

TERM FOR COMMISSIONED SERVICES

1. INTERPRETATION

1.1. Definitions:

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| Background Intellectual Property Rights | all Intellectual Property Rights created, owned or used under licence by the relevant party, where those rights existed before the Commencement Date of this Contract. |
| Business Day | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| Business Hours | 09:00 to 17:30 on any Business Day. |
| Charges | the charges payable by the Client for the supply of the Services in accordance with clause 5 (Charges and payment) and as stipulated in the Specification (and as updated from time to time). |
| Commencement Date | has the meaning given in clause 2.1. |
| Conditions | these terms and conditions as amended from time to time in accordance with clause 12.4. |
| Contract | the contract between NEL and the Client for the supply of Services in accordance with these Conditions. |
| Client | the person or firm who purchases Services from NEL. |

Foreground Intellectual Property Rights all Intellectual Property Rights created during the term of the Contract by NEL for the purpose of the Services.

Intellectual Property Rights rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials all documents and information, including but not limited to works, lyrics, songs, scripts, musical compositions, plans and other items provided to the Client which form part of or relate to the Services, which may be further defined in the Specification.

NEL New Ents Limited (trading as The Show Shop), a company registered in England and Wales at Curzon House, Southernhay West, Exeter, United Kingdom, EX1 1RS with company number **10919552**.

Services the services supplied by NEL to the Client as set out in the Specification.

Specification the description or specification of the Services provided in writing by NEL to the Client.

- 1.2. A reference to a statute or statutory provision is a reference to it as it is in force on the Commencement Date.
- 1.3. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4. A reference to writing or written includes email but not fax.

2. BASIS OF CONTRACT

- 2.1. The Contract shall come into existence when NEL provides notice to the Client that NEL will provide the Services (Commencement Date) in accordance with the Specification.
- 2.2. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1. NEL shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2. NEL reserves the right to amend the Specification if:
 - 3.2.1. necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and NEL shall notify the Client in any such event.

- 3.2.2. The parties mutually agree to an amendment of the Specification (in which case the Client shall be liable for all further costs as notified to the Client by NEL at that time).
- 3.3. NEL warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.4. NEL shall provide and use its own equipment in the provision of the Services except where the Client has provided specific equipment for the provision of some or all of the Services and the same is noted in the Specification.
- 3.5. NEL shall provide the required Materials for the provision of the Services.

4. CLIENT'S OBLIGATIONS

- 4.1. The Client shall:
 - 4.1.1. ensure that any information it provides to NEL is complete and accurate;
 - 4.1.2. co-operate with NEL in all matters relating to the Services;
 - 4.1.3. keep all Materials, equipment, documents and other property of NEL at the Client's premises in safe custody at its own risk and not dispose of or use the property of NEL other than in accordance with NEL's written instructions or authorisation;
 - 4.1.4. ensure that it has in place all necessary licences/permissions for the public performance of the Materials and/or exploitation of the Intellectual Property Rights generated by the Service;
 - 4.1.5. not replicate, disseminate or use the Materials for any other purpose than that as set out by NEL in the Specification and/or during the provision of the Service; and
 - 4.1.6. comply with any additional obligations as set out in the Specification.

5. CHARGES AND PAYMENT

- 5.1. The Charges for the Services shall as set out in the Specification or calculated on a time and materials basis and the Charges shall be calculated in accordance with NEL's fee rates, as set out in the Specification.
- 5.2. The Client shall pay each invoice submitted by NEL:
 - 5.2.1. within the time period set out in the Specification; and
 - 5.2.2. in full and in cleared funds to a bank account nominated in writing by NEL.
- 5.3. Except as otherwise stated, all amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT).
- 5.4. If the Client fails to make a payment due to NEL under the Contract by the due date, then, without limiting NEL's other remedies, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 5.5. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Client hereby grants to NEL a non-exclusive, perpetual, royalty-free licence to use of the Client's Background Intellectual Property Rights (where applicable) in relation to the Services and Materials.
- 6.2. NEL hereby grants the Client a non-exclusive, perpetual, royalty-free licence to NEL's Background Intellectual Property Rights as may arise in the Services and/or Materials as appropriate.
- 6.3. Any Foreground Intellectual Property Rights in or arising out of the Services remains the property of NEL.

- 6.4. NEL grants to the Client an exclusive, royalty-free licence to the Intellectual Property Rights for its own use subject to the restrictions as set out in the Specification.
- 6.5. Should the Client wish to use any of the Intellectual Property Rights granted to it at clause 6.4 for any other purpose or with any third parties, the Client must gain NEL's written permission to do so. NEL reserves the right to request royalty payments for any use of the Intellectual Property Rights outside the scope of clause 6.4.
- 6.6. For the avoidance of doubt, the Contract does not grant the Client any right to use NEL's Background Intellectual Property Rights for purposes other than receiving the Services or using the Materials for the purpose they are provided.

