

# BingeNow OTT

## Terms of Service Agreement

This Terms of Service Agreement are the terms of which are incorporated herein (collectively, the "Agreement") sets forth the legally binding terms for your use of the BingeNow BNOTT.com website referred to as the Site. By using the Site, you agree to be bound by this Agreement as a registered user. The term "User" refers to a Content Owner or a Content Aggregator. You are only authorized to use the Site if you agree to abide by all applicable laws and the terms of this Agreement. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the Site.

Please review this Agreement and visit this section of the Site often for updates. If you do not agree to be bound by this Agreement and to follow all applicable laws, you should leave the Site now. If you wish to become a User, you must read this Agreement and indicate your acceptance during the registration process.

BingeNow, Inc. (hereafter referred to as "BingeNow") may modify this Agreement from time to time and such modification shall be effective upon posting by BingeNow on the Site. Your continued use of the Site after BingeNow posts a revised Agreement signifies your acceptance of the revised Agreement. It is therefore important that you review this Agreement regularly to ensure you are aware of any changes or modifications.

BingeNow reserves the right, in its sole discretion, to reject or remove any video and posting (including email) by you, or to deny, restrict, suspend, or terminate your access to all or any part of the Site at any time, for any or no reason, with or without prior notice or explanation, and without liability. BingeNow expressly reserves the right to remove your profile, videos and/or deny, restrict, suspend, or terminate your access to all or any part of the Site if BingeNow determines, in its sole discretion that you have violated this Agreement or pose a threat to BingeNow, the Site and/or its Users.

You may not access the Site if you are our direct competitor, except with our prior written consent. In addition, you may not access the Site for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

## Terms of Service

The Site provides a marketplace for content owners to list their videos for content aggregators (aggregators) to use in return for a share of the aggregators' OTT subscription fees, and for aggregators to easily search for content to use in their OTT video services. It also provides an end-to-end solution for aggregators to create, distribute and monetize their own customized branded OTT subscription service. The Site allows registered content owners to easily upload videos, create profiles, and select aggregators,

and to get statistics on their video performance and revenue generated. In addition to uploading and using their own videos in their OTT service, aggregators can also add videos from other content owners who have given them permission to do so. Aggregators will also have access to statistics on video performance, subscribers and revenue.

By agreeing to the terms of service each aggregator agrees to allocate a percentage of their monthly OTT subscription revenue for monthly revenue sharing with the owners of the content they are using in their OTT service. Content owners by agreeing to the BingeNow terms of service agree to participate in all or any specific aggregator OTT subscription service, and agree with the aggregator revenue sharing percentage and method for computing content owner share of this revenue. The content owner revenue share (s) is (are) based on the percentage of time their video(s) is (are) viewed compared to the total view time of all videos in a (each) aggregator OTT service during the month.

BingeNow in its sole discretion has the right to at any time and for any or no reason change the service fees per month to maintain this service, and both the aggregator percentage share and the content owner percentage share of monthly OTT subscription revenue, and the algorithm for computing how this monthly revenue is shared among content owners and aggregators as content owners. Currently, the content owner revenue share is 15% of the total subscriber fees each month, and the aggregator revenue share is 20% of the total subscriber fees each month (if aggregator uses their own video content, total revenue share is thus a total of 35% of the gross subscription revenue each month).

Content Owners. You can sign up for free and upload videos into the Marketplace. You have the option of allowing all aggregators (recommended) or just one specific aggregator to have access to view and use your videos. Nobody else will be able to view or use your video in their service. For those you grant access to, they will be able to watch only a scaled down 480p version of your video with a "BingeNow OTT Marketplace Demo--Illegal to Distribute" watermark encoded into the video. When your video is used in an OTT subscription service, you'll be able to see which services are using it, and see a monthly report of the how many times it was viewed and how many minutes of it were viewed. You will accrue a royalty payment based on the percentage of total minutes viewed that your video was responsible for in the OTT service. A percentage of the gross subscription fees collected for each month will be distributed proportionally to the content owners. For now, when you accrue more than \$30, a check will be sent to you. In future, we will also provide other payment methods, including direct bank deposits by ACH. When you first sign up, you will be a "Standard" user, and will be able to upload up to 5 videos. If we review your videos and determine that they are of good quality, we will upgrade you to an "Elite" user (also free), with no limit on video uploads. You can also contact us to request such a review.

