

THIS AGREEMENT is made the day of 2020 BETWEEN:

- (1) **PRE-CLEARED LTD T/A CLICKNCLEAR** whose registered office is at International House, 24 Holborn Viaduct, London, United Kingdom, EC1A 2BN and whose registered company number is 10350620 (“ClicknClear”); and
- (2) **[INSERT NAME OF MUSIC PRODUCER]** whose registered office is **[INSERT ADDRESS]** and whose registered company number is **[INSERT COMPANY NUMBER]** (“Music Producer”)

RECITALS

- (A) ClicknClear operates an online music platform that delivers sound recordings and licenses fully-cleared Pre-Made Mixes using fully cleared compositions and sound recordings to end users for those end users to use the same to create a soundtrack to accompany various live sports routines and performances;
- (B) Music Producer is a music producer who has created or intends to create Pre-Made Mixes intended for subsequent licensing via ClicknClear for use with live sports routines and performances using only tracks for which the adaption rights have been licensed via ClicknClear under this Agreement, and wishes to make such Pre-Made Mixes available to ClicknClear on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1 Definitions

1.1 In this Agreement the following terms shall have the following meanings:

“Agreement”	this agreement and all documents which are to be made a part of this agreement in accordance with Clause 11.1 or are incorporated into this agreement by express reference in this agreement (such documents being part of this agreement to the extent so referenced);
“Compositions”	ClicknClear’s selected catalogue of compositions (including without limitation all music, lyrics, libretti, musical scores, interpolations collections and compilations of all musical works) made available for license by ClicknClear during the Term;
“Effective Date	the date on which the Term shall commence being the date of this agreement;
“Delivery Materials”	the materials, information and data more particularly described at Clause 4;
“Devices”	any type of electronic device capable of connecting directly to ClicknClear’s online service via the internet using a fixed line, wi-fi and/or cellular data connection, including without limitation devices with desktop, notebook, ultrabook, netbook or slider form-factors, portable cellular or WiFi devices, and gaming consoles;
“Downloaded Recording”	Recordings Music Producer has downloaded from ClicknClear’s website in accordance with Clause 2.1 of this Agreement solely as required to make a Pre-made Mix;
“End User(s)”	those persons to whom ClicknClear, or its approved third party partners, grants rights to use Pre-Made Mixes subject to an EUL, which may

include, without limitation, Teams, organisers of events featuring the performances and broadcasters who broadcast footage of said events;

“End User Licence(s)”/“EUL(s)”	licence between ClicknClear and End Users setting out the terms and restrictions under which End Users may use the Pre-Made Mixes for the Permitted Purpose;
“Licensed Use”	the uses set out at Clause 2.2;
“Mix Licence Fee”	the monies payable to the Music Producer as set out in Clause 6.2;
“Music Producer Content”	the combination of wholly owned bespoke created and/or properly licensed (fully paid up) voiceover, effects and simple beats used by Music Producer with the Recordings in the creation of a Pre-Made Mix that is/are unique to each Pre-made Mix and is not to be made available separately from a Pre-Made Mix by Music Producer;
“Party”, “Parties”	the party/ies to this Agreement;
“Performance”	a performance sports or performing arts performance (including but not limited to cheerleading, gymnastics, dance, figure skating, dressage, marching band) that may incorporate a Routine and is performed to a Pre-made Mix, including but not limited to such forming part of, or as preparation for, a competition.
“Permitted Purpose”	the Licensed Use and rights granted to End Users as set out in and which will be incorporated into the EUL;
“Pre-Made Mix(es)”	the combination(s) of Recording(s) embodying the Compositions and Music Producer Content, made subject to this Agreement by Music Producer, specifically in order to accompany one or more Performance(s);
“Prohibited Activities”	any one or more of the following activities: facilitating and/or promoting illegal activity; depicting sexually explicit images; promoting violence and/or discrimination; incorporating any materials that infringe or assist others to infringe on any third party rights, including intellectual property, name and likeness, and/or privacy rights; engaging in the endorsement of political positions, political candidates or religious causes; engaging in the sale or advertisement of pornography, tobacco and other nicotine, smoking or vaping products, firearms or personal hygiene products (including sexual or reproductive health products, but excluding soaps, shampoos, perfumes, lotions and toothpastes); using the Works in any manner intended to defame, damage goodwill or be inconsistent with the image and reputation of the Copyright owners of the Works or us; or engaging in any other activity which we deem in our reasonable discretion to be Prohibited.
“Recordings”	the original sound recordings that embody, in whole or part, the Compositions made available by ClicknClear to Music Producer hereunder;
“Refunds”	any refunds, returns, credits and chargebacks for consumer mischarges, including returns actually provided for any reason and fraud;
“Routine”	a sequence of actions and/or movements carried out for the purpose

