

BACKGROUND

The Company wishes to receive the voiceover services of the Artist.

The parties will agree Project Outlines from time to time setting out the commercial details of the services being provided. Project Outlines shall be governed by these Terms and Conditions.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

“**Additional Services**” means (where relevant) the additional services specified in the Project Outline;

“**Agreement**” means all Project Outlines agreed in writing by the parties together with these Terms and Conditions;

“**Applicable Law**” means any applicable laws, legislations, statutes, regulations, as well as any guidance issued by a regulator and any codes of practice (whether voluntary or not);

“**Artist**” means the artist set out in the Project Outline;

“**BSF**” means the Basic Session Fee set out in the Project Outline;

“**CDPA**” means the Copyright, Designs and Patents Act 1988;

“**Company**” is the company set out in the Project Outline;

“**Confidential Information**” means any information relating to a party or to the End Client which is designated as confidential, or which ought reasonably to be considered as confidential, including: (a) the terms of this Agreement; (b) the amounts payable under this Agreement; and (c) any details relating to the Materials prior to the First Usage Date;

“**Effective Date**” means the earlier of the date of signature of the Project Outline and the date on which the Artist first commenced providing the Services;

“**End Client**” means the end client set out in the Project Outline (where relevant);

“**Expenses**” means any travel and subsistence expenses incurred by the Artist in performing the Services;

“**Fees**” means the BSF and Usage Fees;

“**First Usage Date**” means the date as set out in the Project Outline;

“**Force Majeure Event**” means events outside of the Artist’s reasonable control, including acts of God, epidemics, strikes, lockouts, industrial disputes, unavailability of transport, failure of utility service including internet availability or transport network, act of God, threat of war or terrorism, riot, civil commotion, malicious damage, compliance with any applicable law, accident, breakdown of plant or machinery, fire, flood, storm;

“**Intellectual Property Rights**” means all present and future copyright and Performers’ Property Rights;

“**Intended Usage**” is as specified in the Project Outline;

“**Job date/time**” is as specified in the Project Outline;

“**Location**” is as specified in the Project Outline;

“**Materials**” means the materials provided by the Artist in connection with the Project and Services that have been approved by the Artist for use by the Company and End Client;

“**Payment Terms**” means the payment terms for Usage Fees and BSF as specified in the Project Outline;

“**Performers’ Non-Property Rights**” means, in relation to any and all performances of the Artist contained in the Materials, all those rights specified in section 192A of the CDPA and any analogous or similar rights anywhere in the world;

“**Performers’ Property Rights**” means, in relation to any and all performances of the Artist contained in the Materials, all those rights specified in section 191A of the CDPA and any analogous or similar rights anywhere in the world;

“**Permitted Usage**” means the usage of the Materials in accordance with the Intended Usage and Usage Period set out in the Project Outline;

“**Project**” means the project described in the Project Outline;

“**Services**” means the provision of voiceover services to be provided by the Artist in accordance with the commercial terms set out in the Project Outline together with any Additional Services outlined in the Project Outline;

“**Specification**” is as specified in the Project Outline;

“**Usage Fees**” is as specified in the Project Outline; and

“**Usage Period**” is as specified in the Project Outline.

1.2 In this Agreement, unless the context otherwise requires:

- (a) the headings to clauses and paragraphs are inserted for guidance only and shall not affect the meaning or interpretation of any part of this Agreement;
- (b) a reference to a particular statute, statutory provision, subordinate legislation or EU directive or regulation is a reference to it as it is in force at the date of this Agreement, taking into account any amendment or re-enactment and includes any statute, statutory provision, subordinate legislation or EU directive or regulation which it amends or re-enacts and subordinate legislation (including any rules, orders, regulation or instruments) for the time being in force made under it as well as any ratified international treaty that amends such statute;
- (c) “**writing**” shall include any methods of reproducing words in a legible and non-transitory form (and shall include email and other electronic communications);
- (d) any reference to “**persons**” or “**person**” shall include natural persons, firms, partnerships, companies, body corporates, corporations, unincorporated associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (e) “**including**” means “including, without limitation,” and “**include**” and related expressions such as “**in particular**” shall be construed accordingly; and
- (f) references to a “**party**” or to “**parties**” shall mean a party or parties to this Agreement, their successors and permitted assigns.

2 APPOINTMENT AND PROVISION OF SERVICES

2.1 From time to time, the Artist and the Company may enter into Project Outlines setting out commercial terms relating to the provision of Services. Project Outlines, once agreed by the parties in writing, shall be governed by these Terms and Conditions. Where the Artist sends out a Project Outline and the parties start working on the Services, such Project Outline shall be deemed to have been agreed by the parties.

