

Terms And Conditions

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 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 to provide 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 Licensee owns or controls a central main computer/server in a karaoke network system and/or stand-alone computer system that is installed located and used within the Licensed Premises of a Karaoke Establishment in which the tracks of the Karaoke Format of the Work in the form of electronic/digital file is stored in the central main computer/server of the karaoke network system and/or of a stand-alone computer. The network is connected to karaoke terminals located in the Licensed Premises for, on demand of the Licensee's customers, retrieving, storing and reproducing transient digital copies of Karaoke Format of the Works in the karaoke terminal system so that the customers can play and sing the Karaoke songs.
- f) "Licensed Premises" means the designated areas that are subject to the control of this Karaoke Server Licence in 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 soundtrack, the whole or a predominant part of which soundtrack 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 that 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 under clause 9 hereof.
- k) "Territory" means Hong Kong Special Administrative Region of the People's Republic of China.
- l) "Works" means those Musical Sound/Visual Recordings of the participating record companies as administered by PPSEAL, which are in Karaoke Format, as listed in the Website of PPSEAL (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 PPSEAL on a title to title basis, irrespective of whether such publication is in an electronic form or a physical copy. The Licensee must source the Works from a legitimate source.

In this Agreement, unless the context otherwise requires, words denoting the singular shall include the plural and vice versa. 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, PPSEAL, on behalf of the participating record companies and acts as an administrator of the Karaoke Format of their Works hereby grants a non-exclusive licence to the Licensee at its Licensed Premises as set out in clause 2(b) below during the Term of this Agreement to:
 - i) copying and storing the Karaoke Format of Works in the form of electronic/digital file in the Licensee's Karaoke Server System by electronic means as installed in the Licensed Premises;
 - ii) making of a transient and incidental copy of a Karaoke Format if a Work in the Licensee's Karaoke Server System which is technically required to the extent as may be necessary for the viewing or listening of the Karaoke Song at the Karaoke terminals in the Licensed Premises during Term of the licence period; and
 - iii) the Works which are in the 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 for the karaoke entertainment purpose in a manner as stipulated above within the Licensed Premises, 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 by the customers or patrons of the Karaoke Establishment at the Karaoke Terminals.
 - iv) the list of the licensed Works is set out in the Website of the PPSEAL, which must be consulted and verified at least twice a month during the term of the Agreement. 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 PPSEAL 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 on the Website from time to time.
 - v) for the avoidance of doubt, the Licensee hereby acknowledges and confirms with the copyrights of the Works belong to and vest in the relevant copyright owner. It shall not challenge the validity and/or the copyright's ownership in respect of any circumstances.
 - vi) 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 shall 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) Any right not expressly granted by this Karaoke Server Licence shall hereby be excluded.
- b) It excludes any other rights such as,
 - i) public performance and mechanical reproduction right (other than those expressly stated above) of the Works as owned by the Record Companies that are subject to a separate Public Performance licence; and
 - ii) such other rights such as mechanical reproduction and public performance rights of the copyright owners of the underlying copyright of the musical work and/or lyrics comprising the Works as may be subject to the control or administered by the beneficial owners, music publishers, the other collective societies or any right performance societies.
- c) In particular, under no circumstances shall the Licensee or its customers be allowed to
 - i) disseminate the digital copy of the Works in the Karaoke Server System outside the Premises either by wire or wireless means shall be prohibited
 - ii) broadcast, cablecast or transmit, including transmission through any telecommunication system such as the internet or intranet or, to any persons other than the customers patrons using the Karaoke Server System within the Licensed Premises.

4. Licensee Fee

- a) The Licence Fee is calculated by reference to the Fee Schedule for Karaoke Server Licence.
- b) Save as otherwise specified or provided, and all Licence Fee must be paid in full within 14 days from the Date of Acceptance or Date of the invoice.
- c) All Licence Fee paid is non-refundable.
- d) Save as otherwise specified or provided, and 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) PPSEAL 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) PPSEAL shall give the Licensee not less than one (1) month's written notice of any changes under clause 5(b). 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 PPSEAL quarterly, 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/artistes or group; vi) the label upon which the Works is issued; vii) duration of Works.
- b) PPSEAL 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 PPSEAL 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 of the Karaoke song tracks 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 PPSEAL shall not be covered by this Agreement and will be deemed to be an act of copyright infringement unless the relevant copyright owner has granted a relevant licence in respect of the titles in question.

