

STANDARD TERMS AND CONDITIONS

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

"Agreement" means these Standard Terms and Conditions and the Licence Summary and any other schedules or annexures.

"All Media Platforms" means TV, Radio, Cinema, DVD & Data-storage devices, Online, Mobile, VoD and OTT services.

"Business Day" means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales.

"Copyright" means:

- (a) any copyright under the Copyright Act;
- (b) any copyright under the law of a country other than Australia; and
- (c) rights in the nature of or analogous to the rights in (a) and (b) under the law of Australia or any other country (including future copyright and rights in the nature of or analogous to copyright).

"Copyright Act" means the *Copyright Act 1968* (Cth).

"Invoice" means document entitled Invoice provided by the Publisher to the Licensee setting out the Licence Rights to be obtained by the Licensee subject to payment of the Licence Fees.

"Licence Fees" mean the fees for the Licence Right(s) payable by the Licensee to use the Track in the Production.

"Licence Period" is set out in Item 3 of the Licence Summary.

"Licence Rights" mean the right(s) to use the Track as specified in Item 5 of the Licence Summary subject to receipt of the corresponding Licence Fees.

"Licence Summary" means the commercial terms of this Agreement input by the Licensee during the checkout process on the Publisher's website located at <https://melod.ie>.

"Performing Rights Organisation" means performing rights organisations and/or collecting societies including the Australasian Performing Rights Association Limited (ABN 42 000 016 099) and their international affiliates.

"Production" means the applicable film, production or other subject matter as set out in Item 2 of the Licence Summary or as identified in the Invoice in which the Track will be exploited.

"Tax" means a tax (including any goods and services tax), rate, levy, duty (including mortgage duty and stamp duty) or impost (other than a tax on the income of the Publisher) and any interest, penalty, expense or fine in connection with any of them.

"Territory" is set out in Item 4 of the Licence Summary.

"Track" means each sound recording, the associated musical work and lyrics as specified in Item 1 of the Licence Summary.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) words or phrases defined in the Copyright Act will have the same meaning if used in this Agreement unless the contrary intention is shown or the meaning is inconsistent in the context;
- (c) headings are for convenience and do not affect the interpretation of this Agreement;
- (d) any gender includes the other gender;
- (e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (f) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;

- (g) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (h) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (i) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (j) "includes" and similar words mean includes without limitation;
- (k) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (l) a reference to a Party includes the Party's legal personal representatives, successors, assigns and persons substituted by novation;
- (m) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;
- (n) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (o) a reference to time is to local time in New South Wales; and
- (p) a reference to "\$" or "dollars" refers to the currency of Australia from time to time.

2. Grant of Licence

- 2.1 In consideration for payment of the Licence Fees to the Publisher by the Licensee, the Publisher grants the Licensee an irrevocable, non-exclusive licence for the Licence Period to exploit the Track in accordance with the Licence Rights in the Territory.
- 2.2 Subject to the Licence Rights purchased by the Licensee, the grant of rights under this Agreement does not permit the Licensee to:
 - (a) use or reproduce the Track for a work or subject matter other than in the Production;
 - (b) use or resell the Track as a stand-alone item;
 - (c) edit, modify, alter, adapt any element of the Track or create any derivative works without the Publisher's prior written consent except to incorporate the Track into the Production; or
 - (d) use the Track for any purpose other than the Licence Rights corresponding with the payment of the Licence Fees.
- 2.3 Where multiple Tracks are identified, the Licence Rights granted in this Agreement are granted separately with respect to each Track.
- 2.4 The Licensee's rights granted by this Agreement are subject to any rights vested in a Performing Rights Organisation.
- 2.5 The Licensee may sub-license the rights granted under this Agreement to any other licensee in any other country within the Territory (**Sub-licensee**) for the purpose of exploiting and showing the Production provided that (a) the Licensee remains principally liable to the Publisher for the obligations set out in this Agreement; and (b) the Sub-licensee is required to observe the obligations to the Licensee set out in this Agreement.
- 2.6 All rights in the Track not expressly granted to the Licensee under this Agreement remain with the Publisher, including but not limited to the right to make changes to the Track or use any part of the lyrics or title of the Track as the title or subtitle of the Production. You acknowledge and agree the Publisher owns the Copyright in any and all part of the Track and the recording of the Track.

3. Names and Likeness

- 3.1 The Licensee must obtain the Publisher's written consent for any use of the Track composer's name, likeness and biography for the purpose of promoting the Track or any form of publication of the Track.

4. Licence Fee

- 4.1 The Licensee agrees to pay to the Publisher the Licence Fees within 14 days from the date of this Agreement.
- 4.2 The Licence Fee is exclusive of any and all royalties and/or fees that may be payable to a Performing Rights Organisation. The Licensee is responsible for ensuring that such Performing Rights Organisation is aware of the use of the Track in the Production, including but not limited to providing a cue sheet as set out in clause 5 where applicable.
- 4.3 No fees are payable to the PPCA Ltd (ABN 43 000 680 704) or AMCOS Ltd (ABN 78 001 678 851) for any use of the Track.

