

Terms And Conditions For Karaoke Server Licence

1. Definitions

- a) "Film" shall have the meaning ascribed to it under the Hong Kong Copyright Ordinance (Cap 528)
- b) "Sound Recording" shall have the meaning ascribed to it under the Hong Kong Copyright Ordinance (Cap 528)
- c) "Karaoke Format" means a format of recording of a particular language/ dialect version of a musical work which has as its principal feature the performance or representation of a Musical Visual Recording in respect of that particular language/dialect version which either embodies two soundtracks, one with and the other without any of the vocal part of the recording artiste of such particular language/dialect version of the musical work as performed by that recording artiste or one sound track only without any of the vocal part of the recording artiste (whether the lyrics will be played or showed in the screen or not in both cases).
- d) "Karaoke Establishment" means any place used for the purpose of providing karaoke entertainment by way of trade or business whether such trade or business is carried on exclusively or in association or in connection with any other trade or business activity.
- e) "Karaoke Server System" means the central computer network system and/or stand alone computer system installed and located and used within the Licensed Premises of a Karaoke Establishment in which a karaoke format of musical sound/visual recordings in the form of electronic/digital file is stored in the hard disc of that central computer network system and/or of a stand alone computer so as to enable rapid on-demand retrieval accessed displayed in response to the customers or patrons thereof in that Licensed Premises.
- f) "Licensed Premises" means the designated areas of the premises of the Licensee which is a Karaoke Establishment.
- g) "Musical Sound Recording" means a Sound Recording the whole or a predominant part of which consists of the whole or any part of a musical work or a musical work and a related literary work.
- h) "Musical Visual Recording" means a Film with an accompanying sound-track, the whole or a predominant part of which sound-track consists of the whole or any part of a musical work or a musical work and a related literary work.
- i) "Music Video" means a Film which has as its principal feature the performance or representation of a Musical visual Recording.
- j) "Term" means twelve (12) month period from the Licence Commencement Date as stated in the Karaoke Licence and renewable annually subject, however, to the full payment of the annual prescribed fee unless the Agreement is terminated in accordance with clause 9 hereof.
- k) "Territory" means Hong Kong Special Administration Region of the People's Republic of China.
- l) "Works" means those Musical Sound/Visual Recordings of the participating record companies as administered by PP(SEA)L, which are in Karaoke Format, as listed in the website of PP(SEA)L (www.ppseal.com) which will be updated from time to time, Provided Always That those Works which have not been published or are published by any record companies in Hong Kong within the first six (6) months from the date of first publication are hereby excluded unless otherwise as may be notified in the website of PP(SEA)L on a title to title basis, irrespective of whether such publication is in an electronic form or a physical copy.

In this Agreement, unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting gender include all genders and words denoting persons shall include individuals, bodies corporate, unincorporated associations, sole proprietorships and partnerships.

