is a division of MTV Networks International, which describes itself as the largest television network of youth channels in the world, broadcasting on all continents and reaching an audience of nearly one-and-a-half billion people.

"When MTV Ukraine launches in September this year, it will be over two years in its planning, and I have great confidence that with our local partner and general manager [of MTV Ukraine], Genadiy Borisov, we will launch a channel that will set new standards in quality and creativity, both in Ukraine and our European network of channels," Dean Posenminkie, MTV Networks Europe's general manager for emerging markets, was quoted as saying in a Feb. 13 press release issued by the network.

The announcement was followed by a widely promoted public casting of presenters for MTV Ukraine's news programs in late April.

Now, with the hoopla over, and the MTV Ukraine project apparently canceled, three of the project's former executives are blaming the failure of MTV Ukraine on the project's former general manager, Borisov, accusing him of poor management and lack of flexibility in dealing with the project's investors.

According to Mykhailo Rudenko, MTV Ukraine's former executive director, Ukrainian company Mriya TV became the licensee in Ukraine of MTV Networks Europe in December 2005, but the network revoked that license in August 2006.

Rudenko said that Mriya TV was simply unable to pay the network's license fees, as it failed to get the promised investments needed to continue with the project.

Rudenko confirmed that MTV Ukraine was originally to go on air sometime this fall. According to the MTV license, the channel was to be broadcasting no later than Dec. 18 this year.

see MTV, page 5

Parliament divisions return after summer break

By ORYSIA KULICK

Lawmakers returned on Sept. 5 following their summer vacation, but the political gridlock that had characterized the legislature's first session, which almost ended in President Viktor Yushchenko's dismissal of the parliament, might again be heating up for Ukraine's early Indian summer.

In a sign that the inter-factional negotiations and intrigues witnessed in the wake of the March 26 general elections are still active, MPs immediately postponed their next working session until Sept. 12, opting instead to spar publicly over well-worn issues. Heading the list of these issues is the composition of the Rada's majority coalition and continued efforts by the party in power, or the Donetsk-based Party of Regions, to curtail the prerogatives of an already weakened presidency.

Parliamentary deputies appear to be far from the stability and cooperation that they promised would come from a shaky alliance patched together in early August between President Yushchenko and his hitherto arch enemy Viktor Yanukovich, leader of the Donetsk-based Party of Regions, and now the country's new prime minister.

The alliance ushered in a Region-led government that is now not only solidly in control of the country's economic

and energy policies, but also holds a majority of the posts in the Cabinet of Ministers, which on Aug. 30 moved to reduce the president's direct levers of influence over its work.

The new Cabinet of Ministers, which is comprised of many powerful and controversial Region members, like deputy prime minister Andriy Klituyev and the former head of Naftogaz Ukrainy Yuriy Boyka passed an act that took away the president's ability to

and current Minister of Justice, stressed on Aug. 30, "No lawmaker, not to mention the Cabinet of Ministers, can in any way diminish or increase presidential powers. The only government body that can change the powers of the president is the Verkhovna Rada... by introducing changes to the Ukrainian Constitution."

Yuriy Klituchkovsky, the president's representative in parliament, also underscored on Aug. 30 that "it is not the Cabinet of Ministers that decides

"NO LAWMAKER, NOT TO MENTION THE CABINET OF MINISTERS, CAN IN ANY WAY DIMINISH OR INCREASE PRESIDENTIAL POWERS..."

-Roman Zvarych, Minister of Justice

suspend Cabinet decisions, one of the few ways in which he can check the Cabinet under amendments to the constitution that came into force in January 2006.

This sparked a vociferous reaction from some members of the pro-presidential Our Ukraine and also called into question the extent to which the Donetsk-dominated Cabinet is ready to "cooperate" with the president and his supporters in parliament.

Roman Zvarych, Our Ukraine deputy

how the president of Ukraine should act. That the Cabinet of Ministers is under the control of the president of Ukraine flows directly out of the text of the Constitution."

Cabinet spokesman Oleksandr Lazynovych countered that "although we curtailed the president's right to issue instructions to the Cabinet, he is left with the possibility of challenging decisions made by the Cabinet of Ministers in the courts."

That the Cabinet of Ministers has

moved to further curtail Yushchenko's powers is a concern, especially now that the president cannot dismiss individual ministers, the prime minister, or the Cabinet in its entirety, as was previously the case under the un-amended Constitution.

Yushchenko had the constitutional amendments that came into force in January foisted on him as he battled with Yanukovich for the presidency during the country's 2004 Orange Revolution.

Now, the divided parliament must decide whether to pass legislation that would more clearly delineate and protect the spheres of influence of the president, as well as the Cabinet and the parliamentary opposition.

Various drafts are currently in the legislative pipeline waiting to be introduced, discussed and voted on.

For example, both Regions and the oppositikon BYUT faction have submitted draft laws on the opposition in recent months.

And in an encouraging sign, on Sept. 5, Parliament Speaker Oleksandr Moroz, who controls the agenda set before the legislature, called for parliamentary deputies to adopt a law regulating the interaction between the parliament and the Cabinet.

see RADA, page 5

ON THE MOVE



Alexander Kolyakyn has been appointed Service Line Leader for Supply Chain Management at Deloitte & Touche Ukraine. Kolyakyn will be responsible for introducing this new consulting service line to the Ukrainian market with the support of the Deloitte global network of Supply Chain experts. Deloitte Ukraine provides a full range of services to its clients across four core disciplines: consulting, audit, tax and financial advisory services. In 1999-2006, Kolyakyn worked for Procter & Gamble, gaining practical experience working in a number of positions in Procter & Gamble's supply network and operations departments, including as Plant Planning Manager and Operations Department Manager. Kolyakyn graduated from Kyiv Polytechnic Institute with a degree in Intellectual Decision-Making Systems.



Yevgeniy Bessarabov has been appointed to the position of Finance Director at the Kiev-based law firm Magister & Partners. Prior to joining Magister & Partners, Bessarabov was Finance Director for Reacom Ukraine. Bessarabov has extensive experience in management, accounting and finance from his work at various production and trade companies. He also has a lot of experience in financial management systems implementations and transformation of local accounting systems to US/UK GAAP and IFRS. Bessarabov has worked on a number of successful projects on organization of western-type management accounting and financial systems. He received his economic degree from the International Institute of Business and Law Management and recently received a degree in Management at Kyiv National Trade and Economic University.



Stan Abbeles has been appointed Acting General Director of the telecommunications company Farinvest. Farinvest is a member of System Capital Management holding company, owned by Ukraine's Donetsk-based magnate and MP Vladimir Anshin. Prior to joining Farinvest, Abbeles held the position of chief operations director for Russian telecommunications company Golden Telecom. From 1991 to 1996, he headed Russia's Leninsk, a Russian-based telecommunications company. From 1986 to 1991, Abbeles worked for Alcatel Bell's Chinese office in various top management positions. Abbeles has 20 years of experience working in the telecommunications industry and extensive experience developing and implementing unified infrastructure strategies within the business.



Rene Schlegel has been appointed General Manager of the German-based company Robert Bosch in Ukraine. Schlegel previously served in this position in 2002 and is reassuming his responsibilities in Ukraine in addition to his functions as general manager of Bosch Russia and Bosch Belarus. Bosch Group is a leading producer of motor vehicle and industrial technologies, consumer goods and construction technologies. Founded in 1886 as the Workshop of Precision Mechanics and Electric Engineering, today Bosch Group includes a production, trade and service network of 252 subsidiaries in more than 250 countries around the world. Schlegel, originally from Lucerne, Switzerland, has worked with Bosch in a variety of functions and countries since 1986. He graduated from the University of Chicago and lives with his family in Kyiv and Moscow.



Ernest Arutyunyan has been appointed President for media operations of ADV Ukraine Group, a group of companies providing marketing communications services. Arutyunyan has more than 15 years of experience in the advertising business. Prior to his current appointment, he was ADV Ukraine Group's media director. From 2000 to 2002, Arutyunyan was the president of ADV Belarus. Before joining the company, Arutyunyan was Chief Executive Officer of IP Minak (the Belarusian subdivision of IP Group, which forms part of the French media group Havas). From 1991 to 1993, Arutyunyan worked as editor for the advertising department of the State TV and Radio Broadcasting Company of Belarus. In 1987, Arutyunyan graduated from Belarus State University with a degree in Journalism.

On the Move is prepared by the Kyiv Post editorial staff. The Kyiv Post does not accept payment for news items and photographs included in this section. Send news via e-mail to piekhanova@kypub-lications.com, or contact Lena Piekhanova at 496-1111.

MTV Ukraine stopped in its tracks



Mykola Rudenko, former executive director of MTV Ukraine, says that the Mirya TV company, which was supposed to broadcast MTV Ukraine, lost its license and ended up with debts of \$200,000 as funds from an investor dried up. (Konstantin Pimenko)

MTV, continued from page 3
According to Rudenko, of the \$12 million that Boriov claimed to have secured for the launch of MTV Ukraine from a mystery investor, whose identity neither Rudenko nor Boriov have been willing to disclose, only \$1 million had actually been received. The rest, Rudenko said, was never given to Boriov, as he and the investor were apparently unable to agree on the issue of control over both the company's management and its board of directors. "I believe that MTV should be more scrupulous in selecting their

"After we received the Ukrainian broadcasting license in January, we began actively recruiting people, but then it became apparent that all we had was \$1 million... which was going quickly," Solomakha said.

He said that as of May 20, none of Mirya TV's pending had actually gone toward buying a single piece of studio equipment, adding that the standard delivery time for television equipment is 60 days after the signing of a purchase agreement.

Rudenko said that around 30 people from the local TV market had been hired starting in February, with the average salary at the company for the MTV Ukraine project coming to \$1,000 a month. He said that although staff were paid on time for three months, Mirya TV began laying off employees in May.

Lysyak said that due to the lack of funding for the project, Mirya TV had incurred approximately \$200,000 in debts as of May. That same month, all three executives — Rudenko, Lysyak and Solomakha — were fired from the company for "violation of corporate culture." The three are currently suing Mirya TV in a Kyiv district court over the decision, and say they would be willing to be part of MTV Ukraine if a new licensee is selected. According to Rudenko, they also keep in touch with the project's mystery investor.

Boriov, a U.S. citizen who has worked for MTV Networks' headquarters in New York for the last six years, refused to comment on the current situation with MTV Ukraine.

However, Boriov did tell the Post that he is no longer the channel's general manager.

Asked about former colleagues Rudenko, Lysyak and Solomakha, Boriov said that "these employees were released due to illegal actions, and are currently the subject of a pending investigation."

MTV Networks Europe did not respond to the Post's requests for comment regarding the collapse of the MTV Ukraine project by the time the Post went to press.

Government, president to continue power duel

RADA, continued from page 3

"It is the duty of the parliament and it must be done in the next few months or even weeks," Moroz said. Indeed, the constitutional reforms adopted during the Orange Revolution ceded parliament considerable powers, which lawmakers should now more clearly define for themselves and the executive branch.

Whether they do will reveal much about the intentions and future of the majority coalition, which currently includes the Regions, the Socialists and the Communists.

Although a significant percentage of Yushchenko's parliamentary faction collaborated with the majority in voting in Regions' Yankovych as premier early last month, Our Ukraine is still not a formal member of the coalition.

Moreover, continuing tension as a

result of the inability of Our Ukraine to reach a workable compromise with the existing majority could mean that legislation clarifying the roles of the executive and legislative branches of power will continue to be stalled, making all decisions by parliament contingent on back-room deals.

In the meantime, both sides are sending mixed signals to the public. Our Ukraine recently cited a memorandum of unity signed with Regions and the Socialists, but not the Communists, on Aug. 3, the day before Yushchenko confirmed Yankovych's candidacy for prime minister, joining a coalition without the Communists would be politically less risky for the pro-presidential party.

However, parliamentary speaker Moroz stated on Sept. 4 that the Communists would not be "driven out of the Coalition."



Ukrainian Prime Minister Viktor Yanukovich, left, and deputy prime minister Andriy Khnyuk, right, have a discussion during the opening of the second session of the fifth convocation of the Ukrainian parliament on Sept. 5. Cabinet members and the heads of regional councils and regional administrations, as well as judges were present. (UNIAN)

“Same as it ever was”: MTV’s Principal – Agent Issue

Viacom’s 10-K for 2005 contains the following statement:

NOTE 9. RELATED PARTY TRANSACTIONS

NAI through its wholly-owned subsidiary NAIRI, Inc. is Viacom's controlling stockholder, and Sumner M. Redstone is the controlling stockholder of NAI and Viacom's Executive Chairman of the Board and Founder. NAI and/or NAIRI also own controlling interests in various other companies, some of which do business with Viacom. These companies include CBS Corporation and Midway Games, Inc., as further described below.

NAI licenses films in the ordinary course of business for its motion picture theaters from all major studios including Paramount. During the nine months ended September 30, 2006 and 2005, NAI made payments to Paramount in connection with these licenses in the aggregate amounts of approximately \$8.7 million, and \$11.2 million, respectively.

NAI and Mr. Redstone owned in the aggregate approximately 88% of the common stock of Midway Games Inc. ("Midway") as of September 30, 2006. Midway places advertisements on several of Viacom's cable networks from time to time. During the nine months ended September 30, 2006 and 2005, Midway made payments to MTV Networks of approximately \$3.1 million and \$2.8 million, respectively. The Company believes that these transactions were no more or less favorable to the subsidiaries than they would have obtained from unrelated parties. The Company may continue to enter into these and other business transactions with Midway in the future.

For information on NAI and NAIRI's participation in the Company's stock repurchase program, see *Note 3. Stock Repurchase Program*.

Like father, like son, Viacom’s holding company structure was the house model for Borisov’s MTV Ukraine.

And Viacom evidently regarded it’s deal with Borisov was “no more or less favorable to the subsidiaries [such as MTVNE] than they would have obtained from unrelated parties.”

The consequences of such related party transactions have been broadly examined by students, economists, lawyers and psychologists, to say nothing of company directors.

According to Wikipedia:

“In economics, the problem of motivating one party to act on behalf of another is known as ‘the principal-agent problem’.

The principal-agent problem arises when a principal compensates an agency for performing certain acts that are useful to the principal and costly to the agent, and where there are elements of the performance that are costly to observe.

This is the case to some extent for all contracts that are written in a world of information asymmetry, uncertainty and risk. Here, principals do not know enough about whether (or to what extent) a contract has been satisfied.

The solution to this information problem – closely related to the moral hazard problem – is to ensure the provision of appropriate incentives so agents act in the way principals wish.

In terms of game theory, it involves changing the rules of the game so that the self-interested rational choices of the agent coincide with what the principal desires.

Even in the limited arena of employment contracts, the difficulty of doing this in practice is reflected in a multitude of compensation mechanisms ('the carrot') and supervisory schemes ('the stick'), as well as in critique of such mechanisms

The information asymmetry that exists between shareholders and the Chief Executive Officer is generally considered to be a classic example of a principal-agent problem.

The agent (the manager) is working on behalf of the principal (the shareholders), who does not observe the actions of the agent. This information asymmetry causes the agency problem.

In Viacom's 10Q for the quarter ended 31 October 2006, the Notes to Consolidated Financial Statements states:

“The Company also acquired additional interests in three entities previously accounted for under the equity method of accounting. In September 2006, the Company completed the acquisition of the remaining 63.8% interest in MTV Japan for \$84.6 million in cash consideration. In August 2006, the Company acquired the remaining 58% interest of BET Interactive, the owner of the BET.com for \$22.7 million in cash consideration. In addition, on June 1, 2006, the Company acquired an additional ten percent interest in Nickelodeon UK Limited ("Nick UK") for \$8.9 million in cash consideration. Previously, Nick UK was a fifty-fifty joint venture with BSkyB. With the additional interest, the Company obtained control of Nick UK and began consolidating its operations as of June 1, 2006.”

Discuss the following:

1. Using the revised business plan for MTV Ukraine, and after adjusting for market size and estimated household income relative to Japan, how would you value a 94% holding in MTV Ukraine in September 2006?
2. Was Borisov irrational to hold out for a better offer than that presented by a minority shareholder?
3. **Based on the new licensing agreement proposed by MTV to the minority shareholder (absent MTVNE's original purchase option),** what terms would you have offered Borisov in the days before MTV terminated the original license agreement?

“Into the Blue Again; After the Money’s Gone”

By the end of 2005, leading media companies realized the business models which had sustained them for decades were, if not broken, certainly under severe pressure.

Soaring production costs, declining audience share and digital video recorders that enabled consumers to avoid appointment TV and skip commercials were undermining the television business.

DVD sales – the main source of revenue for the film industry – were slowing after years of double-digit growth.

The threat of piracy, the need to find new growth abroad and internet-based competitors like Google’s YouTube and New Corp’s MySpace were raising the temperature in the boardrooms at NBC, Disney and Viacom.

“There will probably be more changes in the next five years than there have been in the last 50 years.”

– Jeff Zucker, CEO NBC Universal
6 February 2007

The challenge faced by traditional media companies remained immense: how to keep their core business thriving at a time when audiences and advertising dollars were migrating to new media.

And as MTV recognized, mobile media was the hottest addressable platform for the young.

By the end of 2006, Ukraine reported over 105% mobile penetration. Ukraine’s youthful demographic and large television audience remained immensely attractive to MTV executives and their media buying customers.

With about 46 million pair of eyeballs, the prospect of resurrecting MTV Ukraine proved irresistible. Ukraine was the sole remaining European market MTVNE hadn’t licensed.

But where to begin?

*“And you may ask yourself –
How do I work this?
And you may ask yourself –
Where is that large automobile?”*

Where indeed? By year-end, MRIYA still owned a valuable Ukrainian national broadcasting license which could take years to reproduce.

Letting the days go by was not an option for MTV Ukraine.

Time was of the essence if the brand was to remain untarnished in Ukraine.

And some assembly would most certainly be required if MTV was to resurrect the network.

Unfortunately for MTV's plans, MRIYA's national broadcast licenses were revoked by Ukraine on 13 January 2007.

Replacing these national licenses would be difficult after all the broken promises since 2005 including, not least, the big press conference by MTV in February 2006.

With Borisov, MacCormick, Possenniskie, and now Guild, well and truly gone, the remaining MTV executives would have to pick up the pieces.

And one of the most important pieces would be \$9 million of funding available from Horizon Capital.

*And you may tell yourself –
This is not my beautiful house!
And you may tell yourself –
This is not my beautiful wife!*

Perhaps Horizon and MTVNE, as licensor, could simply direct their presumptive “new licensee” owned by a talented media personality, to hire top talent and rebuild the studio.

Under this scenario, the licensee entity might even include seasoned senior executives of, and advisors to, Ukraine's Studio 1+1, a division of Ron Lauder's highly-regarded Central European Media Enterprises. Perhaps some of the former employees of MTV Ukraine too.

At long last, MTVNE could book their license fee and simply rely on local management of the new licensee to deal with the mess left behind by their former executives – and the original licensee entity MTVNE also thought they once controlled.

Voila! MTV Networks Europe would finally be complete.

*Letting the days go by; let the water hold me down
Letting the days go by; water flowing underground
Into the blue again; after the money's gone
Once in a lifetime; water flowing underground.*

*Same as it ever was...Same as it ever was...Same as it ever was...
Same as it ever was...Same as it ever was...Same as it ever was...
Same as it ever was...Same as it ever was...”*

– The Talking Heads, “Once in a Lifetime”

DATED THE ____ DAY OF AUGUST 2006

MTV NETWORKS EUROPE

AND

[LIMITED LIABILITY COMPANY TELERADIOKOMANIYA MRIYA TV]

AND

[LIMITED LIABILITY COMPANY ACTION MEDIA GROUP]

TRADE MARK AND TELEVISION PROGRAMMING AGREEMENT
FOR
MTV UKRAINE

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Subject to Contract**

TRADE MARK AND TELEVISION PROGRAMMING AGREEMENT FOR MTV UKRAINE

Trade Mark and Television Programming Agreement for MTV Ukraine with Commencement Date the _____ day of _____ 2006

BETWEEN

- (1) **MTV NETWORKS EUROPE**, a US partnership between MTV Networks Europe Inc. and Viacom Networks Europe Inc. constituted under the laws of the State of Delaware, USA, whose principal place of business is UK House, 180 Oxford Street, London W1D 1DS ('**MTVNE**'); and
- (2) **LIMITED LIABILITY COMPANY TELERADIOKOMPANIYA "MRIYA-TV"**, a legal entity registered under the laws of Ukraine with registered number 33790240 and registered office at 29 E Vorovskoho Str, Office #14, Kyiv 01054, Ukraine ("**Licensee**") and
- (3) **LIMITED LIABILITY COMPANY ACTION MEDIA GROUP**, a legal entity registered under the laws of Ukraine with registered number 33749873 and registered office at 11-B Marshala Rybalka Str, Kyiv 04116, Ukraine ("**Guarantor**").

