

## **Terms and Conditions for usage of Radioplayer Portal, Software and Services**

### **IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE USING THE SOFTWARE AND / OR THE SERVICES:**

These terms and conditions for the licence of software ("**Terms and Conditions**") form a legal agreement between you ("**you**") and UK Radioplayer Limited, a company registered in England and Wales, company number 07229400 of 55 New Oxford Street, London, WC1A 1BS, United Kingdom ("**UK Radioplayer**", "**we**", "**us**" or "**our**") for the radio player online skin-able software (in executable object code form or in the form of the source code needed to generate, install, and run the object code and to modify the working executable object code) ("**Software**"), the connection and interaction with our online radio service including but not limited to connection to our servers to access Central Services including Search, Favourites and Recommendation functionality ("**UK Radioplayer Service**"), and associated development, smartphone application development ("**Apps**"), marketing, co-ordination and associated services (collectively, the "**Services**") and relevant access to and use of the station management website ("**Portal**") which is accessible through the main website [www.radioplayer.co.uk](http://www.radioplayer.co.uk) ("**Website**"). If you install or use the Software, the Website or the Services you agree to these Terms and Conditions, but if you do not agree to any of the Terms and Conditions, then you must not install or use the Software, the Website or the Services.

These terms and conditions ("**Terms and Conditions**") including the fair usage guidelines ("**Community & Fairplay Guidelines**"), are deemed to also incorporate the Radioplayer Style Guide ("**Style Guide**") which you should read together with these Terms and Conditions, and which are located at [www.radioplayer.co.uk/terms/conditions.pdf](http://www.radioplayer.co.uk/terms/conditions.pdf)

#### **1. CHANGES TO TERMS AND CONDITIONS**

We reserve the right, from time to time, with or without notice to you, to change these Terms and Conditions at our sole discretion. The Terms and Conditions applicable to your access to and use of the Software, UK Radioplayer Service and your use of the Services will be the version that is current and displayed on the Website as at each date you access the Software, UK Radioplayer Service or use the Services (as applicable). Your use of the Software and your use of the UK Radioplayer Service and the Services after changes are made means that you agree to be bound by such changes. It is therefore important that you are familiar with the latest Terms and Conditions and you should make sure you read and comply with the latest Terms and Conditions displayed on the Website at [[www.radioplayer.co.uk/terms](http://www.radioplayer.co.uk/terms)] as you continue to use the Software, UK Radioplayer Service or the Services.

#### **2. LICENCE TO USE SOFTWARE**

2.1 In consideration of you agreeing to abide by these Terms and Conditions and provide the payment of the relevant charges as set out by us, UK Radioplayer hereby grants to you a limited, revocable, non-exclusive, non-transferable licence to use the Software, including the source code, on the terms of these Terms and Conditions.

2.2 You may:

2.2.1 install, modify and use the Software, including the source code, only:

- (A) for the permitted purpose of providing online streaming access to your original UK based radio content to end users from your own website;
- (1) for the replay or streaming of your own related audio content, such as 'listen again' or 'podcast' material (provided it complies with the Ofcom Broadcasting Code as published by Ofcom from time to time and whether or not such content would otherwise be subject to that code (the "**Code**"));

- (2) for the display of related visual, textual, and multimedia content (provided it also complies with the Code);
  - (3) for the provision of links and functionality which offer the listener added value beyond the core stream (provided the destinations and functions are appropriate to a mass-market audience); and
  - (4) for the purpose of connecting to the UK Radioplayer Service.
- 2.2.2 make a copy of the Software, including the source code, for back-up purposes only, provided that this is necessary for the activities permitted by these Terms and Conditions;
- 2.2.3 receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by UK Radioplayer from time to time;
- 2.2.4 use any documentation or content on the Portal in support of the use permitted under these Terms and Conditions.
- 2.3 You acknowledge that all intellectual property rights in the Software throughout the world belong to UK Radioplayer, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software other than the right to use them in accordance with these Terms and Conditions. Any intellectual property rights in any modifications you make to the Software, including the source code, shall vest in you, subject always to clause 2.4.
- 2.4 You shall not produce any derivative works based on whole or part of the Software, including the source code, for any other purpose other than for usage associated with connecting to the UK Radioplayer Service in accordance with these Terms and Conditions, and you shall not convey nor sublicense the Software, including the source code, for any other purpose or to any third party, without the prior written consent of UK Radioplayer at its sole discretion).
- 2.5 You acknowledge that the Software, including the source code, has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described by us meet your requirements.
- 2.6 You acknowledge that the Software, including the source code, may not be free of bugs or errors and you agree that the existence of any minor errors shall not constitute a breach of these Terms and Conditions.