7. CONFIDENTIALITY

- 7.1. The Client undertakes that it shall not at any time during the Contract, and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the events, experiences, proprietary techniques, business, affairs or clients of NEL except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. The Specification and Materials are confidential information.
- 7.2. The Client shall not use NEL's confidential information for any purpose other than to receive the Services.
- 7.3. NEL may inform third parties that it has provided the Services to the Client.
- 7.4. Any names, events, or situations referred to by NEL during the provision of Services are purely fictitious. Any similarity to actual persons, events or situations is purely coincidental.

8. MORAL RIGHTS

NEL hereby waives any and all moral rights (as defined in the Copyright, Designs and Patents Act 1988) arising in the Foreground Intellectual Property Rights and the Materials.

9. LIMITATION OF LIABILITY AND WARRANTIES

- 9.1. Nothing in the Contract shall limit or exclude NEL's liability for:
 - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2. fraud or fraudulent misrepresentation; or
 - 9.1.3. any other liability which cannot be limited or excluded by applicable law.
- 9.2. Subject to clause 9.1, NEL shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for any indirect or consequential loss, including but not limited to loss of profits, sales or business, agreements or contracts, anticipated savings, use or corruption of software, data or information, and damage to goodwill.
- 9.3. Subject to clauses 9.1 and 9.2, NEL's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the Contract.
- 9.4. The Client hereby warrants that all Background Intellectual Property Rights licensed to NEL does not infringe any third party's earlier Intellectual Property Rights.
- 9.5. NEL does not warrant that the Materials or Services provided to the Client do not infringe any third party Intellectual Property Rights and the Client shall have the sole liability for any third party claim of Intellectual Property Right infringement brought against either party as a result of the Clients use of the Services/Materials.
- 9.6. No warranty is given as to the accuracy or suitability of advice or guidance provided by NEL in relation to the Materials or Services and the Client shall have the sole liability for any third party claim brought against it by use of Materials or Services or advice given in relation to the exploitation or provision of either by NEL to the Client.

- 9.7. The Client shall indemnify NEL against all liabilities, costs, expenses, damages and losses including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by NEL arising out of or in connection with:
- 9.7.1. any breach of the warranties;
 - 9.7.2. the Client's breach or negligent performance or non-performance of this Contract;
 - 9.7.3. the enforcement of the Contract;
 - 9.7.4. any claim made against NEL for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Services and/or Materials.
 - 9.7.5. any claim made against NEL by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Client, its employees, agents or subcontractors;
- 9.8. This indemnity shall apply whether or not NEL has been negligent or at fault.
- 9.9. The Client warrants that it shall not use any Intellectual Property Rights assigned to it under this Contract other than for the purpose(s)/scope as set out in the Specification. Breach of this warranty will void the assignments of Intellectual Property Rights from NEL to the Client under this Contract. In the event of a breach of this warranty, the Client shall, as soon as possible and at its own cost, assign to NEL any and all rights which NEL assigned to the Client under this Contract.
- 9.10. This clause 9 shall survive termination of the Contract.

10. **TERMINATION**

- 10.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 10.1.1. the other party commits a breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 Business Days of that party being notified in writing to do so;
 - 10.1.2. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2. Without affecting any other right or remedy available to it, NEL may terminate the Contract with immediate effect by giving written notice to the Client if:
 - 10.2.1. the Client fails to pay any amount due under the Contract on the due date for payment; or
 - 10.2.2. there is a change of control of the Client.

11. CONSEQUENCES OF TERMINATION

- 11.1. On termination of the Contract the Client shall:
 - 11.1.1. immediately pay to NEL all of NEL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NEL shall submit an invoice, which shall be payable by the Client immediately on receipt; and
 - 11.1.2. return any and all property of NEL held by or at the premises of the Client. If the Client fails to do so, then NEL may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose.
- 11.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to

the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 11.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. GENERAL

- 12.1. **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.2. **Assignment.** NEL may assign or sub-contract any of its obligations under this Contract. If the Client wishes to assign or sub-contract any of its obligations under this Contract it must obtain the written permission of NEL.
- 12.3. **Entire agreement.**
- 12.3.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.3.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

- 12.4. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy
- 12.6. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.7. **Notices.**
- 12.7.1. A notice given to a party under or in connection with these Conditions shall be in writing and sent to the party at the address given in these Conditions or as otherwise notified in writing to the other party.
- 12.7.2. The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

| Delivery method (to an address used by either party in correspondence) | Deemed delivery date and time |
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| Delivery by hand or courier. | On signature of a delivery receipt or at the time the notice is left at the address. |
| Pre-paid first class post or other next working day delivery service providing proof of postage. | Midday on the second Business Day after posting or at the time recorded by the delivery service – whichever is earlier. |
| Email. | At the time of transmission if during Business Hours, otherwise at 10:00 on the next Business Day after transmission. |

12.7.3. This clause 12.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.8. **Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it.

12.9. **Governing law & Jurisdiction.** The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Client and Supplier submit.