of performance sports and / or performing arts by a team or individual who is an End User by being a party to an EUL relating to the Pre-Made Mix;

“Team”	The sports team, athlete or performer(s) carrying out the Performance (including applicable coaching staff if any);
“Term”	The Initial Period plus Additional Periods (if any);
“Territory”	Worldwide;
“Videos”	audio-visual recordings reproducing Pre-Made Mix(es) in conjunction and synchronisation with visual material created and/or produced by End Users.

2 Grant of Rights

2.1 Subject to the conditions precedent that:

- (a) each and every recording other than Music Producer Content used by Music Producer in a Pre-Made Mix is a Downloaded Recording;
- (b) no recordings except Downloaded Recordings and Music Producer Content may be used in a Pre-Made Mix;
- (c) Music Producer shall promptly and permanently delete each Downloaded Recording from all Devices under its control and provide confirmation to ClicknClear of such upon the earlier of i) 6 weeks after the date of download of each such Downloaded Recording whether or not it has been included in a Premade-Mix, and ii) immediately upon receipt of notice from ClicknClear to delete such Downloaded Recording.
- (d) Music Producer acknowledges and agrees that ClicknClear will only make Pre-made Mixes available for license in the set of countries to which ClicknClear has rights to all of the constituent Recordings and Compositions;

ClicknClear hereby grants to Music Producer a free non-exclusive license during the Term and in the Territory to download and use Downloaded Recordings as required for the following actions:

- (e) the making of a Pre-made Mix for the purpose of accompanying a Routine, which may include the Recordings (and thereby the underlying Compositions):

being edited/trimmed, tempo shifted, pitch shifted, having voice over and/or sound effects added (filters, noise, flanger, phaser, beats and pre-recorded sounds) being combined and mixed with other tracks subject to the Recordings (and thereby the underlying Compositions):

i) not undergoing a material creative re-interpretation and/or the fundamental character of the music and/or lyrics of the Compositions not being altered, and;

ii) not being used in the context of Prohibited Activities.

2.2 Music Producer hereby grants to ClicknClear an exclusive licence during the Term and in the Territory to use, and permit or authorise, by way of an EUL, ClicknClear’s End Users to use the Music Producer Content in each applicable Pre-Made Mix as required for the following actions:

- (a) the making of copies of the Pre-Made Mix in any digital or physical media, and distribution of said copies to members of the Team solely for training purposes related to a Performance;
- (b)
 - (i) the carrying out by a Team of a Routine and / or Performance set to the Music Producer Content and / or Pre-made Mix;
 - (ii) the incorporation of the Routine and / or Performance and the accompanying Music Producer Content and / or Pre-made Mix into a Video, and
 - (iii) the non-commercial making available of said Video on the websites of End Users, and on social media and user-upload platforms such as, but not limited to YouTube, Facebook, Vimeo, Twitter, Instagram, Pinterest, WeChat, WhatsApp, SnapChat;
- (c)
 - (i) the making of copies of said Video in any digital or physical media and/or or electronic file format, and distribution of said copies directly by End Users;
 - (ii) the non-commercial making available, for demonstration purposes only, of Pre-Made Mixes in audio-only form on ClicknClear's website;
 - (iii) the broadcasting or other communication to the public of a television or online programme (including without limitation video on demand services) incorporating the Pre-Made Mix as part of coverage of events incorporating the Performances, either directly by event producer End Users or using the services of a third party working on their behalf;
 - (iv) the live streaming to the public of an event incorporating one or more Pre-made Mixes as part of the Performances, either by event producer End Users directly or using the services of a third party working on their behalf.
- (d) any other use of a Pre-Made Mix in relation to a Performance which is not included in uses set out in (a)-(c) above (including but not limited to use of the Pre-Made Mix and Performance in a documentary or feature film relating to Performances).

