

# Subway Radio Service and Audio Decoder Terms & Conditions

The **Franchisee**, is entering into a legally binding agreement with **AVC Immedia Limited**, a private limited company incorporated in England and Wales with registered company number 14259614, having its registered office at 8 Eagle Court, London WC1M 5QD (the “**Supplier**”).

## 1. INTERPRETATION

In this Agreement, the words and phrases below shall have the following defined meanings:

- “**Agreement**”: means these Subway Radio Service and Dreamstream Audio Decoder Terms & Conditions together with the Participation Agreement Form.
- “**Alternative Licenced Music**”: means music streamed as part of the Franchisee Services that do not require the Franchisee to obtain any licence from the applicable licencing authority in order to play such music at the Franchisee’s Location.
- “**Confidential Information**”: means all information, whether technical or commercial (including all specifications, drawings and designs disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is: (i) identified at the time of disclosure as confidential; or (ii) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- “**IPC**”: means European Independent Purchasing Company Limited.
- “**Fees**”: means the Supplier’s charges for the Goods and Services as are more particularly described in Appendix 1 to this Agreement.
- “**Framework Agreement**”: means the framework agreement entered into between the Supplier and IPC the terms of which are incorporated into this Agreement. In the event of any conflict or inconsistency between the terms of this Agreement and the Framework Agreement, the terms of the Framework Agreement shall take precedence.
- “**Intellectual Property Rights**”: means all copyright, database rights, topography rights, design rights, trade marks, patents, domain names and other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Goods and/or Franchisee Services.
- “**Licenced Music**”: means music streamed as part of the Franchisee Services that require the Franchisee to obtain a licence from the applicable licencing authority in order for the Franchisee to play such music at the Franchisee’s Location.
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- **“Location”**: means the location(s) set out on the Participation Agreement Form at which the Goods are supplied. Locations include such reasonable additional or replacement Locations as may be notified to the Supplier by the Franchisee or IPC from time to time.
- **“Participation Agreement Form”**: means the Participation Agreement Form attached as a front sheet to this Agreement.

## **2. TERM OF AGREEMENT**

2.1 The Participation Agreement Form constitutes an offer by the Supplier to supply the Goods and the Franchisee Services to each Franchisee, in consideration of the Franchisee’s payment of the Fees, subject to the terms of this Agreement.

2.2 Any acceptance of an Agreement by a Franchisee (confirming by signing, dating and submitting the Participation Agreement Form) shall establish a contract for the supply of Goods and Franchisee Services according to this Agreement.

2.3 The electronic submission of a completed Participation Agreement Form by the Franchisee to the Supplier shall constitute acceptance of the terms of this Agreement.

2.4 Each Agreement shall come into force on the date upon which an Agreement, completed and executed by the Franchisee, is received by the Supplier (**“Effective Date”**).

## **3. SUPPLY OF GOODS AND SERVICES**

3.1 In consideration of the Franchisees payment of the Fees in full and in cleared funds when due, the Supplier shall supply the Goods and the Franchisee Services subject to and in accordance with this Agreement.

3.2 In consideration of the Franchisee’s compliance with the terms of this Agreement, the Supplier hereby grants the Franchisee a non-exclusive, royalty free, non-transferable, non-sub-licensable licence to access the Services using the Goods and, in particular, to reproduce and publicly broadcast the audio content provided as part of the Services at the Location(s) during the term of this Agreement.

## **4. PAYMENT**

4.1 The Franchisee shall pay the Fees for the Goods and Services in accordance with the payment terms set out in Appendix 1 to this Agreement.

4.2 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.3 In addition to the Price, where applicable and subject to receipt of a valid VAT invoice, VAT shall be payable on the Price at the rate and in the manner prescribed by law from time to time and the Franchisee shall pay all such VAT.

## **5. RISK IN AND TITLE TO THE GOODS**

5.1 Property in and title to the Goods shall pass to the Franchisee upon payment in full of the cost for such Goods to the Supplier.

5.2 Risk in the Goods shall pass to the Franchisee upon delivery. The Franchisee acknowledges and agrees that delivery of the Goods shall be completed when the Goods are delivered to the Franchisee's premises.

## **6. INTELLECTUAL PROPERTY**

6.1 The Franchisee acknowledges that all Intellectual Property Rights in the Goods and the Franchisee Services throughout the world belong to the Supplier, IPC and/or their respective licensors and that rights in the Goods and the Franchisee Services are licensed (not sold) to the Franchisee.