Content Aggregators. If you are interested in signing up for a Content Aggregator account, please [contact us](#). Aggregators can upload their own videos, which can be just for their own use, or else also made available to other aggregators for a royalty fee (same as with other content owners). We provide a full set of tools to manage these and curate your own OTT service. We partner with an OTT platform service provider and content delivery network provider to make this available not only on a Website, but also Roku, Fire TV, Apple TV, Mobile Apps, and other platforms. There is a monthly service fee to maintain this service (see our [pricing page](#)). Customer is responsible to pay whatever share of this fee is not met with their monthly revenue share. Once the fee is paid out of the monthly revenue share, the remaining revenue share will be distributed to the customer as a monthly check, with no other charges for the service (e.g., video processing, storage, subscriber billing, content distribution).

Refund. BingeNow has a strict no refund policy as we incur a fixed cost due to hosting, video processing and storage. You can cancel your service anytime consistent with the cancellation terms in this agreement. There is no lock-in period. However, there is no refund to a recurring payment that an aggregator may have already paid.

Registration. Users are required to register (sign up) in order to use Site features. If you register, you warrant that use of Site features requires Users to register (Sign Up). By using the Site features, you represent and warrant that (a) all registration information you submit is truthful and accurate; (b) you have only registered once (multiple registrations are not allowed); and (c) you will maintain the accuracy of your registration information.

Term. This Agreement, and any posted revision to this Agreement, shall remain in full force and effect while you use the Site features, or are a User and will even survive once your usage ends.

Handles and Passwords. When you sign up to become a User, you will also be asked to choose a handle and password. Each User must maintain the confidentiality of his or her handle and password. Users agree not to disclose his or her handle or password to a third party or to use the handle or password of another User. In the event a User's account is breached or accessed by someone other than the User, the owner of the breached account agrees to contact BingeNow immediately via email.

User Content. Each User is responsible for the content that he or she posts or uploads to the Site. You represent and warrant that: (1) you own or have the right to grant license for the media uploaded or posted by you on Site; and (2) the uploading or posting of your media on the Site does not violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any person or entity. You agree to pay for all royalties, fees, and any other monies owing any person or entity by reason of any media posted by you on the Site. BingeNow ASSUMES NO RESPONSIBILITY FOR MONITORING ILLEGAL OR INAPPROPRIATE CONTENT. BingeNow RESERVES THE RIGHT HOWEVER, TO REJECT, REFUSE OR DELETE ANY CONTENT THAT IN THE SOLE DISCRETION OF BINGENOW, MAY BE ILLEGAL, OFFENSIVE OR VIOLATE THE RIGHTS OF ANY PERSON OR ENTITY (I.E. CONTENT INCLUDING, BUT NOT LIMITED TO: PATENTLY OFFENSIVE LANGUAGE, EXTREME VIOLENCE, CRIMINAL CONDUCT, PATENT INFRINGEMENT, TRADEMARK INFRINGEMENT AND/OR COPYRIGHT INFRINGEMENT).

Use by Users. The Site features are for commercial use of Users to distribute and monetize videos of various genres and categories for business purposes in the direct to consumer video market. BingeNow reserves the right to remove any and all personal video content on the site at its sole discretion including but not exclusive to using the BingeNow Marketplace services for any commercial solicitation purposes; impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity.

Use by End Users (Subscribers). You are solely responsible for your interactions with End Users (subscribers). However, you give BingeNow the right to bill and collect revenue fees from these end users on your behalf.

Ownership Rights. BingeNow does not claim any ownership rights in any User's media, (i.e., text, images, photos, video, or any other materials) that is uploaded or posted on the Site. After uploading or posting your media to the Site, you continue to retain any such rights that you may have in your media, subject to the limited license herein. By displaying or publishing ("uploading or posting") any media on the Site,

you hereby grant to BingeNow a limited, non-exclusive, royalty-free license to use, modify, delete from, add to, publicly perform, publicly display, reproduce, and distribute such media solely on the Site. This limited license includes without limitation, distributing part or all of the content in any media format through any media channels (e.g. Mobile Devices) for the express purpose of advertising and promoting BingeNow site features and services.

Fees. You acknowledge that use of the Site features are currently free except for Content aggregators using our OTT services. BingeNow reserves the right in the future to charge for any portion of the Site features and to change its fees from time to time at its sole discretion. If BingeNow terminates your User ship because you have breached the Agreement, you shall not be entitled to the refund of any unused portion of the fees.