2.3 Music Producer grants to ClicknClear an exclusive licence during the Term in the Territory and solely for the Permitted Purpose to

- (a) make the Music Producer Content (as embodied in a Pre-Made Mix) available to End Users via ClicknClear's website at www.clicknclear.com and sub-domains and via the distribution channels of ClicknClear and/or ClicknClear's sub-licensees;
- (b) use all metadata and biographical and other information and data (if any) pertaining to the Music Producer Content;
- (c) use the Pre-made Mix(es) to promote the features of ClicknClear's website and service;

2.4 ClicknClear shall be entitled to grant licenses to the Music Producer Content (as embodied in a Pre-Made Mix) in the Territory via EULs for the full life of copyright in End Users' Mixes and Videos.

2.5 The Music Producer shall not seek to use a Digital Millennium Copyright Act or any other form of take down process against any Pre-made Mixes and/or Video made available pursuant to a valid EUL.

- 2.6 Music Producer warrants that it has, prior to the date of this Agreement, all necessary rights to any pre-existing element of Music Producer Content at the date of this Agreement, and undertakes to immediately notify ClicknClear via its account on www.clicknclear.com to take down any Pre-Made Mix that contains any element of Music Producer Content that is pre-existing or created or acquired by Music Producer and used in a Pre-Made Mix during the Term that is or for any reason becomes excluded from the licence granted to ClicknClear hereunder.

3 **Term**

- 3.1 Subject to the earlier termination or expiry of this Agreement on the terms set out herein, the Term shall commence on the Effective Date and continue for an initial period of three (3) years (“**Initial Period**”).
- 3.2 Thereafter the Term shall continue for successive one (1) year periods (“**Additional Periods**”) unless or and until terminated by either party giving not less than 90 days prior written notice to the other, such notice period to expire at the end of the Initial Period or Additional Period in which it is served.

4 **Delivery Materials**

- 4.1 As soon as reasonably possible after the Effective Date, Music Producer shall deliver to ClicknClear the following via its account on www.clicknclear.com:
- (a) the recording(s) of the Pre-Made Mix(es) embodying the Music Producer Content and Downloaded Recordings (and the Compositions embodied therein) that Music Producer creates under this Agreement in MP3 format (or any additional format as the parties may subsequently agree in writing);
 - (b) the list of Downloaded Recordings used in each Pre-Made Mix;
 - (c) a unique title and Music Producer Content Fee for each Pre-Made Mix; and
 - (d) all metadata and biographical and other data relating to the Pre-made Mixes (if any) as reasonably determined by Music Producer from time to time as will assist:
 - (i) the search functions of ClicknClear’s platform, and
 - (ii) ClicknClear in discharging its accounting and payment obligations to Music Producer.

5 **Warranties**

- 5.1 Music Producer hereby warrants, represents and undertakes that:
- (a) it has obtained any all consents, clearances, permissions, and licenses from all persons who have made contributions to the Music Producer Content (and paid all necessary fees) that the Music Producer Content is to be considered “fully cleared” such that Music Producer has full unfettered rights (under fully paid up license if applicable) to grant the rights and enter into this Agreement including without limitation to allow ClicknClear to sub-licence all rights to End Users for the Permitted Purpose;
 - (b) the authorised use of the Music Producer Content by ClicknClear and/or End Users will not infringe any third party rights;
 - (c) each Recording and / or Composition used in a Pre-Made Mix is and will remain an unencumbered and original copyright work and/or arrangement of a Composition or public domain work;