### 3. ENTRY REQUIREMENTS

- 3.1 To register each station for Radioplayer inclusion and thus, be eligible for access to the Portal and use of the Software or any Services, You must meet the following minimum requirements (the "**Entry Requirements**").
- 3.2 You must be an entity in the United Kingdom (including the Channel Islands and the Isle of Man) (the "**Territory**") which provides a radio station in the Territory which is licensed and regulated by Ofcom and;
  - 3.2.1 only Ofcom licensed radio stations, whether broadcast or web based, may access the Portal or the Website, without the prior written consent of UK Radioplayer at its sole discretion);

- 3.2.2 without limiting clause 5.5 in any way, to the extent that any music content is streamed by you through the Software, you must be licensed by the appropriate UK authorities (whether PPL, PRS or otherwise) to provide streaming music content via the internet for every station which you register and acknowledge that it is solely your responsibility to ensure that you are correctly licensed;
- 3.2.3 you must have a continuous stream of radio content that will be available online via the Software a minimum of three (3) hours each and every day of the calendar year on average;
- 3.2.4 you must have content that is recognisable by a reasonable person, and in any event in the opinion of UK Radioplayer, that is original radio content and that you will make available online via the Software. For clarity, content that is excessively looped, repeated, or not regularly updated in successive calendar day periods will not be deemed original.
- 3.2.5 you will comply with the restrictions of your use of the Portal, the Software and the Services as set out in these Terms and Conditions.
- 3.3 We reserve the right to refuse any application to register or to use or access the Portal the Software or any of the Services, terminate accounts, remove or edit functionality or cancel provision of the Software or Services for any reason whatsoever.
- 3.4 If you use the Portal, the Software and the Services, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer network to prevent unauthorised access to your account. You agree to accept responsibility for all activities and transactions that occur using your account or password. You should take all necessary steps to ensure that your password is kept confidential and secure and should inform us immediately if you have any reason to believe that your password has become known to anyone else, or if the password is being, or is likely to be, used in an unauthorised manner.

#### **4. ACCESS TO SOFTWARE**

- 4.1 Provided that you meet the Entry Requirements and subject to clause 3.3 and compliance with the other provisions of this Agreement, you may access the Portal documentation free of charge. Access to restricted areas will be provided to you once you are registered.
- 4.2 To register for the Portal (as a "**User**") and to access, download and use the Software and Services, you must purchase a licence for each Service. By completing the registration process you agree to pay the applicable charges set forth in clause 8. You will be required to supply an address for which UK Radioplayer may send you an invoice for any applicable fees.
- 4.3 Any terms and conditions, additional usage rules or similar on the Portal relating to the Software or any Service that you use are deemed to be incorporated into these Terms and Conditions.
- 4.4 It is your responsibility to pay for all costs and expenses (including but not limited to, all line charges or internet service provider access, web and audio stream hosting, content licence or subscription charges) that you may incur when using the Portal and / or the Software.
- 4.5 For each station you intend to use the Software with, you are required to provide UK Radioplayer with evidence that you are licenced by OFCOM. You are also required to provide full contact information including postal address and telephone number.

Further you must supply and keep UK Radioplayer up-to-date with the contact details of a day-to-day contact and a member of your accounting personnel. Such contacts should be named individuals and not generic contacts.

- 4.5.1 You must provide more than one method of contacting each individual such as an email address and a telephone number;
- 4.5.2 Where an organisation is an educational establishment, at least one contact must be a full-time member of academic or administrative staff;

## **5. OUR SERVICES AND YOUR OBLIGATIONS IN USING SOFTWARE**

### **5.1 Services**

If you register on the Portal and purchase a licence to use the Software, along with the licence to use the Software granted in clause 2, UK Radioplayer will use its reasonable endeavours to provide the following associated Services:

