

# Terms and Conditions Concerning Post-Selection Arrangements

You are registering or have registered for an account on Gate pursuant to the Terms and Conditions of Gate. As a condition to create or participate in a Challenge on Gate, you agree to be bound by these Terms and Conditions Concerning Post-Selection Arrangements (“Post-Selection Terms”) in full and without modification or variation. These Post-Selection Terms form part of, and should be read in conjunction with the Terms and Conditions, and are between you and Gate (“we” or “us”).

In these Post-Selection Terms:

- (a) where you create a Challenge, you are referred to as an “Initiator”, whether you intend to release the Signed Track(s) yourself or for a Release Label (the latter of which we refer to as a release owner on Gate); and
- (b) where you participate in a Challenge, you are referred to as a “Producer”.

You, whether an Initiator or a Producer, and we are each a “Party” and together as “Parties”.

You “create” a challenge when you click the “Submit challenge” button on Gate, whilst you “participate in” a challenge when you complete the payment after submitting your tracks on Gate for a Challenge.

## Background

- (A) The Initiator desires to create a Challenge on Gate for electronic music producers to submit audio tracks under the Terms and Conditions with a view to selecting one or more of them for subsequent release on the condition that the Initiator will pay remuneration to the producer(s) of the selected track(s).
- (B) The Producer desires to participate in a Challenge by submitting an audio track or tracks with the aim of it or them being selected by the Initiator for subsequent release.
- (C) These Post-Selection Terms set out the arrangements after the aforesaid selection and the rights and obligations of the Initiator, Producer and us which are binding on the Parties.

## Operative Terms

### 1. Interpretation

The following definitions and rules of interpretation apply in these Post-Selection Terms.

#### 1.1 Definitions:

- a. **Challenge:** a challenge created by an Initiator on Gate inviting electronic music producers to submit audio track(s) for the opportunity of the audio track(s) being selected and released.
- b. **Commercialisation Period:** the Initial Period and all Subsequent Periods (if any).
- c. **Effective Date:** the date when we confirm by sending an email to the Producer that the Submitted Tracks are selected as the Signed Tracks by the Initiator.
- d. **Gate:** the online electronic music platform at [welcometogate.com](http://welcometogate.com).
- e. **Gross Revenue:** all fees and royalties actually received by the Initiator arising directly and identifiably from the commercial exploitation of the Signed Tracks pursuant to these Post-Selection Terms within the Territory.
- f. **Initial Period:** a period of 36 months.
- g. **Minimum Royalty Threshold:** the value equivalent to US\$125 adjusted by the Purchasing Power Parities (PPP) index of the country or territory where the Initiator is domiciled latest updated by the Organisation for Economic Co-operation and Development (OECD), or if such index is absent for that country or territory, US\$125.
- h. **One-Off Payments and Incentives:** the one-off payments and incentives payable or deliverable by the Initiator to the Producer as indicated by the Initiator in the Challenge.
- i. **Release Label:** the label, if any, that the Initiator indicates in a Challenge who will be responsible for releasing the Signed Tracks.
- j. **Royalties:** the percentage (%) of the Gross Revenue as indicated by the Initiator in the Challenge to which the particular Signed Tracks relate.
- k. **Signed Track(s):** the Submitted Track(s) selected by the Initiator in a Challenge as the tracks to be released.
- l. **Specific Acts:** the acts of:
  - (a) reproduction and distribution of the Signed Tracks for the purposes of its public release in physical or digital form, including physical albums and digital downloading;
  - (b) granting synchronisation licence for the Signed Tracks to be included in any film, television program advertisement, or other audio or visual work; and
  - (c) communication or making available of the Signed Tracks to the public by way of streaming, including making the Signed Tracks available on Gate.

- m. **Submitted Track(s):** the audio track(s) submitted by the Producer in a Challenge.
- n. **Subsequent Period:** a period of 12 months.
- o. **Terms and Conditions:** The Terms and Conditions for the access and use of Gate available at [welcometogate.com/terms-conditions](http://welcometogate.com/terms-conditions) which may be amended from time to time.
- p. **Territory:** the world.

1.2 A reference to one gender shall include all other genders.

1.3 A Clause refers to the respective clause in these Post-Selection Terms.

1.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Assignment of rights upon selection of tracks

2.1 The Producer agrees to assign to the Initiator the copyright, related rights and other rights and interests (including any future interests) in the Signed Tracks throughout the Territory for the duration of the Commercialisation Period in relation only to the Specific Acts which shall be effective automatically at the Effective Date. The Producer reserves all other rights not specifically assigned, including broadcasting and public performance rights.

2.2 The Initiator and Producer shall execute any further written instrument or take any step if such instrument or step is necessary to make the assignment under Clause 2.1 effective.

2.3 Within 10 days from the Effective Date, for each Signed Track, the Producer shall deliver to the Initiator (a) the Signed Track's digital recording in the originally submitted format and, if any, in other formats as indicated by the Initiator in the Challenge to which the Signed Track relates; (b) the press kit related to the Signed Track, if required by the Initiator; and (c) other materials, documents, files, information or other things as indicated by the Initiator in the Challenge to which the Signed Track relates.