WHEREAS

- (A) MTVNE and its Affiliate(s) (as defined below) own and operate music television channels around the world known as 'MTV: MUSIC TELEVISION', including MTVNE's MTV European service.
- (B) Licensee wishes to produce, to operate and to transmit and/or to procure transmission, via digital and/or analogue cable or satellite television, a 24 hours per day, 7 days per week, new music television channel in the Territory, to be called MTV Ukraine, predominantly in the relevant Authorised Language targeted specifically at young people in the Territory. Licensee is a subsidiary of the Guarantor, the Guarantor owning one hundred per cent (100 %) of the share capital in the Licensee as at the date of this Agreement.
- (C) MTVNE and/or its Affiliate(s) controls the rights in the Territory to certain music-related and other programming suitable for use as part of Licensee's proposed new channel, and to certain trade marks, service marks and copyrights.
- (D) Subject to the Conditions Precedent set out at Clause 2 below and in accordance with the terms and conditions of this Agreement, the parties wish to set out their agreement hereunder for MTVNE to provide the Licensee with trade marks, know how and certain related services in accordance with the terms and conditions of this Agreement solely to enable the Licensee to create, to produce, to operate, to transmit and to distribute the Channel via the Licensed Media in the Territory using the trade marks hereinafter described, and to make use of such trade marks, know how and any related services and the MTV Website Content by means of Online or Internet Based Delivery as defined and more fully described in this Agreement. MTVNE is willing to enter into this Agreement only if all of the Licensee's obligations herein are guaranteed by the Guarantor. Accordingly this Agreement hereby reflects the parties' agreement with regard to:
- (i) the conditions precedent set out in Clause 3, which include, inter alia, certain agreements concerning technical and operational services and distribution agreement(s) required to be executed by the Licensee;

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- (ii) the licensing by MTVNE to Licensee of certain television programming rights and certain trade marks, service marks and copyrights for use by the Licensee in its proposed new channel and as expressly permitted herein;
- (iii) the licensing by MTVNE to Licensee of certain website content for use by the Licensee in operating the Website registered in the name of MTVNE or one of its Affiliates;
- (iii) the parties arrangements in relation to certain advertising and distribution revenues derived from the proposed new channel and Website; and
- (iv) the Guaranty from the Guarantor to MTVNE and its successors and assigns made from the Commencement Date in accordance with Clause 41 below.

NOW, THEREFORE, in consideration of the premises and other covenants and conditions contained herein, the parties hereto agree as follows **THE PARTIES AGREE** as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In addition to the terms defined elsewhere in this Agreement and unless the context otherwise requires, the following terms shall have the following meanings in this Agreement:

"**Advertising**" means Pan Euro Advertising and Local Advertising;

"**Affiliate(s)**" means (i) in relation to the Licensee and Guarantor another person who controls the Licensee or Guarantor, or an entity which is either controlled by the Licensee or Guarantor or by a person who controls the Licensee or Guarantor; and (ii) in relation to MTVNE, Controlled MTV Affiliates and Non-Controlled MTV Affiliates, but not Channel Licensees.

"**Agreement**" means this agreement, as executed in the form of a deed by the Licensee and the Guarantor, as amended, supplemented or otherwise modified from time to time and shall include the Transmission and Technical Services Schedule;

"**Ancillary Activities**" means all commercial activities undertaken by the Licensee directly or through a third party acting on behalf of the Licensee relating to the Channel and/or Website that are beyond the scope of rights expressly granted under this Agreement, including but not limited to, any sales of and revenue from CD sales, merchandising and Channel/Website branded events in the Territory, but shall not include, for the avoidance of any doubt SMS or other interactive applications, which will be subject to separate agreement;

"**Ancillary Revenue**" means all revenue invoiced by the Licensee (excluding Channel Distribution Revenue, Licensee Channel Advertising Revenue or Licensee Website Advertising Revenue) after deduction of all taxes and other fiscal duties that the Licensee is obliged to charge, which is derived directly or indirectly from the transmission, distribution and operation of the Channel via the Licensed Media in the Territory or from any Ancillary Activities that may be consented to and agreed in writing by MTVNE pursuant to this Agreement. This shall include, without limitation, any revenue from CD sales, merchandising and Channel-branded events;

"**Authorised Languages**" shall mean the English and Ukrainian languages and with subtitles being transmitted as appropriate in the Territory and, to the extent as absolutely necessary, reasonable and as permitted by law, Russian language in interviews (where people do not speak Ukrainian), concerts / shows and clips by Russian and Ukrainian artists in the Original Programming and representing a maximum of fifteen per cent (15%) of Original Programming (or Original Mobile Content as the case may be);

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“Barter Agreements” means agreements relating to the exchange of Local Advertising space on the Channel for advertising space on alternative television channels or in alternative media, or for other goods or services;

“Bug” means one of the Marks, as nominated by MTVNE, which shall appear on screen at all times during transmission of the Channel (other than during the transmission of any Advertising transmitted therewith) in order to identify the Channel;

“Business Day” means a day which is a usual business day in the United Kingdom (unless expressly stated otherwise hereunder);

“Cable Operators” means cable operators who operate and manage cable television systems in the Territory to which at least one hundred (100) households are connected;

“Channel” means a twenty four (24) hours per day, seven (7) days per week, music television channel to be produced by the Licensee, subject to the provisions of this Agreement, in the Authorised Languages, as appropriate, targeted specifically at viewers in the Territory and including MTV Programming and Original Programming, to be called **“MTV Ukraine”**;

“Channel Distribution Revenue” means all revenue invoiced by the Licensee from operators of Licensed Media with respect to the distribution of the Channel via such Licensed Media in the Territory, after deduction of all taxes and other fiscal duties that the Licensee is obliged to charge;

“Channel Licensee” means any entity that is licensed by MTVNE or a Controlled MTV Affiliate to produce and operate MTV-branded television programming service(s) and/or website(s), but in which neither Viacom Inc., MTVNE nor any Controlled MTV Affiliate hold any ownership interest, whether controlling or otherwise;

“Commencement Date” means the effective date of this Agreement being the date shown above and when this Agreement has been executed by all parties;

“Commercial Subscribers” means any subscriber who owns or operates a Place of Multiple Occupation;

“Communal Meeting Place” means any premises, establishment or location in the Territory (whether operated for commercial gain or otherwise), which is a communal meeting place (including, without limitation, restaurants, clubs, bars, public houses and health clubs);

“Communal Subscribers” means any subscriber who owns or operates a Communal Meeting Place;

“control” means (a) direct or indirect ownership of such part of the issued share capital or such other interest in the relevant entity as gives a person or organisation majority voting rights in respect of such entity, or (b) the ability to secure that the affairs of the relevant entity are conducted in accordance with that person’s wishes (due to the holding of shares or the possession of voting power or any other power), and **“controlling”** and **“controlled”** shall be construed accordingly;

“Controlled MTV Affiliate” means any entity directly or indirectly controlled by Viacom Inc.;

“Copyrights” means the copyrights subsisting in the Marks, the MTV Programming, the MTV Website Content and elements or combinations of elements contained therein, and, for the avoidance of doubt includes formats incorporated in any MTV Programming, and the “look and feel” of any MTV Website Content;

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“DTH” means the technology of direct-to-home satellite television transmission;

“Dubbing Materials” has the meaning set out in Clause 10.1;

“Event of Force Majeure” has the meaning set out at Clause 36.1;

“Gross Licensee Revenue” means the Ancillary Revenue, the Channel Distribution Revenue, the Licensee Channel Advertising Revenue and the Licensee Website Advertising Revenue invoiced by the Licensee and/or its Affiliates prior to deductions as expressly permitted under this Agreement;

“Guaranty” means the unconditional and irrevocable guarantee made by the Guarantor (as primary obligor and not merely as surety) to MTVNE and its successors and assigns from the Commencement Date and as set out below at Clause 41;

“Initial Marks and Programming Fee” means the fees payable by Licensee to MTVNE in the sum of one million United States Dollars (US\$1,000,000.00) in accordance with Clause 2.9 below;

“Interactive Services” means services whereby a viewer of the Channel directly controls the individual elements of the programming delivered and the timing of the delivery of such individual elements, which shall also mean any interactive elements and/or interactive applications, enhanced or otherwise (but for the avoidance of doubt shall not include viewer call-in programming);

“Launch Date” means the date upon which Licensee commences the transmission of the Channel in the Territory, being 1 December 2006 or such other date as may be expressly agreed to in writing by the parties;

“Licensed Media” means analogue and/or digital cable, satellite, DTH, SMATV, MMDS, and terrestrial television and, subject to MTVNE or its Controlled MTV Affiliate (s) wholly owning or controlling the necessary rights, XDSL or ADSL platforms for television only as exists as media at the date of this Agreement. It does not, for the avoidance of doubt, include any other digital media such as mobile (except as may be agreed separately as part of any agreement between MTVNE and the Licensee pursuant to Clause 7.5 or 7.6 below); Online or Internet Based Delivery or any media or form of distribution that is considered by consumers as directly substitutable for television, and SMS or other interactive applications or Interactive Services, whether in existence now or in the future;

“Licensee Channel Advertising Revenue” means all sums invoiced by Licensee and its Affiliate(s) in respect of the sale of Local Advertising on the Channel, after deduction of any VAT or other taxes that Licensee is obliged to charge, and any bona fide third party advertising commissions actually paid to third parties (maximum permitted deduction for such commission being fifteen per cent (15%) of the gross revenue minus any VAT or other obligatory taxes of each respective contract), but otherwise without deduction of any payments to third parties, Affiliate(s) or any governmental or statutory body;

“Licensee Shareholder” means any Person holding any Shares in a Relevant Entity;

“Licensee Website Advertising Revenue” means all sums invoiced by Licensee and its Affiliate(s) in respect of the sale of Local Advertising on the Website, after deduction of any VAT or other taxes that Licensee is obliged to charge, and any bona fide third party advertising commissions actually paid to third parties (maximum permitted deduction for such commission being fifteen per cent (15%) of the gross revenue minus any VAT or other

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obligatory taxes of each respective contract), but otherwise without deduction of any payments to third parties, Affiliate(s) or any governmental or statutory body;

“**Local Advertising**” means advertisements and sponsorship transmitted on the Channel only, or appearing on the Website only and shall include any Barter Agreements made pursuant to Clause 22.1;

“**Marks**” means the ‘MTV: MUSIC TELEVISION’ name, logos and trade marks set out in Schedule 1 (including any translations thereof into the Ukrainian Language), and such other MTVNE or MTV Networks trade marks whether registered or unregistered, as may be contained or included in the MTV Programming and/or MTV Website Content provided to Licensee hereunder, and the goodwill associated therewith, including any translations, transliterations, registrations, and applications therefore. For the avoidance of any doubt Marks shall include any logo and/or word mark for “**MTV Ukraine**” as provided by MTVNE;

“**Marks and Programming Licence Fee**” means the fees payable by Licensee to MTVNE in accordance with Clause 6 below;

“**MTV Channels**” means any television channel, which is distributed by or on behalf of MTVNE or its Affiliate(s) and Channel Licensees in Europe (including, without limitation, MTV European, MTV Central, MTV Italia, MTVF, MTV Polska, MTVNL, MTV España, MTV Nordic, MTV Russia, MTV UK & Ireland and any other similar service launched by MTVNE, its Affiliate(s) and Channel Licensees from time to time), but excluding the Channel;

“**MTV Digital Media Deal**” has the meaning set out in Clause 7.5;

“**MTVNE Channel Advertising Revenue**” means all sums invoiced by MTVNE and its Affiliate(s) in respect of the sale of Local Advertising on the Channel to Non-Territory Entities, after deduction of VAT or any other taxes which MTVNE is obliged to charge, and any bona fide third party advertising commissions actually paid to third parties or other deduction or payments to third parties, Affiliate(s) or any governmental or statutory body;

“**MTV European**” means MTVNE's twenty four (24) hours per day seven (7) days per week English language music television service currently known as “MTV European” distributed by or on behalf of MTVNE *inter alia* in the Territory;

“**MTV Networks**” means MTV Networks a division of Viacom International, Inc., and an Affiliate(s) of MTVNE;

“**MTV Programming**” means the following programming and programme elements (including the Copyrights therein) (a) to the extent that MTVNE or its Controlled MTV Affiliate(s) wholly own and control the rights necessary to license the television exhibition rights of such programming via the Licensed Media in the Territory as part of the Channel; and (b) as to which neither MTVNE nor its Controlled MTV Affiliate(s) will be required to make a payment to a third party on any direct or incremental basis in connection with the exhibition thereof in the Territory via the Licensed Media as part of the Channel; and (c) provided that said programming and programme elements are produced for initial exhibition on MTV Channels by MTVNE or Controlled MTV Affiliate(s):

- (i) MTV Channels identifications - consisting of art breaks, short-form animations and promotional pieces used as station identifications on the MTV Channels;
- (ii) all original programming produced by MTVNE, MTV Networks or their Controlled MTV Affiliate(s), or commissioned from third parties in the ordinary course of business by MTVNE or MTV Networks, and which is part of the routinely-exhibited programming of

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the MTV Channels, including, but not limited to, longform programming, programme formats, V.J. segments, “MTV News” segments and weekly newscapes;

- (iii) materials created and/or produced by MTVNE or any of its Controlled MTV Affiliate(s) expressly for Licensee; and
- (iv) any other materials which MTVNE, in its sole discretion, may agree in writing to license to Licensee from time to time for exhibition as part of the Channel;

“**MTVNE Website Advertising Revenue**” means all sums invoiced by MTVNE and its Affiliate(s) in respect of the sale of Local Advertising on the Website to Non-Territory Entities, after deduction of VAT and any other taxes which MTVNE is obliged to charge, and any bona fide third party advertising commissions actually paid to third parties or other deduction or payments to third parties, Affiliate(s) or any governmental or statutory body;

“**MTV Website Content**” means all content (including all Copyrights therein) supplied by MTVNE to Licensee from time to time for inclusion on the Website, including all such content created and/or produced by MTVNE or any of its Controlled MTV Affiliate(s) expressly for Licensee;

“**MTV Websites**” means any Internet website operated by or on behalf of MTVNE, its Affiliate(s) and Channel Licensees in Europe (including, without limitation, www.mtv.de, www.mtv.it, www.mtv.fr, www.mtv.pl, www.mtv.nl, www.mtv.es, www.mtve.com, www.mtv.co.uk and any other similar website launched by MTVNE its Affiliate(s) and Channel Licensees from time to time), but excluding the Website;

“**Non-Controlled MTV Affiliate**” means any entity in which Viacom Inc. or any Controlled MTV Affiliate holds, directly or indirectly, any ownership interest that is not a controlling interest, and which is licensed by MTVNE or any Controlled MTV Affiliate to produce and operate MTV-branded television programming service(s) and/or website(s);

“**Non-Territory Entities**” means Persons who are not Entities registered in the Territory;

“**Online or Internet Based Delivery**” shall mean delivery to Internet browsers or software with browser functionality, even if such browsers or browser functionality are operating through a set-top box or a television set and/or are used to deliver video clips or video programs. The terms “browsers” and “browser functionality” for purposes of the foregoing shall refer to software consisting of or containing a graphical user interface which (i) provides the capability for the user to stream video and related content and/or exercise substantial control over the selection, timing, sequence and configuration of content being viewed, when such software is used to view content that has been specifically adapted to be subject to such user controls and (ii) is not primarily intended to be viewed on a simultaneous basis by all users in a linear, sequential manner via (a) Cable, Direct-to-Home-Satellite, SMATV, MDS, MMDS or LMDS or (b) any successor system for the delivery of encrypted television programming for which a fee is charged and which is primarily intended to be viewed on a simultaneous basis by all users in a linear, sequential manner;

“**Operators**” means Cable Operators, Commercial Subscribers, Communal Subscribers, operators of DTH Platforms and (subject to MTVNE or its Controlled MTV Affiliate(s) wholly owning or controlling the necessary rights with respect to MTVNE Programming) xDSL and broadband cable or ADSL platforms for provision of linear television, together or separately, as the context so requires;

“**Original Mobile Content**” means any mobile content that is during the Term created by or for Licensee and/or acquired or licensed by Licensee from third parties (excluding any mobile content and/or any similar product (s) furnished by MTVNE or any of its Controlled MTV

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Affiliate (s) and any mobile or similar product (s) created and/or produced by MTVNE or any of its Controlled MTV Affiliate(s)) for the purposes of fulfilling any MTV Digital Media Deal or Third Party Mobile Deal;

“Original Programming” means any predominantly Ukrainian language programming (or Russian solely to the extent permitted as defined under Authorised Language), programme elements and format rights and any other predominantly Ukrainian materials (other than Dubbing Materials) that are during the Term created by or for Licensee for use on the Channel and/or acquired or licensed by Licensee from third parties for use on the Channel, excluding the MTV Programming and any other materials furnished by MTVNE or any of its Affiliate(s) or Channel Licensees and materials created and/or produced by MTVNE or any of its Affiliate(s) or Channel Licensees expressly for Licensee;

“Original Website Content” means any editorial content created and/or produced by or for Licensee for inclusion on the Website, excluding all such content created and/or produced by MTVNE or any of its Affiliate(s) or Channel Licensees expressly for Licensee;

“Pan Euro Advertising Revenue” means all sums invoiced by MTVNE and its Affiliate(s) in respect of the sale of Pan Euro Advertising, after deduction of any third party advertising commissions paid to third parties;

“Pan Euro Advertising” means advertisements and/or sponsorship of programming transmitted (or to be transmitted) on the Channel and one or more of the MTV Channels, and/or advertisements and/or sponsorship appearing (or to appear) on the Website and one or more of the MTV Websites;

“Pan Euro Programming” means any MTV Programming transmitted (or to be transmitted) on the Channel and all or most of the MTV Channels;

“Pan Euro Website Content” means any MTV Website Content appearing (or to appear) on the Website and all or most of the MTV Websites;

“Peak Time” means the period of time in each twenty four (24) hour period during which air-time on the Channel is sold for the highest price per thirty (30) second advertising spot, such period not to exceed three (3) hours, or be less than two (2) hours, in any 24 hour period;

“Person” means an individual, partnership, corporation, joint stock company, trust, unincorporated association, joint venture, governmental authority, including any division of any of the foregoing, or any other entity of whatever nature whether corporate or incorporate;

“Place of Multiple Occupation” means any premises in the Territory (whether operated for commercial gain or otherwise) containing Rooms or other units which are used as temporary or permanent accommodation (including, without limitation, hotels, motels, inns, guest houses, boarding houses, prisons, hospitals, nursing homes, oil rigs and schools);

“Quarter” means each consecutive three (3) month period ending on a Quarter Day;

“Quarter Day” has the meaning set out in Clause 6.2;

“Relevant Entity” means the Licensee, the Guarantor or any of their Affiliates (including, without limitation, the Guarantor, Ukrainian Broadcasting Holdings Limited and Accella Limited)

“Room” means each room or unit in a Place of Multiple Occupation, which has a television set, and which is equipped and entitled to receive the Channel (whether or not (i) such room

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or unit actually receives the Channel or (ii) a payment is made in respect of such room or unit for the Channel);

“Shares” means any shares or other interest held by a Licensee Shareholder in any Relevant Entity;

“SMATV” means satellite master antennae aerial television, a system whereby subscribers in a multiple dwelling unit receive television signals from a single satellite dish or multiple dishes located within the building complex;

“Sole” means in respect of a right granted under this Agreement that the grantor may itself exercise the right but will not authorise others to exercise that right;

“Term” means the period commencing on the Commencement Date and ending on the tenth anniversary of the Launch Date (or ending at the end of any extension thereof according to Clauses 42.1 and 42.3), subject to earlier termination in accordance with the provisions of this Agreement;

“Territory” means the Ukraine or such other territories as the parties agree in writing shall be added from time to time and in accordance with the terms and conditions of this Agreement;

“Territory Entities” means all Persons who are resident or domiciled in any of the countries in the Territory including advertising agencies, local representatives of Non-Territory Entities, Licensee and any of its relevant Affiliate(s);

“Third Party Mobile Deal” has the meaning set out in Clause 7.6;

“Transmission and Technical Services Schedule” has the meaning ascribed to it in Clause 2.4;

“Website” means the Channel branded Internet website **“MTV.UA”** to be produced by Licensee (registered in the name of MTVNE or one of its Affiliate(s), as determined by MTVNE) subject to the provisions of this Agreement, available to Internet users on the world-wide web and consisting of material (primarily in the Ukrainian language) relating to the Channel including MTV Website Content and Original Website Content, but not including any of the MTV Programming; and

“Year” means (i) the period from the Commencement Date until 31 December 2007, and (ii) each subsequent consecutive twelve (12) month period (or part thereof) throughout the Term.

1.2 In this Agreement a reference to:

1.2.1 a document is a reference to that document, as modified or replaced from time to time;

1.2.2 a person includes a reference to that person's legal personal representatives, successors and permitted assigns; and

1.2.3 a clause or schedule, unless the context otherwise requires, is a reference to a clause of or schedule to this Agreement.

1.3 The headings in this Agreement do not affect its interpretation.

2 CONDITIONS PRECEDENT AND INITIAL MARKS AND PROGRAMMING FEE

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- 2.1 Licensee's compliance with its obligation under Clause 2.2.1, 2.4, 2.9, 2.10 shall be conditions precedent to:
- 2.1.1 the rights and licences granted to Licensee by MTVNE in this Agreement taking effect; and
- 2.1.2 the fulfilment of any obligations of MTVNE as set out in this Agreement
- and any failure by the Licensee to comply with any of the Conditions Precedent or failure to maintain the other obligations, as set out hereunder, shall give rise to the right of termination of this Agreement by MTVNE in accordance with Clause 37 below.

Broadcast Licence

- 2.2 In consideration for the rights granted to Licensee in this Agreement Licensee shall
- 2.2.1 obtain prior to the Launch Date, at its cost all necessary broadcast licenses and other consents necessary for the production, delivery and distribution of the Channel in the Territory; and
- 2.2.2 shall maintain the same throughout the Term.

