



Leaders in non-theatrical distribution

## FILMBANK DISTRIBUTORS LTD: PVS LICENCE™ TERMS & CONDITIONS

*This Licence records the terms upon which Filmbank Distributors Limited grants licences for the showing in public in the United Kingdom of films distributed in VHS video or DVD formats by participating distributors through legitimate retail or rental outlets in the United Kingdom. The Licensee is permitted, on the terms set out below, to show such films in public (i) in their entirety to a fixed audience and (ii) for background use to a transient audience. It is a fundamental term of the Licence that the Licensee shall not charge the audience, directly or indirectly, to view any film shown under this Licence. A full list of participating distributors is available from the Filmbank website [www.filmbank.co.uk/pvsl](http://www.filmbank.co.uk/pvsl).*

### 1. Definitions and Interpretation

1.1 In this Licence the following definitions apply, unless the context requires otherwise:

- (a) **Application Form** means the PVS Licence Application Form a copy of which is available at [www.filmbank.co.uk/pvsl](http://www.filmbank.co.uk/pvsl).
- (b) **Average Weekly Footfall** means the total number of visits by people to the Licensed Premises during the Term, the Licensee's estimate of which appears in the Certificate.
- (c) **Background Screening** means the showing of a Film in public in accordance with Clause 2.1(b).
- (d) **Certificate** means the certificate issued by Filmbank confirming the issue of this Licence which is incorporated into and forms part of this Licence.
- (e) **Excluded Film** means any film listed on the "Excluded Films" page of the Filmbank website [www.filmbank.co.uk/pvsl](http://www.filmbank.co.uk/pvsl).
- (f) **Featured Screening** means the showing of a Film in public in accordance with Clause 2.1(a).
- (g) **Fee** means an amount determined in accordance with the Filmbank Rate Card using the relevant rates prevailing at the commencement of the Term.
- (h) **Film** means any film distributed by Participating Distributors and available for rental or purchase in the form of copyright-fee-paid VHS video and DVD at rental and retail outlets in the Territory at the time of, or at any time prior to, the relevant Screening except any Excluded Film.
- (i) **Filmbank** means Filmbank Distributors Limited.
- (j) **Filmbank Rate Card** means the rate card published by Filmbank from time to time in respect of the PVS Licence.
- (k) **Film Reporting Form** means the reporting form used by Licensees to report the Films, Screened by them during the Term. A copy of the Film Reporting Form is available at [www.filmbank.co.uk/pvsl](http://www.filmbank.co.uk/pvsl). In lieu of the Film Reporting Form, Filmbank will accept a document in any format, provided that it contains all the information requested in the Film Reporting Form.
- (l) **Licensed Group** means the people who have access to the Licensed Premises as described in the Certificate.
- (m) **Licensed Premises** means the premises described in the Certificate.
- (n) **Licensee** means the person, firm or company described in the Certificate.
- (o) **Participating Distributors** means those film distributors listed from time to time on the Filmbank website [www.filmbank.co.uk/pvsl](http://www.filmbank.co.uk/pvsl).
- (p) **Screening** means a Featured Screening or a Background Screening.
- (q) **Size of the Licensed Group** means the number of people in the Licensed Group which number, as provided by the Licensee, in the Certificate.
- (r) **Term** means the period of time described in the Certificate.
- (s) **Territory** means the United Kingdom (as defined in the Interpretation Act 1978), the Isle of Man and the Channel Islands.

1.2 In this Licence:

- (a) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinate legislation made under them.
- (b) unless specified to the contrary, use of the singular is deemed to include the plural.
- (c) any undertaking by Filmbank or Licensee not to do any act or thing shall be deemed to include an undertaking not to permit or suffer or assist the doing of that act or thing.



(d) the headings shall not affect interpretation. References to Clauses are to clauses of this Licence.

## 2. Grant of Rights

2.1 Subject to the terms set out in this Licence, Filmbank grants to the Licensee the following non-exclusive rights during the Term in the Territory:

- (a) the right to show Films on a featured use basis at the Licensed Premises to the whole or any part of the Licensed Group; and
- (b) the right to show Films on a background use basis at the Licensed Premises to the whole or any part of the Licensed Group.

2.2 For the purposes of the rights granted above:

- (a) to show a Film on a featured use basis means the showing of a Film in public on a screen or screens of any size as a main or special attraction where the audience is expected to watch the entire Film.
- (b) to show a Film on a background use basis means the showing of a Film in public on a screen or screens of any size to create an atmosphere or ambience where it is not a main or special attraction and where the audience is transient and not expected to watch the entire Film.

