

# **AFFIDAVIT OF FACT**

## **Introductory Certification**

, the Undersigned Affiant,  
hereinafter "Affiant," does hereby solemnly swear, declare, and state as follows:

1. Affiant is competent to state the matters set forth herewith.
2. Affiant has personal knowledge of the facts stated herein.
3. All the facts stated herein are true, correct, and complete in accordance with Affiant's best firsthand knowledge and understanding, and if called upon to testify as a witness Affiant shall so state.

## **Plain Statement of Facts**

1. Merlin's membership agreement is between Merlin and VIDYPS79. Accordingly, Merlin has no obligation to VIDYPS79's clients and therefore it is impossible for Merlin to hold back money from your clients. (See *inter alia* clause 9.7 of the Merlin Membership Agreement).
2. Merlin's obligation under our Membership Agreement is to pay VIDYPS79 "Merlin Income" (clause 3.1 of the Merlin Membership Agreement). Member Income is defined under the Membership Agreement as "sums collected in relation to" activities under the Membership Agreement (clause 3.1 of the Merlin Membership Agreement). As previously explained, as a result of the plays identified by VEVO as arising due to a breach of our agreement („infringing plays“), VEVO has not paid Merlin amounts otherwise due in order to offset amounts previously paid to us in respect of the infringing plays (and has not paid us for those infringing plays which were reported to us, but which were not yet paid for). Therefore, in any event there is no existing liability from Merlin to VIDYPS79 in respect of VEVO activity (regardless of your or our position re the infringing plays) because there are no applicable "sums collected" from VEVO.
3. VIDYPS79 cannot unilaterally terminate the Merlin Membership Agreement other than by giving not less than three months notice in accordance with the notice provisions under the Merlin Membership Agreement, such notice to expire no earlier than 31 December in any year (clause 7.1 of the Merlin Membership Agreement).
4. As regards the activity VEVO has questioned, we find the evidence they have supplied compelling and therefore understand why they have made the deductions from payments due to Merlin as previously explained. Therefore, I reiterate our requirement for VIDYPS79' to reimburse Merlin with the \$95,981.73 (less our admin fee) we have overpaid as a result of this matter -

such amount being payable pursuant to the indemnity under clause 6.3 of the Merlin Membership Agreement.

### **Verification**

The Undersigned Affiant, \_\_\_\_\_, does herewith swear, declare, and affirm that Affiant issues this Affidavit of Fact with sincere intent, that Affiant is competent to state the matters set forth herein, that the contents are true, correct, complete, and certain, admissible as evidence, and reasonable and just in accordance with Affiant's best firsthand knowledge and understanding.

This Affidavit of Fact is dated the Seventeenth Day of the Sixth Month in the Year of our Lord Two Thousand Fifteen.

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NOTARY PUBLIC