Transmission Arrangements

- 2.3. In consideration of the rights and licences granted to Licensee hereunder, Licensee shall be responsible at its cost for the playout, transmission, encryption and, where relevant, uplink of the Channel and full service maintenance of all such elements for the Channel and for customer care and shall comply with the Transmission and Technical Services Schedule. Licensee shall co-operate with MTVNE in registering the Website in MTVNE or MTVNE's affiliates name in accordance with Clause 13.11 (if not already so registered) and thereafter Licensee shall maintain and operate the Website in accordance with this Agreement.
- 2.4. At least two months in advance of the Launch Date the parties shall finalise the specifications of the Transmission and Technical Services Schedule, which Licensee hereby agrees shall be in accordance with Clause 2.5 and 2.6 below (for the avoidance of any doubt, no further consideration will be due from MTVNE to Licensee under the The Transmission and Technical Services Schedule). The Transmission and Technical Services Schedule is incorporated into and subject to the terms and conditions of this Agreement and shall be annexed as Schedule 6. It shall fully particularise the technical specifications and functionality of the technical services and the management and operational and maintenance services to be provided by Licensee. MTVNE shall co-operate with Licensee in all good faith to agree such documentation as may be required to that end.
- 2.5 The Transmission and Technical Services Schedule shall fully demonstrate the Licensee's ability to broadcast and/or transmit, operate, manage and maintain the Channel and the Website during the Term and the Licensee's ability to fulfill all of its obligations under this Agreement (including any reporting obligations) to a level of the highest quality as required by MTVNE.
- 2.6 Accordingly, the Transmission and Technical Services Schedule shall provide for all technical services to be provided and/or procured by Licensee for the Term, setting out full roles and responsibilities and annual project plans particularised for both the Channel and the Website, which shall include without limitation the following elements (in alphabetical order):
- 2.6.1 Accounting and reporting systems, including for all advertising and distribution activities;

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- 2.6.2 Air Check Cassette;
- 2.6.3 Backup Facilities of at least +2 redundancy to primary system;
- 2.6.4 Delivery, storage and return of tapes;
- 2.6.5 Discrepancy reporting;
- 2.6.6 Dubbing facilities and processes;
- 2.6.7 Encoding/Compression, Uplinking specifications and functionality (Analogue and Digital);
- 2.6.8 Handover and/or integration processes in the event of any transfer, assignment or other change control in the operation and management of the technical services;
- 2.6.9 Method of integration of any systems in any of the countries in the Territory as may be required by MTVNE for Licensee to fulfil its obligations under this Agreement;
- 2.6.10 Monitoring of the Channel and restoration by suitably qualified technical staff twenty-four hours a day each day of the Year, to rectify any failure in any of the technical services and play-out of the Channel. Reporting and remedy options in service levels shall demonstrate the Licensee's process for fault reporting and fault repair, including times and any penalties for breach of such service levels, including, without limitation the customer service levels (ie including subscribers of the channel and end-users of the Website);
- 2.6.11 Multiple language playout;
- 2.6.12 Network origination services including compilation and scheduling;
- 2.6.13 Program plan and play list;
- 2.6.14 Playout services with transmission control suite facilities;
- 2.6.15 Quality control of tapes;
- 2.6.16 Quality control subtitling and audio tracks;
- 2.6.17 Staffing resources for all roles required for fulfilling obligations under this Agreement with the necessary experience and qualifications to perform to the highest professional standards commensurate with the best industry standards. The minimum levels for key roles are as set out in the Organisation Charts of Licensee for MTV Ukraine set out in Schedule 7A (Operations and Production) and B (Finance, Marketing, Sales, Air-time Planning and Business and Legal). Licensee shall put in place the core staff identified five months prior to the Launch Date and all the remaining staff thereafter in good time to enable the Licensee to fulfil its obligations hereunder;
- 2.6.18 Subtitling services for the Authorised Languages;
- 2.6.19 Standards conversion and confidence monitoring;
- 2.6.20 Transmission control automation system to generate a frame accurate "as run" log in a computer-readable form;

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2.6.21 Transponder capacity; and

such other provisions as reasonably requested by MTVNE.

- 2.7 Licensee shall be entitled to subcontract the whole or part of the obligations contained in Clause 2.6 and in the Transmission and Technical Services Schedule with the prior written consent of MTVNE, which consent shall not be unreasonably withheld or delayed, and provided that Licensee shall remain liable always for all obligations under this Agreement and the acts and omissions of any sub-contractor Licensee may engage.
- 2.8 Prior to the Launch Date, Licensee shall use best endeavours to ensure that all operators of Licensed Media to which MTV European may already be supplied enter into a distribution agreement with Licensee to distribute the Channel in place of MTV European with effect from the Launch Date. The parties shall work in all good faith to achieve a smooth transition from MTV European to MTV Ukraine as further detailed at Clause 19.4 below.

Initial Payments

- 2.9 As part consideration of the rights and licences granted to the Licensee hereunder, Licensee shall pay to MTVNE the Initial Marks and Programming Fee in two equal instalments as follows:
- 2.9.1 Immediately upon the Commencement Date, the Licensee shall pay to MTVNE the first instalment of five hundred thousand United States dollars (US\$500,000.00); and
- 2.9.2 On the fifth Business Day after the Launch Date, or 8 December 2006, whichever is the sooner, the Licensee shall pay to MTVNE the second instalment of five hundred thousand United States dollars (US\$500,000.00).

Each instalment of the Initial Marks and Programming Fee shall be payable, and the aggregate amount of the Initial Marks and Programming Fee shall be non-refundable, notwithstanding any failure to comply with any of the remaining conditions precedent set out above and/or notwithstanding the expiration or early termination of this Agreement, howsoever terminated. For the avoidance of doubt, the Initial Marks and Programming Fee is payable in addition to the first payment of the Marks and Programming Licence Fee pursuant to Clause 6.1.1 below.

Investment and Business Plan

- 2.10 Immediately prior to the Commencement Date, the parties shall discuss in good faith an appropriate business plan for the Channel, which once agreed between the parties, shall be annexed to this Agreement as Schedule 5 ("**Initial Business Plan**"). Without limitation, the Initial Business Plan shall show a capital investment by the Licensee of at least nine million US dollars (\$9,000,000) in the Channel business during the first [five (5)] years ("**Investment**"), including a structured plan for when and how this Investment is to be made. Agreement of the Initial Business Plan, and receipt by the Licensee from its shareholders of the first part of the Investment (which shall be no less than three million United States dollars (\$3,000,000.00)), in each case within sixty (60) days after the Commencement Date, is a condition precedent to the grant of the rights and licences, and the fulfilment of MTVNE's obligations hereunder, as described in Clause 2.1 above.
- 2.11 The Initial Business Plan (and all subsequent revisions thereto) shall be subject to review on an annual basis prior to the commencement of each Year of the Term. Each revised business plan shall be produced by the Licensee in consultation with MTVNE, and shall, where practicable, be subject to MTVNE's prior written approval prior to implementation (such

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approval not to be unreasonably withheld or delayed). With prejudice to the foregoing, the Licensee shall take due consideration of all representations made by MTVNE in each annual revision to the business plan.

SECTION ONE: PRODUCTION, PROGRAMMING AND TRADE MARK LICENCE

3 PRODUCTION AND OPERATION OF THE CHANNEL AND WEBSITE

- 3.1 In consideration of the rights and license granted to Licensee, Licensee shall, at its own cost and to a first class standard, operate and produce the Channel using Original Programming and MTV Programming, and shall design, construct, host, maintain and operate the Website using Original Website Content and MTV Website Content, subject to and in accordance with the provisions of this Agreement. The Licensee's responsibilities shall include, without limitation, all relevant programming, dubbing, subtitling, promotion, transmission, marketing and P.R., provision of sufficient personnel, resources, facilities and administrative support in connection therewith.
- 3.2 For the avoidance of doubt, all normal business overheads incurred in the production of the Channel and the design, construction, hosting and maintenance Website including, without limitation, premises, utilities, and staff salaries and benefits, shall be the sole responsibility of Licensee.

4 TELEVISION PROGRAMMING LICENCE AND WEBSITE CONTENT LICENCE

- 4.1 Subject to the terms and conditions of this Agreement and compliance by Licensee of all its obligations in this Agreement, MTVNE grants to Licensee from the Launch Date for the Term and within the Territory:
- 4.1.1 the sole right to use the MTV Programming (including the Copyrights) in the production of the Channel, and the transmission of the Channel for distribution in the Territory in accordance with the terms of this Agreement; and
- 4.1.2 the sole right to use the MTV Website Content in the design, construction, hosting, maintenance and operation of the Website.
- 4.2 For the avoidance of doubt, the rights granted under Clause 4.1 shall be subject always to Clause 2 above (Conditions Precedent), Clause 7 below (Reservation of Rights), Clause 9 (Editorial Control, Scheduling, Editing And Credits, Clause 10 (Dubbing) and reversion of rights under Clause 38 (Post Termination Rights and Obligations).
- 4.3 Licensee acknowledges that the rights granted to it hereunder are granted on the basis that (i) the Channel is to be distributed on a 24 hour basis; and (ii) the Bug shall be exhibited at all times during the broadcast of the Channel (other than during the transmission of any Advertising transmitted therewith).
- 4.4 From time to time throughout the Term, MTVNE shall make available to Licensee certain Pan Euro Programming and/or Pan Euro Website Content which Licensee shall be obliged to feature on the Channel and/or Website respectively, in accordance with the provisions of this Agreement. Such Pan Euro Programming and/or Pan Euro Website Content will be provided to Licensee in the English language, and Licensee shall be responsible, at its own cost, for any translation (including editing and/or dubbing of the MTV Programming) into the Ukrainian and, solely to the extent of the use permitted of Russian as defined in Authorised Language, as applicable.
- 4.5 In the event that MTVNE wishes to grant any other sole trademark and programming licences for any other of its channels in the Territory, MTVNE shall, during the Term, offer such licence

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first to the Licensee on such terms to be agreed in writing under separate agreement between the Parties.

5 TRADE MARK LICENCE

5.1 Subject to the terms and conditions of this Agreement and compliance by Licensee of all its obligations in this Agreement, MTVNE hereby licenses to Licensee for the Term and within the Territory, the sole right to use the Marks:

- 5.1.1 by using the name 'MTV' in the Licensee's corporate name;
- 5.1.2 for the production of the Channel, and the transmission of the Channel to MTVNE for distribution within the Territory in accordance with the terms of this Agreement;
- 5.1.3 for the advertising and promotion of the Channel in the Territory, which includes the right to use reference to the Marks on the radio in content created or procured and cleared by Licensee such as news about the Channel;
- 5.1.4 for the design, construction, maintenance and operation of the Website; and
- 5.1.5 for use in the production of Original Mobile Content, subject to separate agreement with MTVNE on a case by case basis pursuant to Clause 7.5 or 7.6 below.

5.2 All uses by Licensee of the Marks must be approved in advance in writing by MTVNE, be in accordance with Clauses 13 (Rights In The Marks), 14 (Trade Mark Quality Control) Clause 7 (Reservation of Rights) and Clause 17 (Rights Clearance) below, and be accompanied by use of appropriate trademark and/or copyright notice(s) as set out in Schedule 1 or as otherwise notified by MTVNE from time to time.

5.3 For the avoidance of doubt the rights granted under Clause 5.1 above shall be subject to Clause 7 (Reservation of Rights) and Clause 38 (reversion of rights upon expiry or termination) below.

5.4 MTVNE shall have the right on giving notice to Licensee to withhold or withdraw any Mark or MTV Programming from this Agreement if MTVNE believes in its sole good faith judgment that such use may violate or infringe any rights of any third party or may result in liability to MTVNE, provided that it promptly notifies Licensee of such withholding or withdrawal.

6 MARKS AND PROGRAMMING LICENCE FEE

6.1 In consideration of the rights and licences granted to the Licensee at Clause 4.1 and Clause 5.1 above, Licensee shall pay to MTVNE the Marks and Programming Licence Fee as a guaranteed sum during the Term as follows:

- 6.1.1 with respect to the first Year, the sum of one million United States Dollars (US\$1,000,000.00), payable in one instalment one day after the Launch Date or 4 December 2006, whichever is the sooner;
- 6.1.2 with respect to the second Year, the sum of eight hundred and forty thousand United States dollars (US\$840,000.00), payable in four instalments of two hundred and ten thousand United States dollars (US\$210,000.00) quarterly in advance;
- 6.1.3 with respect to the third Year, the sum of one million and eight thousand United States dollars (US\$1,008,000.00), payable in four instalments of two hundred and fifty two thousand United States dollars (US\$252,000.00) quarterly in advance;

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6.1.4 with respect to the fourth Year, the sum of one million, two hundred and nine thousand six hundred United States dollars (US\$1,209,600.00), payable in four instalments of three hundred and two thousand and four hundred United States dollars (US\$302,400.00) quarterly in advance;

6.1.5 with respect to the fifth Year of this Agreement in the sum of one million, four hundred and fifty one thousand five hundred and twenty United States dollars (US\$1,451,520.00), payable in four instalments of three hundred and sixty two thousand and eight hundred and eighty United States dollars (US\$362,880.00) quarterly in advance;

6.1.6 with respect to the sixth Year, the sum of one million, seven hundred and forty one thousand eight hundred and twenty four United States dollars (US\$1,741,824.00), payable in four instalments of four hundred and thirty five thousand and four hundred and fifty six United States dollars (US\$435,456.00) quarterly in advance;

6.1.7 with respect to the seventh Year, the sum of two million and ninety thousand, one hundred and eighty nine United States dollars (US\$2,090,189.00) payable in four instalments of five hundred and twenty two thousand, five hundred and forty seven United States dollars (US\$522,547.00) quarterly in advance;

6.1.8 with respect to the eighth Year, the sum of two million, five hundred and eight thousand two hundred and twenty seven United States dollars (US\$2,508,227.00), payable in four instalments of six hundred and twenty seven thousand and fifty seven United States dollars (US\$627,057.00) quarterly in advance;

6.1.9 with respect to the ninth Year, the sum of three million, nine thousand eight hundred and seventy one United States dollars (US\$3,009,871.00), payable in four instalments of seven hundred and fifty two thousand and four hundred and sixty eight United States dollars (US\$752,468.00) quarterly in advance;

6.1.10 with respect to the tenth Year, the sum of three million, six hundred and eleven thousand eight hundred and forty five United States dollars (US\$3,611,845.00), payable in four instalments of nine hundred and two thousand and nine hundred and sixty one United States dollars (US\$902,961.00) quarterly in advance; and

6.1.11 subject to any extension pursuant to Clause 43.1 below:

- (i) with respect to the eleventh Year, the sum of four million United States dollars (US\$4,000,000.00), payable in four instalments of one million United States dollars (US\$1,000,000.00) quarterly in advance;
- (ii) with respect to the twelfth Year, the sum of four million three hundred thousand United States dollars (US\$4,300,000.00), payable in four instalments of one million one hundred and seventy five thousand United States dollars (US\$1,175,000.00) quarterly in advance;
- (iii) with respect to the thirteenth Year, the sum of four million six hundred and twenty two thousand five hundred United States dollars (US\$4,622,500.00), payable in four instalments of one million one hundred and fifty five thousand six hundred and twenty five United States dollars (US\$1,155,625.00) quarterly in advance;
- (iv) with respect to the fourteenth Year, the sum of four million nine hundred and sixty nine thousand one hundred and eighty seven United States dollars and fifty United States cents (US\$4,969,187.50), payable in four instalments of

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one million two hundred and forty two thousand two hundred and ninety six United States dollars and eighty seven United States cents (US\$1,242,296.87) quarterly in advance; and

- (iv) with respect to the fifteenth Year, the sum of five million three hundred and forty one thousand eight hundred and seventy six United States dollars and fifty six United States cents (US\$5,341,876.56), payable in four instalments of one million three hundred and thirty five thousand four hundred and sixty nine United States dollars and fourteen United States cents (US\$1,335,469.14) quarterly in advance;
- 6.2 The amounts payable by the Licensee pursuant to Clause 6.1 are minimum guaranteed amounts payable on account of all shares of revenues due to MTVNE under this Agreement. Any amounts received by MTVNE pursuant to Clause 6.1 above may be offset by Licensee against any payments due from Licensee to MTVNE in any one year under Clause 31.1 below and strictly in accordance with the provisions set out at Clause 31.9.2 below.
- 6.3 Quarterly payments pursuant to Clause 6.1 shall be due on the first day of the relevant Year (1 January), and on the first day of each consecutive three (3) month period thereafter (each a "Quarter Day"). MTVNE shall invoice the Licensee for such payments, and the Licensee shall pay each such invoice within thirty (30) days of receipt.

7 RESERVATION OF RIGHTS

- 7.1 The rights granted to Licensee under this Agreement and in particular pursuant to Clauses 4.1 and 5.1 above are granted on a Sole basis in the Territory. For the avoidance of any doubt, MTVNE is subject to the restrictions set out hereunder.
- 7.2 All rights not expressly granted to Licensee under this Agreement are retained by MTVNE (and any of its Affiliate(s) as appropriate), including without limitation to the generality of the foregoing MTVNE's on-line or Internet-based rights in the MTV Programming.
- 7.3 Licensee expressly acknowledges that its rights granted herein in the MTV Marks do not extend to any use on wireless or any other new digital media (except as may be agreed in any separate agreement entered into between the parties pursuant to Clause 7.5 below) and nor do the rights granted herein extend to the use of the MTV Programming on any Interactive Services or for distribution via wireless devices or using the Internet (including, without limitation, via the Website).
- 7.4 The parties will discuss in good faith any additional rights that Licensee may request in accordance with Clause 26 (Ancillary Activity) subject always to Clause 7.5. Such request shall not oblige MTVNE to agree or procure any such additional rights but any request from licensee shall be considered in all good faith by MTVNE.
- 7.5 Subject to Clause 7.6 with regard to any business activity of MTVNE in the Territory in connection with wireless devices such as mobile or other media other than the Licensed Media and any use of the MTV Marks, MTV Programming or any MTV content therein ("**MTV Digital Media Deal**"), the Licensee's participation therein, and any terms and conditions that may be agreed between the parties with respect thereto (including, without limitation, relating to the production of Original Mobile Content) shall be subject to an entirely separate agreement between the Licensee and MTVNE or its relevant Affiliate(s). MTVNE hereby grants the Licensee a first option to be MTVNE's sole agent in the Territory for such business on terms to be agreed under separate contract and shall use all reasonable commercial endeavours to agree the same within thirty days of the Commencement Date. It is understood between the parties in principle that the commission that would be payable to Licensee for its services under any such separate agency agreement would be no more than fifty percent

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(50%) of the net revenues received by MTVNE for the respective contract arising as a result of any such agency services. This option shall automatically cease to apply upon the date ninety (90) days from the Effective Date of this Agreement if the parties fail to execute an agency agreement (save where the Parties agree in writing to any extension of that time) or if the Licensee elects not to exercise this option, whichever is the earlier date, and MTVNE shall be free to engage any other third party as its agent thereafter.

- 7.6 If the Licensee wishes to produce Original Mobile Content for distribution by third parties over mobile networks otherwise than as part of an MTV Digital Media Deal ("**Third Party Mobile Deal**"), then the terms on which Licensee shall be permitted to do so shall be subject to separate agreement between the parties. The Licensee shall pay to MTVNE thirty-five per cent (35%) of all revenues invoiced by Licensee under such Third Party Mobile Deal (or such greater amount as may be agreed pursuant to the provisions of such separate agreement between the parties), which shall be deemed "Ancillary Revenue" and reported and paid in accordance with Clause 31. The parties shall work together in all good faith to exploit all opportunities and to agree terms and conditions for additional opportunities that may arise and fall under the parameters of Clause 7.5 above and this Clause 7.6.
- 7.7 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall limit or restrict the right of MTVNE or its Affiliate(s) or Channel Licensees to license to third parties in the Territory individual programmes or series incorporated in the MTV Programming on a programme by programme, or series by series basis, or as part of a MTV: MUSIC TELEVISION branded block of continuous or contiguous programming, provided that:
- 7.7.1 such block is not broadcast in the Territory for more than one (1) hour per day; and
- 7.7.2 where MTVNE or its Affiliate(s) intend to so license any such MTV Programming, and such MTV Programming has been available to the Licensee for broadcast on the Channel for less than six (6) months, MTVNE will obtain the written approval of Licensee before entering into such a licence, such approval not to be unreasonably withheld, conditioned or delayed.
- 7.8 Licensee hereby undertakes with MTVNE that during the Term neither Licensee nor any of its Affiliate(s) nor any company in which it has any interest shall operate, control or participate in any business that in any way competes directly or indirectly with MTVNE, and the Channel shall not feature programming from, or the logos or trademarks of, any other broadcaster of music or youth oriented programming.
- 7.9 Subject to Clause 7.3 and 7.7, MTVNE hereby undertakes with Licensee that during the Term neither MTVNE nor any company controlled by MTVNE shall operate, control or participate in any business in the Territory that in any way competes directly or indirectly with Licensee's business as permitted in this Agreement. For the avoidance of any doubt, this does not apply to any digital media business (including wireless) and, further, Licensee acknowledges that MTVNE and its Affiliate(s) may own and operate music channels in the Territory not in the Ukrainian language known as VH1 European or VIVA that would not be deemed to compete directly or indirectly with Licensee and may launch or license other such channels in the future. Provided always if MTVNE does wish to launch either VH1 or VIVA channels by way of a licensed channel in the Territory, then MTVNE hereby grants the Licensee the first option to be MTVNE's sole Channel Licensee in the Territory for either or both such channels on terms to be agreed under separate contract(s). This option shall automatically cease to apply upon the date ninety (90) days from the date any such licence is respectively offered to the Licensee if the parties fail to execute such agreement or if the Licensee elects not to exercise this option, whichever is the earlier date. Thereafter, MTVNE shall be free to licence to any other third party without being in breach of this Agreement. It is agreed that MTVNE shall not authorise or permit the distribution by MTVNE or its Affiliate(s) of the channel known as MTV Russia or any channel known as VH1 Russia in the Territory as of April 1, 2006. MTVNE shall

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use all reasonable endeavours to ensure that any opportunity for the licence of Nickelodeon is made known and offered to Licensee where possible.