Artist’s obligations

- 2.2 The Artist agrees to:
- (a) reasonably co-operate with the Company (and any third parties participating in the creation of the Materials) in relation to the Services;
 - (b) provide the Services to the best of the Artist's ability, using reasonable care and skill;
 - (c) comply with any timing deadlines agreed for the Services set out in the Project Outlines or as otherwise agreed in writing, in so far as the Artist is not prevented from doing so by reasons outside of their control or as a result of any act or omission of the Company; and
 - (d) provide the Materials materially in accordance with the Specification (if relevant).
- 2.3 The Artist must advise the Company promptly in writing on becoming aware:
- (a) that the Artist may be unable to perform the Services in accordance with this Agreement; or
 - (b) of any development that may have a material impact on the Artist's ability to perform the Services in accordance with this Agreement.
- 2.4 Where the Location is the Artist's own studio, the Artist shall ensure that such studio is suitably equipped to provide the Materials materially in accordance with the Specification.
- 2.5 The Artist agrees to comply with all reasonable rules of the Location and other locations at which the Artist provides the Services provided that such rules are reasonable and proportionate and have been notified to the Artist in advance.
- 2.6 Where the Company records the Artist at the Company's provided studio, the Company shall submit to the Artist the draft Materials for approval prior to distribution, broadcast or publication. The Artist shall endeavour to give their approval on a timely basis, and shall not be entitled to unreasonably withhold approval. In the event that the Artist has not responded to a request for approval, the Company shall not be entitled to deem the approval has been given.

Company's obligations

- 2.7 The Company agrees to:
- (a) provide any materials reasonably requested by the Artist to perform the Services in a professional and timely manner including any scripts required to perform the Services;
 - (b) ensure that the Location (in so far as the Location is not the Artist's own studio) is:
 - (i) suitably equipped to enable the Artist to provide the Services; and
 - (ii) available at the time set out in the Project Outlines;
 - (c) comply with and ensure that the Materials comply with all Applicable Laws; and
 - (d) obtain such insurance as is reasonably necessary in respect of the provision of Services at the Location.

3 PENCILLING IN

- 3.1 Where the Company tentatively books the Artist for a particular date(s) ("**Pencilled In Date**"), the Company agrees to use its best endeavours to remove the Pencilled In Date as soon as possible either by confirming such date in writing or by confirming that the Artist is no longer required for such Pencilled In Date.
- 3.2 If the Artist receives another request for their services on the Pencilled In Date, the Artist shall inform the Company that it has received another request and ask the Company to either confirm the Pencilled In Date is going ahead, or to remove the Pencilled In Date if the Company no longer requires the Artist's services on that date. If the Artist does not receive a response confirming the Pencilled In Date or removing the Pencilled In Date within the timeframe notified by the Artist (or if no such timeframe is notified, within **[1 week]**), the Artist shall be entitled to treat the Pencilled In Date as unconfirmed and may accept alternative bookings that conflict with the Pencilled In Date.
- 3.3 If the Company has not confirmed or removed the Pencilled In Date within **[24]** hours of the Job date, the Artist may treat the entire booking as confirmed, and the Company shall be liable for the BSF set out in the Project Outline.

4 ASSERTION AND LICENCE OF RIGHTS

- 4.1 The Company and/or the End User shall be entitled (but not obliged) to make use of the Materials within the Permitted Usage. In the event that the Company and/or End User wishes to make use of the Materials it shall notify the Artist in advance of the First Usage Date.
- 4.2 In consideration of payment of the Usage Fee (and provided that all instalments of the Usage Fee have been paid up to date), [and subject to clause 4.5 below,] the Artist hereby grants to the Company (and to the End Client where applicable) a licence to use the Materials and the Intellectual Property Rights in the Materials provided that such use is strictly in accordance with the Permitted Usage. For the avoidance of doubt, no rights or licence are implied in relation to usage outside of the Permitted Usage and any such additional usage shall require the Artist's prior written agreement and payment of further usage fees to be agreed with the Artist.
- 4.3 The Artist shall remain the owner of all right, title and interest in and to the Intellectual Property Rights in the Materials and in any goodwill which accrues in respect of such Intellectual Property Rights.
- 4.4 Should any right, title or interest in such licensed Intellectual Property Rights or any goodwill arising out of the use of such rights become vested in the Company or End Client (by the operation of law or otherwise), the Company shall hold and will procure that the End Client holds the same in trust for the Artist and shall, at the request of the Artist, immediately and unconditionally assign (with full title guarantee) free of charge any such right, title, interest or goodwill to it for the full duration of such rights and execute any documents and do all acts required for the purpose of confirming such assignment.
- 4.5 [The Company acknowledges (and will procure that where relevant the End Client acknowledges) that the Artist asserts:
- (a) any moral right it has to be identified as performer in the Materials pursuant to section 205C of the CDPA;
 - (b) any moral right it has to object to derogatory treatment of its performance in the Materials pursuant to section 205F of the CPDA; and
- any other moral or equivalent rights to those set out in this clause 4.5 to which the Artist may be entitled under any legislation now existing or future enacted in any part of the world.
- Company shall (and will procure that where relevant the End Client shall) give the Artist such credit as is agreed with the Artist.
- 4.6 [The Company acknowledges and agrees, and where relevant will procure that the End Client acknowledges and agrees, that:
- (a) the Artist asserts any right it has to equitable remuneration under section 182D CDPA and to any equivalent rights to which the Artist may be entitled under any legislation now existing or future enacted in any part of the world;
 - (b) the Artist is entitled to appropriate and proportionate remuneration for the licencing of its rights under clause 4.1;
 - (c) in the event that it becomes reasonably apparent that the Usage Fee is disproportionately low, inequitable, inappropriate or unfair when compared to all the subsequent revenues derived from the exploitation of the Materials, the Artist is entitled to apply in accordance with Applicable Law for review and appropriate redress from the Copyright Tribunal or similar body with jurisdiction to assess such matters under Applicable Law.]