8. Claims

- a) Licensee shall immediately notify PPSEAL 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 PPSEAL its fullest cooperation and shall not do anything to settle or compromise the PPSEAL or the record companies' legal position in relation thereto.
- b) Notwithstanding anything in this Agreement, PPSEAL'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 PPSEAL 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 party may terminate this Agreement by giving one (1) month priority notice in writing to the other party; or
- b) PPSEAL 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 of 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 PPSEAL, and the Licensee shall return to PPSEAL 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 PPSEAL 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 PPSEAL, and no such relationship exists between them with respect to the Karaoke Server Licence, and neither the Licensee nor PPSEAL 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 the essence of this Agreement but no failure on the part of PPSEAL enforcing any term or condition of this Agreement or any forbearance or granting of time to the Licensee by PPSEAL 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.

條款及條件

本牌照協議中文本內容，如與英文本有歧異，以英文本內容為準。

1. 定義

- "影片"指根據香港版權條例(第 528 章)所給予的涵義。
- "聲音紀錄"指根據香港版權條例(第 528 章)所給予的涵義。
- "卡拉 OK 格式"指以輯錄特定語言/方言之音樂作品版本的格式，擁有其主要特質表演或音樂視像紀錄之表現，而該特定語言/方言之版本會載有兩種與視像影帶有關係的聲帶，一種載有而另一種則沒有載有藝人以該特定語言/方言表演音樂作品的任何聲音部份，或祇有一種沒有輯錄藝人任何聲音部份的聲帶(在兩種情況下，不論歌詞是否放映或展示在螢幕上)。
- "卡拉 OK 場所"指任何以生意或業務形式提供卡拉 OK 娛樂的地方，不論該生意或業務是獨立經營，或是與任何其他生意或業務活動相聯或有關連而經營。
- "卡拉 OK 伺服器系統"指持牌人擁有或控制卡拉 OK 網絡系統及/或獨立電腦系統中的中央電腦/伺服器，該中央電腦/伺服器系統位於卡拉 OK 業務的牌照場所所在內安裝及使用，其中以電子/數碼檔案儲存在卡拉 OK 網絡系統的中央電腦/伺服器及/或獨立電腦中。該網絡與位於持牌處所內的卡拉 OK 終端相連，供持牌人客戶要求，在卡拉 OK 終端系統中檢索、儲存及複製卡拉 OK 格式作品的即時數碼副本，以便顧客可以播放和演唱卡拉 OK 歌曲。
- "牌照處所"指卡拉 OK 場所受本卡拉 OK 伺服器牌照控制的指定區域。
- "音樂聲音紀錄"指聲音紀錄完全是或有主要部分是由整項或部分音樂作品或由音樂作品和有關的文學作品所構成。
- "音樂視像紀錄"指影片附有聲帶而該聲帶完全是或有主要部分是由整項或部分音樂作品或由音樂作品和有關的文學作品所構成。
- "音樂錄像"指影片以音樂視像紀錄為主之表演或演出。
- "有效期"指卡拉 OK 牌照內說明之牌照生效日起計的十二個月，並每年續期，但除非協議根據下述第 9 段終止，否則必須繳付全年牌照費用。
- "作品"指那些參與唱片公司交由 PPSEAL 管理以卡拉 OK 格式呈現的音樂聲音/視像紀錄，在 PPSEAL 之網頁內(www.ppseal.com)會列出並隨時更新，規定除非於 PPSEAL 之網頁內以標題為依據通知，否則那些未發行或由任何香港唱片公司首次發行六個月內之作品並不包括在內，不論該作品以電子格式或實物拷貝發行。持牌人必須由合法來源獲取音樂製品。在本協議內，除文意另有所指外，文字表示之單數包括複數；反之亦然，文字表示之性別包括所有性別，文字表示之人物包括個體、法人團體、非法組織、獨資經營及合夥商行。