8 MATERIALS DELIVERY AND RETURN

- 8.1 Individual tapes of the MTV Programming, shall be in digital beta cam format or such other method of delivery as may be agreed between the Parties such as digital file based format, and shall be delivered to Licensee (at Licensee's cost in accordance with Clause 8.4 below) at Licensee's facility as set out in the Transmission Services Schedule or as notified to MTVNE in writing or in such alternative manner that MTVNE and Licensee shall from time to time agree. Timing for delivery shall be a reasonable number of days in advance of the date(s) that each such item of MTV Programming is scheduled for transmission as part of the Channel, which date(s) shall be notified by Licensee to MTVNE reasonably in advance.
- 8.2 Licensee shall examine each of the materials delivered pursuant to Clause 8.1 above upon receipt thereof and must notify MTVNE by registered mail or confirmed facsimile within fifteen (15) Business Days of receipt if such materials are not fit for transmission in accordance with international customary industry standards and in accordance with the terms of this Agreement. In any of the foregoing circumstances, MTVNE shall replace the relevant materials with technically acceptable materials in accordance with this Clause 8. If MTVNE does not receive Licensee's notice to the contrary within fifteen (15) Business Days of delivery, the materials shall be deemed approved.
- 8.3 At any time during or after the Term, Licensee shall at the request of MTVNE promptly erase or destroy, as the case may be, all transmission tapes and other materials supplied under this Agreement and deliver to MTVNE a certificate of erasure or destruction, duly signed by an officer of Licensee, which certificate shall be in a form reasonably satisfactory to MTVNE.
- 8.4 All tape costs (including the creation of transmission tapes), dubbing costs, formatting costs, transportation costs (including, without limitation, all taxes, duties, customs charges, second use fees, insurance and forwarding charges) relating to the supply by MTVNE to Licensee of any tapes or materials (including the cost of erasure and certifying the same, where required by MTVNE) shall be borne by Licensee (and for the avoidance of doubt shall be no greater than the cost incurred by MTVNE). All costs relating to the conversion of the tapes from one format to another shall be borne by Licensee. To the extent any of such costs are paid by MTVNE or its Affiliate(s) or Channel Licensees, Licensee shall promptly reimburse MTVNE upon receipt of MTVNE's invoice therefor.
- 8.5 All risk of loss and/or damage to any tapes or materials immediately when such tapes or materials go into transit to Licensee and/or are in the custody or control of Licensee shall be borne solely by Licensee.
- 8.6 All costs in connection with return of tapes to MTVNE upon expiration of this Agreement or prior thereto, or return of tapes to MTVNE pursuant to Clause 8.2 above because such tapes are defective, shall be borne by Licensee.
- 8.7 MTV Website Content shall be delivered to Licensee in accordance with the specification set out in the Transmission and Technical Services Schedule or in accordance with any specifications as notified to Licensee by MTVNE from time to time.

9 EDITORIAL CONTROL, SCHEDULING, EDITING AND CREDITS

- 9.1 Subject to Clause 9.2, 9.4 and Clause 10 below, Licensee shall not re-sequence, cut, modify, edit, change or otherwise alter in any manner any of the MTV Programming or the MTV Website Content delivered to Licensee hereunder (including, without limitation, any of the

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Marks contained therein). Except for trailers promoting an exhibition of the MTV Programming, the MTV Programming shall only be shown in its entirety, as part of the Channel. Any editing permitted by this Clause 9.1 and Clause 9.4 below shall not impair the technical quality, meaning or integrity of any of the MTV Programming or MTV Website Content.

- 9.2 The restrictions in Clause 9.1 shall not apply to the insertion of Advertising in any MTV Programming, provided, however, that if Advertising is inserted in any tape containing any MTV Programming, Licensee shall, prior to return, restore such tape to the condition in which it was delivered.
- 9.3 Licensee shall not delete or alter any copyright notice included in any MTV Programming or MTV Website Content, or the MTVNE or MTV Networks name or any other name and logo or talent, writing, producing, directing or any other credits whatsoever included therein. Each and every exhibition of the MTV Programming by Licensee shall include all of the credits contained on the tape delivered to Licensee by MTVNE.
- 9.4 Notwithstanding the provisions of Clauses 9.1 and 9.3, the Licensee may edit the MTV Programming and/or MTV Website Content solely where necessary to comply with any legislation applicable to the Channel and/or the Website or with any rules, regulations, guidelines or codes of any competent regulatory authority with jurisdiction over the Channel and/or the Website, or with applicable censorship requirements in the relevant country within the Territory, or where necessary to meet programme timing requirements due to an emergency time shortage, provided that Licensee shall not delete or fail to transmit or display any Marks, credits, titles or copyright notices appearing in the MTV Programming or MTV Website Content.
- 9.5 Subject to the foregoing provisions of this Clause 9, and the terms and conditions of this Agreement, in particular but not limited to Clause 12 (Withdrawal), Clause 14 (Trademark Quality Control) and Clause 22.4 (restrictions regarding Excluded Material) Licensee shall have editorial responsibility for the Channel and the Website, including production, presentation and transmission, which shall be subject to any applicable laws, rules, regulations, guidelines or codes of the relevant cable and satellite authorities and local regulatory requirements (which approval(s) shall be obtained or procured by Licensee). Provided always that MTVNE shall have ultimate approval over the look and feel of the Channel and the Website and the manner in which the Channel and Website is assembled, presented and played-out, including (without limitation) the selection and scheduling of individual elements of the MTV Programming and the Original Programming. Further:
- 9.5.1 if Licensee is carrying on the Channel or the Website any MTV Programming or MTV Website Content (respectively) for which MTVNE or any of its Affiliate(s) has secured Pan Euro Advertising from one or more sponsor(s); and
- 9.5.2 if the agreement(s) between MTVNE or its Affiliate(s) and the sponsor(s) for such MTV Programming is current at the time of Licensee's exhibition of such MTV Programming,

then MTVNE may require Licensee, upon written notice, to exhibit on the Channel all sponsorship exposures (such as trailers, billboards and promotions) which are being exhibited by MTVNE or any of its Affiliate(s) or Channel Licensees as part of their exhibition of such MTV Programming or MTV Website Content on the MTV Channels and MTV Websites pursuant to their agreement(s) with the sponsor(s). If such sponsorship requirements contravene any applicable laws and regulations in the relevant country in the Territory, then Licensee shall notify MTVNE immediately and the parties shall discuss what amendments (if any) can be made to the sponsorship exposures in order to comply with such applicable laws and regulations of the relevant country in the Territory. Licensee shall not make any

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amendments to any sponsorship exposures without MTVNE's prior written consent, but subject to this, Licensee shall make all necessary amendments at MTVNE's cost.

10 DUBBING

10.1 Licensee shall, at its own cost, arrange for all MTV Programming and/or MTV Website Content to be dubbed, subtitled and/or translated (as appropriate) into the Ukrainian language (the resulting dub tracks, subtitle files and/or translations shall be referred to herein as "Dubbing Materials"). Licensee shall keep and update an inventory of all MTV Programming and MTV Website Content that is dubbed, subtitled and/or translated into the Ukrainian language.

10.2 All production of Dubbing Materials shall be contracted in accordance with or on no less onerous terms and conditions than the Standard Terms and Conditions for Dubbing as set out in Schedule 3 and any other guidelines issued by MTVNE to Licensee from time to time. All matters relating to the production of Dubbing Materials including all performers providing voice-overs or other dubbing services ("Performer") shall be subject to the prior approval of MTVNE. As and when requested by MTVNE, samples of final Dubbing Materials shall be submitted to MTVNE for final approval prior to transmission. In respect of each programme being dubbed, where relevant, Licensee shall ensure that the Performer is available for the total number of episodes of the programme. If the Performer is unavailable for the total number of episodes of the programme being dubbed, or fails to fulfil his/her contractual obligations, Licensee shall source and present to MTVNE for approval suitable replacements for such Performer who are available to complete the dubbing services. Above mentioned approvals other than the last one shall not be unreasonably withheld or delayed. MTVNE shall communicate its acceptance or rejection of such replacement performer within two weeks of such performer being presented to MTVNE.

11 LOSS OR DAMAGE

Licensee shall immediately report to MTVNE any loss, theft, destruction or damage to any materials containing any of the MTV Programming or MTV Website Content occurring during the Term. In the event of any such loss, theft, destruction or damage, Licensee shall pay MTVNE a sum equal to the cost of making new replacement materials.

12 WITHDRAWAL

12.1 Licensee shall comply with all laws and regulations applicable to Licensee's exercise of its rights and performance of its obligations hereunder. In the event that any third party or governmental agency shall object to the exhibition of any of the MTV Programming or MTV Website Content, Licensee shall immediately notify MTVNE of such objection and, in the event that Licensee intends to exhibit such MTV Programming or publish such MTV Website Content, MTVNE shall have the right, but not the obligation, to take or require Licensee to take, at Licensee's sole cost and expense, such steps as MTVNE deems desirable to cause such objection to be withdrawn prior to exhibition of the MTV Programming or publication of MTV Website Content. In no event shall Licensee exhibit such MTV Programming or publish such MTV Website Content despite such objection without first obtaining MTVNE's prior written approval.

12.2 If MTVNE notifies Licensee that in its reasonable opinion an element of any MTV Programming or MTV Website Content supplied has not been fully cleared for the use intended to be made of it then such element of such MTV Programming or MTV Website Content shall be withdrawn from the terms of the licence hereunder and shall not be exhibited on the Channel or the Website. This shall not affect any accrued rights of the Licensee under this Agreement in connection with any MTV Programming or MTV Website Content up to the date of notice from MTVNE for its withdrawal under this Clause 12.2.

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13 RIGHTS IN THE MARKS

13.1 Licensee and Guarantor acknowledge that, as between Licensee and MTVNE, MTVNE is the owner of the Marks and of all concepts, trademarks and copyrights in the subject matter comprised in the Marks. It is understood and agreed that Licensee and/or Guarantor shall not acquire and shall not claim any title to the Marks by virtue of the licence granted to Licensee hereunder or through Licensee's use of the Marks, the parties agreeing that all goodwill arising through use of the Marks by Licensee shall inure to the benefit of MTVNE or, if MTVNE so directs, of MTV Networks. Licensee and Guarantor undertake to execute any instruments, acknowledgements, assignments or similar documents MTVNE deems reasonably necessary or advisable to confirm or give effect to this Clause 13.1.

13.2 Licensee and Guarantor further acknowledge the validity of the Marks, and throughout the Term, agree not to institute or participate in any proceedings which challenge the validity of the Marks, or of MTVNE's ownership thereof.

13.3 If MTVNE determines that Licensee should be recorded as a user of the Marks, Licensee undertakes to co-operate with MTVNE in effecting such recording and to execute any written instruments or other documents MTVNE deems necessary or desirable for that purpose.

13.4 At no time shall Licensee or Guarantor attempt to register, in the Territory or elsewhere, as trademarks, service marks, domain names or otherwise any names, marks, logos or other materials identical or substantially similar to any of the Marks or any other marks of MTVNE or MTV Networks.

13.5 Licensee shall use its best efforts to assist MTVNE, at MTVNE's reasonable request and at MTVNE's expense, in obtaining any trade mark registrations or other proprietary documents desired by MTVNE in the Territory in connection with the Marks, including without limitation any new word mark or logo for MTV Ukraine.

13.6 Licensee shall use its best efforts to monitor any infringement of the rights granted pursuant to Clause 4 and Clause 5 and to monitor any other unauthorised uses or misuses ('Infringements') in the Territory of any of the Marks, and shall promptly notify MTVNE of any such Infringements it discovers. Upon the written request of MTVNE, Licensee shall forward to the party responsible for the Infringement a warning letter in a form submitted by MTVNE in respect of the Infringement.

13.7 Licensee agrees to use its best efforts and to co-operate with MTVNE, upon MTVNE's request and at MTVNE's expense, in terminating infringing or unauthorised or wrongful uses of the Marks and undertakes to furnish any documentary evidence or evidentiary materials which MTVNE may reasonable require for the purpose of terminating such uses.

13.8 In addition, Licensee undertakes to use its best efforts to assist and co-operate with MTVNE in the prosecution of any lawsuits, legal actions or other proceedings which, in the opinion of MTVNE, are necessary or advisable to protect the Marks, including, at MTVNE's request, participating in such proceedings as a party. The expense of such proceedings shall be borne by MTVNE. The right to protect such Marks, as well as the right to determine in all respects the manner of protection, shall at all times rest exclusively with MTVNE.

13.9 Upon the termination or expiration of the Term, Licensee shall, within sixty (60) Business Days of its receipt of MTVNE's request and instructions and at MTVNE's discretion, either immediately return to MTVNE or destroy (and provide to MTVNE a certificate of destruction with respect thereto) all materials and copies provided by MTVNE that include or contain the Marks and all other materials, including but not limited to advertising pieces, that Licensee has created that contain, incorporate or in any way relate to any of the Marks.

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- 13.10 Licensee specifically acknowledges that all programming, derivative works, translations and like materials developed by or for Licensee that contain, incorporate or are based on the Marks are the property of MTVNE. Subject to any pre-existing third party rights, any such programming and other materials, and all rights therein including copyright and trademark rights, made or commissioned by Licensee shall be owned by MTVNE (or its designated Affiliate(s)), and Licensee hereby agrees to execute all such documents and do all such things as may be necessary to give effect to this Clause 13.10.
- 13.11 MTVNE, in consultation with, and with the assistance of Licensee, shall register in its own name or the name of one of its Affiliate(s) at the appropriate registry such domain names relating to the Channel as may be required for the purposes of establishing and operating the Website, and Licensee shall have the right to use such domain names under licence from MTVNE or its Affiliate(s) during the Term in connection with the design, construction, hosting, maintenance and operation of the Website in accordance with the provisions of this Agreement.
- 13.12 Licensee undertakes not to actively market or promote the Website outside the Territory.
- 14 TRADE MARK QUALITY CONTROL AND CREATIVE APPROVAL OF MTVNE**
- 14.1 MTVNE shall deliver, at MTVNE's cost, all approved formats, style sheets, design sheets and samples incorporating the Marks that may be requested from time to time by Licensee.
- 14.2 Licensee shall not alter, change, edit or otherwise modify any of the Marks unless approved in advance by MTVNE.
- 14.3 MTVNE shall have the right to request Licensee to immediately refrain from a particular use of the Marks (or any of them), and Licensee must comply with that request, if such use in the reasonable opinion of MTVNE would denigrate or otherwise adversely affect the Marks (or any of them) or MTVNE's intellectual property rights, or the goodwill therein.
- 14.4 To ensure that the value of and/or goodwill associated with the Marks is in no way diminished, denigrated or otherwise adversely affected, and in connection with trade mark quality assurance requirements, MTVNE has the right of final approval, with respect to -
- 14.4.1 the final on-screen look, style and overall feel, and content of the Channel and the Website; and
- 14.4.2 the placement of any Advertising appearing on the Channel in order to ensure that such Advertising is appropriate, clearly distinguishable and separate from the programmes surrounding them, that advertising breaks are taken only at a point where some interruption in the continuity of the relevant programme would, in any case occur and that the content, scheduling and exhibition of such Advertising complies with all applicable governmental rules, guidelines, safety codes and regulations.
- 14.4.3 the manner in which the Marks are used to identify, market, promote and/or advertise the Channel and/or the Website to consumers, advertisers, distributors and/or any other party; and
- 14.4.4 the use of any third-party trade marks, brands or logos in connection with the Marks or in connection with the exhibition of MTV Programming on the Channel, or MTV Website Content on the Website.
- 14.5 To ensure that quality control standards are met, Licensee will supply MTVNE with:

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- 14.5.1 the pilot tapes of all programming tapes of all programming and, upon reasonable request from time to time, tapes of all programming (aforementioned programming including, without limitation, all Original Programming, and all MTV Programming that has been edited or altered in any way, including being dubbed or subtitled into the Authorised Languages), and will not transmit any such programming on the Channel without MTVNE's prior written approval. Such approval shall not be unreasonably withheld or delayed. Licensee shall continuously record the output of the channel from Launch Date, which shall include any and all Programming and Advertising and shall securely store tapes of such recording for a minimum of 4 months;
- 14.5.2 from time to time, on request, a taped aircheck of any continuous forty-eight (48) hour period of the Channel and any other taped airchecks that MTVNE shall reasonably request, and with actual print samples of promotional pieces, station identifications and other interstitial materials that have been produced by or for Licensee for the on-air or off-air use of the Channel;
- 14.5.3 from time to time, on request, such materials relating to the Website as MTVNE shall reasonably request, including without limitation actual print samples of Original Website Content and any translations of MTV Website Content into the Authorised Languages; and
- 14.5.4 an activated smart card and necessary equipment upon reasonable request to enable MTVNE to view the channel from London or from such other business location as reasonably requested by MTVNE.
- 14.6 During the Term, Licensee shall allow MTVNE's representatives access to Licensee's offices for quality control purposes at any time during normal business hours upon reasonable notice. Licensee and its employees and representatives shall co-operate and work together in all good faith with MTVNE and its employees and representatives, whether MTVNE is in attendance or working with Licensee remotely, in order to comply with this Clause 14.
- 14.7 Licensee shall comply with such other reasonable requirements as MTVNE may impose from time to time for legal, creative or artistic reasons in connection with the Channel or the Website or the use of the Marks, MTV Programming or MTV Website Content.
- 15 RIGHTS IN MTVNE MATERIAL**
- 15.1 As between MTVNE and Licensee, all proprietary right, title and interest, including but not limited to copyright, in and to the MTV Programming and the MTV Website Content are and shall be owned exclusively by MTVNE. This shall include, for the avoidance of any doubt, the MTV Ukraine word mark or any MTV Ukraine logo to be provided by MTVNE to Licensee, whether registered or not as at the date of this Agreement and the Dubbing Materials.
- 15.2 Except as expressly authorised herein or in accordance with any separate, written agreement between the Parties, Licensee shall not make, authorise or permit any use of any of the MTV Programming or the MTV Website Content including, without limitation, copying, duplicating, or sub-licensing the use thereof or authorising or permitting the exhibition thereof, whether by way of television broadcasting or otherwise, or on any distribution media, or making any use thereof for the purpose of offering any Interactive Services, or doing anything which may impair MTVNE's rights thereto.
- 15.3 Licensee undertakes to execute any instruments, acknowledgements, assignments or similar documents reasonably required to confirm or effectuate MTVNE's ownership of rights

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pursuant to Clause 15.1 at MTVNE's cost (save where necessary as a result of the acts or omissions of Licensee or its representatives). Licensee specifically acknowledges that all derivative works, translations and like materials (including, without limitation, all Dubbing Materials) are the property of MTVNE and Licensee undertakes to use all reasonable endeavours to secure any instruments of transfer or acknowledgement from Licensee's employees, agents, contractors or others who may have been involved in the creation of such copyrightable subject matter.

16 RIGHTS IN ORIGINAL MATERIAL

- 16.1 Subject to the terms and conditions of this Agreement, as between Licensee and MTVNE, all right, title and interest in and to Original Programming and Original Website Content created by or for Licensee (other than by MTVNE or any of its Affiliate(s) or Channel Licensees, and except for those elements which are the Marks or other rights of MTVNE licensed hereunder) including, but not limited to, copyrights pertaining thereto, shall during the Term be owned by Licensee but may, subject as set out below, upon termination of this Agreement be acquired by MTVNE or its Affiliate(s) in accordance with Clause 38.3 below.
- 16.2 Where Original Programming or Original Website Content is created for Licensee by a third party (being a party other than MTVNE or any of its Affiliate(s) or Channel Licensees), Licensee shall use its best endeavours to ensure that it obtains all first rights, title and interest in and to such programming or content from such third parties, and failing which shall ensure that it is granted the exclusive right to exhibit the same.
- 16.3 Where Original Programming or Original Website Content is licensed to Licensee by a third party (being a party other than MTVNE or any of its Affiliate(s) or Channel Licensees) and is not created specifically for Licensee, Licensee shall where practical and in consultation with MTVNE also use its best endeavours to ensure that it is granted an option to acquire all first rights, title and interest in and to such programming or content from such third parties.
- 16.4 Licensee shall grant to MTVNE and its Affiliates a perpetual worldwide royalty free licence to use the Original Programming and Original Website Content in all media without restriction (where legally available and subject to the rights of third parties in the material referred to in Clause 16.1 above). Provided that where MTVNE proposes to licence the Original Programming and/or Original Website Content to any third party (not, for the avoidance of any doubt being one of its Affiliates or Channel Licensees) MTVNE shall agree in writing with Licensee prior to the grant of any such licence the payment terms to Licensee, which shall be as a percentage of the sums to be received by MTVNE under such licence to a third party.
- 16.5 Except as expressly authorised herein, Licensee shall not use the Marks or the Copyrights or any other rights owned by MTVNE in connection with the Original Programming or the Original Website Content or use any element, name, logo or design which is substantially or confusingly similar to any of the Marks or the Copyrights.
- 16.6 Licensee shall ensure that no programming or programme element created by or for it as part of the Original Programming incorporates copyright material and/or format rights from any MTV Programming, without the prior written consent of MTVNE and/or MTV Networks (as appropriate). Similarly, Licensee shall ensure that no mobile content or website content created by or for it as part of the Original Website Content incorporates copyright material from, and/or the look and feel of, any MTV Website Content.
- 16.7 Licensee shall provide such documentation or take such steps as may be reasonably required by MTVNE in order to secure the rights for MTVNE as intended under this Clause 16, including but not limited to, acquisition or licensing-in of all necessary rights, consents and

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licenses from artists, record companies, collecting societies and such other rights owners and/or rights administrators as may be lawfully required.

- 16.8 Ownership of any Original Mobile Content shall be set out in any agreement entered into between the parties pursuant to Clause 7.5 or 7.6 above.

