

# GENERAL TERMS AND CONDITIONS FOR VPL PUBLIC PERFORMANCE LICENCES

## 1. INTERPRETATION

1.1 The following words have the following meanings:

"Public Terms and Conditions" means these general terms and conditions (as may be amended Performance from time to time);

"Authorised Signatory of VPL" means a director or head of department of VPL;

"Information" means any information relating to the use of the Music Videos by the Licensee supplied to VPL by the Licensee whenever supplied including, without limitation, all information the Licensee is required to provide to VPL for the purposes of determining the appropriate Licence Fee and any relevant information supplied to the Licensee by VPL and in respect of which VPL is not notified of any objections by the Licensee;

"Licence" means the non-exclusive licence to publicly perform Music Videos (or to authorise the public performance of Music Videos) at the Named Premises granted by VPL to the Licensee;

"Licence Document" means the document issued by VPL which records the details of the Licence subject to the Relevant Tariff and the Public Performance Terms and Conditions;

"Licence Fee" means the fee for the Licence as specified in the Licence Document;

"Licence Period" means the licence period starting on the date specified in the Licence Document and continuing until the date of expiry specified in the Licence Document or the date of any earlier termination in accordance with Clause 9 of the Public Performance Terms and Conditions;

"Licensee" means the licensee named in the Licence Document;

"Music Videos" means all those music videos the ownership or control of the relevant copyright in which shall be vested in VPL from time to time;

"Named Premises" means the premises named in the Licence Document;

"Relevant Tariff" means the relevant VPL public performance tariff or tariffs applicable from time to time;

"Renewed Licence" means any renewal of the Licence Document granting the Licensee a further licence;

"VAT" means value added tax;

"VPL" means Video Performance Limited whose registered address is 1 Upper James Street London, W1F 9DE;

"Working Hours" means from 9:00 a.m. to 5:00 p.m. on any day of the week other than Saturday, Sunday or a public holiday.

1.2 Where expressions are used in the Public Performance Terms and Conditions which are expressions used in the Copyright, Designs and Patents Act 1988 (as may be amended from time to time), they shall have the same meaning in the Public Performance Terms and Conditions as in that Act, unless the context otherwise requires.

## 2. TERMS

2.1 The Licence (on taking effect as provided in Clause 3.2) is granted pursuant to the Relevant Tariff and is subject to the Public Performance Terms and Conditions. For the avoidance of doubt, terms and conditions stipulated by the Licensee when applying for the Licence do not form part of the Licence.

2.2 Where the provisions of the Licence Document conflict with any provision of the Public Performance Terms and Conditions, the Public Performance Terms and Conditions shall prevail.

2.3 Where the provisions of the Licence Document conflict with any provision of the Relevant Tariff, the Relevant Tariff shall prevail.

2.4 The Public Performance Terms and Conditions shall not entitle the Licensee to include any Music Video in any broadcast, or copy any Music Video for any purpose whatsoever. Such exploitation of any Music Video must be licensed under VPL's appropriate terms and conditions.

## 3. LICENCE FEE

3.1 An offer by or on behalf of the Licensee to obtain a Licence may only be made by making full payment of the Licence Fee to VPL (or any other party reasonably authorised by VPL). Such an offer may only be accepted by VPL accepting full payment of the Licence Fee. For the avoidance of doubt, neither the submission of any application form, invoice or other document by VPL to the Licensee nor the return of a completed application form by the Licensee to VPL nor the provision of any Information by the Licensee to VPL shall be treated as an offer by the Licensee to obtain a licence from VPL.

3.2 The Licence only takes effect as and when VPL (or any other party reasonably authorised by VPL) has received the Licence Fee and the VAT thereon in cleared funds (subject to Clause 3.4). Unless and until full payment of the Licence Fee and any other sums outstanding (together with any accrued interest) has been made by or on behalf of the Licensee and acknowledged in writing by VPL (or any other party reasonably authorised by VPL), the public performance of Music Videos at the Named Premises shall therefore remain unlicensed.

3.3 The Licensee must pay VPL (or any other party reasonably authorised by VPL) all amounts due to VPL in full without any deduction or set-off (equitable or otherwise). The Licensee may not assert any credit or counterclaim against VPL to justify withholding all or part of any payment.

3.4 VPL may apply any sums paid by or on behalf of the Licensee to VPL (or any other party reasonably authorised by VPL) against any amounts owed by the Licensee to VPL.

3.5 The Licence Fee is calculated according to the Relevant Tariff and based on the Information supplied to VPL before the Licence was granted. If there is any change in circumstances that causes or will cause any of the Information to become misleading or inaccurate to any material extent during the Licence Period and/or if there is any change in the information stated in the Licence Document (including, without limitation, any change that would require an additional public performance licence from VPL), the Licensee must notify VPL promptly in writing of such changes. If the change in circumstances is such that the Licence requires amendment and/or any additional VPL licence is required, the Licensee must notify VPL and pay any additional licence fees payable in advance of the change in circumstances occurring. Failure to do so will mean that the Licence shall cease with effect from such change in circumstances occurring. It is expressly agreed and declared that the obligation to notify VPL contained in this clause shall not be construed as implying any consent on the part of VPL to any change so notified.