- 5.1.1 supply and ongoing development of search engine technology for the Software;
- 5.1.2 a central system to co-ordinate common functions including station-switching and user presets for the Software;
- 5.1.3 provision of a 'Player-making tool' to assist in skinning the Software to your custom brand;
- 5.1.4 development of interface and metadata standards for the Software;
- 5.1.5 co-ordination of marketing/syndication of the Software and promotion of its use in industry and by end users;
- 5.1.6 iteration and refinement of the Software and associated support systems;  
and
- 5.1.7 exploration of Software potential on additional platforms/devices.
- 5.1.8 support and assistance with respect to the operation of the UK Radioplayer Service ("Support Services") provided that You acknowledge that such Support Services may be provided by third parties over whom we have no control and that we shall not be liable for any failure of any third party with respect to such Support Services. Such Support Services shall be provided in during normal business hours on a reasonable endeavours basis and subject to a fair-use policy;
- 5.1.9 provision and ongoing development of Apps for the purpose of radio discovery and innovation on electronic devices, where inclusion of a station in such Apps shall be determined by the compliance of technical standards relating to audio streams and metadata and other policies we may publish on the Portal. You acknowledge that Apps are not specific to individual stations but encompass all eligible services on Radioplayer;
- 5.1.10 syndication of metadata, visuals or audio streams to trusted third parties, where such syndication is for the advance of distribution, innovation, reputation or industry collaboration;
- 5.1.11 provision of optional services on a reasonable endeavours basis which may include but not be limited to the provision of hosting the Software, technical and optimisation tools, out-of-hours support and consultancy. Such services may be subject to additional fees, terms and conditions;

## 5.2 Technical Requirements

Your ability to use the Software and to stream content to end users through the Software will depend on you having the necessary equipment, systems and connectivity. We are not responsible in any way for your ability to stream content. However, minimum system requirements are specified on the Portal. You acknowledge that the availability to stream content via the Software may be affected by internet traffic congestion, by other network, ISP, electronic, computer or other communication problems or failures ("**Fault**") and that we are not responsible for the failure of the Software to stream or to continue streaming due to any Fault.

## 5.3 Your Obligations in Using Software

Except as expressly set out in these Terms and Conditions or as permitted by any local law, you undertake:

- 5.3.1 not to copy the Software except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- 5.3.2 not to rent, lease, sub-license, loan, translate, or merge the Software;
- 5.3.3 not permit the Software to become incorporated in, any other programs, or used in for any purpose other than in connection with the UK Radioplayer Service;
- 5.3.4 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 5.3.5 to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with these Terms and Conditions;
- 5.3.6 to replace the current version of the Software with any updated or upgraded version or new release provided by UK Radioplayer under these Terms and Conditions immediately on receipt of such version or release;
- 5.3.7 to include the copyright notice of UK Radioplayer on all entire and partial copies of the Software, including the source code, in any form;
- 5.3.8 not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than your employees without prior written consent from UK Radioplayer (to be given at UK Radioplayer's sole discretion);
- 5.3.9 to abide by the technical requirements as listed on the Portal including minimum uptimes and quality standards for metadata, logos, images and content streams;
- 5.3.10 to stream radio content using the Software only in a compatible format, as outlined on the Portal and to ensure such streams remain reliable and available to listeners for the majority of the intended broadcast time. For the avoidance of doubt, we may replace or remove unreliable audio streams from our products if, in our reasonable view, the user experience is being degraded;
- 5.3.11 to ensure that You have completed the joining process as described by UK Radioplayer within three (3) months of becoming a User and before publicising your use of the Software. You should seek approval from UK Radioplayer that your use is compliant with these Terms and Conditions, and the style and technical

standards - and must not make the Software available to the public without approval which shall not be unreasonably withheld;

5.3.12 to follow the "brandstyle guidelines" as set out in the Radioplayer Style and Implementation Guide available on the Portal including but not limited to: (i) you may only skin and populate the Software with your content in accordance with the guidelines; (ii) the common features of the Software must remain unaltered and must not be altered by you, or any third party that you procure; (iii) you may skin the Software in a variety of colours to match your brand but the usability of the core controls of the Software must be maintained at all times; (iv) you must not remove, alter, or obscure the branding of Radioplayer or any of its associates on the core Software (such as the 'powered by....' marks) (v) all radio stations who meet the Entry Requirements to be Users of the Software will be discoverable from the Software via the search box and menu controls, which must appear on the Software; and (vi) you must supply metadata information about your station in accordance with the Fairplay Guidelines listed in Clause 7.

