

## **Cinephonix Music Library – Single Use**

### **Terms and Conditions (for Pay Per Use customers)**

#### **1. DEFINITIONS**

In these Terms and Conditions:

- “broadcast”** shall have the meaning ascribed thereto in section 6 of the Copyright Designs and Patents Act 1988;
- “Cinephonix”** means Cinephonix Limited (company number 5821054) of The Top Floor, 63 Philbeach Gardens, London, SW5 9EE;
- “Cinephonix Work”** means each Musical Work the copyright in which is owned or controlled in the United Kingdom by Cinephonix and which is listed in the Cinephonix music library accessible via the Website;
- “Delivery Date”** means, in relation to a Production, the date of delivery of the final version of the Production to the party that has commissioned it from the Licensee (or the party to which the Licensee is selling the Production, where it has not been commissioned), or where the Production consists of a series of episodes, delivery of the final episode;
- “Licence Fee(s)”** means the licence fee payable by the Licensee to Cinephonix at Cinephonix’s then current licence fee rate(s) as published on the Website for the relevant Cinephonix Work downloaded by the Licensee;
- “Licensee”** means the individual or company registered with the Website who wishes to obtain a licence from Cinephonix to exploit Cinephonix Works and/or the client of the individual or company registered with the Website, if that individual or company is working on behalf of a client who wishes to obtain a licence from Cinephonix to exploit Cinephonix Works;
- “making available to the public”** shall have the meaning ascribed thereto in section 20(2)(b) of the Copyright Designs and Patents Act 1988;
- “Musical Work”** means any work consisting of music and any lyrics or words written to be used with the music (if applicable). It includes any part of such a work;
- “Permitted Exploitation”** means the usage that the Licensee selects when downloading the Cinephonix Works via the Website and such other uses as Cinephonix may agree to in writing on a case by case basis;

- “Production”** means an individual audio visual production. For the purposes of the terms and conditions, the following shall be deemed to be an individual audiovisual production (without limitation):
- (a) each single episode of a television series;
  - (b) each single audio visual video, broadcast or streamed on a website;
  - (c) each single advertising commercial;
- “Registration Date”** means the date that the Licensee first downloads a Cinephonix Work via the Website;
- “Re-version”** means a piece of audio-visual material that is produced by editing the content of a Production into a different form. Re-versions will comprise substantially the same content as was contained in the original Production, but may include some new content, provided that it is related to the original content;
- “Term”** means a period of 3 months starting on the Registration Date, subject to any earlier termination in accordance with these Terms and Conditions;
- “Territory”** means, in the case of the distribution territory covered by this licence, the World and in the case of the synchronisation territory covered by this licence, the country in which the Licensee carries out its business in accordance with the Licensees Website registration details; and
- “Website”** means the Cinephonix website at [www.cinephonix.com](http://www.cinephonix.com).

## **2. RIGHTS LICENSED**

- 2.1 Subject to these Terms and Conditions, Cinephonix hereby grants to the Licensee a non-exclusive licence during the Term to reproduce (including by way of synchronisation) Cinephonix Work(s) in the territory of the world into one single Production.
- 2.2 The licence granted under clause 2.1 is of the copyright in both the Cinephonix Works and the specific sound recordings of the Cinephonix Works made available via the Website.
- 2.3 There is no restriction on the number of Cinephonix Works that the Licensee may reproduce in any single Production and the Licensee may reproduce a Cinephonix Work either in whole or in part in the single Production covered by this licence.

- 2.4 The Licensee may edit or re-edit a Cinephonix Work to the required length, but this is the only form of editing or re-editing of a Cinephonix Work that is permitted under these Terms and Conditions.
- 2.5 The licence granted hereunder covers distribution of the Production containing Cinephonix Works worldwide for the Permitted Exploitation.
- 2.6 Provided that the synchronisation of a Cinephonix Work into the Production takes place during the Term, the licence granted hereunder will run in perpetuity in relation to that Production only.

### **3. EXTENT OF THE LICENCE**

- 3.1 This Agreement does not extend to or permit the inclusion of any adaptation of any Cinephonix Work in a Production. By way of example only, this applies to:
  - 3.1.1 making any arrangement of the music;
  - 3.1.2 making any alteration to the lyrics, save for any minor change which does not alter the meaning thereof;
  - 3.1.3 any sampling (as that expression is commonly used in the music industry) of the music and/or lyrics;
  - 3.1.4 reproduction in the form of a sample of the music and/or lyrics;
  - 3.1.5 using with music lyrics other than those written to be used with the music or authorised for use with the music; or
  - 3.1.6 using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.
- 3.2 All rights not specifically granted under these Terms and Conditions are hereby reserved, and no implied licences are to be construed hereunder. Without limitation, the acts of broadcasting and making available to the public of Cinephonix Works contained within a Production are not licensed hereunder.
- 3.3 The provisions of these Terms and Conditions authorise the making of the Production for the Permitted Exploitation only. In the event that a copy of the Production or the soundtrack thereof is made or used in any way for any other purpose (including, without limitation, retail sale, rental and/or lending, cinematic performance) whether by the Licensee or any other party then that copy shall not be licensed under these Terms and Conditions and a separate licence will be required from Cinephonix.
- 3.4 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work (or part thereof) in a Production which is not a Cinephonix Work.