2.4 The Producer shall provide all necessary information in relation to the Signed Tracks and necessary assistance to the Initiator for its commercial exploitation under these Post-Selection Terms.

**2.5 The Producer retains any moral rights in the Signed Tracks after the assignment. The Producer agrees that the exercise of such moral rights should not prevent the Initiator from commercially exploiting the Signed Tracks as contemplated under these Post-Selection Terms.**

**2.6 The assignment under Clause 2.1 is between the Producer and the Initiator. We have no obligation, responsibility or liability in relation to the assignment (or the deficiency or absence of it), except that we may enforce the provisions under these Post-Selection Terms or the Terms and Conditions and/or seek remedies where you are in breach of them.**

### **3. Rights and responsibilities of the Initiator**

**3.1 The Initiator may commercially exploit the Signed Tracks in connection with the Specific Acts during the Commercialisation Period. The Initiator also grants a royalty-free licence to us to reproduce and make available the Signed Tracks on our website.**

**3.2 Where the Initiator has indicated in the Challenge that a Release Label will be responsible for the release of the Signed Tracks of that Challenge, the Initiator may further assign the copyright, related rights and other rights and interests (including any future interests) in the Signed Tracks as specified under Clause 2.1 to the Release Label on the same restrictions and not exceeding the Commercialisation Period and the scope as set out in these Post-Selection Terms. The Initiator shall ensure by way of a valid contract that the Release Label must not further assign, transfer or dispose of the copyright, related rights and other rights and interests (including any future interests) in the Signed Tracks to any third party.**

**3.3 The Initiator agrees not to make any alterations to (other than for necessary abridgement, prolongation or mastering for the release of the Signed Tracks), create derivative works from, create security interests in, or assign or transfer (except as provided under Clause 3.2) the Signed Tracks without the approval of the Producer, and will ensure the Release Label or other licensee, if any, to comply with the same restriction.**

**3.4 If the Initiator has indicated in the relevant Challenge that it will pay or provide one-off payments and/or incentives to the producer of the Signed Track, the Initiator shall procure the payment or delivery of the One-Off Payments and Incentives to the Producer within 30 days from the Effective Date of these Post-Selection Terms. The Initiator shall bear the related fees, expenses and costs for such payment or delivery.**

**3.5** If the Initiator has indicated in the relevant Challenge that it will pay royalties to the producer of the Signed Track, the Initiator shall procure to pay the Producer the Royalties pursuant to Clause 3.6, after deduction of value-added taxes and any other like taxes required to be deducted in any part of the Territory. The Initiator shall bear the related fees, expenses and costs for such payment.

**3.6** The Initiator shall keep proper books and records of account in respect of exploitation of the Signed Tracks and shall draw up statements of account showing the Royalties due to the Producer in respect of each Signed Track at half yearly intervals ending on 30 June and 31 December in each year until the Initiator shall cease to derive income from such Signed Track. The Initiator shall forward such statements and make payment of the amounts shown due to the Producer within 60 days of 30 June and 31 December each year.

**3.7** Not more than twice in any year subject to reasonable notice, the Producer may appoint a chartered accountant to inspect the relevant parts of the Initiator's books and records in order to verify the accounts. The Producer may not inspect the books or records in respect of royalty accounts rendered more than five years previously. The fees and costs of such inspection shall be borne by the Producer, except where the inspection discloses a miscalculation of Royalties by more than 5% in which case the Initiator shall bear the fees and costs.

**3.8** The Initiator shall procure that the Release Label, if any, provide to the Producer the same inspection right as stipulated under Clause 3.7 in relation to the parts of books and records of the Release Label that concern the exploitation of the Signed Tracks.

#### **4. Reversion**

**4.1** In the event that the Royalties deriving from any Signed Track do not reach the Minimum Royalty Threshold in 2 consecutive half-yearly intervals as specified in Clause 3.6 during the Commercialisation Period, then the Producer may serve notice on the Initiator for a reversion of the copyright, related rights and other rights and interest in the particular Signed Track to the Producer. Such reversion shall be effective on the date of issue of the notice.

**4.2** The Initiator shall execute any written instrument or take any step if such instrument or step is necessary to make the reversion under Clause 4.1 effective, including procuring a reversion of the copyright, related rights and other rights and interest in the particular Signed Track from the Release Label if applicable.

## **5. Commercialisation Period, Term and termination**

**5.1 The Commercialisation Period shall consist initially of the Initial Period commencing on the Effective Date. The Initiator and Producer may agree in writing to extend the Commercialisation Period for particular Signed Track(s) for further Subsequent Period(s) before the end of the then expiring Commercialisation Period.**

**5.2 The Initiator and Producer may agree to terminate the Commercialisation Period for particular Signed Track(s) on 90 days' written notice. Without prejudice to the other provisions in these Post-Selection Terms, the termination of the Commercialisation Period for a Signed Track does not affect that of the other Signed Track(s).**