5.3.13 to ensure that where you provide user registration within Radioplayer Software, (i) you clearly indicate to the users that their personal data is being held by you and not Radioplayer; (ii) that you are correctly registered with the Information Commissioner as the Data Controller; and that (iii) you comply with all relevant Data Protection legislation including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive); and/or the General Data Protection Regulation (EU) 2016/679 (GDPR), and/or any corresponding or equivalent national laws or regulations implementing GDPR. You will indemnify UK Radioplayer, against any loss, liability, claim, demand, damages, costs and expenses, including reasonable legal fees for any claims arising out of or in connection with any claim) involving a breach of this Clause 5.3.13;

5.3.14 to ensure any additional radio stations and streams you wish to stream through the Software, beyond those you have already registered, are submitted to UK Radioplayer as new stations. Such new stations are subject to the Entry Requirements outlined in Clause 3, noting specifically that 3.2 shall apply in all circumstances and that we may request evidence of the Ofcom licence. For the avoidance of doubt, this means any additional programming or streaming that UK Radioplayer considers (acting reasonably) to be a distinct service, rather than additional 'listen again' or 'podcast' content. You may not clone the Software and use it for stations not formally registered with Radioplayer;

5.3.15 to recognise that the content to be provided through the Software shall be primarily audio. You may feature short-form video content including reasonable video advertising through the Software provided that UK Radioplayer shall not be obligated to provide the ability or capacity to feature such content and UK Radioplayer is entitled to set whatever limits it deems necessary with respect to such content.

5.4 You agree that in using the Portal, the Software and the Services you will not:

5.4.1 use the Portal, the Software or the Services in any way that may lead to the encouragement, procurement or carrying out of any criminal activity or for any other unlawful purpose;

- 5.4.2 use the Portal, the Software or the Services in any way that interrupts, damages, impairs or renders the Website, the Software or the Services less effective;
- 5.4.3 use the Portal, the Software or the Services for any purpose other than as permitted in the Terms and Conditions;
- 5.4.4 email, transmit, stream or otherwise disseminate any content which is in breach of the applicable Ofcom guidelines or is otherwise defamatory, obscene, in breach of copyright, vulgar or indecent or may have the effect of being harassing, threatening, abusive or hateful or that otherwise degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
- 5.4.5 not do or allow anything to be done that would, or would be likely to, bring UK Radioplayer into disrepute or injure, tarnish, damage or otherwise negatively affect the reputation and goodwill associated with UK Radioplayer, our Software and Services;
- 5.4.6 advertise or promote third party or your own products or services by way of the distribution of spam email; or
- 5.4.7 transfer or transmit to end users' files that contain viruses, trojans or other harmful programs.

## 5.5 Restrictions on Streamed Content

You acknowledge that UK Radioplayer has no control over any content you stream via the Software, or what images and other content you may upload or transmit using the Software, and that it is solely your obligation to get consent for all intellectual property and other rights in the content that you upload, stream or otherwise transmit using the Software. Accordingly, you warrant and represent that:

- 5.5.1 you will only stream and transmit content using the Software that you have the legal rights to stream and transmit, and it is your obligation to procure, at your cost, any necessary consents, licences or permissions from relevant third parties to stream such content, and you shall pay all royalty and copyright collection fees to the relevant third parties in respect of such content that you may stream using the Software;
  - 5.5.2 you will not, and will not authorise, encourage or assist any other person to, stream any content via the Software that breaches the intellectual property rights of any third party;
  - 5.5.3 you will only stream content using the Software where that content is acceptable under the Code; and
  - 5.5.4 in using the Software you will comply with the terms of any Ofcom licence that you are subject to, the Code and will comply with all relevant radio broadcasting legislation, codes, regulations and guidelines.
- 5.6 You accept that in providing the Services, we may work with third-party services who may require us to display reciprocal links within our Software and/or Services. Where such links exist, you may not change, remove or benefit from the links in any way other than as we may direct.
- 5.7 You acknowledge that any breach of these Terms and Conditions will entitle us to terminate your use of the Software, or any part of the Software features (including but not limited to exclusion from the search results and / or removal from the preset list of

stations on all instances of the Software) and the Services immediately and without notice.

- 5.8 We reserve the right to change, suspend, or cease the Portal, Software and the Services, or any part of them at any time and without notice to you. You agree that we will not be liable to you if we exercise those rights, even if your streaming of content is affected by the change, suspension or cessation.