5 FEES

- 5.1 The Company shall pay the Fees in accordance with the Payment Terms. The Company shall reimburse all Expenses incurred by the Artist in connection with the Services (provided that such Expenses have been approved by the Company in advance).
- 5.2 Once the Company has paid the BSF and/or Usage Fees, such Fees shall be non-refundable.

- 5.3 All sums payable under this Agreement are exclusive of value added tax, which (if applicable) shall be payable by the Company.
- 5.4 The Artist shall be responsible for making all deductions from payments and fees received and for performing all acts and making all payments necessary under any applicable legislation in force in the Territory including any Income Tax, National Insurance and Social Security contributions.
- 5.5 In the event of late payment of any Fees arising in connection with this Agreement, the Artist shall be entitled to charge interest on any overdue invoices at the statutory rate set out in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6 If the Company fails to pay any Fee due under the Agreement within [14] days of receipt of written notice from the Artist that such Fees remain outstanding, the Artist may, at their sole discretion and without prejudice to any other remedies under this Agreement, upon written notice to the Company revoke the licences and consents granted under clause 4 until such overdue sums are paid. For the avoidance of doubt, if the Company and/or the End User continues to use the Materials in such circumstances it will be doing so in infringement of the Artist's Intellectual Property Rights and Performers' Non-Property Rights. Nothing in this clause 5.6 affects the Artist's right to terminate the Agreement under clause 8.1(a) or 8.1(b).

6 WARRANTIES

- 6.1 The Artist warrants and undertakes to the Company that:
- (a) the Artist has the right and power to enter into this Agreement, and to assign, grant and/or licence (as applicable) the rights herein to the Company and the End Client (or to procure such assignment, grant or licence as applicable);
 - (b) the Artist is not under the age of eighteen years;
 - (c) the Artist is in such a state of health that the Artist will be able to fulfil their obligations under this Agreement; and
 - (d) if the Artist is required to travel abroad as part of the Services, the Artist holds a valid passport and has no restrictions that may prevent Artist from travelling as contemplated in this Agreement.
- 6.2 The Company warrants and undertakes to the Artist that:
- (a) the Company has the right and power to enter into this Agreement;
 - (b) where relevant, the Company will procure that the End Client complies with all obligations of the Company set out in this Agreement;
 - (c) the materials provided by or on behalf of the Company for use by the Artist in connection with the Services (including any scripts or briefs) will not infringe the rights of any third party (including any Intellectual Property Rights) or be in any way contrary to any Applicable Law, and the Company shall (or where relevant shall procure that the End Client shall) ensure that all Materials comply with all Applicable Laws including any necessary disclaimers, legal lines or other edits necessary to comply with Applicable Laws .
- 6.3 The Company hereby indemnifies the Artist against any losses, damages, costs, expenses, penalties or liabilities arising out of the Artist's provision of Services in accordance with their obligations under this Agreement, or as a result of the Company's breach of its warranties and undertakings set out in this Agreement.

7 CONFIDENTIALITY

- 7.1 The parties each acknowledge that whether by virtue of and in the course of this Agreement or otherwise, they shall receive or otherwise become aware of Confidential Information relating to the other party, the End Client and to this Agreement.
- 7.2 Except as provided by Clauses 7.3 and 7.4, the parties shall at all times during the continuance of this Agreement and after its termination or expiry:

- (a) keep all Confidential Information and the provisions of this Agreement confidential and accordingly not disclose the provisions of this Agreement or any Confidential Information to any other person; and
- (b) not use any Confidential Information for any purpose other than the performance of their obligations and/or exercise of its rights under this Agreement.