2.3 The following conditions apply to the grant of rights above:

- (a) no charge shall be made, directly or indirectly, for:
  - (i) the Screening; or
  - (ii) admission to the whole of the Licensed Premises; or
  - (iii) admission to the part of the Licensed Premises where Screenings take place.
- (b) no advertising or promotion of Screenings shall be permitted except as set out at Clause 2.4 below.
- (c) no goods, services, organisation or event shall be endorsed or promoted in connection with Screenings.
- (d) no cutting, editing, alteration or adaptation of any Film shall be permitted.
- (e) no Screening shall be permitted from a copy of a Film other than a copyright-fee-paid copy of a Film in VHS video or DVD format available from retail and rental outlets in the Territory.
- (f) no Screenings shall be permitted under this Licence if one of the main purposes or activities of the Licensee is the Screening of Films.

2.4 Advertising or promotion of Films is permitted only in relation to Screenings where no commercial activity of any kind is undertaken at the Licensed Premises during, prior to or after the relevant Screening and in such event any such advertising or promotion shall be limited to advertising and promotion on the Licensed Premises to the Licensed Group.

2.5 The rights granted in this Licence do not include the right to perform in public, as part of any Screening or otherwise, musical compositions embodied in the soundtrack of a Film.

2.6 The rights granted in this Licence may not be licensed or assigned to any third party.

2.7 The Licensee must complete and provide to Filmbank, every three (3) months from the start of the Term, a report of all films Screened under this Licence incorporating all information requested in the Film Reporting Form. If the Licensee does not supply such report within one month of the end of the three month reporting period, then the Licence will be rescinded and no refund given. The reporting periods can be found at [www.filmbank.co.uk/pvsl](http://www.filmbank.co.uk/pvsl).

2.8 The Licensee is responsible for all royalties, licence fees and other payments due in respect of the performing rights in any music and the mechanical reproduction of any recordings in the Film Screened by the Licensee.

## 3. Excluded Rights

Nothing in this Licence shall be construed as a licence to copy any Film, to issue copies of any Film to the public, to rent or lend any Film to the public, to communicate any Film to the public (including without limitation by way of broadcast or making available by electronic transmission) or to perform, show or play any Film in public other than in accordance with the terms expressly set out in this Licence.



Leaders in non-theatrical distribution

#### **4. Charging for Screenings**

4.1 Screenings must be free to the Licensed Group. For the purposes of Clause 2.3(a) above, a charge shall be deemed to have been made for the Screening where:

- (a) the audience has paid to watch a Screening of the Film;
- (b) the audience (or any part of the audience) has paid for admission to the Licensed Premises or the part of Licensed Premises where the Screening takes place;
- (c) goods or services are supplied at the Licensed Premises (or any part of the Licensed Premises where the Screening takes place):
  - (i) at prices which are substantially attributable to the Screening; or
  - (ii) at prices exceeding those usually charged there.

4.2 For the purposes of Clause 2.3(a) above, but subject to Clause 4.1 above, a charge shall not be deemed to have been made for admission to the Licensed Premises or any Screening in respect of:

- (a) persons admitted as residents or inmates of the Licensed Premises;
- (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the Screening is only incidental to the main purposes of the club or society.

#### **5. Licensed Premises**

5.1 The Licensee warrants and represents that:

- (a) the Licensed Premises are indoor premises that are fully enclosed.
- (b) the Screenings shall take place in a communal area or areas of the Licensed Premises where the Licensed Group is allowed access freely.

5.2 The Licensed Premises may be fixed or mobile but it is understood that, in the event that the Licensed Premises are mobile, this Licence shall only apply when the Licensed Premises are in the Territory.

#### **6. Materials**

It is the Licensee's responsibility to obtain a copyright-fee-paid VHS video or DVD of any Film to be shown under the terms of this Licence.

#### **7. Fee**

7.1 The Licensee shall pay the Fee together with any VAT to Filmbank. Filmbank shall issue a Certificate to the Licensee following receipt of the Fee.

7.2 Licensees shall not be entitled to a refund of any Licence Fees or a pro-rata portion of Licence Fee where the Licence:

- (a) is granted part way during the Term; or
- (b) has been terminated.

7.3 The Licensee warrants and represents that the information given to Filmbank for the calculation by Filmbank of the Fee is correct to the best of the Licensee's knowledge and belief.

7.4 Filmbank reserves the right to request reasonable documentary evidence of the Licensee's estimate of the Size of the Licensed Group or the Average Weekly Footfall (as appropriate).

7.5 The Fee shall be calculated on the basis of the Size of the Licensed Group except where it is impossible to define with reasonable certainty the same in which case the Fee shall be calculated on the basis of the best estimate of the Average Weekly Footfall.