## **6. USAGE STATISTICS**

- 6.1 UK Radioplayer may gather usage statistics regarding the Software, Apps and the UK Radioplayer Service.
- 6.2 UK Radioplayer may choose to share and / or publish overall statistics of usage of the Software and the UK Radioplayer Service in marketing materials or industry communications. We will never share specific usage figures of your usage of the Software or the UK Radioplayer Service without your prior written consent, not to be unreasonably withheld.
- 6.3 We are not obliged to provide usage data to you on a per-station basis, however we may choose to do so. Where usage data is provided to you, it shall be on an as-is basis without warranty of any kind;

## **7. COMMUNITY & FAIR PLAY GUIDELINES**

- 7.1 You are expected to use the Software as the primary method that listeners access your live broadcast;
- 7.2 You should provide a 'listen' hyperlink to the Software from the homepage of the relevant radio station. You may style this to suit your website or use any tools or templates that we may provide from time to time;
- 7.3 You acknowledge that we may perform spot checks, to ensure compliance with these guidelines. Non-compliance of clauses 7.1 and 7.2 shall not constitute grounds for termination but a premium may be applied to licence fee at renewal, where stations have opted out;
- 7.4 You may be invited to participate in community activities which raise awareness of the Service, Software and/or Apps such as the broadcast of promotional spots or the dissemination of marketing content through your website or social media channels. Your participation in such activities is voluntary however you agree to give due consideration to such content;
- 7.5 You must ensure there is no encumbrance of the traffic flow across Radioplayer. Stations must not delay or obstruct a user as they switch to another station;
- 7.6 You may not show messages or interstitials to users as they exit one web player and switch to another unless such messages are required by law, and you must not change or obscure any messages we may show to the user without our written permission;
- 7.7 You acknowledge that the metadata you provide UK Radioplayer must be accurate and is subject to additional rules as documented on the Portal from time to time. You warrant that:
- 7.7.1 Service Information ("SI") metadata will accurately represent the station and not deviate significantly from the records held by Ofcom, in particular relating to station naming;



- 7.7.2 You will not insert dynamic data such as programme or musical track information into SI metadata nor update more than once per week unless there is a technical imperative to do so;
- 7.7.3 Metadata will not contain references to competitor brands or to trade or service marks which you do not own;
- 7.7.4 You shall provide Metadata written for public consumption and not include inappropriate language, excessive repetition, advertising, excessive use of keywords or irrelevant terms nor employ tactics to artificially inflate a station's position within Search results;
- 7.7.5 Any images you provide shall relate to the stations and programmes they are intended to represent and you warrant that you have permission to use and distribute such images;
- 7.8 You accept that we may edit metadata for compliance with this clause 7, to improve user experience and for any other reason whatsoever and that we may or may not notify you of such edits;

## **8. CHARGES AND PAYMENT**

- 8.1 There are no charges for accessing or browsing the Portal documentation.
- 8.2 Usage of the Software (and the associated Services) is subject to the payment of a once-only setup charge and an annual subscription charge for the first year of usage, and then an ongoing annual subscription charge due annually on the anniversary of the date on which you first agree to download the Software, including the source code. If your annual fee, as set out on the Portal or as provided to you by us upon enquiry, is greater than £5000 per annum, then you may pay this in two instalments at six monthly intervals.
- 8.3 We reserve the right to suspend, restrict or terminate your access to the Portal, the Software and Services. At our discretion we may apply statutory charges including interest and late payment fees in the event that you fail to make a payment within thirty (30) days of it falling due;
- 8.4 The charges payable for the Software (and the associated Services) are inclusive of VAT and are set out at the time of purchase and may vary between users dependent upon the size of your enterprise. We may at any time and from time to time, in our sole discretion, change the fees and charges, or add new fees and charges, in relation to usage of the Software (and the associated Services).
- 8.5 In order to gain access to the Software you will need to provide payment using an accepted payment method. The applicable charge for the Software will be deducted using the payment method you have selected or invoiced to you at the address that you provide. Invoices are due for payment immediately on receipt unless otherwise agreed in writing.
- 8.6 We may provide you with optional services as outlined in 5.1.11 and when such services are offered, they may be subject to an additional fee. We shall advise you of such fees before commencement of any service, and upon your written acceptance, such amounts shall be due immediately.
- 8.7 You agree that once you make payment using your selected payment method, subject to your statutory rights of recourse, you will not then be able to cancel your offer to

use the Software and the Services and you will be charged for the relevant Software and Services provided to you.