Content aggregator paid services. Subject to the terms of this Agreement, curation qualifications and payment of applicable fees stated therein, BingeNow hereby grants to Content aggregators, during the term of this Agreement, a non-exclusive, non-transferable, non-sub licensable right to use the BingeNow Marketplace and OTT Services, for your internal business purposes solely as necessary to develop, maintain and support the Authorized Products; and access and use the BingeNow Marketplace and OTT Service solely as necessary to distribute and support the applicable content you provide to BingeNow to make available to the appropriate End Users of the content. BingeNow reserves all rights not expressly granted herein in the BingeNow Marketplace and OTT Service.

Ownership of End User Information. You and BingeNow will jointly own any End User Information obtained from an End User via the BingeNow Service. The privacy policy for any Media Platform offered to End Users using the BingeNow Service shall clearly state that any End User Information is jointly owned and that both you and BingeNow shall have equal and independent rights to use such End User Information for any purposes allowed by applicable law without requirement of consent from the other party.

Support. Subject to the terms of this Agreement, BingeNow shall use commercially reasonable efforts to maintain the security of the BingeNow Marketplace and OTT Service; and provide the support if any requests for support may be made after you've logged into your account by creating a support ticket on the support page.

Intellectual Property. All software, features, navigation and trade dress developed for the Site including but not limited to, text, graphics, photographs, audio and video content, logos, icons, screens and configurations, is the property of BingeNow or its licensors and is protected by U.S. and international copyright and trademark laws, as an individual compilation or as collective work. You do not acquire any ownership rights by printing or downloading any information. All software is the property of BingeNow or its software developers or suppliers and is also protected by U.S. and international copyright laws. You may not copy, reproduce, transmit, distribute, modify, replicate, publish, enter into a database, perform, display, create derivative works, distribute over a network, sell or offer for sale or otherwise exploit the intellectual property of this Site. Any other use of the content of this Site is strictly prohibited.

Third Party Sites. As a convenience, this Site contains links to our OTT service partner Muvi and may contain links to other Internet sites that are owned and operated by third parties. By offering you these links, BingeNow is only endorsing Muvi and not endorsing any of the other sites and BingeNow has no

responsibility for the content of these other third party sites. You access any and all these other linked sites at your own risk.

User Disputes. BingeNow Users are responsible for resolving disputes with other Users. BingeNow has no obligation to review or determine the merit of any complaint. BingeNow reserves the right to review disputes and/or complaints at its sole discretion.

Restrictions on Exports. United States export laws and regulations restrict the exportation and/or re-exportation, through downloading or otherwise, into any certain embargoed countries, according to the US Department of Commerce Regulation. You are representing that you are not located in any of the prohibited countries.

Disclaimers. THIS SITE IS PROVIDED BY BINGENOW ON AN "AS IS" BASIS AND THE USE OF THIS SITE IS ENTIRELY AT YOUR OWN RISK. BINGENOW MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE, THE INFORMATION, CONTENT, ADVERTISING, FEATURES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE STATUTORY WARRANTY AGAINST NON-INFRINGEMENT. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY BINGENOW OR ITS EMPLOYEES OR REPRESENTATIVES, WILL CREATE A WARRANTY AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. NOTHING CONTAINED IN THIS SITE IS OFFERED OR INTENDED AS PROVIDING LEGAL, ACCOUNTING OR OTHER PROFESSIONAL ADVICE. YOU SHOULD CONSULT A LEGAL, ACCOUNTING OR OTHER APPROPRIATE PROFESSIONAL FOR SUCH ADVICE.

