

## FILMBANK DISTRIBUTORS LIMITED: DVD CONCIERGE TERMS & CONDITIONS

This licence records the terms upon which Filmbank Distributors Limited (Filmbankmedia) grants licences for the screening of participating distributors' films obtained through legitimate retail outlets in guest accommodation in the United Kingdom.

It is a fundamental term of the licence that the licensee shall not charge the guest, to view any film shown under this Licence. A full list of participating distributors is available from the Filmbankmedia website [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl)

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this DVD Concierge Licence ("Licence"), the following definitions apply, unless the context requires otherwise:

- APPLICATION FORM means the DVD Concierge Licence Application Form, a copy of which is available at [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl)
- CERTIFICATE means the certificate issued by Filmbankmedia confirming the issue of this DVD Concierge Licence which is incorporated into and forms part of this Licence.
- DIFFUSED SYSTEM means a system where Films are distributed from one source onto multiple TV sets or other similar equipment at the same time.
- EXCLUDED FILM means any film listed on the "Excluded Films" page of the Filmbankmedia website [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl)
- FEE means an amount payable by Licensee in respect of the grant of this Licence determined in accordance with the Filmbankmedia Rate Card using the relevant rates prevailing at the commencement of the Term.
- FILM means any film (except any Excluded Film) distributed by Participating Distributors and available in the form of VHS video, DVD, UMD and Blu-ray discs available from legitimate outlets in the Territory at the time of, or at any time prior to, the relevant Screening except any Excluded Film.
- FILM REPORTING FORM means the reporting form used by Licensees to list the Films available in the Film library during the Term. A copy of the Film Reporting Form is available at [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl)
- FILMBANKMEDIA means Filmbank Distributors Limited, a company incorporated under the laws of England and Wales with company number 1021212 and with its registered office at Warner House, 98 Theobald's Road, London WC1X 8WB.
- FILMBANKMEDIA RATE CARD means the rate card published by Filmbankmedia from time to time in respect of the DVD Concierge Licence.
- GUEST ROOMS means the individual guest rooms or suites (whether occupied or not), within types of guest accommodation which have a TV, DVD or other audio visual equipment capable of showing films.
- LICENSED GUEST ROOMS means the Guest Rooms indicated in the Certificate.
- LICENSEE means the person, firm or company described in the Certificate.
- NUMBER OF LICENSED GUEST ROOMS means the number of Guest Rooms which is provided by the Licensee in the Certificate.
- OPERATING PERIOD means the number of months the property is open to receive guests.
- PARTICIPATING DISTRIBUTORS means those film distributors listed from time to time on the Filmbankmedia website at [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl)
- SCREENING, SCREEN, SCREENED means creating a Film library consisting of Films for use in the Licensed Guest Rooms in accordance with Clause 2.1.
- TERM means the period of time described in the Certificate.
- TERRITORY means the United Kingdom (as defined in the Interpretation Act 1978).

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 Filmbankmedia 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 Filmbankmedia's acceptance of the Application Form and the terms set out in this Licence, Filmbankmedia grants to the Licensee the non-exclusive right during the Term in the Territory to create a Film library (in 2D or 2D and 3D format, as selected in the Application Form) consisting of Films for use in the Licensed Guest Rooms.

2.2 The following conditions apply to the grant of rights in Clause 2.1 above:

- a. No charge shall be made for the Screening;
- b. No advertising or promotion of individual film titles shall be permitted except as set out at Clause 2.3 below;
- c. No goods, services, organisation or event shall be endorsed or promoted in connection with the 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 copy of a Film in VHS video, DVD, UMD or Blu-ray formats available from legitimate outlets in the Territory;
- f. No Screening shall be permitted via a closed circuit Diffused System to the Guest Room;
- g. No outdoor screenings are permitted;
- h. No Screenings shall be permitted under this Licence if one of the main purposes or activities of the Licensee is the Screening of Films; and
- i. If 2D format is selected on the Application Form the licence will not cover the screening of Films in 3D format.

2.3 Advertising or promotion of Films is not permitted, although advertising and promotion of the DVD Concierge Licence service itself is permitted. Furthermore, Licensee shall not make or permit to be made in any advertising, publicity or otherwise promoting the DVD Concierge Licence service, any statements or acts which:

- a. constitute or give the impression of an approval or endorsement of any goods, products, services, organisation or events by Filmbankmedia or any person, company or corporation connected or associated with a Film, its production or distribution; and/or
- b. indicate or create the impression that Filmbankmedia is connected or associated with any third party goods, products, services, organisations or events (other than the Films).

2.4 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.

2.5 The Licensee must complete and provide to Filmbankmedia, every three (3) months from the start of the Term, a report listing the films available in the Film library incorporating all information requested in the Film Reporting Form. If the Licensee does not supply such report within one (1) month of the end of the three (3) month reporting period, then the Licence may be rescinded and no refund given. The reporting periods can be found at [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl)

2.6 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.

### 4 CHARGING FOR SCREENINGS

4.1 Screenings must be free to the guests.

4.2 For the purposes of Clause 2.2 (a) a charge shall be deemed to have been made for the Screening where:

- a. the guest has paid to watch a Screening of the Film;
- b. goods or services are supplied in the Licensed Guest Rooms at prices:
  - (i) which are substantially attributable to the Screening; or
  - (ii) exceeding those usually charged in the Licensed Guest Rooms.