#### **4. LICENCE FEES AND PAYMENT**

- 4.1 In consideration of the licence granted by Cinephonix hereunder, the Licensee shall pay to Cinephonix the Licence Fee(s), which shall be non-refundable.
- 4.2 A Licence Fee is payable each time that a Cinephonix Work is downloaded by the Licensee for use in the Production. The Licence Fee(s) shall cover reproduction of the Cinephonix Work into one Production. If the Licensee wishes to reproduce the Cinephonix Work into more than one Production, an additional Licence Fee shall be payable in respect of each such Production. Please contact Cinephonix for details of such additional licence fees on: 0207 8351731 or sales@cinephonix.com.
- 4.3 The Licence Fee(s) must be paid by debit card, credit card or Paypal via the Website and are subject to VAT where applicable, which shall be payable by the Licensee.

#### **5. CUE SHEETS AND PERFORMING RIGHTS**

- 5.1 For the Production covered by these Terms and Conditions the Licensee shall:
- 5.1.1 provide the relevant production company, broadcaster, website owner or other third party with a cue sheet containing sufficient information to allow such third party to properly register the performance usage with the local performing rights collecting society. For the avoidance of doubt, the cue sheet must as a minimum contain the details set out in Schedule 1. Performing rights will normally be cleared by the performing organisation, broadcaster or web site owner (not the producer). This is usually done through a blanket licence arrangement with the PRS (Performing Right Society) in the UK or similar relevant societies in overseas territories. Any queries in this respect should be raised with Cinephonix on 02078351731 or licensing@cinephonix.com;
- 5.1.2 provide Cinephonix with a copy of such cue sheet within 7 days of the Delivery Date, or on the date that the Production is first communicated to the public if there is no Delivery Date; and
- 5.1.3 to the best of its ability, upon request by Cinephonix on no more than a semi-annual basis, provide Cinephonix with details of any broadcast or performance of a Production in the Territory.

#### **6. TERMINATION OF AGREEMENT**

- 6.1 Upon expiry of the Term, the licence granted hereunder terminates and the Licensee must renew its licence via the Website.
- 6.2 Cinephonix shall have the right to terminate the licence granted under these Terms and Conditions immediately by notice to the other party if the Licensee:

- 6.2.1 commits a material breach of these Terms and Conditions which is not capable of remedy; or
  - 6.2.2 commits a material breach of these Terms and Conditions which is capable of remedy but which has not been so remedied within 14 days of notice thereof;
  - 6.2.3 is dissolved, becomes insolvent or otherwise unable to pay its debts, ceases to trade, has a trustee, administrator or receiver appointed, has a resolution passed for its winding up or liquidation or makes a general assignment, arrangement or composition with or for the benefit of its creditors.
- 6.3 For the avoidance of doubt, following expiry of the Term or termination of the licence granted under these Terms and Conditions the Licensee may not download any further Cinephonix Works or reproduce any Cinephonix Works downloaded prior to such expiry or termination and shall permanently delete all copies of Cinephonix Works (excluding those reproduced into Productions in accordance with these Terms and Conditions).

## **7. INDEMNITY**

You agree at all times to keep Cinephonix fully indemnified from and against any losses, claims, demands and expenses actual and/ or adjudged by a court or tribunal of competent jurisdiction which Cinephonix may sustain by reason of any breach of any provisions hereof by the Licensee or any warranty, representation or undertaking given by the Licensee hereunder being untrue, inaccurate or unfulfilled

## **8. GENERAL**

- 8.1 The Licensee shall include in each and every Production containing Cinephonix Works licensed hereunder a suitable credit in the name of Cinephonix where music credits are given.
- 8.2 The Website Terms and Conditions shall apply to the Licensee's use of the Website to download Cinephonix Works. In the event of any conflict or inconsistency between these Terms and Conditions and the Website Terms and Conditions, these Terms and Conditions shall prevail.
- 8.3 Other than as set out herein, the licence granted under these Terms and Conditions is personal and the Licensee shall not assign, sub-contract or otherwise transfer this licence or any of its rights or obligations under these Terms and Conditions in whole or in part without the prior written consent of Cinephonix.
- 8.4 The parties expressly agree that a person who is not a party to these Terms and Conditions shall not have the right to enforce any term or terms of these Terms and Conditions pursuant to the Contract (Rights of Third Parties) Act 1999.

- 8.5 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise of any other rights and remedies.
- 8.6 No waiver shall be binding or effectual unless expressed in writing and signed by the party giving it and such waiver shall be effective only in the specific instance and for the purpose given.
- 8.7 If these Terms and Conditions create any rights which would in the absence of this provision be enforceable by any person not a party to these Terms and Conditions, such rights shall not be enforceable.
- 8.8 These Terms and Conditions shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.