17 RIGHTS CLEARANCES

- 17.1 Without prejudice to Clause 17.2 below, MTVNE shall be solely responsible for obtaining all necessary clearances, licences and permissions, and for paying all fees, charges and royalties due with respect to the inclusion of each musical composition and video production in the MTV Programming prior to delivery to Licensee pursuant to Clause 8 above.
- 17.2 Subject to Clause 17.1 above, Licensee shall, at its sole cost and expense, be solely responsible for obtaining all necessary clearances, licences and permissions, and for paying all fees, charges and royalties due as a result of Licensee's exercise of its rights and performance of its obligations hereunder, including all performing rights licences necessary for the use and performance in the Territory of each musical composition and video production performed on the Channel, including without limitation those contained in any programmes or materials furnished by MTVNE and the Dubbing Materials (which clearances shall not be deemed included in MTVNE's indemnification undertaking in this Agreement).
- 17.3 With respect to each musical composition contained in the MTV Programming, the performing rights in and to such musical composition are (or will be at the time of delivery) either –
- 17.3.1 available for license through the performing rights society or individual having jurisdiction in the Territory, the United Kingdom or the United States; or
- 17.3.2 in the public domain; or
- 17.3.3 controlled by MTVNE or its Controlled MTV Affiliate(s) to the extent necessary to permit the exercise of the rights granted to the Licensee hereunder.
- 17.4 Licensee shall from the Effective Date implement such rights and clearance policies and procedures as are reasonably required to ensure its obligations are met under this Clause 17. Licensee shall ensure that it has at least one suitably qualified person to manage that process who will liaise with MTVNE, as required during the Term. Licensee shall provide evidence to MTVNE upon reasonable request of all contracts and arrangements procured by Licensee in compliance with its obligations under this Clause 17 and such documentation as may be necessary to show the reporting processes of Licensee for any royalties due to any rights owners or collecting societies arising from Licensee's activities pursuant to this Agreement. It is acknowledged and agreed by the Licensee that the provisions of this Clause 17 are customary in the operation of a television channel and website and are necessary in order to demonstrate the lawful use of any relevant rights on the Channel and Website and, further, that such measures are to ensure MTVNE is able to account to and co-operate with any of its licensees or with collecting societies or government bodies or intellectual property right organisations in respect of any such rights, as may be required from time to time.
- 18 ADVERTISING, MARKETING AND PROGRAMMING CONSULTATION AND SERVICES**
- 18.1 During the Term, Licensee will provide information on and consult quarterly with MTVNE or its designated Affiliate(s) as to programming, production, promotion, advertising and marketing in connection with the Channel and the Website. For this purpose MTVNE will make reasonably available one or more suitably qualified MTVNE staff members for meetings, discussions and on-going communication. Licensee shall provide any documentation or reports in that regard to MTVNE within seven days of any reasonable request by MTVNE.

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18.2 MTVNE shall notify Licensee of certain opportunities MTVNE may be contemplating or is negotiating with third parties to optimise Pan European advertising activity, which may include the Licensee by Licensee providing certain services to MTVNE as a part of those activities. This may include, by way of example only, the activation of special events and/or advertising sales promotions on a Pan European basis that includes the Territory as part of an MTVNE Pan European agreement with a third party. Licensee and MTVNE shall agree a separate agreement in writing entitled "Provision Of Advertising And Marketing Services" (EMMP) in substantially the form attached at Schedule 8, which provides for the provision by Licensee of such services to MTVNE in the Territory as MTVNE may require from time to time in return for the fees payable to Licensee by MTVNE, all in accordance with the terms and conditions and the relevant schedules set out in that separate agreement. Licensee shall promptly pass to MTVNE all requests for information received by Licensee from any third parties who wish to take up any such Pan European activities with MTVNE.

SECTION TWO: DELIVERY AND DISTRIBUTION OF THE CHANNEL

19 PLAYOUT, TRANSMISSION AND UPLINK

In consideration for the rights and licenses granted to it hereunder, Licensee shall be responsible, at its own cost, for the compilation, playout, transmission, uplink and lease of adequate space segment in relation to the Channel as more particularly described in the Transmission and Technical Services Schedule referred to at Clause 2.4 above.

20 DISTRIBUTION

20.1 In consideration for the rights and licenses granted to it hereunder, the Licensee shall be responsible for the distribution of the Channel via Licensed Media in the Territory. Subject to the terms and conditions of this Agreement and compliance by Licensee of all its obligations in this Agreement the Licensee may enter into agreements with distributors operating in the Licensed Media in the Territory ("Licence Agreements"), pursuant to which such distributors shall have the right to transmit the Channel without interruption and in its entirety via such distributors' distribution systems, provided that (a) such systems are limited to the Licensed Media in the Territory and (b) the Licensee shall remain fully liable hereunder and shall procure that each distributor observes terms no less onerous to those in this Agreement in order to protect the intellectual property rights of MTVNE, its affiliates and its licensors and any breach by any such distributor of such terms shall be deemed to be a breach by the Licensee of the terms of this Agreement.

20.2 Any distribution of the Channel via xDSL broadband cable or ADSL broadband technologies, and any development and/or distribution of any iTV and broadband applications of the Channel, shall be subject to separate terms and conditions to be agreed in writing between the parties as soon as possible at the appropriate time.

20.3 Licensee agrees to:

20.3.1 work diligently to solicit and negotiate Licence Agreements with Operators for the distribution of the Channel to ensure distribution from the Launch Date. Subject to any existing agreements assigned pursuant to Clause 20.4, all new Licence Agreements or renewals, variations or extensions of existing Licence agreements shall be on standard terms and conditions agreed between MTVNE and Licensee and shall provide, inter alia, that Licensee's rights and obligations under each Licence Agreement may be novated to MTVNE at the request of MTVNE in the event of termination of this Agreement. All Licence Agreements shall be co-terminous with this Agreement.

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20.3.2 promptly bring to the notice of MTVNE any information received by Licensee which is likely to be of use or benefit to MTVNE in relation to the marketing of the Channel including the provision of information in relation to cable television markets for music channels, identifying cable carriage opportunities with Operators and advising on strategies for maximum carriage and advertising revenue, and advising on the regulatory position in the Territory;

20.3.3 carry out marketing and promotional activity as and when required by MTVNE; and

20.3.4 at Licensor's expense, supply and/or procure the supply of all necessary equipment (including without limitation decoders, integrated receiver/decompressors and/or viewing cards) to Operators in connection with the decryption, reception and/or decompression of the Channel to enable distribution.

20.4 Prior to the Launch Date, MTVNE shall notify (and where necessary use reasonable endeavours to obtain the agreement of) all operators of Licensed Media in the Territory to which MTV European is then supplied by or on behalf of MTVNE that, with effect from the Launch Date, such operators will be supplied with the Channel in place of MTV European. Where any contracts with such operators are assignable, the Licensee shall take an assignment of the same in accordance with the form of assignment provided by MTVNE and hereby undertakes to take all steps necessary to inform the operators of the changes. In the event that any consents are required from such operators for any assignment or novation, MTVNE shall use all reasonable endeavours to agree the same with the relevant operator provided always Licensee shall bear the reasonable legal fees of MTVNE in that process.

20.5 In consideration for the Licensee's share of the Channel Distribution Revenue, Licensee shall actively promote the Channel in the Territory and in particular shall advertise, market and promote the Channel to specific operator(s) of Licensed Media in the Territory with the aim of maximising the Channel Distribution Revenue, the nature of such activities to be agreed in advance between MTVNE and Licensee, and in so doing, subject to MTVNE's prior written consent in each instance, shall be entitled to create promotional materials on air and in print which support the mutual interests of the parties in maximising the number of distributors.

20.1 If any distributor requires any distribution agreement to be made directly with MTVNE, the Licensee shall immediately inform MTVNE and the parties will discuss in good faith any appropriate terms and conditions that may be agreed. .

20.2 In the event that any Operator does and/or omits to do anything which has any adverse effect on the Channel or any elements therein, a soon as the same comes to the attention of the Licensee it shall immediately inform MTVNE and the parties shall discuss in good faith the appropriate steps to be taken immediately. Licensee shall, in any event, immediately withdraw the Channel from such Operator upon the reasonable request of MTVNE and, in any event, where the damage continues for a period longer than thirty (30) days. The parties acknowledge and agree that the purpose of this clause 20.6 is to mitigate any damage that may occur to either party in such circumstances and that they shall work together in good faith at all times to try to ensure continuance of the Channel as intended under this Agreement.

21 DISTRIBUTION REVENUE SHARE

In consideration of the rights and obligations granted to Licensee, MTVNE shall be entitled to twenty per cent (20%) of all Channel Distribution Revenue payable by Licensee in accordance with Clause 30 below.

SECTION THREE: ADVERTISING, SPONSORSHIP AND ANY ANCILLARY ACTIVITIES

22 SALE OF ADVERTISING BY LICENSEE

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- 22.1 Licensee may sell Local Advertising to Territory Entities, subject to the terms and conditions set out in this Agreement, and (subject to Clause 23.1, revenues due to MTVNE) shall be entitled to retain all Licensee Channel Advertising Revenue and Licensee Website Advertising Revenue derived therefrom. Licensee shall be permitted up to a maximum of twelve thousand five hundred (12,500) 30 second advertising spots per Year, on the Channels, to make Barter Agreements. For the avoidance of any doubt, where no Local Advertising Revenue is agreed and received by the Licensee for such Barter Agreements there shall be no obligation upon the Licensee to pay Local Advertising Revenue upon such Barter Agreements equivalent to the value of the respective Barter Agreement.
- 22.2 Neither Licensee, nor its servants, agents or any persons duly authorised by Licensee shall
- 22.2.1 actively solicit Non-Territory Entities in respect of the sale of Local Advertising save with the prior written consent of MTVNE, which consent shall not be unreasonably withheld or delayed; or
- 22.2.2 actively solicit Territory Entities or Non-Territory Entities in respect of the sale of Pan Euro Advertising,
- and shall promptly pass to MTVNE all requests for information received by Licensee from Non-Territory Entities with respect to Local Advertising, and from Territory Entities and Non-Territory Entities regarding Pan Euro Advertising.
- 22.3 Prior to approaching and/or seeking sales of Local Advertising from any of the customers listed in Schedule 2 hereto (as updated from time to time by MTVNE), Licensee shall notify, and shall only approach and/or seek sales of Local Advertising from such customers to the extent that such customers are Territory Entities in accordance with the rights granted herein.
- 22.4 Unless otherwise agreed between MTVNE and Licensee in advance in writing, Licensee shall not sell any Local Advertising containing any **"Excluded Material"** listed in Schedule 4 or otherwise notified by MTVNE from time to time.
- 22.5 Licensee shall prepare and invoice customers on its own stationery in respect of all Local Advertising sold by Licensee, and shall immediately send to MTVNE copies of all invoices issued. Licensee shall use its best endeavours to collect all sums owing from its customers with respect to Local Advertising, in full and immediately they become due.

23 SALE OF ADVERTISING BY MTVNE

- 23.1 MTVNE and its Affiliate(s) may sell Pan Euro Advertising to Territory Entities and Non-Territory Entities, and Local Advertising to Non-Territory Entities, subject to the terms and conditions set out in this Agreement. MTVNE and its Affiliate(s) shall be entitled to retain all Pan Euro Advertising Revenue and MTVNE Website Advertising Revenue derived therefrom subject to Clause 29 below (any agreement for the purchase of additional commercial airtime and/or advertising space online).
- 23.2 Subject to Clause 23.3 below, MTVNE, its servants, agents and all persons duly authorised by it shall promptly pass to Licensee all requests it receives from Territory Entities for information regarding Local Advertising.
- 23.3 MTVNE and its Affiliate(s) shall be entitled to offer for sale, via the Internet, and thereby directly to entities in the Territory, whether or not they are Territory Entities, any Pan Euro Advertising air-time that remains unsold before the scheduled date of broadcast (the **"Unsold**

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- Inventory"**). The inclusion of Pan Euro Advertising air-time in the Unsold Inventory shall be at the sole discretion of MTVNE.
- 23.4 MTVNE and its Affiliate(s) (as appropriate) shall prepare and invoice customers on its own stationery in respect of all Local Advertising sold to Non-Territory Entities and Pan Euro Advertising, and shall send to Licensee summaries of all sales in relation to Local Advertising, but shall be under no obligation to provide any details of sales of Pan Euro Advertising. MTVNE or its Affiliate(s) (as appropriate) shall use its reasonable endeavours to collect all sums owing from its customers with respect to Local Advertising and Pan Euro Advertising, in full and immediately they become due.
- 24 ADVERTISING REVENUE SHARE**
- 24.1 MTVNE shall be entitled to and Licensee shall pay to MTVNE in accordance with Clause 30 below a share of the Licensee Channel Advertising Revenue and the Licensee Website Advertising Revenue as follows:
- 24.1.1 twenty percent (20%) of the Licensee Channel Advertising Revenue; and
- 24.1.2 twenty percent (20%) of Licensee Website Advertising Revenue.
- 24.2 Licensee shall be entitled to twenty per cent 20% of all MTVNE Channel Advertising Revenue and MTVNE Website Advertising Revenue payable in accordance with Clause 31.
- 24.3 MTVNE shall be entitled to retain all Pan Euro Advertising Revenue and Pan Euro Website Advertising Revenue, subject to Clause 29 below (any purchase of additional commercial airtime and/or advertising space online).
- 25 INSERTION PROCEDURE FOR ADVERTISING ON AIR AND ON-LINE**
- 25.1 With respect to Advertising on the Channel, MTVNE shall provide tapes of its customers' Advertising in digi-betacam format, of a quality suitable for broadcast, not less than five (5) Business Days prior to the scheduled transmission of the Advertising on the Channel.
- 25.2 With respect to Advertising on the Website, MTVNE shall provide copies of its customers' Advertising in HTML format, of a quality suitable for publication on the Website, not less than two (2) Business Days prior to the agreed date of publication of the Advertising on the Website.
- 25.3 Licensee shall examine the materials delivered pursuant to Clauses 25.1 and 25.2 above upon receipt thereof, and must notify MTVNE by registered mail or confirmed facsimile if such materials are not fit for broadcast on the Channel or publication on the Website (as appropriate) in accordance with international customary industry standards, within fourteen (14) days of receipt, or at least twenty four (24) hours prior to the scheduled broadcast or publication (as appropriate) if the period between delivery and broadcast or publication (as appropriate) is less than fourteen (14) days. In such circumstances, MTVNE shall replace the relevant materials with technically acceptable materials and, if necessary, Licensee shall re-schedule the Advertising for broadcast or publication (as appropriate) as agreed between the parties hereto.
- 25.4 Following the final transmission of any Advertising on the Channel, or final publication of any Advertising on the Website, Licensee shall return to MTVNE all Advertising materials supplied by MTVNE pursuant to this Clause 25. All costs in connection with the return of such materials to MTVNE shall be borne by MTVNE.

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- 25.5 Licensee will provide MTVNE with reasonable notice in respect of any of the following events, thereby allowing the alteration of marketing strategy and the placing of Advertising:
- 25.5.1 modification of the programming schedules and/or timetables for the Channel;
- 24.5.2 difficulties in transmission of the Channel or the availability of the Website, of which it is aware; and
- 24.5.3 studies or surveys of the Channel and/or the Website, of which it is aware.

26 ANCILLARY ACTIVITIES, INCLUDING INTERACTIVE SERVICES

- 26.1 In the event that Licensee wishes to undertake any activities outside the express terms of this Agreement in connection with the Channel and/or Website it shall first submit a formal written request to MTVNE setting out the full details of the activity proposed. The parties shall negotiate in all good faith the terms and conditions that shall be applicable to any such additional activity, including all commercial terms, any new rights or licenses that may be required to be granted from MTVNE and restrictions contained therein, any additional warranties or indemnities that may be required from Licensee.
- 26.2 In particular, without limitation, in the event that the parties agree to develop any Interactive Services to the Channel, then the fees payable in respect of such Interactive Services shall be negotiated by the parties hereto prior to any agreement being made with any third party relating to such Interactive Services.
- 26.3 All elements relating to any Interactive Services (including without limitation development and distribution elements) shall be agreed between the parties prior to launch based on the business plan for such activity as agreed between the parties in all good faith. The parties agree in principle that (i) Licensee shall bear all related development costs; (ii) all rights in and to all elements of such Interactive Services shall be owned by the Party who develops the Interactive Service with a licence to the other party in perpetuity to use such elements on terms and conditions to be agreed; (iii) where any Interactive Services are jointly developed the parties shall agree prior to development on the terms and conditions of ownership of the elements therein; and (iv) all elements of such Interactive Services shall be subject to the prior approval of MTVNE, which shall not be unreasonably withheld or delayed.
- 26.4 In consideration for any further rights or licenses granted to Licensee pursuant to Clause 26.1 and without prejudice to the provisions therein, the parties hereby agree Licensee shall pay to MTVNE a minimum of twenty percent (20%) of any Ancillary Revenue received by Licensee and in accordance with Clause 31.2 below. Licensee shall include details of all such revenue derived in any quarter in its quarterly report pursuant to Clause 31.2 below.
- 26.5 Provided always this Clause 26 is subject entirely to Clause 7.5 (separate agreement for digital media activity by agency arrangements) and the separate commercial terms that would apply.

27 OTHER OBLIGATIONS OF LICENSEE

- 27.1 Licensee shall use its reasonable endeavours at its own expense to promote and extend sales of Local Advertising and will work diligently to obtain orders for Local Advertising and to maximise Channel Advertising Revenues and Website Advertising Revenues within the Territory. Licensee shall report regularly to MTVNE's General Manager of Emerging Markets or such other person as may be nominated by MTVNE from time to time on such marketing activities and shall comply with all reasonable directions and request of MTVNE's General Manager of Emerging Markets.

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- 27.2 Licensee shall immediately propose to MTVNE any opportunities it devises or of which it becomes aware for optimising Advertising revenues in relation to the Channel and the Website including, by way of example, the establishment of any special operations, or a sales and rate policy taking into account developments in the technical, commercial and advertising environment and the target audience of the Channel and the Website.
- 27.3 Licensee shall provide MTVNE with advice and recommendations for all studies, surveys and promotional activities to be conducted by Licensee with the approval of MTVNE in the Territory in connection with the Channel and the Website. Licensee shall provide copies of any such studies, surveys or reports prepared in relation to the Channel and any activities connected with it immediately following preparation or receipt, as the case may be, of the same by Licensee.
- 27.4 Licensee shall provide such additional promotional services and information regarding the Channel and/or the Website as MTVNE may reasonably request to clients in the Territory who have booked Advertising on the Channel and/or the Website (whether such clients have been introduced by Licensee or not).
- 27.5 Licensee shall not during the Term act as a representative for the sale of advertising and/or sponsorship for any other music or youth oriented programme service distributed in the Territory other than such services as are distributed by MTVNE or its Affiliate(s).
- 27.6 If Licensee wishes to book any air-time or online inventory from MTVNE on any MTV Channel or MTV Website operated by MTVNE, the parties will discuss in all good faith the terms and conditions, including pricing that would apply. In any event, any air-time or online inventory provided by MTVNE is solely and strictly to be used for the purposes of promotion of the Channel and/or the Website, is subject always to availability, MTVNE's absolute editorial control, any applicable restrictions in law (in particular but not limited to the rules of Ofcom or other similar governing body) and MTVNE's General Terms and Conditions applicable to the acceptance and transmission by MTVNE of any content provided by the Licensee or by persons on behalf of the Licensee to be inserted into such air-time or inventory.
- 28 PROVISION OF AIR-TIME AND ONLINE INVENTORY BY LICENSEE TO MTVNE AND PROVISION OF ANY AIR-TIME BY MTVNE**
- 28.1 For the duration of the Term, Licensee shall provide to MTVNE without charge air-time on the Channel representing ten thousand (10,000) advertising spots per Year (pro-rated in any Year of the Term that is greater or less than twelve (12) months) each of thirty (30) seconds' duration or 10% of the total air-time available for advertising, whichever is the greater amount ("Airtime"), and banner inventory on the Website representing ten percent (10%) of Licensee's total banner inventory for the Website per Year (pro-rated in any Year of the Term that is greater or less than twelve (12) months) ("Online Inventory"), in relation to Advertising sold by MTVNE or its Affiliate(s).
- 28.2 Subject to Clause 28.3 below, the Airtime shall be apportioned by Licensee so that the thirty (30) second spots are transmitted in equal numbers in all day parts on the Channel, provided that if, during Peak Time, Licensee achieves or can achieve sales to third parties of thirty (30) second advertising spots already allocated to customers of MTVNE or its Affiliate(s) then such third party advertisers shall receive priority over MTVNE's or its Affiliate(s)' customers with regard to the allocation of the time of transmission, and MTVNE's or its Affiliate(s)' customers' advertising shall be broadcast in the next available unsold spots.
- 28.3 Where MTVNE or its Affiliate(s) have sold Pan Euro Advertising that is specific to any of MTVNE's or its Affiliate(s)' pan-euro programming that is broadcast on all or most of the MTV Channels, Licensee shall ensure that such Pan Euro Advertising is broadcast in and around

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such pan-euro programming together with any promotional spots relating thereto, provided that MTVNE has supplied to Licensee reasonable prior written notice thereof.

- 28.4 Subject to Clause 28.5 below, the Online Inventory shall be placed run of site on the Website.
- 28.5 Where MTVNE or its Affiliate(s)' have sold Pan Euro Advertising that is specific to any MTV Website Content that is published on all or most of the MTV Websites, Licensee shall ensure that such Pan Euro Advertising is displayed on the Website in and around such MTV Website Content, provided that MTVNE has supplied to Licensee reasonable prior written notice of the same.
- 28.6 Licensee shall at all times provide such information as MTVNE may reasonably request, and shall give due and careful consideration to any requests made by MTVNE or its Affiliate(s) or Channel Licensees, with regard to the scheduling and broadcast of Advertising on the Channel and/or the placement of Advertising on the Website.
- 28.7 Should MTVNE's sales of Advertising exceed the Airtime and/or Online Inventory, MTVNE or its Affiliate(s) will purchase any additional commercial airtime and/or online inventory (as appropriate) in accordance with Clause 29 below.

29 PURCHASE OF ADDITIONAL AIRTIME AND ONLINE INVENTORY BY MTVNE

- 29.1 Where MTVNE, or its Affiliate(s), require additional advertising spots for the broadcast of Advertising on the Channel, and/or additional advertising space for the placement of Advertising on the Website, the price for such additional airtime and/or advertising space shall be discussed and agreed between the parties taking into account (but not necessarily being) the rate card price for the Channel and/or the Website (as appropriate) current at the time. The charges to MTVNE shall, in any event, be no less favourable than the charges at the relevant time to any other customer of the Licensee.
- 29.2 Licensee shall invoice MTVNE or its Affiliate(s) (as directed by MTVNE) for any such additional airtime and/or advertising space on a monthly basis, and MTVNE or its Affiliate(s) (as appropriate) shall pay such invoice in accordance with Clause 31.3.4.