2. 權利之授予

- 持牌人在完全遵從牌照內所訂明責任的規限下，PPSEAL 代表參與唱片公司並作為其卡拉 OK 格式作品管理人，特此授予持牌人在本協定期限內在其牌照處所的非專屬性牌照，根據以下第 2(b)段所規定：
 - 於本協議之下以電子/數碼檔案形式複製和儲存卡拉 OK 格式的作品，將作品以電子形式儲存於安裝在牌照處所內的卡拉 OK 伺服器系統上，並複製作品的電子/數碼檔案以至於有必要時作為卡拉 OK 娛樂之目的，在牌照有效期內，在牌照處所內作為卡拉 OK 伺服器系統之用，同時有權為此及在有關連的情況下作出所有作為；
 - 如持牌人的卡拉 OK 伺服器系統的作品在技術上是必需的製作臨時及附帶卡拉 OK 格式的副本，以便在牌照期限內在牌照處所內的卡拉 OK 伺服器上觀看或收聽卡拉 OK 歌曲所必需的程度；和
 - 以電子檔形式儲存在卡拉 OK 伺服器系統內的作品，卡拉 OK 場所的客戶或顧客將按上述規定的方式，以「點對點」的方式，以卡拉 OK 娛樂目的，無限次地使用，不允許對作品的電子/數碼檔進行任何進一步的複製，除非在技術上需要臨時及附帶的複製，以便卡拉 OK 場所內卡拉 OK 終端機的客戶或顧客觀看和收聽。
 - PPSEAL 網頁內列明牌照認可之作品，於本協議有效期內最少每月兩次查閱及核實，持牌人可從網頁(www.ppseal.com)取得或下載本協議下合發牌規定之最新歌曲標題的清單。但在自首次出版之日起首六(6)個月內尚未出版或由香港任何唱片公司出版的作品不包括在內，不論該作品以電子格式或實物副本發行。持牌人必須遵從指引使用牌照認可之作品，指引如適當使用作品等會在網頁內列明。
 - 為免生疑問，持牌人特此承認並確認作品的版權屬於相關版權擁有者並歸屬於相關版權擁有者。在任何情況下，它都不得質疑有效性及/或版權的擁有權。
 - 本牌照協議祇給予持牌人，持牌人不得轉讓或再發給予任何其他一方，不論是否與持牌人有關係，或另於牌照處所經營的卡拉 OK 場所之任何擁有權變更將立即終止，恕不另行通知或手續。
- 持牌人所經營卡拉 OK 場所指明之處所必須與牌照處所內所指之地址相同。

3. 不包括在本協議之權利

- 本卡拉 OK 伺服器牌照未有明確授予的任何權利應特此排除。
- 不包括任何其他權利，例如：
 - 由單一公開播放牌照約束的唱片公司所擁有的作品的公開表演和機械複製權(上述明確規定除外)；及
 - 此類其他權利，例如音樂作品及/或歌詞的基本版權的版權擁有者的機械複製和公開播放權，包括可能受受益所有人、音樂出版商、其他集體管理團體或任何權利表演協會控制或管理的作品。
- 特別是，在任何情況下均不得允許持牌人或其客戶：
 - 禁止在場所外的卡拉 OK 伺服器系統中通過有線或無線方式傳播作品的數碼副本；
 - 廣播、有線廣播或傳輸，包括通過任何電信系統(如互聯網或內聯網)傳輸，或通過許可場所內使用卡拉 OK 伺服器系統向客戶或顧客以外的任何人傳輸。

4. 牌照費用

- 牌照費乃根據卡拉 OK 伺服器牌照之收費表計算。
- 除另有指明或規定，及所有牌照費用必須於接受申請日期或發票日期起計十四天內全數繳付。
- 所有已繳付之牌照費一概不獲退還。
- 除另有指明或規定，及所有牌照費每年將會根據適用之收費表訂明消費物價指數基礎數字作出調整。

5. 適用收費表

- 卡拉 OK 伺服器牌照收費表之各項規定應被視為已合併於本協議內。
- PPSEAL 有權在任何時間對適用收費表內任何規定作出更改、修改、刪除、增訂及/或其他改變及受制於參與之唱片公司隨時作出之行政安排。
- PPSEAL 就 5b 段之改變須向持牌人給予不少於壹個月之書面通知，而該等改變及/或取代將在隨後之牌照年度內對持牌人具約束力。