6.2 The integrity of the Goods and the Franchisee Services are protected by technical protection measures ("TPM"). Franchisee must not attempt in any way to remove or circumvent such TPM, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire any means whose purpose is to facilitate the unauthorised removal or circumvention of such TPM.

6.3 Breach of this paragraph 6 shall be deemed a material breach of this Agreement.

## **7. CONFIDENTIALITY**

7.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information, being at least a reasonable degree of care.

7.2 Confidential Information may be disclosed to employees, affiliates and professional advisers, provided they are bound in writing to maintain confidentiality.

7.3 These obligations shall not apply to information that: is already publicly known; was already in possession of the receiving party; was received from an independent third party; was independently developed; or is required to be disclosed by law or governmental authority.

## **8. WARRANTY, RETURNS AND DAMAGED GOODS**

8.1 The Supplier warrants that Goods delivered shall be fit for purpose, of satisfactory quality, and free from defects in materials and workmanship for a period of **60 months** from the date of delivery (“**Warranty Period**”).

8.2 The warranty shall not apply to Goods that have been: modified by unauthorized parties; stored or installed contrary to instructions; misused; accidentally damaged; or have developed a fault outside the Warranty Period.

8.3 If Goods develop a fault not covered by warranty, the Supplier may invoice the Franchisee for repair or replacement at the Supplier’s list price. The Franchisee is responsible for transport charges for damaged or replacement Goods in these instances.

8.4 The Warranty Period continues to run from the original delivery date and does not restart upon repair. However, if Goods are replaced entirely, the replacement unit shall be warranted for a full 60 months from its delivery date.

8.5 Subject to express provisions, all warranties implied by statute or common law are excluded to the fullest extent permitted by law.

## **9. FRANCHISEE OBLIGATIONS**

The Franchisee shall:

- Provide a suitable environment, including a reliable power supply and a secure internet connection with sufficient bandwidth (minimum 56Kbps);
- Ensure Goods are kept secure and used in accordance with Supplier instructions;
- Obtain and maintain applicable music licences if they have opted for **Licenced Music** on the Participation Agreement Form.

## **10. LIMITATION OF LIABILITY**

10.1 The Supplier gives no warranty as to the effect of the Services on the Franchisee’s business.

10.2 The Supplier shall have no liability for defects arising from: failure to follow instructions; wilful damage or negligence by the Franchisee; or unauthorized repair.

10.3 Nothing in this Agreement shall exclude or limit liability for:

- Death or personal injury caused by negligence;
- Fraud or fraudulent misrepresentation;
- Breach of terms implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to Clause 10.3, the Supplier's total aggregate liability shall in no event exceed **1000%** of the aggregate sums paid by the Franchisee to the Supplier in the 12 months preceding the claim.

## **11. TERMINATION**

11.1 Either Party may terminate this Agreement immediately if the other party commits a material breach (not remedied within 30 days) or enters into insolvency/liquidation.

11.2 The Franchisee may terminate at any time upon giving **thirty (30) days** written notice to the Supplier.

11.3 This Agreement shall automatically terminate if:

- The Framework Agreement ceases to have effect; or
- The Franchisee ceases to be a SUBWAY® franchisee.

## **12. CONSEQUENCES OF TERMINATION**

12.1 Upon termination, the Supplier shall cease providing Services and refund any unused part of Fees paid annually in advance.

12.2 The Franchisee shall immediately cease all use of and (unless instructed otherwise) return all materials provided by the Supplier at the Franchisee's expense.

## **13. GENERAL**

13.1 **Force Majeure:** Neither party is liable for delays caused by circumstances beyond their reasonable control.

13.2 **Notices:** Notices must be in writing and sent to the addresses listed at the start of this Agreement.

13.3 **Severability:** If any provision is held unenforceable, the remaining terms shall remain valid.

13.4 **Governing Law:** This Agreement is governed by the laws of **England and Wales**.

## Appendix 1: Fees

### PART A – PRICE AND PAYMENT

<b>Service (Music &amp; Marketing Channels)</b>	<b>Alternate Licensed Music (Annual)</b>	<b>Licensed Music (Annual)</b>
<b>1. United Kingdom</b>	£162.00	£194.88
<b>2. Republic of Ireland</b>	€192.51	€231.59
<b>3. Germany</b>	€192.51	€231.59
<b>4. Netherlands, Sweden &amp; Finland</b>	€ Nil (Funded by IPC)	€231.59