Limitation of Liability. YOU AGREE THAT BINGENOW AND ITS RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, USERS, EMPLOYEES, AGENTS REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, LICENSORS AND CONTENT PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGE, LOSS, OR EXPENSE OF ANY KIND ARISING OUT OF OR RESULTING FROM YOUR USE OF THE SITE FEATURES, CONTENT, OR INFORMATION ON THIS SITE REGARDLESS OF WHETHER SUCH LIABILITY IS BASED IN TORT, CONTRACT, OR OTHERWISE. IN NO EVENT, INCLUDING, WITHOUT LIMITATION, A NEGLIGENT ACT, SHALL BINGENOW OR ANY OF ITS RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, USERS, EMPLOYEES, AGENTS REPRESENTATIVES, PARENTS, SUBSIDIARIES, AFFILIATES, LICENSORS AND CONTENT PROVIDERS ASSIGNS BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OR CORRUPTION OF DATA, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, OR INTERRUPTION OF PERSONAL OR BUSINESS OPERATIONS), ARISING OUT OF OR IN ANY WAY RELATED TO THE USE, CONTENT, OR INFORMATION ON THIS SITE OR ANY OTHER PRODUCTS, SERVICES, OR INFORMATION OFFERED, SOLD, OR DISPLAYED ON THIS SITE, YOUR USE OF, OR INABILITY TO USE, THIS SITE GENERALLY, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER BINGENOW OR ANY OF ITS PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES DO NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN ANY EVENT, THE TOTAL AMOUNT OF BINGENOW'S LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED \$100.00.

Indemnity. You agree to indemnify BingeNow and its respective officers, directors, shareholders, Users, employees, agents representatives, parents, subsidiaries, affiliates, licensors and content providers for and from any loss by reason of, in any way relating to, or arising out of: (a) your use of this Site and any violation of any law, rule or regulation arising out of such use; or (b) any violation of this Agreement.

Jurisdiction and Law. This Agreement shall be construed and governed by the laws of the state of Delaware, United States of America and not by the application of choice of law principles or the laws of any other state or country. You agree that the federal and state courts sitting in the State of Delaware shall have exclusive jurisdiction and venue over any action brought to enforce the rights and obligations in or arising from this Agreement and each of the parties irrevocably submits to the jurisdiction of such courts.

Force Majeure. BingeNow will not be liable in any amount for failure to perform under this Agreement if such failure is caused by fire, flood, earthquakes, tornadoes, war, acts of God, terrorist acts or the occurrence of any other unforeseen contingency beyond the control of BingeNow.

Entire Agreement; Non-Severability. This Agreement constitutes the entire agreement between you and BingeNow and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter of this Agreement. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against public policy, the remainder of this Agreement shall remain in full force and effect and the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties.

Billing. If you provide BingeNow with valid credit card information, you authorize BingeNow to charge such credit card for the Service Fees associated with the initial term and any renewal term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, BingeNow will invoice you in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net thirty (30) days from the invoice date. In the event that your corresponding Fees are overdue, BingeNow shall be entitled to (in addition to any other rights or remedies BingeNow may have) discontinue the BingeNow Service and suspend your access, including your Authorized Users' access, to the BingeNow Service until such amounts are paid in full. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less. BingeNow reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of a term, upon thirty (30) days prior notice to Customer (which may be sent by email). If you believe that BingeNow has billed you incorrectly, you must contact BingeNow no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to BingeNow's customer support department by creating a support ticket once you've logged into your account.

Third-party Fees. The issuer of your credit card may charge you a foreign transaction fee or other charges for subscribing to the BingeNow Service. It is your responsibility to check with your credit card issuer regarding these details.

Taxes. The fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and you will be responsible for payment of all such taxes (other than taxes based on BingeNow's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of access to the BingeNow Service to you. You will make all payments of fees to BingeNow free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to BingeNow

will be your sole responsibility, and you will provide BingeNow with official receipts issued by the appropriate taxing authority, or such other evidence as BingeNow may reasonably request, to establish that such taxes have been paid. You shall indemnify and defend BingeNow in connection with any proceedings brought by any taxing authorities in connection with this Agreement.

No Refunds. Notwithstanding any contrary terms in this Agreement or an applicable Order Form, the Fees paid for the BingeNow Service are non-cancelable and non-refundable. At any time with a 30 day written notice to BingeNow you can cancel your BingeNow Service. Upon BingeNow receiving your notice of termination BingeNow will continue to provide you access to the BingeNow Service through the remainder of the then-current term. Your access to the BingeNow Service will be terminated effective as of the final day of the then-current term.

Term and Termination. This Agreement commences on the Effective Date and remains in effect for the initial term, as set forth in an Order Form. Unless earlier terminated as set forth below, this Agreement shall be automatically renewed for consecutive terms equal in length to the initial term unless either party provides written notice to the other of its intention not to renew thirty (30) days prior to the expiration of the then-current term.