6. 有效期

本協議自開始日期起生效一年，並根據繳付適用收費及下述第 9 段有關協議終止之條款規定，在隨後之每一牌照年度開始日期起每次續約一年。

7. 紀錄及審查

- 持牌人同意提供每季之播放紀錄予 PPSEAL，而每次播放使用時間超過兩分鐘才作一個播放計算及準確紀錄儲存於卡拉 OK 伺服器系統內歌曲名稱的所有詳情及播出紀錄必須以電子格式和包括 i) 牌照處所之名稱及地址；ii) 播出紀錄之時期；iii) 播放率；iv) 作品標題；v) 歌手或組合名稱；vi) 發行之作品標題；vii) 作品的播放時間。
- PPSEAL 或其授權代理人有權經事先通知及在合理之營業時間內，審查、提取和將該日誌及記錄(包括該儲存於電腦系統內之記錄)及卡拉 OK 伺服器系統製造複本，以作為核實持牌人之報告及/或以遵行本協議條文的目。儘管本協議已終止亦會作出該項審查。就上述之需要，持牌人必須向 PPSEAL 及/或其正式授權代理人提供所有有需要的協助以取得下述紀錄(包括加密或密碼保護的資料)。
- 任何儲存於伺服器或卡拉 OK 伺服器系統的儲存裝置內的任何其他卡拉 OK 的作品標題若沒有於 PPSEAL 網頁之資料庫列明，不列入本協議之範圍內及被視為侵犯版權，除非有關版權擁有人已授予該作品標題牌照。

8. 申索

- 持牌人必須立即通知 PPSEAL 任何與作品有關或本協議牌照之行使的申索或受法律程序之威脅。持牌人必須給予 PPSEAL 完全的合作及不得作任何事情對 PPSEAL 或有關唱片公司之法律立場有關事情作解決或妥協。
- 儘管本協議有規定，PPSEAL 對持牌人在本協議之下產生或與之有關連的任何損失、申索或損害的責任(如有的話)，只限一筆相等於持牌人實際上已付有關爭議作品之牌照費用，規定 PPSEAL 不需對持牌人或會受到不論任何原因而產生之任何資料上之損失、利潤上之損失、商譽上之損失、商業或商機上之損失、或間接損失或由各類相應而生帶來之損失、申索或損害負責。

9. 協議終止

- 任何一方均有權於一個月前以書面通知對方終止協議；或
- 倘若發生下列事件，PPSEAL 有權立即終止本協議：
 - 持牌人違犯本牌照協議之任何規定，特別是延交或欠交牌照費用，及如該違約是可補救及未能於收到違約通知發出日起一個月內作補救；或
 - 通過決議或被法庭命令清盤或有一破產管理人被委任接管持牌人全部或任何部份資產；或
 - 持牌人控制權益的控制權有改變及歸予他人，而與本協議日期時擁有控制權或控制權益之人不同，然而該一方可以書面申請新的牌照協議；或
- 持牌人停止經營卡拉 OK 場所或有干犯任何侵犯版權之行動，其牌照將即時終止，不作另行通知。

10. 協議終止的影響

本協議一經終止，所有授予之權力將自動及即時復歸予 PPSEAL，持牌人必須將所有供給其之物資等(如有)連同持牌人製造該物資之任何複本退回予 PPSEAL。為免生疑問，所有儲存於持牌人的卡拉 OK 伺服器系統內之電子/數碼檔案的作品必須完全被刪除，持牌人並必須以書面通知 PPSEAL 以確實有關事宜。

11. 沒有合夥

持牌人與 PPSEAL 在本協議上沒有訂立任何合夥、聯營或代理，受信人或僱傭關係，在卡拉 OK 伺服器牌照上亦沒有該關係存在於兩者之間，除另有相反之指明或規定外，持牌人與 PPSEAL 均沒有權力以任何方法使合約另一方受約束。

12. 劃分

如本協議內任何條文被法庭禁止或被裁定為不能強制履行或無效，該條文應在需要的範圍內與本協議劃分並不得以任何方法影響本協議有效性及強制性。

13. 通知

根據本協議發出的任何通知必須以書面方式、傳真或電子郵件或以掛號郵件發送，按對方最後以書面通知之商業地址送達合約對方。以傳真傳送或電子郵件的當日，及郵寄的隨後一天，被認為此通知之送達日期。

14. 沒有豁免

時間是本協議之要素，但是就 PPSEAL 而言，在執行本協議之任何條款時引發之過失或由 PPSEAL 對本協議批准時間之延緩，均不會導致違背任何條款，亦不會導致違背任何單一或部份權力或補償之行使或任何其他或進一步之行使或任何補償或權力之行使。

15. 法律管限

本協議須根據中華人民共和國香港特別行政區之法律管轄及解釋，而雙方均同意接受不可撤銷香港特別行政區法院之非專有審判權。