### 5 LICENSED GUEST ROOMS

5.1 The Licensee warrants and represents to Filmbankmedia that:

- a. The Number of Licensed Guest Rooms is true and correct;
- b. The Screenings shall not take place in a communal area which the general public or guests are freely allowed access to;
- c. Licensee shall not knowingly Screen or otherwise exploit any Film or any part of the Film in any manner which may be in violation of any applicable law, governmental rule or regulation;
- d. Licensee shall not Screen a copy of a Film other than a legitimately produced, manufactured and distributed copy; and
- e. Licensee shall only Screen the Films in the Territory.

### 6 MATERIALS

It is the Licensee's responsibility to obtain VHS video, DVD, UMD or Blu-ray copies of the Film from a legitimate outlet.

### 7 FEE

7.1 The Licensee shall pay the Fee together with any VAT to Filmbankmedia. Filmbankmedia 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 Filmbankmedia for the calculation by Filmbankmedia of the Fee is correct to the best of the Licensee's knowledge and belief.
- 7.4 Filmbankmedia reserves the right to request reasonable documentary evidence of Licensed Guest Rooms and Operating Period.
- 7.5 The Fee shall be calculated on the basis of the Number of Licensed Guest Rooms.
- 7.6 Filmbankmedia shall be entitled to conduct an audit (or appoint an auditor to conduct an audit) to ascertain that the Number of Licensed Guest Rooms and/or Operating Period is true and correct and the Licensee hereby grants to Filmbankmedia (or its designated auditor) access to relevant records during the Term to enable Filmbankmedia to conduct any such audit.
- 7.7 If, as a result of conducting an audit or otherwise, Filmbankmedia estimates that the actual number of Guest Rooms is greater than the Number of the Licensed Guest Rooms, Filmbankmedia shall notify the Licensee of any such difference and the basis upon which Filmbankmedia has calculated the number of actual Guest Rooms and the Fee shall be increased as appropriate in accordance with the Filmbankmedia Rate Card for the Term. Likewise, if, as a result of conducting an audit or otherwise, Filmbankmedia estimates that the Operating Period is longer than notified in the Application Form and/or on the Certificate, Filmbankmedia shall notify the Licensee of any such difference and the Fee shall be increased as appropriate in accordance with the Filmbankmedia Rate Card for the Term. Filmbankmedia reserves the right to charge to the Licensee the reasonable costs of any audit conducted where the Number of Licensed Guest Rooms is less than the actual number of Guest Rooms by the Licensee by more than five per cent (5%).
- 7.8 Filmbankmedia 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 Filmbankmedia may terminate this Licence 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 Licence and Licensee fails to rectify the breach within five (5) business days.
- 8.2 Filmbankmedia'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 Filmbankmedia or the Licensee may terminate this Licence 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 DATA PROTECTION

For information on how Filmbankmedia processes your personal data, please visit [www.filmbank-media.com/privacy-notice/](http://www.filmbank-media.com/privacy-notice/).

## 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 LIMITATION OF LIABILITY

11.1 Neither party shall be liable, regardless of the form of action, whether in contract, tort (including negligence or otherwise) for the withdrawal of a Film or a studio participating in the DVD Concierge scheme for any:

- a. direct loss or damage;
- b. indirect, consequential or incidental loss or damage; or
- c. punitive damages, arising out of or in connection with this Licence (including, without limitation, actual or expected loss of profit, loss of business or loss of revenue in connection with withdrawal of a Film and/or Participating Distributors) even if such loss or damage was reasonably foreseeable or if the possibility of such loss or damage was notified by the party incurring it to the other party (save that any exclusions or limitations of liability shall not apply in respect of fraud or for death or personal injury caused by a party's negligence).

11.2 The Licensee acknowledges and agrees that the limitations contained in this Clause 11 are reasonable in all the circumstances.

## 12 MISCELLANEOUS

12.1 Nothing in this Licence shall constitute an agency, partnership or joint venture between Filmbankmedia and the Licensee.

12.2 Except as expressly provided in this Licence, neither Filmbankmedia nor the Licensee shall be entitled to assign the benefit of this Licence without the prior written consent of the other.

12.3 This Licence together with any documents referred to in this Licence constitute the entire agreement between Filmbankmedia 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 Filmbankmedia 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 If any of the provisions of this Licence are judged to be illegal or unenforceable due to applicable law, it shall be deemed deleted and the continuation in full force and effect of the remainder of the provisions will not be prejudiced unless the substantive purpose of this Licence is then frustrated, in which case either party may terminate this Licence immediately on written notice.
- 12.9 Filmbankmedia may update this Licence to reflect changes in its services and Excluded Films. When changes are made to this Licence, Filmbankmedia will mark the Licence with the date it was “last updated”.
- a. If there are material changes to this Licence, Filmbankmedia will notify Licensee either:
    - (i) by prominently posting a notice of such changes on the Filmbankmedia website at [www.filmbankmedia.com/dvdcl](http://www.filmbankmedia.com/dvdcl) prior to implementing the change; and/or
    - (ii) by sending Licensee an e-mail notification of the same.
  - b. Licensee is required to periodically review the Filmbankmedia website or request in writing to be notified of changes to the service and Excluded Films.
- 12.10 All disputes arising under this Licence shall be governed by the laws of England and Filmbankmedia and the Licensee shall submit to the exclusive jurisdiction of the courts of England. This licence records the terms upon which Filmbankmedia grants licences for the screening of participating distributors’ films obtained through legitimate retail outlets in guest accommodation in the United Kingdom.

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