3.6 The Licence Fee does not include VAT and the Licensee shall pay any VAT or similar tax where the same is applicable at the prevailing rate or rates from time to time.

3.7 Any refund of the Licence Fee shall be at the sole discretion of VPL.

## 4. DURATION OF LICENCE

The Licence shall be for the Licence Period subject to Clause 3.2.

## 5. RESERVATION OF RIGHTS

5.1 All rights in the Music Videos which are owned or controlled by VPL and not expressly licensed to the Licensee under the Licence are expressly reserved.

5.2 Nothing contained in the Licence Document, the Relevant Tariff or the Public Performance Terms and Conditions shall be construed as:

5.2.1 permitting the Licensee to do anything in relation to any Music Video unless it is expressly permitted by the Licence; or

5.2.2 entitling the Licensee to publicly perform anything other than legitimately purchased or rented Music Videos, and VPL expressly reserves its rights in respect of any such activity.

5.3 For the avoidance of doubt (and without in any way limiting Clause 5.1), no rights in respect of the editing, copying or digital storage of Music Videos are licensed under the Licence.

## 6. THE LICENSEE'S OBLIGATIONS TO VPL

6.1 The Licensee hereby undertakes:

6.1.1 not to engage in or authorise or permit any other person to engage in the public performance of any Music Video other than as permitted under the Licence;

6.1.2 not to make or authorise or permit or encourage any other person to make any unauthorized copy of any Music Video;

6.1.3 not to use or authorise or permit or encourage any other person to use any Music Video in such a way as may be taken to state or imply that any groups or individuals or any goods or services other than Music Videos are endorsed by, advertised or associated with any artist whose performance is contained on the Music Video or other party who owns rights in or in connection with such Music Video;

6.1.4 not to use or authorise or permit or encourage any other person to use any Music Video in any context which ought reasonably to be considered as likely to be derogatory or detrimental to the artist or group of artists featured in such Music Video;

6.1.5 to show a Music Video in the exact form in which it is supplied to the Licensee (and, for the avoidance of doubt, not to edit or distort any Music Video);

6.1.6 not to superimpose any other visual images or sounds over the Music Videos whilst they are being played except by way of identification of the Music Video or by using the logo of the Licensee (such logo shall be clearly visible but must be in a corner of the video image and be no larger than 5% of the image on the screen); and

6.1.7 to inform VPL of any breach of VPL's rights or the rights of its members or other illegal activities concerning the rights of its members which come to the notice of the Licensee.

6.2 The Licensee warrants that all information given to VPL is accurate and not misleading to any material extent. In the event that such information is inaccurate, VPL shall have no liability in respect of the same and, in particular and without prejudice to Clause 3.7, will be under no obligation to refund any money already paid in respect of the Licence to VPL.

## 7. VPL'S OBLIGATIONS TO THE LICENSEE

7.1 VPL warrants to the Licensee that it has the right to grant the Licence.

7.2 The Licence relates only to the public performance of the Music Videos and does not grant any other consents or authorisations of any nature which may be required for the use of the Music Videos. VPL shall not be liable for any claims arising out of the use of the Music Videos which may be made by the owners of the copyright in any literary, dramatic or musical works embodied in the Music Videos (or any other rights that VPL does not control). Accordingly, VPL shall not be liable in respect of any failure on the part of the Licensee or any third party to obtain any other consent or authorisation which may be required.

## 8. INSPECTION

8.1 Where VPL has a reasonable belief that any of its rights have been, are being or may be infringed or otherwise prejudiced at the Named Premises or any other premises of the Licensee, the Licensee shall permit (and warrants that it is able to permit) VPL (and/or any other party reasonably authorised by VPL including without limitation agents, professional advisers and experts) to enter and remain at such premises to:

8.1.1 determine if the information is accurate;

8.1.2 ascertain whether the Public Performance Terms and Conditions have been complied with; and/or

8.1.3 ascertain whether VPL's rights in the Music Videos are being infringed or otherwise prejudiced.

8.2 The Licensee shall provide VPL (and/or any other party reasonably authorised by VPL including without limitation agents, professional advisers and experts) with all assistance of whatever nature that VPL may reasonably require in connection with Clause 8.1.

## 9. TERMINATION

9.1 The Licence will automatically terminate:

9.1.1 on the expiry of the Licence Period;

9.1.2 if the Licensee is in breach of any of the Public Performance Terms and Conditions; or

9.1.3 if a statutory demand is served upon the Licensee or the Licensee enters into an agreement or composition with or for the benefit of its creditors or suffers an execution to be levied against its goods or property or (being a company) it is wound up whether compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or suffers an execution to be levied against its goods or property or has a receiver or administrator appointed over its assets or any of them or if notice of any liquidation or other proceedings relating to insolvency (including an application for an administration order) are served upon it.