30 PROMOTIONAL MATERIAL

- 30.1 The parties shall provide to each other, free of charge, all sales material (in English, Russian or Ukrainian, as appropriate), which the other may reasonably require in connection with its obligations under this Agreement. Any translations (and the cost thereof) shall be the receiving party's sole responsibility.
- 30.2 Licensee shall provide MTVNE with pre-transmission schedules in respect of all Advertising booked pursuant to this Agreement and transmission certificates in respect of all Advertising that is transmitted on the Channel.

SECTION FOUR: GENERAL

31 REPORTING, INVOICING AND PAYMENT

- 31.1 Within fifteen (15) days after each Quarter Day during the Term, Licensee shall deliver to MTVNE (at the address given in the definition above or such other address notified for this purpose) a statement certified to be accurate by a director of Licensee, showing the following details for the preceding Quarter:
- 31.1.1 Local Advertising sold to Territory Entities, stating separately Local Advertising on the

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Channel and Local Advertising on the Website;

- 31.1.2 Licensee Channel Advertising Revenue received by Licensee or its Affiliate(s), and Licensee Channel Advertising Revenue invoiced but not yet received by Licensee or its Affiliate(s);
- 31.1.3 Website Advertising Revenue received by Licensee or its Affiliate(s), and Website Advertising Revenue invoiced but not yet received by Licensee or its Affiliate(s);
- 31.1.4 Channel Distribution Revenue received by Licensee or its Affiliate(s), and Channel Distribution Revenue invoiced but not yet received by Licensee or its Affiliate(s);
- 31.1.5 Ancillary Revenue received by Licensee or its Affiliate(s), and Ancillary Revenue invoiced but not yet received by Licensee or its Affiliate(s);
- 31.1.6 The share of all the above Revenues due to MTVNE in accordance with this Agreement:
- (i) for the preceding Quarter;
 - (ii) with any cumulative total for the relevant Year;
 - (iii) including full particulars for each separate revenue stream;
 - (iv) and, if applicable, setting out any deduction to be made to that share pursuant to Clause 6.2 above and Clause 31.9.2 below.
- 31.1.7 Gross Licensee Revenue and particulars of any deductions made, accounted for separately.
- 31.2 At the end of each Year following receipt of Licensee's report for the last Quarter of the relevant Year pursuant to Clause 31.1 above, MTVNE shall invoice Licensee for any share of any revenues received by Licensee and due to MTVNE as set out in such report, and subject to Clause 31.9 below, Licensee shall pay such invoice within forty five (45) days of receipt of the invoice. For any amounts invoiced but not yet received by Licensee, MTVNE shall only be entitled to invoice Licensee for any share of such revenues due to MTVNE upon the earlier of the date the sums are received by Licensee (as contained in a subsequent statement of Licensee) or six months from the date of the statement delivered under Clause 31.1 above for the respective sums.
- 31.3 Where MTVNE has sold any Local Advertising to Non-Territory Entities within fifteen (15) days following the end of each and every calendar month during the Term, MTVNE shall deliver to Licensee (at the address shown at the top of this Agreement above or such other address notified to MTVNE for this purpose) a statement certified to be accurate by a duly authorised officer of MTVNE, showing the following details for the preceding calendar month:
- 31.3.1 Local Advertising sold to Non-Territory Entities, stating separately Local Advertising on the Channel and Local Advertising on the Website;
- 31.3.2 MTVNE Channel Advertising Revenue received by MTVNE or its Affiliate(s), and MTVNE Channel Advertising Revenue invoiced but not yet received by MTVNE or its Affiliate(s);
- 31.3.3 MTVNE Website Advertising Revenue received by MTVNE or its Affiliate(s), and MTVNE Website Advertising Revenue invoiced but not yet received by MTVNE or its Affiliate(s); and
- 31.3.4 if any agreement has been reached pursuant to Clause 29 above for the purchase of

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any additional commercial airtime and/or advertising space online with any revenues to be paid to Licensee, the share of any of the above due to Licensee for the preceding month and the cumulative total for the relevant Year.

- 31.4 At the end of each Year following receipt of MTVNE's report for the last Quarter of the relevant Year pursuant to Clause 31.3 above, Licensee shall invoice MTVNE for any share of any revenue due to Licensee as set out in such report, and subject to Clause 30.9 below, MTVNE shall pay such invoice within thirty (30) days of receipt of the invoice.
- 31.5 Subject to Clause 31.9, all payments under this Agreement shall be paid without any deductions or withholding on account of any taxes (other than withholding taxes and then only subject to the next sentence), levies, fees or other charges (however denominated) imposed, levied or assessed by statute, law, rule or regulation now in effect or hereafter enacted, it being the intent of this Agreement that the payments specified shall be net amounts unreduced by any tax, levy or charge. In the event that withholding tax is imposed on any amount required to be paid under this Agreement by either party (the "**Paying Party**") to the other (the "**Receiving Party**"), the Paying Party shall notify the Receiving Party immediately and shall co-operate fully with the Receiving Party in establishing the applicable rate of such withholding tax prior to deducting such tax from the payment to be made under this Agreement. The Paying Party shall be entitled to deduct the amount of such withholding tax provided the Paying Party pays such withholding tax to the appropriate tax authorities and forwards to the Receiving Party all required documentation (including an original receipt or other evidence of receipt of payment) in order for the Receiving Party to obtain a tax credit for the amounts so deducted.
- 31.6 If any party ("**Payor**") defaults for any reason in making payment of any sum payable to the other party ("**Payee**") hereunder, then the Payor shall pay interest on that sum for the period from the due date until the date of payment, such interest to be calculated on a daily basis (as well after as before any judgment) at a rate per annum equal to 4% above the National Westminster Bank plc (or its successor(s)) base rate from time to time and shall be payable on demand. Notwithstanding the foregoing, the parties agree that this Clause 31.6 shall not constitute the Payee's agreement to accept such payments after the same are due or a commitment by the Payee to extend credit to the Payor. Further, each party acknowledges and agrees that failure to pay any or all such amounts within thirty (30) Business Days of notification to pay following late payment shall constitute a material breach of this Agreement, notwithstanding the provisions of this Clause 31.6.
- 31.7 All amounts payable by the Payor to the Payee shall be payable in Euro unless the Payee notifies Payor otherwise. The exchange rate used shall be that which is published in the Financial Times three (3) Business Days before the relevant payment is due. All payments shall be remitted by telegraphic transfer to the Payee's bank account as follows:-

For payments to MTVNE:

Account Name: MTV Networks Europe
Account No: 22395101
Bank: Chase Manhattan Bank
Address: 125 London Wall, London EC2Y 5AJ, U.K.
Swift Code: CHASGB2LA

For payments to Licensee:

Account Name: Teleradiokompaniya MRIYA TV
Account No: 26002300111654
Bank: JSB VABank
Address:

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Swift Code: VABAUUK

MFO 321637

Corresponding bank: BKTRUS33

Deutsche Bank Trust Company Americas

Account: 04-403-050

- 31.8 Each party shall be responsible for the payment of all agency fees and commission charged by advertising agencies used by them in connection with the sales of Advertising hereunder.
- 31.9 The following are permitted deductions with regard to any payments made pursuant to this Agreement:
- 31.9.1 Notwithstanding any designation by Licensee, MTVNE shall have the sole discretion to apply any payments received from Licensee or to set off any indebtedness of MTVNE to Licensee, to or against any past due indebtedness of Licensee to MTVNE or any of its Affiliate(s), under any agreement between MTVNE and Licensee or its Affiliate(s). In particular, but without limitation, MTVNE shall be entitled to set off any sums due to Licensee pursuant to Clause 30.3 above against any sums due to MTVNE pursuant to this Agreement or otherwise due to MTVNE from Licensee.
- 31.9.2 Licensee shall only be permitted to deduct from any sums due to MTVNE under Clause 31.2 in any relevant Year an amount equivalent to the sums actually received by MTVNE from Licensee in accordance with Clause 6 above in that Year.
- 31.10 Each party shall keep (at that party's principal place of business) during the Term and for at least two (2) years thereafter, complete and accurate books of account, accurate records and statements relating to its activities under this Agreement (including records of all transactions and negotiations relating to the sale of Local Advertising), which books and records, together with supporting documentation, shall be open for inspection and audit (with the right to make copies and take excerpts) by the other or its representatives during normal business hours upon reasonable notice during and up to two (2) years after the expiry of the Term.
- 31.11 In the event that any inspection and/or audit undertaken by a party ("**Auditing Party**") or its representatives in accordance with Clause 31.10 above discloses that there has been an underpayment of monies due to the Auditing Party of not less than five per cent (5%) of the total monies paid by the other party ("**Audited Party**") in respect of the period which is the subject of the inspection and/or audit, the Audited Party shall forthwith reimburse the Auditing Party for all costs and expenses incurred by the Auditing Party in connection with such inspection and audit. In any event, the Audited Party shall forthwith pay the Auditing Party the amount of any underpayment plus interest from the date the payment should have been made until the date of receipt of the payment by the Auditing Party at the rate specified in Clause 31.6 above.
- 32 LAUNCH PARTY**
- 32.1 Licensee shall, at its own cost and in consultation with MTVNE, organise a party, to be held in the Territory on the Launch Date, to celebrate the launch of the Channel and the Website ("**Launch Party**"), such cost not to include the travel and associated costs of MTVNE staff attending the Launch Party.
- 32.2 Licensee shall, at its own cost, arrange for an international recording artist(s) to attend and

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perform at the Launch Party and comply with its obligations under Clause 17 (Rights Clearances). MTVNE shall provide Licensee with all reasonable assistance and its expertise in arranging the attendance and performance of such international recording artist(s).

33 PRESS RELEASES

All press releases and other public statements regarding this Agreement shall be subject to approval in writing in advance by each of the parties hereto.

34 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 34.1 MTVNE represents and warrants during the Term that it has, and will continue to have throughout the Term, the right to enter into and fully to perform this Agreement.
- 34.2 MTVNE represents during the Term that, except as expressly provided to the contrary in this Agreement, it has the right to license the MTV Programming, the MTV Website Content and the Marks as provided herein and that the use by Licensee of the MTV Programming, the MTV Website Content and the Marks pursuant to the terms hereof, will not infringe the copyright, trade mark, rights of privacy or similar rights of any third party.
- 34.3 Without prejudice to any of the Licensee's obligations hereunder, MTVNE undertakes to provide the Licensee with such assistance as the Licensee may reasonably require, prior to the Launch Date, to ensure a successful commercial launch of the Channel and the Website on the Launch Date. Licensee shall reimburse MTVNE on demand for all reasonable out-of-pocket expenses properly incurred by MTVNE and/or its employees and representatives in providing such assistance to the Licensee.
- 34.4 Licensee represents and warrants that:
- 34.4.1 it has, and will continue to have throughout the Term, the right to enter into and fully perform this Agreement;
- 34.4.2 it will maintain throughout the Term, all necessary licenses, authorisations, permits, permissions or consents required by any applicable government department or other regulatory body in order to transmit and broadcast the Channel as contemplated hereunder, and the Channel will comply with the provisions of all such licenses, authorisations, permits, permissions or consents at all times;
- 34.4.3 it shall not throughout the Term, directly or indirectly license, distribute or exhibit animations, promos, names, logos, service marks, trade marks or similar items similar in format to the Marks, the MTV Programming or the MTV Website Content other than in conjunction with its use of the Marks, the MTV Programming or the MTV Website Content as permitted in this Agreement;
- 34.4.4 throughout the Term, the Channel as produced and transmitted by Licensee hereunder will incorporate the Bug on-air at all times (except during the transmission of Advertising);
- 34.4.5 throughout the Term, subject to MTVNE's warranties at Clause 34.2 above, nothing used on the Channel or the Website shall at any time infringe any rights of third parties, and that everything which is so used shall comply with all applicable governmental rules, guidelines, safety codes and regulations;

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34.4.6 the Licensee shall comply with all applicable governmental rules, legislation, guidelines, codes and regulations including, as relevant, the provisions of US Foreign Corrupt Practices Act ('FCPA') and the OECD Convention.

- 34.7 Licensee warrants that, throughout the Term, the Channel and the Website will be of high standard in style, appearance and quality.
- 34.8 Licensee represents that, in accordance with Clause 17, it has procured or will obtain and maintain all necessary synchronisation, mechanical, performance and other licences, clearances and permissions from third parties, and make payments with respect thereto, in connection with Licensee's exercise of its rights and performance of its obligations hereunder.

35 INDEMNITY

- 35.1 MTVNE will indemnify and hold Licensee harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees, arising from any breach or any alleged breach by MTVNE of any warranty under this Agreement, provided, however, that Licensee shall promptly notify MTVNE of any claim or litigation to which this indemnity applies, and that at MTVNE's option, MTVNE may assume the defence of any such claim or litigation.
- 35.2 Licensee will indemnify and hold MTVNE harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees, arising from:
- 35.2.1 the transmission of any programming or other materials created by, under the direction of, or at the request of Licensee, including without limitation the Original Programming, the Original Mobile Content and Original Website Content, or any programming that is otherwise inserted into or added to any MTV Programming or with any MTV Website Content;
- 35.2.2 any breach or alleged breach by Licensee of any representation, warranty, or undertaking under this Agreement, or of any agreement entered into by Licensee with a third party in connection with this Agreement;
- 35.2.3 any claim that any activity of Licensee relating to the Channel, Original Mobile Content or the Website, whether in exercise of the Licensee's rights hereunder or otherwise, infringes the intellectual property rights of any third party, or
- 35.2.4 Licensee's breach or alleged breach of its obligations to any advertiser or third party with respect to Advertising on the Channel and/or the Website and/or Original Mobile Content,
- provided, however, that MTVNE shall promptly notify Licensee of any claim or litigation to which this indemnity applies, and that at Licensee's option, Licensee may assume the defence of any such claim or litigation.

36 FORCE MAJEURE

- 36.1 For the purposes of this Agreement, "Event of Force Majeure" means, in relation to a party, any circumstances beyond the reasonable control of that party which could not by reasonable diligence have been avoided by such party. Without prejudice to the generality of the foregoing, the following shall be regarded as circumstances beyond a party's reasonable control
- 36.1.1 act of God, explosion, flood, tempest, fire or accident;

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- 36.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 36.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 36.1.4 import or export regulations or embargoes;
- 36.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the party in question or of a third party); or
- 36.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- 36.2 If a party is affected by an Event of Force Majeure which affects or may affect the performance of any of that party's obligations under this Agreement, then that party shall promptly notify the other party of the nature and extent of the Event of Force Majeure and affect on that party's performance of its obligations hereunder.
- 36.3 Neither of the parties shall be deemed to be in breach of this Agreement, or otherwise be liable to the other party, by reason of any delay in performance, or the non-performance, of any of its obligations hereunder, to the extent that the delay or non-performance is due to any Event of Force Majeure of which it has notified the other party pursuant to Clause 36.2, and the time for performance of that obligation shall be extended accordingly, provided always that the party which is affected by the Event of Force Majeure shall use all its reasonable endeavours to minimise the effects of the Event Force Majeure upon the performance of its obligations under this Agreement and to resume normal performance as soon as possible. Nothing in this Clause 36.3 shall relieve any party of an obligation to pay money.
- 36.4 If the performance by either party of any of its obligations under this Agreement is affected by an Event Force Majeure for a continuous period in excess of one (1) month, the parties shall enter into a bona fide discussions with a view to alleviating the effects of the Event of Force Majeure, or to agreeing upon such alternative arrangements as may be fair and reasonable in the circumstances. If such party's performance is so affected for a continuous period in excess of three (3) months the other party shall be entitled to terminate this Agreement by giving written notice to the party so affected.

37 TERMINATION

- 37.1 Either party (the "**Initiating Party**") may terminate this Agreement with immediate effect by notice to the other party (the "**Breaching Party**") on or at any time after the occurrence of any of the following events in relation to the Breaching Party:
- 37.1.1 the Breaching Party being in material breach of any provision under this Agreement and, if the breach is capable of remedy, failing to remedy the breach within thirty (30) days starting on the day after receipt of notice from the Initiating Party giving particulars of the breach and requiring the Breaching Party to remedy the breach;
- 37.1.2 the Breaching Party passing a resolution for its winding-up or a court of competent jurisdiction making an order for the Breaching Party's winding up or dissolution;
- 37.1.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or the taking possession or sale by an encumbrancer taking possession of or selling an asset of the Breaching Party;

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- 37.1.4 the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.
- 37.2 If in any instance Licensee has failed to obtain approval under Clause 16.2 for any use of any of the Marks, but such unauthorised use has ceased and is therefore incapable cure, MTVNE may send Licensee a written warning notice in respect of such use, but such use shall not be considered as a material breach for the purposes of Clause 37.1 above. However, if, during any period of ninety (90) days during the Term, MTVNE has sent Licensee three such notices, and within that period or within the subsequent period of ninety (90) days (commencing ninety (90) days after the first instance of unauthorised use of any of the Marks by Licensee in respect of which MTVNE has sent Licensee a written warning notice), there occurs a further instance of failure to obtain approval, MTVNE shall be entitled either to send a further warning notice or to give Licensee written notice terminating this Agreement forthwith.
- 37.3 In addition, MTVNE shall have the right to terminate this Agreement forthwith by giving Licensee written notice thereof if any of the following events occur:
- 37.3.1 the Licensee fails to comply with any of the Conditions Precedent in accordance with Clause 3;
- 37.3.2 the Launch Date has not occurred by 1 March 2007 (or such later date as the parties may agree in writing);
- 37.3.3 Licensee changes its organisation or methods of business in such a way as in the opinion of MTVNE to be able less effectively to carry out its duties under this agreement;
- 37.3.4 Licensee does anything which significantly diminishes, denigrates or otherwise adversely affects the value of and/or goodwill associated with the Marks and breaches this agreement in connection with trade mark quality assurance requirements;
- 37.3.5 without prejudice to MTVNE's rights pursuant to Clause 42 below, effective control of the Licensee or any Person directly or indirectly controlling the Licensee is acquired by any of the Persons listed in Schedule 9 (as such list may be updated from time to time in accordance with paragraph 5 thereof); or
- 37.3.6 the Licensee has not received the full amount of the Investment by the [fifth] year of the Term.
- 37.4 Any act done or omitted to be done by any Affiliate(s) of Licensee, which would be a breach of this Agreement if done by Licensee, is deemed to be a breach of this Agreement by Licensee.
- 37.5 Termination or expiry of this Agreement shall be without prejudice to the rights and remedies of either party accrued prior to the effective date of such termination or expiry.
- 38 POST-TERM RIGHTS AND OBLIGATIONS**
- 38.1 At the end of the Term (howsoever determined), all rights granted by MTVNE hereunder shall forthwith revert to MTVNE and the Licensee shall forthwith change all corporate names to names not incorporating the word 'MTV' or any word confusingly or deceptively similar to 'MTV'.
- 38.2 At the end of the Term (howsoever determined), Licensee shall, as directed by MTVNE, either (i) immediately return to MTVNE, at such address as MTVNE shall then identify, postage

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prepaid and in the same condition as received by Licensee (fair wear and tear excepted), or (ii) destroy and provide to MTVNE a certificate of destruction, duly signed by officer of Licensee, covering -

- 38.2.1 all materials and copies of materials provided by or owned by MTVNE, or referred to hereunder, that include or contain any MTV Programming, any MTV Website Content, any Marks, any Copyrights and/or any Advertising or Dubbing Materials; and
- 38.2.2 subject to third party rights, all other materials, including but not limited to Advertising, that Licensee has created that contain, incorporate or in any way relate to any of the foregoing materials (for the avoidance of doubt, the Licensee shall not be required to destroy the Original Programming or the Original Website Content under this Clause 38.2 provided that such material does not contain any Marks).
- 38.3 Upon expiration or termination by MTVNE pursuant to Clause 37 above, then MTVNE shall have the right of first refusal in respect of acquiring (for itself or any of its Affiliate(s) or Channel Licensees) the rights to all Original Programming, Original Mobile Content and Original Website Content owned by Licensee at the date of such termination in accordance with Clause 16.1 above, at a price which is the market value for such programming (excluding any value attributable to any inclusion therein of the Marks or reference therein to MTVNE or its Affiliate(s)).
- 38.4 Upon expiration or termination of this Agreement, Licensee shall immediately cease using the materials referred to in Clause 38.2 above, and shall not use, advertise, exhibit, license, distribute, or exploit such materials in any manner, or use any element, name, logo, or design which is substantially or confusingly similar to any of the Marks on any product or service in any place whatsoever.
- 38.5 Upon expiration or termination of this Agreement, Licensee shall immediately pay to MTVNE any sums due to MTVNE pursuant to this Agreement in accordance with Clause 31 and shall produce any ongoing reports as may be required and to continue to pay any sums immediately until all sums due are accounted for and paid in full.
- 38.6 Termination or expiry of this Agreement shall be without prejudice to the rights and remedies of either party accrued prior to the effective date of such termination or expiry.

39 NOTICES

- 39.1 Except as otherwise expressly provided herein, notices and other communications served under this Agreement shall be in writing and shall be delivered by hand or overnight courier service, posted by registered service or sent by facsimile transmission, as follows -

If to MTVNE:

MTV Networks Europe
180 Oxford Street
London W1D 1DS

Attention: Dean Possenniskie, Vice President, General Manager – Emerging Markets
Facsimile: +44 20 7478 5909

with a copy to:

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MTV Networks Europe
180 Oxford Street
London W1D 1DS

Attention: VP, Business & Legal Affairs
Facsimile: +44 20 7478 6008

If to Licensee or to Guarantor:

29 E Vorovskogo Str, Office #14,
Kiev 01054, Ukraine

Attention: [To be designated by investor group]
Facsimile:

or to such other address, facsimile number, or attention of such other person as the relevant party hereto shall advise the other party in writing from time to time.