7.6 Filmbank shall be entitled to conduct an audit (or appoint an auditor to conduct an audit) of the Licensed Premises to verify the Average Weekly Footfall as estimated by the Licensee and the Licensee hereby grants to Filmbank (or its designated auditor) access to the Licensed Premises during the Term to enable Filmbank to conduct any such audit. Where the Licensed Premises are not open to the public, Filmbank shall give to the Licensee reasonable notice of Filmbank's intention to conduct any such audit.



Leaders in non-theatrical distribution

- 7.7 In the event that, as a result of conducting an audit or otherwise, Filmbank estimates that the Average Weekly Footfall is greater than the estimate provided by the Licensee, Filmbank shall notify the Licensee of any such difference and the basis upon which Filmbank has calculated Filmbank's estimate of the Average Weekly Footfall and the Fee shall be increased as appropriate in accordance with the Filmbank Rate Card for the Term. Filmbank reserves the right to charge to the Licensee the reasonable costs of any audit conducted where the Average Weekly Footfall was underestimated by the Licensee by more than five per cent (5%).
- 7.8 Filmbank reserves the right to charge interest on late payment of amounts due under this Licence at the rate prescribed from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. Termination**

- 8.1 Filmbank may terminate this Agreement with immediate effect by notice in writing to the Licensee if the Licensee is in material breach of any of the Licensee's obligations under this Agreement.
- 8.2 Filmbank's rights under Clause 8.1 are without prejudice to any other rights it may have hereunder or at law in relation to termination of this Licence, including without limitation any right to damages.
- 8.3 Either Filmbank or the Licensee may terminate this Agreement with immediate effect by notice in writing to the other if the other: proposes to enter or enters into any composition or arrangement with its creditors generally or any class of its creditors; or is the subject of any judgment or order made against it which is not complied with within seven (7) days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any part of its undertaking, property, assets or revenue; or, being a company is the subject of a petition presented or an order made or a resolution passed or analogous proceedings or steps taken for or towards appointing an administrator of or winding up such company, or suffers an incumbrancer to take possession, or to exercise or attempt to exercise any power of sale, or a receiver or administrative receiver to be appointed, of the whole or any part of the undertaking, property, assets or revenues of such company, or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 Section 123, or ceases or threatens to cease to carry on its business in the normal course; or, being an individual, is the subject of a bankruptcy petition or bankruptcy order, or is the subject of an application or order or appointment under the Insolvency Act 1986 Section 253 or Section 273 or Section 286 or makes a proposal for a composition or arrangement with his creditors generally or any class of them, or is unable to pay or has no reasonable prospect of being able to pay his debts within the meaning of the Insolvency Act 1986 Sections 267 and 268; or any event occurs or proceedings are taken in respect of the other in any jurisdiction which has an effect equivalent or similar to any of the events mentioned in this Clause 8.3.

## **9. Personal Data**

Information provided on the Application Form ("**Information**") will be used by Filmbank for the purposes of administering an application for a PVS Licence and subsequent participation in the PVS Licence scheme. Please note that for such purposes, Filmbank may need to share the Information with third parties, including group companies of Filmbank and the owners of the Films situated outside Europe. By completing and submitting an Application Form, the Licensee agrees to the processing of the Information by Filmbank in this manner.

## **10. Statutory Rights**

This Licence shall be deemed to complement and extend the rights of the Licensee under the Copyright, Designs & Patents Act 1988 (as amended from time to time) and nothing in this Licence shall constitute a waiver of any statutory rights held by the Licensee from time to time there under.

## **11. Liability**

Filmbank shall not be liable to Licensee for loss of profits, goodwill or any type of special, indirect or consequential loss under this Licence (including without limitation loss or damage suffered by Licensee as a result of a withdrawal of a Film).

## **12. Miscellaneous**

- 12.1 Nothing in this Licence shall constitute an agency, partnership or joint venture between the Filmbank and the Licensee.
- 12.2 Except as expressly provided in this Licence, neither Filmbank nor the Licensee shall be entitled to assign the benefit of this Licence without the prior written consent of the other.



Leaders in non-theatrical distribution

- 12.3 This Licence together with any documents referred to in this Licence constitute the entire agreement between Filmbank and the Licensee relating to the subject matter of this Licence and supersede all previous licences or agreements.
- 12.4 No variation of this Licence shall be valid unless it is in writing and signed by or on behalf of each of Filmbank or the Licensee.
- 12.5 The failure to exercise or delay in exercising a right or remedy under this Licence shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Licence shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 12.6 The rights and remedies contained in this Licence are cumulative and not exclusive of any rights or remedies provided by law.
- 12.7 No provision of this Licence is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 12.8 All disputes arising under this Licence shall be governed by the laws of England and Filmbank and the Licensee shall submit to the non-exclusive jurisdiction of the courts of England.

Updated 12.01.2012