**5.3 The Commercialisation Period for all Signed Tracks shall terminate if the Initiator or the Release Label shall enter into bankruptcy or liquidation (other than a voluntary liquidation for the purposes of reconstruction or reorganisation) or if a receiver is appointed to take over all or a substantial part of the Initiator's or Release Label's (if any) assets and is in control thereof for 15 days or more. The Producer may give written notice to terminate the Commercialisation Period for any or all Signed Tracks upon the filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors by the Initiator or Release Label (if any); provided, however, that in the case of any involuntary bankruptcy or liquidation proceeding such right to terminate shall only become effective if the Initiator or Release Label (if any) consents to the involuntary bankruptcy or such proceeding is not dismissed within 90 days after the filing thereof.**

**5.4 If the Initiator shall fail to provide accounting statements and to procure to pay any monies shown owing thereon and such default shall continue for a period of 30 days after the receipt by the Initiator of notice in writing from the Producer requiring the same to be remedied then the Producer shall have the right to terminate the Commercialisation Period for any or all Signed Tracks by written notice sent to the Initiator served at any time after the expiry of the 30-day period and prior to such accounts and monies being rendered.**

**5.5 If either the Initiator or the Producer breaches any of the provisions of these Post-Selection Terms (including any warranty), the non-defaulting Party(ies) (including us) shall have the right to terminate the Commercialisation Period for any or all Signed Tracks by notice in writing to the defaulting Initiator or Producer immediately (where the breach is incapable of remedy), or 30 days after the receipt of the notice by the defaulting Initiator or Producer if the breach is not remedied (where the breach is**

capable of remedy).

**5.6 The Commercialisation Periods for all Signed Tracks shall be terminated immediately upon the termination of the Terms and Conditions.**

**5.7 Upon the termination of the Commercialisation Period of a Signed Track, all copyright, related rights and other rights and interests (including any future interests) in that Signed Track shall be reverted to the Producer immediately. The Initiator shall execute any written instrument or take any step if such instrument or step is necessary to make the reversion under this Clause effective, including procuring a reversion of the copyright, related rights and other rights and interest in the particular Signed Track from the Release Label if applicable.**

**5.8 Any Royalties received by the Initiator in respect of a Signed Track after the termination of its Commercialisation Period shall continue to be accounted for and paid to the Producer pursuant to Clause 3.6, and the Producer shall continue to have the inspection right under Clause 3.7, until all Royalties in respect of the Signed Track have been paid out. This Clause shall survive termination of the Terms and Conditions and these Post-Selection Terms.**

## **6. Liability, warranty and indemnity**

**6.1 The Producer warrants that it has the right to grant the rights assigned under these Post-Selection Terms free of encumbrances and that the Signed Tracks are either original or clear of third-party rights. The Producer warrants that the Signed Tracks do not infringe the rights of any third party nor be obscene or defamatory. The Producer further warrants there is no claim or other legal action pending or threatened in respect of the Signed Tracks.**

**6.2 The Producer agrees to indemnify the Initiator against any loss (including legal fees) that the Initiator may suffer resulting from any claim against the Initiator for any infringement of third-party right. Until such claim has been finally adjudicated or settled or withdrawn, the Initiator, in its sole discretion, shall have the right to withhold a reasonable proportion of any and all monies becoming payable to the Producer under these Post-Selection Terms until the final adjudication or settlement or withdrawal of such claim.**

**6.3 The Initiator agrees to indemnify the Producer against any loss (including legal fees) that the Initiator may suffer resulting from any use of rights and works by the Initiator or any person authorised by the Initiator in excess of the rights assigned to**

them in these Post-Selection Terms. The Initiator has the right to require the Producer to account for the profits derived from such unauthorised use.

**6.4 THE PARTIES AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, WE WILL HAVE NO LIABILITY FOR ANY DAMAGES OR LOSS WHATSOEVER, WHETHER DIRECT OR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT ARISING OUT OF OR IN CONNECTION WITH THE USE AND ASSIGNMENT OF THE SIGNED TRACKS, THE PAYMENT AND PROVISION OF ROYALTIES AND/OR ONE-OFF PAYMENTS AND INCENTIVES, AND IN GENERAL ANY OF THE MATTERS UNDER THESE POST-SELECTION TERMS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

## **7. Notice**

**7.1 Any notice or other communication given to a Party under or in connection with these Post-Selection Terms shall be in writing and shall be sent by email or other electronic means to the address as notified by that Party from time to time.**

**7.2 Any notice or communication shall be deemed to have been received on the same day of the transmission.**

**7.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.**

## **8. Entire agreement**

**These Post-Selection Terms, together with the Terms and Conditions and other agreements incorporated by them, constitute the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the arrangements after the selection of Signed Tracks.**

## **9. Third party rights**

**No one other than a Party shall have any right to enforce any of its terms.**



## **10. Variation**

**These Post-Selection Terms may be modified by us from time to time. The modifications shall be effective upon their publication on Gate. You are responsible for checking the latest version of these Post-Selection Terms on Gate.**

## **11. Waiver**

**No failure or delay by a Party to exercise any right or remedy provided under these Post-Selection Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.**

## **12. Governing law and Jurisdiction**

**The governing law and jurisdiction provisions in the Terms and Conditions shall apply to these Post-Selection Terms.**

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