5. Cue Sheets and Credit

- 5.1 For each Production identified in this Agreement, the Licensee agrees to provide the Performing Rights Organisation and the Publisher with the necessary information including a music cue sheet to allow such parties to register the public performance of the track and its use with their local Performing Rights Organisation setting out details including but not limited to details of the Publisher, composer, and Track(s) used. The Licensee agrees to send a copy of such cue sheet and/or other relevant details to the Publisher.
- 5.2 Subject to and in accordance with the practices of the broadcaster, the Licensee will credit the Publisher in each and every transmission of the Production containing the Track with notice to the effect of "Music courtesy of Melodie Music".

6. Licensee's Representations and Warranties

- 6.1 **Nature:** The Licensee represents and warrants that:
- (a) it is not a minor and is not suffering from legal incapacity which in any way affects, or might in the future affect, its ability to execute or deliver or comply with its obligations under this Agreement;
 - (b) this Agreement constitutes its legal, valid and binding obligations and is enforceable against it by the Publisher in accordance with its terms;
 - (c) it will not sell or otherwise distribute or exploit the Track except in accordance with the Licence Rights paid for under the Invoice;
 - (d) the execution and delivery of, and the compliance with its obligations under, this Agreement do not contravene any law or directive from a government body, any agreement or instrument to which it is a party, any of its obligations to any other person; and
 - (e) except as notified to the Publisher in writing prior to the date of this Agreement, it does not enter into this Agreement as trustee of any trust.
- 6.2 **General:** The Licensee acknowledges that the Publisher enters into this Agreement in reliance on the representations and warranties.

7. Term and Termination

- 7.1 This Agreement commences on the date payment of the Licence Fees by the Licensee is received by the Publisher.
- 7.2 This Agreement may be terminated by agreement between the Parties.
- 7.3 This Agreement may be terminated by either party if the other party materially breaches this Agreement and does not remedy such breach within 14 days of written notice by the other party.
- 7.4 Termination of this Agreement by either Party will not prejudice any rights granted to the Licensee prior to termination.

8. Liability and Indemnities

- 8.1 To the fullest extent permitted by law, the Publisher is not liable to the Licensee for any claim, loss, expense or damages. Whether arising in contract, in tort (including in negligence), in equity, by operation of law or otherwise arising out of or in connection with this Agreement or the Track, or

the Licensee's use of the Track except as expressly provided for in this Agreement.

- 8.2 The Licensee indemnifies the Publisher on demand against any liability, loss, cost or expense caused or contributed to by any failure by the Licensee to comply with its warranties under this Agreement.
- 8.3 The indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Licensee and survives the termination of this Agreement.

9. Costs and Expenses

- 9.1 The Licensee must on demand pay, and if paid by the Publisher reimburse, to the Publisher (a) the Publisher's reasonable costs and expenses (including legal costs and expenses on a full indemnity basis) in relation to the negotiation, preparation and execution of this Agreement and any variation, replacement or discharge of this Agreement and the exercise or attempted exercise or the preservation of any rights of the Publisher under this Agreement; and (b) any Taxes and registration and other fees (including fines and penalties relating to the Taxes and fees) which are payable in relation to this Agreement and any transaction contemplated by it.

10. Dispute Resolution

- 10.1 If there is a dispute between the Parties in relation to this Agreement, the Parties agree to the following dispute resolution procedure.
- 10.2 The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute any agreement between them (**Initial Meeting**).
- 10.3 If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer to the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 10.4 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under this Agreement, by law or in equity.

11. General

- 11.1 **Supervening legislation:** Any present or future legislation which operates to lessen or vary in favour of the Licensee any of its obligations in connection with this Agreement or to postpone, stay, suspend or curtail any rights of the Publisher under this Agreement is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.
- 11.2 **Notices:** Any notice in connection with this Agreement will be deemed to have been duly given when made in writing and delivered or sent by email or post to the party to whom such notice is intended to be given or to such other address or email address as may from time to time be notified in writing to the other party.
- 11.3 **Force Majeure:** A Party is not liable for its inability to perform, or delay in performing, any of its obligations under this Agreement if that inability or delay is due to any circumstance(s) beyond its reasonable control.
- 11.4 **Relationship of parties:** This Agreement is not intended to create a relationship between the Parties of partnership, joint venture or agency.
- 11.5 **Assignment:** The Licensee must not assign or otherwise dispose of any right under this Agreement without the prior written consent of the Publisher. The Publisher's rights under this Agreement are assignable.
- 11.6 **Waiver or variation of rights:** A right in favour of the Publisher under this Agreement and a breach of an obligation of the Licensee under this Agreement can only be waived by an instrument duly

executed by the Publisher. No other act, omission or delay of the Publisher will constitute a waiver binding, or estoppel against, the Publisher. A single or partial exercise or waiver by the Publisher of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

- 11.7 **Powers, rights and remedies:** Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party or any other person.
- 11.8 **Entire agreement and understanding:** In respect of the subject matter of this Agreement: (a) this Agreement contains the entire understanding between the Parties; (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement; and (c) each of the Parties has relied entirely on its own enquiries before entering into this Agreement.
- 11.9 **Severance:** If all or any part of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.
- 11.10 **Governing law and jurisdiction:** This Agreement is governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.

For any questions or notice, please contact the Publisher at:

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