- 39.2 All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given -

39.2.1 ten (10) Business Days after the same are sent by registered mail, postage prepaid,

39.2.2 when delivered by hand or transmitted by facsimile (with appropriate written acknowledgement of confirmed receipt) unless delivered on a day which is not a Business Day in the receiving jurisdiction in which case such notice shall be deemed to have been given on the next succeeding Business Day in such jurisdiction; or

39.2.3 two (2) Business Day after the same are sent by an overnight or express courier service of international standing (if sending from one country to another) or national standing (if sending within a single country), with appropriate written acknowledgement of confirmed receipt.

40 CONFIDENTIALITY AND NON-POACHING

- 40.1 For the purposes of this Agreement, “**Restricted Information**” means, in relation to each party to this Agreement (the “**Recipient**”) any information which is disclosed to that party by another party (the “**Informant**”) pursuant to or in connection with this Agreement, whether orally or in writing or any other medium, and whether the information is expressly stated to be confidential or marked as such.

- 40.2 The Recipient undertakes to the Informant that, except as provided by Clause 30.3 below or as authorised in writing by the Informant, it shall, during the Term and for a period of five (5) years from the date of expiry or termination of this Agreement;-

40.2.1 use its best endeavours to keep confidential the Restricted Information;

40.2.2 not disclose the Restricted Information to any other person;

40.2.3 not use any Restricted Information for any purpose otherwise than as contemplated by and subject to the terms of this Agreement;

40.2.4 not make any copies of, record in any way, or part with possession of any Restricted Information; and

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- 40.2.5 ensure that none of its directors, officers, employees, agents or advisers of the Recipient does any act, which if done by the Recipient, would be a breach of the provisions of 40.1.2 to 40.2.4 above.
- 40.3 The Recipient may
- 40.3.1 disclose any Restricted Information to:
- (i) any sub-contractor, supplier or Licensee of the Recipient;
 - (ii) any governmental, or other authority or regulatory body, or recognised stock exchange;
 - (iii) any professional advisers of the Recipient;
 - (iv) Affiliate(s) of the Recipient, and in the case of MTVNE, to Channel Licensees; or
 - (v) any employees of the Recipient or of any of the aforementioned persons,
- to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law or relevant stock exchange rules, and in each case (except where the disclosure is to any such body as is mentioned in (ii) or (iv) above or any employees of any such body) subject to the Recipient first obtaining a written undertaking in favour of the Informant from the person in question, as nearly as practicable in the terms of this Clause 40, to keep the Restricted Information confidential and to use it only for the purposes for which the disclosure is made, and submitting the same to the Informant; or
- 40.3.2 use any Restricted Information for any purpose (in addition to any use as contemplated hereunder), or disclose it to any other person, to the extent only that:
- (i) the Recipient can demonstrate from its written records that it was known to the Recipient at the time when it was disclosed by the Informant;
 - (ii) after being disclosed by the Informant it is disclosed to the Recipient by any other person otherwise than in breach of any obligation of confidentiality owed to the Informant; or;
 - (iii) it is at the date of this Agreement, or at any time after that date becomes public knowledge through no fault of the Recipient, provided that in doing so the Recipient does not disclose any part of that Restricted Information which is not public knowledge.
- 40.4 The provisions of this Clause 40 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.
- 40.5 In addition to the rights and obligations contained at Clauses 40.1 to 40.3 above, the parties shall keep the terms of this Agreement (and any amendments thereto) confidential for the duration of this Agreement and for five (5) years thereafter. During such period the parties may only disclose the terms hereof to the persons and for the purposes described at Clause 40.3.

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- 40.6 Neither party shall directly or indirectly solicit, entice away or engage any employees or consultants of the other party during the Term or for a period of twelve months following the date of expiry or termination of this Agreement.
- 41 GUARANTY AND GUARANTOR'S COVENANTS, WARRANTIES AND INDEMNITIES**
- 41.1 The Guarantor hereby unconditionally and irrevocably guarantees to MTVNE and its successors and assigns (as primary obligor and not merely as surety) (the "**Guaranty**"):
- 41.1.1 the due and punctual payment of all monetary obligations now or hereafter payable by Licensee under this Agreement;
 - 41.1.2 the full and complete performance of all obligations, duties and covenants to be performed by the Licensee under this Agreement; and
 - 41.1.3 the accuracy of the representations and warranties made by the Licensee in this Agreement;
- (collectively the "**Guaranteed Obligations**"), and in the case of the obligations described in Clauses 41.1.1 and 41.1.2 when and as the same shall become due under this Agreement. For the avoidance of any doubt, all references in this Clause 41 to the "Agreement" also include the Transmission and Technical Services Schedule and all the provisions of the Guaranty shall apply to the Transmission and Technical Services Schedule.
- 41.2 The Guarantor waives any and all notices of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by MTVNE upon the Guaranty or acceptance of the Guaranty. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred in reliance upon the Guaranty, and all dealings between MTVNE, on the one hand, and the Licensee and/or the Guarantor, on the other hand, in connection with this Agreement, shall likewise conclusively be presumed to have been had or consummated in reliance upon the Guaranty. The Guarantor also waives diligence, presentment, demand for payment, protest and notice of non-payment or dishonour and all other notices and demands whatsoever relating to the Guaranteed Obligations or the requirement that MTVNE proceed first against the Licensee, or any other guarantor of the Guaranteed Obligations or otherwise exhaust any right, power or remedy under this Agreement giving rise to such Guaranteed Obligations before proceeding hereunder. The Guarantor covenants that the Guaranty shall not be discharged except by complete payment and performance of the Guaranteed Obligations.
- 41.2 The obligations of the Guarantor under the Guaranty shall constitute a present and continuing guarantee of payment and not of collectability only, shall be absolute and unconditional, shall not be subject to any counterclaim, setoff, deduction or defence the Guarantor may have against MTVNE or any of its Affiliate(s) or Channel Licensee, the Licensee or any of its Affiliate(s) or any other Person and shall remain in full force and effect until all Guaranteed Obligations have been satisfied and performed in full, without regard to any event whatsoever (whether or not the Guarantor shall have any knowledge or notice thereof or shall have consented thereto), including without limitation:
- 41.3.1 any amendment or modification of or supplement to this Agreement, any assignment or transfer of any of the other rights, obligations, duties or covenants of any party to this Agreement, any renewal or extension of time for the performance of any of the Guaranteed Obligations, or any furnishing or acceptance of security so furnished or accepted for any of the Guaranteed Obligations;
 - 41.3.2 any waiver, consent, extension, forbearance, release or substitution of security or other action or inaction under or in respect of this Agreement, or any exercise of, or

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failure to exercise, any right, remedy or power in respect hereof or thereof;

- 41.3.3 any bankruptcy, insolvency, marshalling of assets and liabilities, arrangement, readjustment, composition, receivership, assignment for the benefit of creditors, liquidation or similar proceedings with respect to Licensee or the Guarantor;
- 41.3.4 the dissolution, sale or other disposition of all or substantially all of the assets of the Licensee, the Guarantor, MTVNE or any of its affiliates; or
- 41.3.5 any default by the Licensee or the Guarantor under, or any invalidity or any unenforceability of, or any misrepresentation by the Licensee or the Guarantor in, or any irregularity or other defect in this Agreement or any other instrument or agreement.

Any term of this Clause 41 to the contrary notwithstanding, if at any time any amount (constituting a Guaranteed Obligation) paid or payable by the Licensee is rescinded or must otherwise be restored or returned, whether upon or as a result of the appointment of a custodian, receiver or trustee or similar officer for the Licensee or any substantial part of the Licensee's assets, or the insolvency, bankruptcy or reorganisation of the Licensee or otherwise, the Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

- 41.4 The Guarantor will not exercise any rights which it may have acquired against the Licensee by way of subrogation, by any payment made hereunder or otherwise, or accept any payment on account of such subrogation rights, unless and until all of the Guaranteed Obligations of the Licensee, for which performance is then due have been fully satisfied.
- 41.5 The Guarantor may at any time elect to pay or otherwise perform any Guaranteed Obligation, which shall operate (subject to the last sentence of Clause 41.3 above) as a discharge and release of the Licensee from such Guaranteed Obligation to MTVNE (or its successors and/or assigns as the case may be) provided that no such election shall release the Licensee from any of its other Guaranteed Obligations.
- 41.6 The Guarantor covenants and agrees that during the Term neither Guarantor nor any of its Affiliate(s) nor any company in which it has any interest shall operate, control or participate in any business (save the Channel itself) that in any way competes directly or indirectly with MTVNE, and the Channel shall not feature programming from, or the logos or trademarks of, any other broadcaster of music or youth oriented programming, unless agreed to in writing by MTVNE.
- 41.7 The Guarantor hereby agrees that it shall not cause or suffer the Licensee voluntarily to institute any proceedings seeking to adjudicate the Licensee a bankrupt or insolvent, or seeking liquidation, winding up, reorganisation, arrangement, adjustment, protection, relief or composition of the Licensee or its debts under any law relating to bankruptcy, insolvency or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, administrator, trustee or other similar official for it or for any part of its property, in each case unless in connection with the institution by the Guarantor itself of any such proceeding.
- 41.8 In order to induce MTVNE and the Guarantor to enter into this Agreement and each to perform its obligations hereunder, the Guarantor hereby represents and warrants to MTVNE that:
- 41.8.1 it is a corporation duly organised, validly existing and in good standing (where such term has meaning under the relevant laws) under the laws of the jurisdiction of its incorporation and has all corporate power and authority necessary to carry on its business as it is now being conducted, to enter into this Agreement and to perform its

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obligations hereunder;

- 41.8.2 all corporate and other proceedings required to be taken by or on behalf of the Guarantor to authorise it enter into and carry out this Agreement have been duly taken, and this Agreement has been duly executed and delivered by, and constitutes a legal, valid and binding obligation of, the Guarantor, enforceable against the Guarantor in accordance with its terms, except
- (i) as such enforceability may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally and
- (ii) to the extent that equitable remedies, such as injunctive relief or specific performance, are within the discretion of courts of competent jurisdiction.
- 41.8.3 the execution and delivery of this Agreement, the performance by the Guarantor of its terms, and the consummation of the transactions contemplated hereby, do not and will not conflict with, or result in any violation of, or a default or loss of a benefit under, or permit the acceleration of any obligation under
- (i) the certificate of incorporation, articles of association by-laws or memoranda of association (or comparable instruments with different names) of the Guarantor
- (ii) any contract, agreement or commitment of the Guarantor or
- (iii) any permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Guarantor or to its properties, other than such conflicts, violations, defaults, or losses which do not and will not, individually or in the aggregate, have a material adverse effect on the business or financial condition of the Guarantor and its subsidiaries, taken as a whole.
- 41.8.4 no consent, approval, order or authorisation of, or registration, declaration or filing with, any governmental authority is required in connection with the execution and delivery of this Agreement by the Guarantor or the consummation by the Guarantor of the transactions contemplated hereby.
- 41.8.5 there is no litigation, claim, proceeding or investigation of any nature pending or, to the Guarantor's knowledge, threatened against or affecting it or the Licensee that would materially interfere with its ability fully to perform its obligations under this Agreement.
- 41.9 Guarantor will indemnify and hold MTVNE harmless from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees, arising from any breach or alleged breach by Guarantor of any representation, warranty, or undertaking under this Agreement.
- 42 MTVNE'S RIGHTS ON PROPOSED SALE**
- 42.1 If any Licensee Shareholder wishes to transfer any Shares to any third party, except to an Affiliate of such Licensee Shareholder, the Licensee shall procure that, prior to offering such Shares to such third party, such Licensee Shareholder shall give notice in writing of such wish to MTVNE ("**Transfer Notice**"), and shall not pursue discussions with such third party unless and until the process described in this Clause 42 has been completed.
- 42.2 Each Transfer Notice shall:

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- (a) relate to one class of Shares only; and
- (b) specify the number and class of Shares which the Licensee Shareholder wishes to transfer ("**Sale Shares**");

and following receipt of the Transfer Notice, MTVNE has the right, within thirty (30) days after receiving the Transfer Notice (the first day being the day after MTVNE received the Transfer Notice), to notify the Licensee Shareholder in writing of its wish to buy the Sale Shares, whether itself or through an Affiliate, at a specified price for cash and not on deferred terms ("**Offer Notice**").

42.3 The Licensee Shareholder has a period of thirty (30) days after receiving the Offer Notice (the first day being the day after Licensee Shareholder received the Offer Notice) ("**Share Pricing Period**") within which to:

- (a) accept the price offered for the Sale Shares by MTVNE as stated in the Offer Notice; or
- (b) agree with MTVNE that a Fair Value for the Sale Shares shall be determined by an Independent Bank, in accordance with Clause 42.5 below ("**Independent Valuation**").

If, by the end of the Share Pricing Period, the Licensee Shareholder does not expressly accept an offer pursuant to Clause 42.3(a) or request an Independent Valuation pursuant to Clause 42.3(b), then the Licensee Shareholder shall be deemed to have accepted MTVNE's offer to buy the Sale Shares at the price stated in the Offer Notice.

42.4 The price for the Sale Shares shall be:

- (a) the price offered by MTVNE in the Offer Notice if, at the expiry of the Share Pricing Period, the Licensee Shareholder has either (i) expressly accepted that price, or (ii) neither accepted that price nor agreed with MTVNE that the Fair Value should be determined by Independent Valuation; or
- (b) the Fair Value determined by Independent Valuation, if the Licensee Shareholder and MTVNE agree on such a determination before the expiry of the Share Pricing Period.

42.5 If the determination of the price is referred to Independent Valuation, then the Licensee shall use its reasonable endeavours to procure that the Licensee Shareholder will agree with MTVNE on the appointment of an internationally recognised and reputable investment bank, independent of all parties, with experience in the valuation of private companies in the Territory ("**Independent Investment Bank**"). If MTVNE and the Licensee Shareholder are unable to agree on an Independent Investment Bank within seven (7) days, then each party shall appoint its own Independent Investment Bank, and each party's Independent Investment Bank shall agree on a third Independent Investment Bank that shall perform the Independent Valuation.

42.6 The Independent Investment Bank, once appointed, shall be required to give a written report (in the English language) of its decision regarding the Fair Value of the Sale Shares (including the methodology applied) within a maximum of sixty (60) days of the matter being referred to the Independent Investment Bank ("**Valuation Report**"). The "**Fair Value**" of the Sale Shares shall be the value that the Independent Investment Bank certifies to be the fair market value in its opinion based on the following assumptions:

- (a) the value of the Sale Shares is that proportion of the fair market value of the entire issued share capital of the Relevant Entity that the Sale Shares bear to the then total

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issued share capital of the Relevant Entity (with no premium or discount for the size of the Licensed Shareholder's shareholding or for the rights or restrictions applying to the Sale Shares under any agreement or the articles of association of the Relevant Entity);

- (b) the sale is between a willing buyer and a willing seller on the open market;
- (c) the Licensee's business shall continue to be carried on as a going concern; and
- (e) the Sale Shares are sold free of all liens, charges and other encumbrances.

If the Independent Investment Bank becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then MTVNE and the Licensee Shareholder shall agree on the appointment of a replacement Independent Investment Bank with the required expertise, in which case this clause shall apply in relation to the new Independent Investment Bank as it were the bank first appointed. Both MTVNE and the Licensee Shareholder shall be entitled to make written submissions to the Independent Investment Bank, and the Licensee and the Guarantor shall provide the Independent Investment Bank with such assistance and documents as the expert may reasonably require for the purpose of reaching a decision on the Fair Value.

42.7 If MTVNE wishes to buy the Sale Shares at the Fair Value determined by the Independent Investment Bank pursuant to Clause 42.6, then MTVNE shall give notice to the Licensee Shareholder within fourteen (14) days after receiving notification of the Fair Value determined by the Independent Bank (the first day being the day after MTVNE receives the Valuation Report) ("**Notice to Buy**").

42.8 Express acceptance by the Licensee Shareholder under Clause 42.3 (a) or Clause 42.7 shall bind the MTVNE (or an Affiliate of MTVNE, as appropriate) to buy, and the Licensee Shareholder to sell the Sale Shares, and the Licensee shall register or procure the registration of the transfer of shares pursuant to this agreement and the articles of association of the Relevant Entity.

42.10 If requested by MTVNE, the Licensee shall procure that any and all Licensee Shareholders enter into a separate agreement with MTVNE reflecting the provisions of this Clause 42.

43. EXTENSION OF TERM

43.1 At least six (6) months prior to the tenth anniversary of the Launch Date, the parties shall meet to discuss in good faith an extension of the Term for an additional five (5) years. If, at the tenth anniversary of the Launch Date:

- (i) the Licensee is not in breach of any of the provisions of this Agreement (including, without limitation, that all sums then due under this Agreement have been paid in full); and
- (ii) the annual [operating income] for the Channel business during each of the previous five (5) consecutive Years has been at least eighty percent (80%) of the [operating income] projected and agreed between the parties in the business plan for each of those Years

then the Term shall automatically be extended until the fifteenth anniversary of the Launch Date. To the extent that any amendments are required to the provisions of this Agreement in order to reflect material developments in the television industry in the Territory, such amendments shall be discussed in good faith, but otherwise any extension of this Agreement pursuant to this Clause 43.1 shall be on the same terms and conditions (with the exception of

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this Clause 43.1).

44.2 If the Term is extended pursuant to Clause 43.1, then at least twelve (12) months prior to the fifteenth anniversary of the Launch Date, the parties shall meet to discuss in good faith whether, and the terms on which, this Agreement should be renewed. If the parties are unable to agree such terms within six (6) months of the commencement of such good faith discussions, then neither party shall be obliged to continue with such discussions and this Agreement shall expire on the fifteenth anniversary of the Launch Date.

44 MISCELLANEOUS

44.1 This Agreement constitutes the entire understanding between the parties hereto relating to the subject matter hereof and supersedes all prior agreements (whether written or oral) with respect thereto (except as otherwise expressly provided herein) and no warranties, representations or undertakings are made by the parties hereto except as expressly provided herein.

44.2 Clauses [1, 2.9, 8.3, 8.5, 8.6, 13.1, 13.3, 13.4, 13.9, 13.10, 15.1, 15.3, 16.1, 16.2, 16.3, 16.4, 31.10, 31.11, 34, 35, 38, 39, 40, 41 and 43 – *to be confirmed prior to signature*] hereof will survive the termination of this Agreement and any investigation made by or on behalf of the parties hereto at any time with respect thereto.

44.3 Nothing herein contained shall be construed to constitute a partnership or joint venture between the parties, and neither Licensee nor MTVNE shall become bound by any representation, act or omission of the other.

44.4 All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

44.5 No waiver by any party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default, whether of the same provision or otherwise. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term, but any such waiver shall be effective only if in writing signed by the party against which such waiver is to be asserted and only in the specific instance and for the specific purpose for which given. Except as otherwise provided herein, no failure or delay of any party hereto in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

44.6 If any provision of this Agreement shall be held to be unenforceable by a court of law or any other competent person or regulatory body or authority, the parties agree to use good faith to negotiate an acceptable alternative provision which reflects the intent of the unenforceable provision. The validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

44.7 Except insofar as this Agreement expressly provides that a third party may in his own right enforce a term of this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act. Neither party may declare itself a trustee of the rights under this Agreement for the benefit of any third party.

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44.8 This Agreement supersedes and replaces the original Trade Mark and Television Programming Agreement for MTV Ukraine between the parties dated 13 January 2006 (the "**Original Agreement**"). The Original Agreement shall cease to be a valid and effective instrument as of the Commencement Date hereof, but without prejudice to any rights or remedies of either party accrued prior to such date.

44.9 All amendments or modifications to this Agreement shall be in writing, executed by all parties to this Agreement.

44.10 This Agreement shall be governed by and construed and enforced in accordance with the laws of England and Wales and the parties accept the non-exclusive jurisdiction of the English courts in determining any dispute arising out of this Agreement.

44.11 Licensee shall not assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of MTVNE. Save that the Licensee may novate all of its rights and obligations (but not one without the other) hereunder to one of its Affiliates provided that it notifies MTVNE in advance of the full, legal registration details of its affiliate, obtains MTVNE's prior approval of such Affiliate transferee, and enters into a valid and binding deed of novation with MTVNE and its Affiliate transferee..

44.12 This Agreement shall become binding on the parties only if signed by a duly authorised officer of MTVNE and if executed as a deed by duly authorised officers of the Licensee and the Guarantor. It may be executed in counterparts, which together shall form this Agreement properly executed.

44.13 This Agreement shall be entered into four (4) counterparts in English and Ukrainian. In case of discrepancy, the English version of this Agreement shall prevail.

[SIGNATURE PAGE TO FOLLOW]

SIGNED for and on behalf of

MTV NETWORKS EUROPE

.....
Signature

.....
Name

.....
Title

Executed as a Deed
(INCLUDE COMPANY SEAL IF REQUIRED BY LAW)

for and on behalf of
**[LIMITED LIABILITY COMPANY
TELERADIOKOMANIYA MRIYA TV LLC]**

.....
Signature

.....
Name

.....
Title

Executed as a Deed
(INCLUDE COMPANY SEAL IF REQUIRED BY LAW)

for and on behalf of
**[LIMITED LIABILITY COMPANY ACTION
MEDIA GROUP]**

.....
Signature

.....
Name

.....
Title

SCHEDULE 1
MTV Trade Marks



1. These three things about the logo should never change:
 - a. The outline of the block letter "M", including the drop shadow outlines.
 - b. The letters "TV", scrawled on a diagonal halfway up the second leg of the "M".
 - c. The word Music Television, proportionally spaced and placed under the "M", should always remain constant.
2. Always include the appropriate trademark symbol either by placing a capital "R" in a circle or a "TM" immediately after and to the right of the word "television". In print, include the following trademark notice:

"MTV: Music Television and (logo here) are trademarks owned by MTV Networks, a division of Viacom International Inc."
3. Be careful about the logo bleeding off the page. You have to be able to recognize that it is the MTV logo.
4. Make sure that the MTV: Music Television logo is always recognizable. It's important to preserve the integrity of the logo, that means no slanting, distorting, twisting or otherwise modifying the proportions of the logo. The outline of the logo should never be altered.
5. The space inside the "M" and all the space around it is a blank canvas, choose any colour or design for this – it's up to you! Please make sure that the "TV" is clear and pops off the "M". This can be achieved graphically or by selecting contrasting colours or patterns.
6. A copyright and trademark notice in the following form must appear on all licensed merchandise, point of sale signage, and in all advertising for any licensed merchandise:
 - a. Copyright notice: "© 2002 MTV Networks. All Rights Reserved."
 - b. Trademark notice: "MTV: Music Television and all related titles, logos and characters are trademarks of MTV Networks, a division of Viacom International Inc."

