

BUSINESS TO BUSINESS TERMS AND CONDITIONS OF SERVICE

1. Immedia's Warranties

Immedia warrants to the Customer that:

- (a) it has the power and authority to enter into this Agreement and to fully perform its obligations under it;
- (b) it will provide the Services with reasonable care and skill and in accordance with good industry practice;
- (c) it will use its reasonable endeavours to provide the Channels 24/7, with guaranteed provision between the hours of 9am to 6pm GMT on Business Days
- (d) it will obtain and maintain for the duration of this Agreement all necessary licences from Phonographic Performance Ltd (PPL), Performing Right Society (PRS) and Mechanical-Copyright Protection Society (MCPS) to enable it to produce and broadcast the Channels to the Immediate Music Unit.

2. The Customer's Obligations and Warranties

2.1 Care of the Immediate Music Unit

The Immediate Music Unit remains the property of Immedia at all times. The Customer shall:

- (a) take good care of the Unit and shall not interfere with the Unit, its working mechanisms or any other parts and shall only use the Unit for its proper purpose in a safe and correct manner in accordance with any operating and safety instructions provided;
- (b) be responsible for providing power and a broadband connection to the Unit;
- (c) be responsible for providing amplifiers and speakers for the Unit;
- (d) take adequate and proper measures to protect the Unit from all risks;
- (e) keep the Unit at all times in its possession and control and not remove the Unit from the Premises without the prior written consent of Immedia;
- (f) in the event of damage to or loss or theft of the Unit at any time during the Subscription Period, pay to Immedia a replacement charge of £150 for the Unit (and for the avoidance of doubt any such damage, loss or theft shall not give the Customer any right to terminate this Agreement prior to the end of the Subscription Period);
- (g) deliver the Unit in good condition to Immedia upon the expiry of the Subscription Period (or earlier termination of this Agreement).

2.2 Music Public Performance Site Licensing

For the avoidance of doubt, Immedia is not liable for PRS, PPL or other public performance site licence fees for the Customer's Premises which are the sole responsibility of the Customer.

2.3 Warranties

The Customer warrants and undertakes to Immedia that:

- (a) it has the power and authority to enter into this Agreement and to fully perform its obligations under it;
- (b) this Agreement is executed by a duly authorised representative of the Customer;
- (c) this Agreement constitutes valid, binding and enforceable obligations of the Customer in accordance with its terms.

3. Indemnity

The Customer shall indemnify and keep indemnified Immedia against all losses or liabilities (including without limitation any direct or indirect consequential losses or loss of profit and loss of reputation, damages, claims, demands, proceedings, costs, expenses, penalties, legal and other professional fees and costs) which may be suffered or incurred by Immedia which arise directly or indirectly in connection with the following:

- (a) any loss of or damage to the Unit, however arising;
- (b) subject to Clause 6, any breach of intellectual property rights arising in connection with the Unit or its use;
- (c) any part of this Subscription Agreement being void, voidable or unenforceable for any reason other than a breach of the warranties given by Immedia under clauses 1(a) to (c) inclusive ;
- (d) the possession, use or operation of the Unit by the Customer or any other person in any way other than as defined by this Agreement;
- (e) the exercise or purported exercise by Immedia of its rights under this Agreement;
- (f) any claim which could affect Immedia's interest in or title to the Unit and any action taken by Immedia to protect such interest and title;
- (g) any breach by the Customer of any of its obligations under this Agreement.

Each indemnity in this clause is a separate and independent obligation and continues after and shall survive termination of this Agreement.

4. Limitation of Liability

4.1 This paragraph 4 sets out the entire financial liability of Immedia (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer of the Unit, the Services or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

4.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

4.3 Nothing in this Agreement limits or excludes the liability of Immedia:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Immedia; or

- (c) for any liability incurred by the Customer as a result of any breach by Immedia of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

4.4 Subject to the foregoing provisions of this paragraph 4:

- (a) Immedia shall not be liable for:
 - (1) loss of profits; or
 - (2) loss of business; or
 - (3) depletion of goodwill and/or similar losses; or
 - (4) loss of anticipated savings; or
 - (5) loss of goods; or
 - (6) loss of contract; or
 - (7) loss of use; or
 - (8) loss of corruption of data or information; or
 - (9) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Immedia's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this Agreement shall be limited to the amount of the Subscription Charges paid by the Customer to Immedia.