- (d) Music Producer Content will not be defamatory or criminally obscene and will not infringe the copyright or other rights of any third party;
- (e) there is no suit, claim, action or other legal or administrative proceeding now pending or threatened which involves the Music Producer Content any persons or entities who in any way contributed to the creation of Music Producer Content and which might in any way act to impair or deprive ClicknClear of any of the rights in this Agreement granted; and
- (f) all consents of any third party who has an interest in the Music Producer Content has been duly obtained and, if required by ClicknClear in writing, Music Producer shall deliver copies thereof to ClicknClear;
- (g) Music Producer is fully responsible and liable for paying any and all royalties and/or fees that may arise to any individual performer(s), licensor, guild or union from the exploitation of the Music Producer Content further to this Agreement; and
- (h) the payment by ClicknClear of the Mix License Fee is the full and final extent of any and all payments by ClicknClear to any party that may arise from the exploitation of the Music Producer Content in the Pre-Made Mix(es) further to this Agreement.
- (i) the performance of Music Producers obligations and warranties hereunder and the rights and licenses assigned to ClicknClear hereunder are of a unique, unusual, extraordinary and intellectual character which gives them a special value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, that a material breach by Music Producer of this Agreement will cause ClicknClear great and irreparable injury and damage and, therefore, that ClicknClear will be entitled to injunctive relief to prevent such injury or damage. Music Producer agrees that in the event of any breach of this Agreement by ClicknClear it will be entitled, at its option, to sue for damages which it hereby agrees and acknowledges shall be an adequate and appropriate remedy and it agrees it will not seek injunctive relief and/or to enjoin or restrain the promotion, advertising, licensing, distribution, publication, development, production or exploitation of any ClicknClear product by or on behalf of ClicknClear or its licensors, whether such product uses any Music Producer Content or not, anywhere in the world.

Music Producer hereby fully indemnifies ClicknClear from any breach by Music Producer of its representations, warranties, and undertakings under this Agreement.

5.2 ClicknClear hereby warrants, represents and undertakes that:

- (a) ClicknClear shall have sole responsibility for obtaining any licence or permission necessary in respect of the sound recording copyright or related rights in any Recordings and related Compositions for the Permitted Purposes;
- (b) it shall require all End Users to enter into a valid EUL prior to any Pre-Made Mix(es) being made available or licensed to End Users;
- (c) it will procure that where Pre-Made Mixes are made available through its approved partners' distribution channels, End Users will enter into that approved partner's standard End User licence agreement which shall provide equivalent protections and other provisions to those contained in the standard form EUL from time to time utilised by ClicknClear.

6 **Payments and accounting**

6.1 In consideration of the rights licensed to ClicknClear further to this Agreement, ClicknClear shall pay the Mix License Fee to Music Producer arising from the exploitation hereunder of any Music Producer Content embodied in a Pre-Made Mix that is still in copyright in the place of use, on the terms set out below.

- 6.2 The Mix Licence Fee shall be calculated as follows:
- (a) All amounts actually received by ClicknClear under a transaction related to a Pre-Made Mix pursuant to a EUL less Refunds shall constitute Gross Receipts;
 - (b) VAT or other applicable sales tax of any kind or origin that may apply to the transaction under the EUL, and any payment processing fees that may apply to the transaction, shall be deducted from Gross Receipts to constitute Net Receipts;
 - (c) 100% of any and all fees related to licensing of Compositions and Recordings that may apply to the transaction under the EUL shall be deducted from Net Receipts to constitute Net Music Producer Content Receipts;
 - (d) ClicknClear shall retain a commission of 30% of Net Music Producer Content Receipts, and after deduction of this amount (together with any VAT or other applicable sales tax of any kind or origin that may apply to such commission) the remaining funds shall constitute the Mix License Fee;
- 6.3 The Mix Licence Fee shall be paid to the Music Producer net of any withholding tax which may apply.
- 6.4 ClicknClear makes no representation or warranty as to the level of commercial success of the Pre-made Mixes it exploits under this Agreement.
- 6.5 ClicknClear shall account to Music Producer on a calendar quarterly basis in \$US dollars ("USD"). Within 90 (ninety) days of the end of each calendar quarter ClicknClear shall account to Music Producer for all exploitation made of Pre-Made Mixes further to this Agreement, providing such information as is necessary to demonstrate the calculation of the Mix Licence Fee under this Agreement and shall account to and pay the Mix Licence Fee to Music Producer. ClicknClear is entitled to require submission of a valid invoice from Music Producer for the Mix Licence Fee prior to accounting to Music Producer. Where ClicknClear receives funds in currencies other than USD the exchange rate used for each non-USD currency per calendar quarter will be the interbank rate as reported on OANDA.com (or other mutually agreed website should OANDA.com be unavailable) for the middle of the calendar quarter being reported. Where the middle of the calendar quarter is not a business day, such rate on ClicknClear's last business day before the middle of the calendar month being reported will be used.
- 6.6 ClicknClear shall not be obligated to pay the Mix Licence Fee if the accrued Mix Licence Fee is less than fifty US dollars (\$50.00) but shall carry forward any such earnings until such time as the Mix Licence Fee due to Music Producer hereunder exceeds fifty US dollars (\$50.00) in aggregate.
- 6.7 Once in each year upon giving no less than thirty (30) days prior written notice to ClicknClear, Music Producer may, at Music Producer's own costs, inspect (but not take copies of) ClicknClear's books and records of all transactions and EULs entered into by ClicknClear that include the Pre-Made Mix(es). In the event of there being any agreed underpayment, ClicknClear shall pay the amount thereof with its next quarterly statement to Music Producer. Each statement issued by ClicknClear shall be deemed final, agreed and binding on Music Producer unless challenged in writing by Music Producer within two (2) years of date it is received by Music Producer. Music Producer shall keep confidential all information made available to Music Producer in the course of such inspection.