## **9. TERMINATION**

- 9.1 You may terminate your account with UK Radioplayer at any time. Cancellation requests must be completed online through the Portal and to terminate, you must notify us by submitting a support request stating the name of the Services affected by this change. If you terminate your account with us, you will no longer be able to use the Software or the Services. If you choose to use the Software or the Services in the future you will need to set up a new account. If you terminate your account, you will be liable to pay any charges owed to UK Radioplayer for your usage of the Software and any associated Services up to and including the date of termination. Further you must immediately destroy all copies of the Software. You will not receive a refund for any part of the annual subscription fee for the subscription period that remains, and you acknowledge and agree that this will be forfeited to UK Radioplayer.
- 9.2 We reserve the right to suspend, restrict or terminate your access to the Portal, the Software and the Services at any time without notice if we have reasonable grounds to believe that you have breached any of the restrictions or your obligations set out in these Terms and Conditions. This shall not limit our rights to take any other actions against you that we consider appropriate to defend our rights or those of any other person. All outstanding charges and invoices remain due for full payment by You.
- 9.3 Should we suspend or terminate your access to the Portal, the Service or the Services, and later agree to restore access, we may at our discretion apply a reactivation fee;

## **10. GENERAL TERMS AND CONDITIONS**

### **10.1 Indemnities**

#### **10.1.1 Indemnity by You**

You agree to indemnify and hold UK Radioplayer, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable legal fees, arising out of or in connection with any breach by you of these Terms and Conditions or any violation by you of any applicable laws or the rights of any third party in connection with your use of the Software or use of Services. You agree to compensate and defend us fully against any claims or legal proceedings brought against us by any other person as a result of your breach of these Terms and Conditions or breach by you of any applicable law or rights of any third party (including, but not limited to, any claim against UK Radioplayer brought by any third party that content that you have streamed using the Software infringes any third party intellectual property rights which shall include claims that you are not licensed to provide the content on any station which you stream through the Software in the manner contemplated by this Agreement). If we take legal action against you for any breach of these Terms and Conditions and a court makes an award in our favour, you will be responsible for all costs allowable by the courts.

#### **10.1.2 Indemnity by UK Radioplayer**

Subject to clause 10.1.3, UK Radioplayer agrees to indemnify and hold you, your subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim,

demand, damages, costs and expenses, including reasonable legal fees, arising out of or in connection with any claim by any third party that the Software breaches that third party's intellectual property rights.

#### 10.1.3 Indemnity for Modifications

UK Radioplayer will not be liable, and You will indemnify UK Radioplayer, against any loss, liability, claim, demand, damages, costs and expenses, including reasonable legal fees for any claims arising out of or in connection with any claim by any third party that the Software, including the source code, breaches that third party's intellectual property rights by reason of any modification to the Software, source code, or inclusion of any third party component into the Software or the source code by you, your affiliates, or any employee or third party engaged by you.

### 10.2 Disclaimer of Warranties and Limitations on Liability

10.2.1 Nothing in this clause 10.2 (*Disclaimer of Warranties and Limitations on Liability*) or otherwise in these Terms and Conditions shall exclude or in any way limit the Parties' liability for:

- (A) Fraud; or
- (B) Death or personal injury caused by its negligence (including negligence as defined in s.1 Unfair Contract Terms Act 1977); or
- (C) Liability to the extent the same may not be excluded or limited as a matter of law.

10.2.2 Subject to clause 10.2.1:

- (A) The Portal and the Software is provided on an "as is" and on an "as available" basis and we make no representations or warranties of any kind with respect to it, including as to the accuracy, completeness or currency of the Portal or the Software;
- (B) We shall use our best endeavours to ensure that the Software performs in accordance with the technical specifications as listed on the Portal from time to time; and
- (C) We assume no liability or responsibility for any errors or omissions in the content that you stream using the Software, or any failures in the streaming of content;

10.2.3 Subject to clause 10.2.1, in no event shall we, our shareholders, directors, officers, or employees be liable (jointly or severally), to you or any third party for any special, incidental, indirect or consequential damages of any kind, or any damages whatsoever including but not limited to: loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, or loss of data, whether or not advised of the possibility of such damage, and on any theory of liability, arising out of or in connection with the use of the Software or the use of the Portal. If any applicable authority holds any portion of this clause 10.2.3, 10.2.1 or clause 10.2.2 to be unenforceable, then liability will be limited to the fullest possible extent permitted by applicable law.