2. Grant of Rights

- a) Subject to the full compliance of the obligations as imposed on the part of the Licensee hereunder, PP(SEA)L, on behalf of the participating record companies and acts as an administrator of their Works hereby grants a non-exclusive licence to the Licensee at the Licensed Premises of the Licensee as set out in clause 2(b) below during the Term of this Agreement to:
 - i) duplicate and store the Karaoke Format of Works as licensed under this Agreement in the form of electronic/digital file and store the same in the Karaoke Server System by electronic means as installed in the Licensed Premises and duplicate the electronic/digital files of the Works to the extent as may be necessary for the purpose of karaoke entertainment, in the Licensed Premises during Term of the licence period as is necessary for use in the Karaoke Server System, together with the right to do all acts for the purpose of and in connection with the same;
 - ii) The Works which are in form of electronic files as stored in the Karaoke Server System will be accessed, an unlimited number of times, on-demand on a "point to point" basis by the customers or patrons of the Karaoke Establishment within the Licensed Premises and will be played/used, transmitted or displayed or run over within a central computer network system and/or a stand alone computer (as the case may be) installed within the Licensed Premises only (including but not limited to Music Videos in Karaoke Format) Provided Always That any further duplication of the electronic/digital files of the Works shall not be allowed except in so far as necessary for the transient and incidental copying which is technically required for viewing and listening to the Musical Sound Visual Recording whether in Karaoke Format or not by the customers or patrons of the Karaoke Establishment and that the Works cannot be received by any person outside the Licensed Premises for that Karaoke Establishment.
 - iii) The list of the licensed Works is set out in the website of the PP(SEA)L which must be consulted and verified at least twice a month during the term of the Agreement and the Licensee may obtain or download an updated list of the titles cleared for licensing under this Agreement from that website (www.ppseal.com) Provided Always That those Works which have not been published or are published by any record companies in the Hong Kong within the first six (6) months from the date of first publication are hereby excluded unless otherwise as may be notified in the website of PP(SEA)L on a title to title basis, irrespective of whether such publication is in electronic form or physical copy. The Licensee shall also comply with the guidelines for using the licensed Works such as the proper credits of the Works etc as may be set out in the Website from time to time.
 - iv) For the avoidance of doubt, the Licensee hereby acknowledges and confirms with PP(SEA)L that the Licensee shall not tamper or interfere or circumvent with nor allow any person or customers or patrons to tamper or interfere or circumvent with any technological measures and/or digital rights management information system as may be used or applied by PP(SEA)L or any of the participating record companies and shall not allow any of its customers or patrons to duplicate any of the electronic/digital files of the Works or any part thereof either by a portable hard disc based device such as IPOD or other storage device which may be able to connect to the Karaoke Server System of the Licensee. Any retention of any Works for longer period than necessary and any duplication and /or dissemination of copies of any Works outside the scope of this Agreement shall not be allowed under any circumstances.
 - v) This Licence Agreement is personal to the Licensee which shall not be assigned or sub-licensed to any other parties whether it is a related party of the Licensee or otherwise and any change of ownership of the Karaoke Establishment operated in the Licensed Premises will be forthwith terminated without any notice or formality.
- b) The designated premises of the Karaoke Establishment as operated by the Licensee shall be the address of the Licensed Premises.

3. Rights Excluded

- a) This Agreement does not include the rights to broadcast, cablecast or transmit, including transmission through any telecommunication system such as the internet or intranet or, to any persons other than the customers or patrons using the Karaoke Server System within the Licensed Premises. The Works so licensed under this Agreement shall not be rented, leased or lent to any third party.
- b) For the avoidance of doubt, the Licensee hereby declares and confirms and acknowledges that it owns or controls the Karaoke Server System containing the electronic/digital files of the Works as licensed under this Agreement but not the rights of the said electronic/digital files of the Works themselves and that the copyright in the electronic/digital files of the Works is owned or controlled by the respective copyright owners thereof.
- c) The rights granted herein shall exclude any other rights such as, public performance and mechanical reproduction right of musical work and/or lyrics comprising the Works, public performance right of the Works and such other rights as may be subject to the control or administered by the beneficial owners, music publishers, the other collective societies or any performance right societies.

d) Any rights not expressly granted herein are hereby expressly excluded.

4. License Fee

- a) The Licence Fee is calculated by reference to the Fee Schedule for Karaoke Server Licence.
- b) Save as otherwise specified or provided, all Licence Fee must be paid in full within 14 days from the Date of Acceptance or Date of invoice.
- c) All Licence Fee paid is non-refundable.
- d) Save as otherwise specified or provided, all Licence Fee will be adjusted annually according to the Consumer Price Index Base figure as stipulated in the applicable Fee Schedule.

5. Applicable Fee Schedule

- a) All provisions of the Fee Schedule for Karaoke Server Licence shall be deemed to be incorporated in this Agreement.
- b) PP(SEA)L may at any time in its sole discretion make any revisions, modifications, variations, amendments, obliterations, additions and/or other changes to any of the provisions of the applicable Fee Schedule(s) and subject to the administrative arrangement with the participating record companies from time to time.
- c) PP(SEA)L shall give to the Licensee not less than one (1) month's written notice of any changes under clause 5(b) and such changes and/or supersession shall be binding on the Licensee for the immediate succeeding Licence Year.

6. Term

This Agreement shall continue in force for a period of one (1) year from the Licence Commencement Date and thereafter renewable from year to year subject to the payment of the applicable fee and to the provisions as to Termination under clause 9 .