9.2 Termination of the Licence will not affect any rights accrued to the date of termination.

## 10. RENEWAL

10.1 VPL may send the Licensee a notice indicating the information on which the fees for a Renewed Licence will be calculated or a renewal notice inviting the Licensee to tender payment for a Renewed Licence. Any such notice is not an offer to grant a Renewed Licence (or any other licence). If the Licensee wishes to renew the Licence it must pay VPL the appropriate licence fee in full (which for the avoidance of doubt may change in accordance with any increase in the Relevant Tariff). It is the Licensee's responsibility to contact VPL and ensure that it obtains a Renewed Licence (or any other licence) if it requires one.

10.2 If any of the details set out in any notice indicating the information on which the fees for a Renewed Licence will be calculated or in any renewal notice are incorrect the Licensee must notify VPL in writing of any changes that are required to those details so that such changes may be incorporated into any Renewed Licence.

10.3 For the avoidance of doubt the Public Performance Terms and Conditions will apply in full to any Renewed Licence and any reference to "the Licence" in the Public Performance Terms and Conditions shall, in the context of any Renewed Licence, be read as referring to such Renewed Licence.

## 11. NOTICES

11.1 Any notice or other communication under or in connection with the Licence shall be in writing and shall be delivered personally or sent by post (air mail if overseas) or by facsimile to the party due to receive the notice or communication at its registered address (in the case of VPL) or the address specified in the

Licence Document (in the case of the Licensee) or such other address as a party may specify by notice in writing to the other. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given: if delivered personally, when left at the address referred to above; if sent by mail other than air mail, two days after posting it; if sent by air mail, six days after posting it; and if sent by facsimile machine, on completion of its transmission (provided that the sender shall have received and can produce a transmission report indicating that all pages of the notice have been transmitted to the correct facsimile number at the time of despatch).

## 12. DATA PROTECTION

12.1 VPL may use the Information (including any personal data such as names and contact details) provided to it in connection with the Licence for its lawful business purposes, including, without limitation, calculating appropriate licence fees, contacting licensees, applicants and other respondents regarding VPL licences and to research and analyse the types of organisations and entities that hold, or should potentially hold, relevant copyright licences. Information may be disclosed to law enforcement bodies from time to time in relation to any intended or potential action for breach of copyright.

12.2 VPL may also exchange information with other collecting societies for the purpose of establishing whether further copyright licences are required to be held.

12.3 The Licensee warrants that it will obtain the consent of any individual whose personal data is submitted to VPL before submission of that data.

## 13. MISCELLANEOUS

13.1 Whenever VPL's permission, consent or agreement is required, that consent or agreement must be given in writing in advance and signed by an Authorised Signatory of VPL.

13.2 No waiver by VPL of any breach of any provision of the Public Performance Terms and Conditions shall be deemed to be a waiver of any other breach. No waiver shall be binding or effective unless made in writing by an authorised signatory. No single or partial exercise of any right, power, privilege or remedy precludes any other or further exercise of such or any other right, power, privilege or remedy available to VPL under the Public Performance Terms and Conditions. The rights, powers, privileges and remedies in the Public Performance Terms and Conditions are cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to VPL at law or in equity.

13.3 No variation or amendment of the Licence shall bind either party unless agreed to in writing by their respective duly authorised representatives, which in VPL's case will be an Authorised Signatory of VPL.

13.4 The Public Performance Terms and Conditions shall not constitute any form of partnership or joint venture between the Licensee and VPL.

13.5 If any provision (or part thereof) of the Public Performance Terms and Conditions shall be determined by any court of competent jurisdiction to be void or unenforceable all other provisions (and, if part of the provision is so determined to be void or unenforceable, the remainder of that provision) of the Public Performance Terms and Conditions shall nevertheless continue in full force and effect.

13.6 The clause headings in the Public Performance Terms and Conditions are for information only and do not form part of them.

13.7 The Licence is personal to the Licensee and the Licensee shall not assign, transfer, charge, hold on trust or sub-license or purport to assign, transfer, charge, hold on trust or sub-license the benefit of the Licence or any part of it or interest in it without VPL's prior written consent to be given or withheld at its absolute discretion.

13.8 A person who is not a party to the Licence has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Licence but this does not affect the right or remedy of a third party which exists or is available apart from that Act.

13.9 The Licensee irrevocably waives any right it may have to seek a remedy for:

13.9.1 any misrepresentation which has not become a term of the Licence; or

13.9.2 any breach of warranty or undertaking (other than those contained in the Public Performance Terms and Conditions) whether express or implied statutory or otherwise; unless such misrepresentation was made or such warranty or undertaking was given fraudulently.

13.10 The Licence, the Relevant Tariff and the Public Performance Terms and Conditions are subject to English law and jurisdiction.