10.2.4 Subject to clauses 10.2.1, 10.2.2 and 10.2.3 our maximum liability to you, (whether in contract, tort, (including negligence), breach of statutory duty or otherwise), arising out of or in connection directly or indirectly with your use of the Portal, or the Software or your use of the Services shall not exceed in aggregate the total

amount paid by you to us in respect of the Software in accordance with these Terms and Conditions during the previous 24 months..

### **10.3 Applicable Law and Jurisdiction**

10.3.1 Your use of the Portal and your use of Services is governed by these Terms and Conditions which shall be construed and enforced in accordance with the laws of England and Wales. Disputes arising from or in connection with your use of the Portal and/or your use of the Services shall be subject to the exclusive jurisdiction of the courts of England and Wales.

10.3.2 The Portal and Services are only intended to be accessed from the Territory. We make no representations that the Portal or Services are appropriate or available for use at other locations and access from territories where the Portal or Services are illegal are strictly prohibited. If you access the Portal outside of the Territory, you are responsible for the compliance with all local laws.

### **10.4 Assignment/Transfer by Us**

You agree that we may assign any or all of our rights and/or novate, transfer, sub-contract or delegate any or all of our obligations under these Terms and Conditions to any third party.

### **10.5 Assignment/Transfer by You**

These Terms and Conditions are personal to you and are agreed to by you for your own benefit and not for the benefit of any other third party. UK Radioplayer accounts and your other rights and/or obligations under these Terms and Conditions are not transferable and therefore cannot be sold or traded. Further, you may not assign, novate, transfer, sub-contract or otherwise dispose of any or all of your rights and/or obligations under these Terms and Conditions.

### **10.6 No Waiver**

If we delay exercising or fail to exercise or enforce any right available to us under these Terms and Conditions, such delay or failure does not constitute a waiver of that right or any other rights under these Terms and Conditions. A waiver by us of any default shall not constitute a waiver of any subsequent default. No waiver by us shall be effective unless it is expressly stated to be a waiver and is communicated to you in accordance with clause 10.11.

### **10.7 Force Majeure**

We will not be liable to you for any lack of performance, or the unavailability or failure, of the Portal or any of the Services, or for any failure or delay by us to comply with these Terms and Conditions, where such lack, unavailability or failure arises from any cause beyond our reasonable control.

### **10.8 Third Party Rights**

Nothing in these Terms and Conditions confers on any third party any benefits under the provisions of the Contracts (Rights of Third Parties) Act 1999.

### **10.9 Entire Agreement**

These Terms and Conditions (including any other terms and conditions or usage rules incorporated into these Terms and Conditions) constitute the whole agreement between you and us relating to their subject matter and supersede any prior agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

## 10.10 Interpretation

In these Terms and Conditions, unless the context requires otherwise: i) any phrase introduced by the words "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; and ii) references to the singular include the plural and to the masculine include the feminine, and in each case vice versa.

## 10.11 Electronic communications and data processing

10.11.1 When you visit the Portal or send e-mails to us, you are communicating with us electronically. We communicate with you by e-mail or by posting notices on the Portal. For contractual purposes, you consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. This condition does not affect your statutory rights;

10.11.2 We will process and store your personal information for the purposes of administering your account, for billing, technical, internal audit and compliance, and service provision reasons. We shall communicate with you periodically pursuant to these activities, and to provide information about our products, services and activities. You consent to these data processing and communications activities.

10.11.3 You may request details of the personal information we hold about. You may revoke consent for us to hold and process your personal information at any time but must ensure compliance with 4.5 at all times by providing an alternative contact;

## 10.12 Severability

If any of these conditions is deemed invalid, void, or for any reason unenforceable, that condition will be deemed severable and will not affect the validity and enforceability of any remaining condition.

## 11. CONTACTING US

11.1 If you have a technical, billing, content related or general query regarding your use of the Portal or Software, please refer to the appropriate section of the documentation on the Portal for further guidance..

11.2 All correspondence to UK Radioplayer, including any other queries you may have regarding your use of the Portal, your use of Services or the Terms and Conditions, should be sent to the address set out at the start of these Terms and Conditions.