The word mark and logo for "MTV [NAME]" shall be provided to Licensee by MTVNE following signature of this Agreement on a date to be agreed between the parties.

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SCHEDULE 2

This is an active list of targeted international accounts, and may be updated by MTVNE from time to time by notice to Licensee in writing.

20th Century Fox	Motorola
AD	Nestle - Nescafe
Adidas	Nike
Apple Computer	Nintendo Europe
Ballantines	Nissan
BMW AG	Nokia
BMW Mini	Orange
Budweiser /Becks /Coke	P&G - Pringles
Buena Vista International	P&G Fine Fragrances
Burger King	Philips
Canon	Polygram Insight
CAPCOM	Procter & Gamble - CH
Carlsberg	Puma
Coca Cola - Sprite	Red Bull GmbH -
Columbia Tristar	Rimmel
Compaq	Samsung
Coty Inc	Skechers
DFC 2nd Half	Sony Ericsson
Durex	Sony PAE
Elida Faberge	Sony Walkman
European Government	SSL Int.
Ford	Swatch
Gillette	Tiscali
Gillette - Venus	Tissot
Grand Marnier	Tommy Hilfiger
Hennes & Mauritz SW	Toyota
Honda	Trium
Honda Bike	Unilever
Hyundai	Unilever - Lipton Ice
Infogrames	United International Pictures
Intel	Universal Music International
Japan	Virgin Interactive E
Johnson & Johnson	Visa
Kickers	Vivastar Trading AG
Kraft Jacobs Suchard	Vizzavi
Kswiss	Vodafone
Lacoste	Vodafone Europe Ltd
Lee Jeans	Warner Bros. Studios
Levis Strauss & CI Europe	Warner Film
Memorex Products Europe	Yahoo! Europe
Merrell	Youth Smoking Prevention
Morgan	

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SCHEDULE 3

DUBBING TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS FOR DUBBING

PART A – GENERAL OBLIGATIONS

Any provider of dubbing, subtitling or translation services (“**Dubbing House**”) that provides dubbing services for MTV Networks (“**MTV**”) or to **MTV’s Licensee** on behalf of MTV shall do so on the following terms and conditions:

1. Dubbing House Dubbing Responsibilities
 - 1.1 Dubbing House agrees to arrange for and deliver to MTV dubbing services in the agreed language pursuant to the terms, conditions and specifications set out herein. All dubbing services and any other services and materials delivered by Dubbing House in connection and in accordance with this Agreement, including, without limitation, the dub tracks, shall collectively be referred to as the “Dubbed Programs”.
 - 1.2 Dubbing House shall within two weeks after having received the material from MTV provide MTV with a time table in writing about its dubbing procedure and shall provide MTV with the language scripts for MTV’s approval. Upon approval by MTV (such approval to be exercised by MTV in its sole discretion), such scripts shall be the basis for the Dubbed Programs to be provided hereunder.
 - 1.3 Dubbing House shall provide MTV with minimum three voice auditions per main character, to be submitted on VHS or audio cassette and to be delivered to MTV for approval prior to commencing the voice-over production.
 - 1.4 Dubbing House shall inform MTV at least five days before commencing with the voice over production and Dubbing House shall obtain written approval by MTV for changes to series titles and character names.
 - 1.5 Dubbing House shall obtain written approval by MTV for dubbing company credit.
2. **QUALITY CONTROL AND APPROVALS**
 - 2.1 Dubbing House warrants that the Dubbed Programs shall be of high technical broadcast quality and creative quality, as set out in Part B of this Schedule 3.
 - 2.2 MTV shall have access to Dubbing House premises during the production of the Dubbed Programs after giving reasonable notice to Dubbing House to exercise quality control.
 - 2.3 Dubbing House agrees that the dubbing of the programs delivered by MTV to Dubbing House shall be subject to MTV’s supervision, control and technical and creative instructions.
 - 2.4 Dubbing House shall ensure that the performer is available for all episodes. In the event that Dubbing House fails to contract the performer for the total number of episodes having been commissioned by Dubbing House or if the performer being unable to perform, including fails to fulfil his/her/its obligations in accordance with the contract, the parties agree that (1) Dubbing House shall in good faith search for and present to MTV for approval “suitable” replacements

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for such performer with MTV agreeing to either accept or reject in its sole discretion such replacement performers within two weeks of such performer being presented, and/or (2) MTV shall in its sole discretion select a replacement performer. Dubbing House shall be held responsible for all delays and costs resulting from such performer being unable to be available to perform, including, without limitation the costs resulting from redubbing at MTV direction all episodes of the series to ensure that a character has a consistent "voice". Dubbing House shall use its best efforts to secure talents services for future episodes of Programs.

- 2.5 Upon receipt of the programs by Dubbing House, Dubbing House shall check the programs and immediately notify MTV in writing should the programs be damaged or be incomplete. If MTV does not receive written notice of defect within 10 business days from delivery of the programs, the programs shall be deemed free of defects, complete and accepted by Dubbing House.
- 2.6 MTV shall be entitled to refuse to accept delivery of any Dubbed Programs or any part thereof if the Dubbed Programs or any part thereof technically or creatively do not comply with the terms, conditions and standards set forth in this Agreement. If the Dubbed Programs or any part thereof are not refused within 25 Business days after delivery to MTV, MTV shall be deemed to have accepted the same.
- 2.7 Acceptance by MTV of the Dubbed Programs does not relieve Dubbing House of any of its representations, warranties and/or obligations hereunder.

3. Freight Costs, Risk

Freight costs and risk shall be borne by the given sender, i.e. MTV shall bear the costs and risk for sending its deliverables to Dubbing House, Dubbing House shall bear the costs and risk for sending its deliverables to MTV at such location, as indicated by MTV from time to time.

a. Rights

- 4.1 Dubbing House acknowledges and agrees that all programs, and any copyrights, trademarks or other intellectual properties of MTV or any of its affiliated or related entities contained therein, as well as any other materials provided to Dubbing House by MTV or created by MTV or Dubbing House hereunder (including, without limitation, master tapes of programs, program scripts, etc.), shall be and remain the property of MTV. Dubbing House shall not exhibit or otherwise use any such items or undertake that, in the absence of MTV' prior written consent allow any third party to copy, reproduce, make a recording of, redistribute or otherwise use any of the foregoing items or materials.
- 4.2 With respect to the territory of Israel, Dubbing House hereby transfers and assigns to MTV all rights in connection with the Dubbed Programs without limitation to time, or its content for free TV and pay TV for all technical means, including without limitation satellite terrestrial, cable or other means whether all in existence or not, and those rights also include home video and any other media, which shall include, without limitation, internet and world wide web, which rights include, among others, all intellectual property rights, the right to license to third parties, to broadcast, to exhibit, to air, to duplicate and to exploit the Dubbed Programs including audio, video, online or the duplication via tapes, record, or film.
- 4.3 With respect to territories other than Ukraine, Dubbing House hereby transfers and assigns to MTV all rights in connection with the Dubbed Programs without limitation to time, or its content for free TV and pay TV for all technical means, including without limitation satellite terrestrial, cable or other means whether all in existence or not, and those rights also include home video and any other media, which shall include, without limitation, internet and world wide web, which rights include, among others, all intellectual property rights, the right to license to third parties, to broadcast, to exhibit, to air, to duplicate and to exploit the Dubbed Programs

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including audio, video, online or the duplication via tapes, record, or film, SUBJECT ONLY to the payment of performance royalties to any performer featured in the Dubbed Programs (or any society or union representing such performer(s)) for any broadcast or other exploitation (including, without limitation, home video) of the Dubbed Programs in such territories.

- 4.4 MTV may shorten or modify the Dubbed Programs and use the modified Dubbed Programs in accordance to all rights granted under this Agreement.
- 4.5 MTV shall not be obligated to use or air the Dubbed Programs nor to credit Dubbing House in connection with the Dubbed Programs.
- 4.6 Subject to Clause 4.3 above, to the extent Dubbing House acquires or retains any of the foregoing rights by virtue of the services it is to perform hereunder or otherwise, Dubbing House agrees to hereby assign to MTV and have subcontractors if any assign and execute all such rights, and execute such instruments with respect to the same, as may be requested by MTV.
- 5. Insurance etc.**
- 5.1 Dubbing House agrees to maintain insurance with regard to any loss of or damage to the Programs, and Dubbed Programs, as the case may be, from the moment of delivery of the Programs to Dubbing House until the moment of return of the Programs and Dubbed Programs to MTV.
- 5.2 The risk of loss or damage of the Programs provided to Dubbing House by MTV hereunder will be borne by Dubbing House from the moment of delivery of the Programs to Dubbing House until the moment of return of the Programs and the Dubbed Programs to MTV.

6. Representations and Warranties

Dubbing House hereby represents and warrants as follows:

- 6.1 Dubbing House is free to enter into and fully perform this Agreement. The Dubbed Programs and all related materials shall be free and clear of any liens, encumbrances, claims, demands or restrictions of any kind whatsoever which among other things, would in any way affect, prejudice or derogate from the rights granted to MTV under this Agreement or would require MTV to make any additional payments other than the consideration provided herein, or as specifically referred to in Clause 4.3.
- 6.2 Without prejudice to the generality of Paragraph 6.1, Dubbing House has or will have obtained all required rights and consent in writing of all voice-over artists and any other performers whose performances are reproduced in any of the Dubbed Programs and/or shall obtain all other consents necessary for the exercise of all rights granted or purported to be granted herein.
- 6.3 Subject to Clause 4.3, MTV shall own fully all rights in and to the Dubbed Programs and Dubbing House shall ensure that its (sub) contractor shall transfer and assign its rights in the Dubbed Programs to MTV.
- 6.4 Subject to Clause 4.3, MTV shall be under no liability whatsoever to anyone performing any services in connection with the Programs to be dubbed hereunder or to any other third party rendering services in connection with the dubbing of Programs and/or distribution and exploitation of the Dubbed Programs, including but not limited to, the payment of any and all royalties, participations, re-use fees, residual fees, re-run fees or other payments of whatsoever nature to any or all of the persons aforesaid or to any right society or unions

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representing such persons for the privilege or right of exploiting or marketing the Dubbed Programs pursuant to the rights of MTV.

- 6.5 Subject to Clause 4.3, the Dubbed Programs will not infringe upon any rights of any third party, including but not limited to copyright (including any performing rights in any sound recordings as reproduced in any of the programs), moral rights, trademark, unfair competition, contract, defamation, privacy or publicity rights. Dubbing House shall be solely responsible for all consequences of infringement of any of the aforesaid rights including (without limitation) any claims for compensation or damages in connection therewith.
- 6.6 The Dubbed Programs do not and will not contain material which is obscene or defamatory or which will or might expose MTV or any of its affiliated, related, subsidiary or parent entities to any proceedings whatsoever of a civil nature from third parties (including but not limited to proceedings in respect of invasion of or breach of rights of privacy) or to criminal proceedings.
- 6.7 The Dubbed Programs will comply in all aspects with all relevant Israeli legislation, codes of practice or other regulations to which Ukraine is or may be subject from time to time.

7. Indemnity

Each party to this Agreement shall at all times indemnify and hold harmless the other party, its shareholders, parent, subsidiaries and affiliated and related entities, and their officers, employees, directors, agents, representatives, licensees and the affiliated and related entities thereof, against and from any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees, herein collectively called "claims", arising out of any breach or alleged breach by it of any material representation, warranty, obligation or other provision hereof. In the event of any claim or service of process upon either party involving this indemnification, such party shall notify the other party in writing promptly of the claim. The indemnifying party will adjust, settle, defend or otherwise dispose of such claim at its sole cost; provided, however, that if the adjustment, settlement or defence of such claim would result in material prejudice or economic cost to the other party (in excess of the monetary value of the services to be performed hereunder) or involves that party's intellectual property rights, no such adjustment, settlement or defence shall be entered into without the prior consent of the other party, not to be unreasonably withheld.

PART B - DUBBING TECHNICAL AND OPERATIONAL SPECIFICATIONS

1. Introduction

This paper describes the technical and operational standards of videotapes that are supplied for editing and subsequent transmission.

2. Original Format

All Tapes delivered must be of international broadcast standard. If delivered tape contains audio or video defects; we will require a replacement tape(s) made to international broadcast standard.

3. Videotape Specifications

3.1 Video:

- 3.1.1 The video shall be free of excessive crushed blacks and highlight compression. Transient response shall be such that ringing, smear & echoes are not noticeable. Moiré & other

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patterning shall not be visible. Hum, cross talk & other spurious signals should not be apparent in the video signal.

- 3.1.2 Color rendition, especially skin tones, shall be natural unless artistic considerations require otherwise.
- 3.1.3 The timings, amplitudes & bandwidths of video material shall not violate relevant EBU broadcast specifications.
- 3.1.4 The use of any video equipment, such as digital video effects devices, must not introduce unintentional changes to luminous & chrominance levels, nor cause perceptible timing shifts on entry levels or exit from the digital effect.

3.2 Audio:

- 3.2.1 The audio shall be free of spurious signals such as noise, hum and cross talk. Sibilance and distortion, wow and flutter shall not be apparent. The audio shall not show dynamic & frequency response artifacts as a result of noise reduction or low bit rate systems.
- 3.2.2 Dialogue levels should be averaged between +2dBu & +6dBu relative to zero level. Optimally, the music & effects should not peak above +8dBu but incidental peaks (e.g. Gun shots & shouting) to 10dBu are acceptable. Whenever possible, maintain parity in audio levels between various channels. Dialogue, music & effects must be fully filled & properly mixed without distortion.
- 3.2.3 Audio shall be in synchronization with the vision such that audio should not lead the vision more than (1) field or lag by more than (1) frame.

Timecode	Video	A1	A2	A3/A4
09:58:00:00	Colour Bars	Tone	Tone	Tone
09:59:45:00	Clock / Ident	Silence	Silence	Silence
09:59:57:00:	Black	Silence	Silence	Silence
10:00:00:00	Programme	Prog	Prog	M&E

3.3 Timecode Specifications:

- 3.3.1 Tapes shall carry timecode conforming to the relevant 525 EBU/625EBU specification on the designated track. The preferred timecode for the first frame of the programs shall be 10:00:00:00. LTC and VITC (lines 19, 21 and 332, 334) must be recorded and be identical.
- 3.3.2 Timecode must be in a breakless & continuous format.

3.4 Line-up Signals:

- 3.4.1 To ensure correct replay, the tapes shall contain appropriate sound & vision line to test signals at the head of the tape.
- 3.4.2 Line-up signals & identification leaders are to be recorded at the beginning of each tape as indicated below:

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- 3.3.3 Vision: At least (1) minute of first generation 75% 525/60 for NTSC color bars.
- 3.4.4 The program should be followed by synchronous cut to black which runs for at least 20 seconds.
- 3.4.5 The start of program shall be preceded by an ident clock as detailed below.
- 3.4.6 Sound: At least (1) minute of 1 kHz tone recorded at -20dBFS, OdBu level. This line-up shall accompany the above color bars & be present on each audio channel. The start of program shall be preceded by clock sound as detailed below.
- 3.4.7 Clock/Slate: The clock/slate must show the Product Title, Version & Duration.
- 3.4.8 Program: The timecode for the first frame of picture & sound shall be 10:00:00:00.
- 4. Documentation Provided by Dubbing House**
- 4.1 The following documentation must be provided with all tapes:
- 4.1.1 Recording Report with:
- o Program title, episode number, huse number, tape number
 - o start time (Start Of Message S.O.M)
 - o finish time (End Of Message E.O.M)
 - o record breaks (if any)
 - o source faults
 - o audio level information and
 - o recommended change over point if program is split over 2 videotapes.
- 4.1.2 Original Format (source element used for recording).
- 4.1.3 Videotape recorder number used & Operator's name.
- 4.1.4 Colour Standard.
- 4.1.5 Audio track configuration.
- 4.1.6 Noise reduction process.
- 4.1.7 Quality check report.
- 4.2 Labels on the tape cassette box & slate must contain the following information:
- 4.2.1 Product title & Version (in original / native language & English language;
- 4.2.2 If applicable: episode name, number, production number (in original language & English);
- 4.2.3 Production / Distribution company names;

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- 4.2.4 Post production facility name;
- 4.2.5 Tape format & broadcast standard;
- 4.2.6 Audio track configuration;
- 4.2.7 Date tape was recorded;
- 4.2.8 Purchase order number.
- 4.3 Labels on the tape must contain the following information:
- 4.3.1 Series title (in English);
- 4.3.2 If applicable: episode name, number, production number;
- 4.3.3 Post production facility name;
- 4.3.4 Tape format & broadcast standard;
- 4.3.5 Audio track configuration;
- 4.3.6 Date tape was recorded.

5. Music & Effects tracks

The tracks must be fully synchronized to the picture unless specifically requested otherwise. Audio quality must adhere to the above-mentioned specification.

6. Delivery Timeline

The delivery timeline for tapes shall be 10 days before the air date.

SCHEDULE 4

Excluded Material

1. Any advertisement the objects whereof are wholly or mainly of a political nature or directed towards any political end.
2. Any advertisement having any relation to any industrial dispute.
3. Any advertisement showing partiality as respects matters of political or industrial controversy or relating to current public policy in any territory where the channel is received.
4. Advertisements for products or services coming within the recognised character of, or specifically concerned with:
 - 4.1 Alcohol over 50% proof (25% alcohol by volume);
 - 4.2 Breath-testing devices and products which purport to mask the effects of alcohol;
 - 4.3 Escort agencies;
 - 4.4 The occult;
 - 4.5 Guns and gun clubs;
 - 4.6 Organisations/companies/persons seeking to advertise for the purpose of giving betting tips;
 - 4.7 Betting and gaming (including pools): (This does not preclude lotteries permitted under the Lotteries and Amusements Act 1976 but such advertisements shall be limited to an announcement of the event and necessary details);
 - 4.8 All tobacco products;
 - 4.9 Private investigation agencies;
 - 4.10 Commercial services offering advice on personal or consumer problems;
 - 4.11 Prescription-only medicinal products or treatments
 - 4.12 Pornography (including "girlie" magazines and the like);
5. Any advertisement for an acceptable product or service, the main purpose of which, in the reasonable opinion of MTVNE and Ofcom, seems to be to indirectly publicise any product or services referred to in paragraph 4 above.
6. Any advertisement contrary to the Ofcom Regulations of Advertising Standards and Practice or any advertising code of any other competent broadcasting authority responsible for regulating the contents of the channel from time to time in force.

SCHEDULE 5

Agreed Business Plan As Attached

SCHEDULE 6

The Transmission and Technical Services Schedule

SCHEDULE 7

MTV Ukraine ORGANISATION CHARTS

CHART A Operations And Productions
CHART B Finance, Marketing, Sales, Air Time Planning And Business And Legal



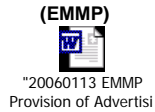
"20060110 Org
Chart - Ops Prod (Sci



"20060111 Org
Chart - Commercial (

SCHEDULE 8

AGREEMENT FOR PROVISION OF ADVERTISING AND MARKETING SERVICES BY LICENSEE



SCHEDULE 9

LIST OF PERSONS/ENTITIES FOR PURPOSES OF CLAUSE 37.3.5

1. Any Person who is a major international producer and/or distributor of audio-visual content for viewing by consumers, and at the Commencement Date, such Persons shall comprise:
 - [TBC]
2. Any Person who, at the relevant time, is a major supplier of intellectual property rights to MTVNE and its Affiliates, and at the Commencement Date such Persons shall comprise:
 - [Universal Music Group]
 - [Sony/BMG]
 - [EMI]
 - [Warner Music Group]
 - [EMI Music Publishing]
 - [BMG Music Publishing]
 - [Warner-Chappell]
 - [Sony ATV]
 - [others TBC]

in each case, including any successors in title thereto, or affiliates thereof
3. Any Person who, at the relevant time, is a major customer of MTVNE and its Affiliates in the acquisition and distribution of audio-visual content. At the Commencement Date, such Persons shall comprise:
 - [BSkyB]
 - [Liberty Global]
 - [Canal Plus]
 - [Vodafone]
 - [T-Mobile]
 - [others TBC]

in each case, including any successors in title thereto, or affiliates thereof
4. Any Person who MTVNE has reasonable grounds to suspect is, or is affiliated to, a criminal organisation, foreign government, a political or religious group, and/or any other Person, an association with whom would, in MTVNE's reasonable opinion, cause damage to the goodwill

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and reputation of MTVNE, its Affiliate(s) and/or the MTV Marks.

5. With respect to those Persons listed in paragraphs 2 and 3 above, MTVNE shall notify the Licensee of any changes to such lists of Persons from time to time throughout the Term, as and when such changes occur. With respect to those Persons listed in paragraph 1, the Parties agree to a regular review and update of such list to reflect changes in the marketplace and to include any existing or emerging Persons who can reasonably be considered as having significant business interests in any area in which MTVNE and/or its Affiliates is active at the relevant time. Such review and update shall take place annually not later than 30 June of each calendar year (the "**Review Date**"). A Party initiating the review and update shall notify the other Party regarding such review and update in writing not less than fourteen (14) calendar days prior to the Review Date. The Parties shall use their best endeavours to agree on any proposed amendments to paragraph 1 of this Schedule 9 within sixty (60) days after the Review Date, but in default of agreement and provided MTVNE has acted reasonably and in good faith in proposing or rejecting any such amendments, any amendments proposed or rejected by MTVNE shall be deemed to be agreed by the parties, and paragraph 1 of Schedule 9 shall be amended accordingly.