Termination for Cause. BingeNow may terminate this Agreement immediately upon breach of the Confidentiality or Proprietary Rights sections of this Agreement. We reserve the right to modify, suspend or terminate the BingeNow Service (or any part thereof), your right or your Authorized Users' rights, or End Users' rights to access and use the BingeNow Service, and remove, disable and discard any Content if we believe that you, your Authorized Users, or End Users have violated this Agreement. This includes the removal or disablement of Content in accordance with our Copyright Policy. Unless legally prohibited from doing so, we will use commercially reasonable efforts to contact you directly via email to the email associated with your account to notify you when taking any of the foregoing actions. We shall not be liable to you, your Authorized Users, End Users or any other third party for any such modification, suspension or discontinuation of your rights to access and use the BingeNow Service. Any suspected fraudulent, abusive, or illegal activity by you, Authorized Users or End Users may be referred to law enforcement authorities at our sole discretion.

Effect of Termination. Upon termination or expiration of this Agreement for any reason: all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; and within ten (10) days after the effective date of termination, BingeNow shall discontinue all use of the Content you originated on the BingeNow Service and may destroy all copies of the same in our possession. The sections intended to survive termination of this Agreement shall survive, including but not limited to the sections and subsections titled Definitions and Related Transactions, Limitations, Warranties and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous.

Protection of Intellectual Property. Users agree not to upload, embed, post, email, or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. Any such material that is reported to or discovered by BingeNow and found to violate this will be removed from the site. BingeNow also reserves the right to remove the account of any actual or alleged infringing User. If you believe that any material on the Site infringes upon any copyright which you own or control, you may, as per provisions of the Digital Millennium Copyright Act,

send a written notification that complies with the requirements of our [Copyright Infringement Procedure](#) (this form is available from the confirmation page when you flag content for an intellectual property violation). Such a claim may be disputed by sending a written notification that complies with the requirements of our [DMCA Counter Notification Procedure](#).

## Content Guidelines

**Respect the Community.** We do our best to keep BingeNow OTT safe, but we cannot guarantee it. We need your help to accomplish this goal and ensure that the site is not abused. Every cool new feature on BingeNow OTT involves a certain level of trust. We trust you to be responsible.

**Responsible Conduct.** BingeNow is not for pornographic, threatening, harassing, libelous, tortuous, or fraudulent content. Nor is it to be used for the invasion of another's privacy. If this describes your content, don't upload it on BingeNow.

Please do not upload videos that display:

Pornography. Videos which depict a human engaged in actual sexual conduct including but not limited to:

Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal.

bestiality

masturbation

sadistic or masochistic abuse

lascivious exhibition of genitals

Sexual Nudity (nudity refers to the condition or fact of being unclothed in areas where underwear is generally used). Artistic, educational, and documentary nudity are allowed (but must be marked as "Adult Content"). Gratuitously graphic sexual nudity is not allowed. For example, a documentary on breast cancer would be appropriate, but posting clips out of context from the documentary might not be.

Exploitation of Children or Other Minors. Please be extremely cautious when posting something involving a child. Videos involving children (anyone under the age of 18) are particularly sensitive. Videos containing children should never be sexually suggestive or violent. We intend to cooperate with all governmental agencies that seek those who produce child exploitation on this site.

Criminal activity, drug abuse, under-age drinking and smoking, bomb making or animal abuse.

Dead bodies, accidents or similar things intended to shock or disgust.

Misleading titles, descriptions or video posters.

Threats against other people.

Hate speech (speech that is intended or designed to instigate violence based on race or ethnic origin, religion, disability, gender, age, veteran status, or sexual orientation/gender identity).



Phishing. Attempts to fraudulently obtain sensitive data, such as credit card details and security passwords.

This list is not all inclusive, so use common sense when posting content.

Content Labeling. Some material may not be appropriate for children. Videos containing profanity or nudity must be labeled as "Mature Content" when they are uploaded. Videos containing mature content are only intended to be viewed by people are at least 18 years old.

Please take our Content Guidelines seriously and take them to heart. Don't try to look for loopholes or work-arounds-just understand them and try to respect the spirit in which they were created.

Flagging. If you find any content that violates our Responsible Conduct provisions, click the "Flag" link next to the content in question to submit it for review by BingeNow staff. If the content does not violate our Responsible Conduct provisions it should not be flagged. Individuals who repeatedly flag material falling outside the provisions will be subjected to having their accounts suspended or deleted.