7 Credits

Music Producer accepts that no credits will be required of End Users.

8 Take Down Notices

- 8.1 During the Term and on giving ClicknClear reasonable written notice, Music Producer may require ClicknClear to remove or take-down a Pre-Made Mix from offer to End Users (“**Take-down Notice**”). ClicknClear shall use reasonable commercial efforts to comply with such notice within 2 (two) working days from the time it receives such Take-down Notice to comply with such notice, save that any inadvertent failure to do so shall not be deemed a breach of this Agreement provided Music Producer notifies ClicknClear in writing of such failure and ClicknClear remedies such failure with three (3) working days of receipt of such further notice.
- 8.2 Notwithstanding Clause 8.1:
- (a) all EULs granted prior to the receipt of the Take-down Notice shall be permitted to run until the end of their respective terms;
 - (b) ClicknClear shall have thirty (30) days from the date of its receipt of a Take-down Notice to:
 - (i) remove Pre-Made Mixes from its distribution channels;
 - (ii) review pending EUL requests for the Pre-Made Mixes, which shall be notified to Music Producer and which may be completed by ClicknClear on the terms of this Agreement unless otherwise specifically notified to the contrary by Music Producer; and/or
 - (c) failure by Music Producer to notify ClicknClear that a Pre-Made Mix is no longer available to be licensed to End Users shall fully and completely absolve ClicknClear for all liability arising as a consequence and in respect of which Music Producer shall fully and completely indemnify ClicknClear.
 - (d) ClicknClear may decide in its absolute sole discretion to take down from offer to End Users and from its distribution channels any and all Pre-Made Mixes that are the subject of the Agreement.
- 8.3 In the event of any transfer of ownership or control by licence or otherwise of any Music Producer Content, Music Producer shall notify, or procure the notification to, those acquiring rights in such Music Producer Content that ClicknClear has been licensed to grant EULs in and to such Pre-Made Mixes and that no such change of control will derogate from or vitiate rights so granted by ClicknClear pursuant to the provisions of this Agreement.
- 8.4 At any time during Term, Music Producer may give written notice to ClicknClear of use(s) made by an End User of Pre-Made Mixes incorporating Music Producer Content that Music Producer determines to be in breach of the EUL or otherwise in breach of any rights held by the Music Producer. After receiving such notification ClicknClear shall promptly take such steps as it reasonably may to investigate the matters of which Music Producer complains and, where possible, ClicknClear shall serve on such End User a takedown notice and/or take such other steps as it can to procure a cessation of such use(s).
- 8.5 Nothing shall oblige or require ClicknClear to initiate litigation or take any steps in preparation for litigation against any non-compliant End User.
- 8.6 Notwithstanding the foregoing, and irrespective of ClicknClear’s efforts, Music Producer may take such steps as it may in its absolute discretion and at its sole cost and expense determine to procure the cessation of any unauthorised use of a Pre-Made Mix embodying Music Producer Content.