5. Onsite Warranty

In the event of a problem, the Customer should first consult the Immedia website at www.immediapl.com to ascertain if there have been any events that may have disrupted the Channels.

The Customer should contact the Helpdesk on 0845 634 8488 to seek assistance and to be taken through a fault checking procedure in order to restore the service. If this procedure is unsuccessful our engineer will attend the Premises within 3 Business Days after the phone call to the Helpdesk.

In the event the engineer attends the Premises and determines that the fault is not with the Immediate Music Unit then a call out fee of £95 will be charged.

6. Music Copyright

Music streamed via the Immediate Music Unit is owned by third party copyright owners and is provided under licence from Mechanical-Copyright Protection Society (MCPS) and Phonographic Performance Limited (PPL).

7. VAT

All charges and fees set out in this Agreement exclude VAT which will be charged at the prevailing rate.

8. Invalidity

If any term or condition of this Agreement or the application thereof is or becomes invalid or unenforceable, the remaining terms and conditions and information shall not be affected thereby and each and every term and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Definitions In this Agreement, unless the context otherwise requires, the expressions: (a) *Customer* shall mean and include the Customer and each of them and where appropriate their respective directors, shareholders, representatives, transferees and assigns; (b) *Immedia* shall mean Immedia Broadcast Ltd; (c) *Channels* shall mean the Immediate Music Channels (c) *Territory* shall mean the mainland United Kingdom including Northern Ireland and excluding the Channel Islands and the Isle of Man; (d) *Business Days* shall mean Mondays to Saturdays in each week during the Subscription Period; (e) *Subscription Period* shall mean the duration for which Immedia has agreed to provide the Immediate Music Unit in accordance with the terms and conditions of this Agreement; (f) *Force Majeure Event* shall mean any circumstances beyond the reasonable control of a party preventing or delaying the performance of that party's obligations under this Agreement (in full or in part) including any strike, lock-out or other form of industrial action, but excluding lack of available funds; (g) *Services* shall mean the services to be provided by Immedia in accordance with the definition set out in the End User Agreement.

10. Intellectual Property.

All intellectual property rights in the Immediate Music Unit and the Channels shall be owned by Immedia (subject always to clause 6).

11. Termination

Without prejudice to any other rights or remedies which Immedia may have, Immedia may terminate this Agreement without liability to the Customer immediately on giving notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven (7) days after such payment has become due, or the Customer commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of the Customer being notified in writing of the breach; or
- (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- (d) there is a change of control of the Customer

11.1 On termination of this Agreement for any reason:

- (a) the Customer shall immediately pay to Immedia all of Immedia's outstanding unpaid invoices and interest and, in respect of any part of the Subscription Period for which no invoice has been submitted, Immedia may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall immediately make the Unit available for collection by Immedia. If the Customer fails to do so, then the Customer shall pay a further administration charge of £100 plus VAT to Immedia and Immedia may enter the Premises and take possession of it and

- recover the cost of so doing from the Customer. Until it has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

11.2 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Immedia on the due date, Immedia may:

- (a) charge interest on any overdue sums from the due date for payment at the annual rate of 6% above the base rate published from time to time of HSBC Bank, accruing on a daily basis until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and
- (b) suspend the delivery of the Channels to the Unit until payment has been made in full.

12. Assignment

The Customer may not without the prior written consent of Immedia, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under this Agreement.

Immedia may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

13. Force Majeure

Immedia shall not be liable for any delay or failure to carry out its obligations under this Agreement caused by a Force Majeure Event. Once it becomes aware of the Force Majeure Event, Immedia will make reasonable endeavours promptly to give written notice by email of the occurrence of the Force Majeure Event to the Customer together with details of the nature and extent of the circumstances in question, and the length of time for which it is estimated such circumstances shall subsist (if ascertainable) and shall use all reasonable endeavours to remove or avoid the effect of such Force Majeure Event.

14. Severance

If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. No partnership

Nothing in this Agreement is intended to create a joint venture or partnership between the parties.

16. Waiver

No failure or delay on the part of either party in exercising any right or remedy under or pursuant to this Agreement shall operate as a waiver of any such right or remedy, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy. The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or otherwise.

17. Variation

No variation of this Agreement shall be effective unless in writing signed by both of the parties or their duly authorised representatives.

18. Law

This Agreement shall be governed by and construed in accordance with English Law and any dispute arising out of or in connection therewith shall be subject to the non-exclusive jurisdiction of the English Courts.