7. Records And Inspection

- a) The Licensee agrees to provide play-logs to PP(SEA)L on a quarterly basis and each usage played for over two (2) minutes is counted as one play and also to maintain complete and accurate records of all the particulars of the titles as stored in the Karaoke Server System and the play-logs should be in electronic format and contain; i) name and address of Licensed Premises; ii) the period of the play-logs; iii) the frequency of play; iv) the titles of the Works; v) the artiste/artists or group; vi) the label upon which the Works is issued; vii) duration of Works.
- b) PP(SEA)L or its authorised agents shall be entitled, upon prior notice and during reasonable business hours, to inspect, make extracts and take copies of such books and records (including such records stored in a computer system) and Karaoke Server System, for the purpose of verifying Licensee's reports and/or compliance with the terms of this Agreement. Such inspection may be made notwithstanding the termination of this Agreement. Licensee shall provide all assistance necessary to PP(SEA)L and/or its duly authorised agents to access the records referred to hereunder (including information protected by encryption or passwords).
- c) Any storage of the titles in the servers or storage device of the Karaoke Server System of any other Works not listed in the database as set out in the website of PP(SEA)L shall not be covered by this Agreement and will be deemed to be an act of copyright infringement unless a relevant licence in respect of the titles in question has been granted by the relevant copyright owner.

8. Claims

- a) Licensee shall immediately notify PP(SEA)L of any claim or threat of legal proceedings against Licensee in connection with the Works or the exercise of the Licence granted to it under this Agreement and the. Licensee shall give PP(SEA)L its fullest cooperation, and shall not do anything to settle or compromise the PP(SEA)L or the record companies' legal position in relation thereto.
- b) Notwithstanding anything in this Agreement, PP(SEA)L's liability to Licensee, if any, in connection with any loss, claim or damage arising under or in connection with this Agreement shall be limited, to a sum equivalent to the Licence Fees actually paid by Licensee in respect of the Works in question, provided always that PP(SEA)L shall not be liable for any loss, claim or damage Licensee may suffer in connection with any loss of data, loss of profits, loss of goodwill, loss of business or business opportunity, or indirect losses or consequential damages of any kind, regardless of the cause thereof.

9. Termination

- a) Either parties may terminate this Agreement by giving one (1) month priority notice in writing to the other party; or
- b) PP(SEA)L may terminate this Agreement if
 - i) the Licensee is in breach of any obligations hereunder and in particulars, any delay in the payment or non-payment of the Licence Fee and , if the breach is remediable, has failed to remedy the same within one (1) month from the date of good receipt of notice of the breach; or
 - ii) a resolution is passed or an order is granted for the winding-up, liquidation or administration or a receiver or an administrative receiver is appointed over all or any part of the assets of the Licensee; or
 - iii) the control or the controlling interest in the Licensee is changed and vested in persons different from persons having control or the controlling interest as at the date of this Agreement however, the parties may nevertheless apply in writing for a new Licence Agreement; or
- c) This Licence shall be forthwith terminated without any further notice on the date on which the Licensee ceases to be a Karaoke Establishment; or the Licensee commits any acts of copyright infringement.

10. Effect of Termination

Upon termination of this Agreement, all the rights granted herein shall automatically and immediately revert to PP(SEA)L and the Licensee shall return to PP (SEA)L all the material etc. (if any) supplied to the Licensee hereunder together with any copies made by the Licensee of such material etc. For the avoidance of doubt, any digital/electronic files of the Works as stored in the Karaoke Server System of the Licensee shall be deleted entirely and the Licensee shall forthwith notify PP(SEA)L in writing confirming the same.

11. No Partnership

This Agreement shall not create any partnership, joint venture, or agency, fiduciary, or employment relationship between the Licensee and PP(SEA)L and no such relationship exists between them with respect to the Karaoke Server Licence and neither the Licensee nor PP(SEA)L shall have any authority to bind the other in any way save as specifically provided herein to the contrary.

12. Severability

If any provision of this Agreement shall be prohibited by or adjudged by a Court to be unenforceable or void, such provision shall to the extent required be severed from this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.

13. Notices

Any notice to be given under this Agreement shall be in writing or sent by facsimile transmission or email or forwarded by registered letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date facsimile transmission or email or on the day following that on which the notice was posted.

14. No Waiver

Time shall be of essence of this Agreement but no failure on the part of PP(SEA)L enforcing any term or condition of this Agreement or any forbearance or granting of time to the Licensee by PP(SEA)L shall operate as a waiver of any breach of any term hereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any remedy or right.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China and the parties hereto agree to submit irrevocably to the non-exclusive jurisdiction of the Courts of the Hong Kong Special Administrative Region.