9 **Termination**

- 9.1 Either Party may serve a notice to terminate this Agreement in the following circumstances:
- (a) if the other Party breaches this Agreement and such breach (if capable of remedy) has not been remedied within thirty (30) days written notice thereof from the terminating Party; or

- (b) if the other Party is unable to pay its debts generally as they fall due (within the meaning of Section 123 of The Insolvency Act 1986) or becomes insolvent or files any petition or action for relief under any bankruptcy, re-organisation, insolvency or moratorium law; or
- (c) an application is made for an administration order in respect of the other party; or
- (d) a petition is presented or a resolution passed for the winding-up of the other Party or proceedings are started for the appointment of a receiver, trustee or similar officer of all or any part of the other party's assets; or
- (e) any event occurs which is analogous to any of the foregoing in the territory in which it occurs.

9.2 Termination shall not affect the validity of any EUL in force at the date of termination.

10 **Confidentiality**

10.1 Each of the parties undertakes to the other to keep confidential at all times any information of the other party that is (i) marked as confidential or otherwise expressly designated as such; or (ii) which by its nature or the circumstances of disclosure the recipient ought reasonably to conclude was confidential, and to use such information only for the purposes of this Agreement.

10.2 The obligation in Clause 10.1 shall not apply to the extent that (i) information, in the form that it is supplied by one party to the other, is or becomes public knowledge (otherwise than as a result of any breach of confidentiality); (ii) disclosure is compelled by law or by a competent judicial or regulatory body.

11 **Miscellaneous**

11.1 This Agreement constitutes 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 its subject matter. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

11.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

11.3 No failure on the part of either party to exercise or to enforce any right given to it by this Agreement or at law or any custom or practice of the parties at variance with the terms of this Agreement shall constitute a waiver of either of the parties' respective rights under this Agreement or operate so as to prevent the exercise or enforcement of any such right at any time.

11.4 Music Producer agrees that ClicknClear may publicly identify the Music Producer as a licensor whose Pre-Made Mixes are available for licensing via ClicknClear for the Permitted Purpose and may identify the Music Producer for the purpose of marketing and publicising ClicknClear's services, including use of Music Producer's brand name and/or logo on a list of customers on ClicknClear's website and reasonable marketing material.

11.5 All sums due under this Agreement are exclusive of any applicable Value Added Tax or other sales tax and ClicknClear shall pay any applicable Value Added Tax or other sales tax with the relevant sum at the rate and in the manner from time to time prescribed by law.

11.6 This Agreement may not be assigned, sub-licensed and/or disposed of by Music Producer, by operation of law or otherwise, without the prior written consent of ClicknClear.

- 11.7 Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it, and the parties to this Agreement may terminate or vary any of the terms without the consent of any third party.
- 11.8 The Parties shall keep this Agreement and its terms confidential and shall not disclose the same to any person other than their professional advisers or as required by law.
- 11.9 Any notice under this Agreement shall be written and delivered by hand, or sent by prepaid first class (air mail if posted to another country) post to the Party at its address above (or as otherwise notified in writing) with an emailed copy of each notice from Licensor simultaneously sent to notice@clicknclear.com and shall be deemed to have been served immediately if hand delivered during business hours (or otherwise when the next business day starts) or, if posted, on the second business day after the date of posting (the fifth if posted to another country).
- 11.10 This Agreement shall be construed in accordance with the laws of England and the parties agree that any disputes shall be referred to the jurisdiction of the courts of England.

AS WITNESS the signatures of the duly authorised representatives of the parties.

FOR AND ON BEHALF OF PRE-CLEARED LIMITED T/A CLICKNCLEAR:

Signed _____

Print name _____

Title _____

FOR AND ON BEHALF OF [*INSERT MUSIC PRODUCER'S FULL LEGAL ENTITY NAME*]

Signed _____

Print name _____

Title _____

[Neither an offer nor an agreement until signed by both parties.]