7.3 The provisions of this Agreement and any Confidential Information may be disclosed by a party to:

- (a) bona fide professional advisers to the disclosing party;
- (b) the End Client;
- (c) governmental or other authority or regulatory bodies; or
- (d) employees of that party

to such extent only as is strictly necessary for the purposes contemplated by this Agreement or as is required by Applicable Law or regulatory body and subject in each case to the party in question using its reasonable endeavours to ensure that the person in question to whom the Confidential Information is disclosed keeps such information confidential and does not use the Confidential except for the purposes for which the disclosure is made.

7.4 Information shall no longer be considered "Confidential Information" if:

- (a) it becomes public knowledge through no fault of the party in question; and/or
- (b) it can be shown by the party in question to the reasonable satisfaction of the other parties to have been known to the recipient prior to it being received by the disclosing party.

7.5 At any time upon either party's request, the other party shall promptly return all information and materials which include any Confidential Information and all copies thereof, that the relevant party may have in its possession or control.

8 TERMINATION

8.1 Either party shall have the right to terminate this Agreement on written notice to the other party if:

- (a) the other party materially breaches its obligations under this Agreement and, if such breach is capable of remedy, fails to remedy the breach within [7] (seven) days of the receipt of a written notice identifying the breach and requiring the same to be remedied;
- (b) in the case of the Company or the End Client, the Company or End Client fails to pay any Fees by the due date and/or files or is in receipt of an order, claim, petition or similar for bankruptcy, liquidation, receivership, administration or similar action in connection with an inability to pay its debts when due;
- (c) the Artist becomes incapacitated, dies or is otherwise unable to perform any of the Services;

8.2 Termination of this Agreement shall automatically terminate all licences, consents and permissions granted by the Artist and the Company shall (and if relevant shall procure that the End Client shall) cease all use of the Materials upon termination.

8.3 Neither termination nor suspension of this Agreement shall otherwise affect a party's accrued rights and obligations at the date of termination.

9 NOTICES

9.1 Any notice required to be given under this Agreement shall be in writing signed by the person giving it and may be served by delivering it personally or by first class prepaid or registered mail or by international courier to the address of the relevant party set out at the head of this Agreement or to such other address as is notified in writing from time to time by or on behalf of the parties. Any notice so served shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of a notice sent by first class prepaid or registered mail within the United Kingdom, 48 hours after the date of posting; or

(c) in the case of a notice sent by international courier, upon signed for receipt.

10 FORCE MAJEURE

- 10.1 The Artist shall not be liable for any delay or failure to perform the Services as a result of a Force Majeure Event.
- 10.2 In the event of a Force Majeure Event occurring, the parties shall agree in good faith a reasonable extension of time for the Artist to provide the Services.

11 GENERAL

- 11.1 No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the parties.
- 11.2 If at any time any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired.
- 11.3 A failure or delay by any party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time. The partial exercise of any right, power or remedy shall not preclude any further exercise of that right, power or remedy. No custom or practice of the parties at variance with the terms of this Agreement shall constitute a waiver of the rights of any party under this Agreement. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 11.4 This Agreement may be executed in two or more counterparts or by way of electronic signatures, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement.
- 11.5 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between any of the parties and none of them shall have authority to bind the others in any way.
- 11.6 The parties acknowledge and agree that this Agreement is intended to confer a benefit on the End Client (where an End Client is specified in the Project Outline), which shall be entitled to enforce its terms accordingly, subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999. No term of this Agreement is enforceable by any person not a party to it except as expressly provided in this clause 11.6.
- 11.7 Neither party may assign, transfer, charge, sub-contract or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written consent of the other party.
- 11.8 This Agreement and any documents referred to in it, or entered into pursuant to it (including all Project Outlines) constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and any other prior agreements between the parties relating to the subject matter of this Agreement are hereby terminated and of no further effect. This Agreement shall supersede all prior discussions, understandings and agreements between the parties (or any of them) and all prior representations by a party to any other party.

12 GOVERNING LAW AND JURISDICTION

- 12.1 The validity, construction and performance of this Agreement and any disputes or claims arising under or in connection with this Agreement (including non-contractual disputes and claims) shall be governed by the laws of England and Wales.
- 12.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales for the resolution of any dispute, claim or matter arising under or in connection with this Agreement (including non-contractual disputes or claims), save in respect of enforcement of judgments where their jurisdiction shall be non-exclusive.