General Terms and Conditions

PlayFilms Australia 16 October 2018

1. APPLICABILITY AND CHANGES

These General Terms and Conditions and the Specific Terms and Conditions (the 'General and Specific Terms and Conditions'), as well as the copyright policy and the privacy policy, apply to all agreements between us, as the Provider (the 'Provider', 'we', 'us' or 'our' – see the Specific Terms and Conditions for our details) and you, as the 'Buyer' of the Services that we supply. 'Services' refers to the supply of PlayFilms, an online portal that allows you access to e-books, movies, music, music documentaries and fitness ('Digital Content'), on your smart phone, tablet, desktop and/or laptop ('Digital Devices') the (mobile) internet, this website or a wapsite (the 'Sites') and/or via any other method of delivery of digital content, unless otherwise agreed in writing.

The General and Specific Terms and Conditions, as well as the copyright policy and the privacy policy, also apply to the use of the Sites.

Using the sites and/or registering for (one of) the services and/or accepting the digital content and/or (one of) the services constitutes acceptance of the general and specific terms and conditions, as well as the copyright policy and the privacy policy, and you acknowledge and confirm that you have read these and are bound by them.

The Provider has the right at all times to vary or supplement the General and Specific Terms and Conditions. Any material changes (such as changes to our fees or the nature of the Services) will be notified to you via an email. All other changes will be posted on the website.

2. DESCRIPTION OF THE SERVICES

The Provider grants you access to the Services, which allows you to access the Digital Content. The Services may also include access to the digital content and services of independent third parties. Please see the Specific Terms and Conditions for the details of your Service.

Please note that the fees shall become due regardless of whether or not you actually stream the Digital Content; the fees are charged for the right to stream the Digital Content.

The General and Specific Terms and Conditions, the copyright policy and the privacy policy also apply to any expansion or improvement of the current Service(s). The Provider may temporarily or permanently change or discontinue the Service(s) (or a part thereof) at any time upon providing you with reasonable notice or, in the case of an emergency or for reasons outside our control or if we have reason to believe you are in serious breach, without notice.

The Provider's liability for any losses incurred by the Buyer or by any third party as a result of any such suspension or discontinuation is limited to the amount of the fees the Buyer has paid to us for the applicable Service(s).

3. ACCESS TO THE SERVICES, AVAILABILITY AND AGE RESTRICTION; YOUR RESPONSIBILITIES

1. In order to be able to make use of the Service(s), you must:
    1. At least have reached the age referred to in the Specific Terms and Conditions
    2. If someone else makes the payments for the Services delivered to you (the authorised bill payer), you must have his/her permission for the purchase and use of the Services and for making the payments for the Services, and you must ensure that he/she reads and accepts these General and Specific Terms and Conditions, the copyright policy and the privacy policy in giving such permission.

2. The Service(s) is/are provided 'as is' and 'as available' at the time of use or consumption without any representation or endorsement and (to the extent permitted by law) without warranty of any kind, whether express or implied.
3. In order to be able to make use of the Services:

    1. You need a Digital Device which features an internet browser. Certain Digital Content is only available for a select number of Digital Devices and internet browsers. This is a matter for the producers of Digital Devices and internet browsers and therefore lies beyond the Provider's sphere of risk. In order to avoid disappointment, before registering for the Services, you are requested to check the compatibility of your Digital Device (including the internet browser installed on such Digital Device) for these Services in clause 4.2 of the Specific Terms
    2. You must make sure that the settings, such as the internet settings of your Digital Device, are correct. In order to avoid disappointment, before registering for (one of) the Services, you are requested to check that the settings of your Digital Device are suitable for these Services.
    3. You must have a valid PayPal account via which you will be charged for the Services.
    4. You must have access to the internet via you Digital Device.

Please note that you will be charged for use of the services as set out in the specific terms and conditions. Additional charges from your network provider may apply for access to a (mobile) communication network, a working internet connection or for creating the right settings in order to be able to make use of the services.

4. The Provider is not responsible and accepts no liability whatsoever if you are not able to make (full) use of the Services and/or Digital Content or do not receive (email) messages from us or do not receive messages as a result of your failure to comply with the provisions of clause 3 above or as a result of your deletion or failure to save the Digital Content or (email) messages that you receive from us (in time) or as a result of the fact that your (email) inbox or memory device is full.

5. You are responsible for ensuring that your equipment and/or software does not disrupt or prevent the Services of the Provider. Equipment or software that causes disruptions will be immediately disconnected from the Services and in such cases the Provider has the right to terminate or suspend the Services with immediate effect. If a change in your equipment or software is required for an upgrade or for the Services, you must make that

change at your own expense.

4. PAYMENT FOR THE SERVICES

In order to buy the Services, you must pay a fee in accordance with the Provider's current rates via your PayPal account.

It is possible that your (mobile) network provider will charge costs for sending or receiving (email) messages or Digital Content to or from us, in addition to the monthly fees that we charge. Please check this with your (mobile) network provider.

The applicable monthly fee for the Service, including the payment frequency, are set out in the relevant Specific Terms and Conditions. All fees, including fees for existing subscriptions, are subject to change upon notice from the Provider. The Provider will provide you with reasonable notice of such changes. If you do not accept the new fees (which will never be applied retrospectively), you may cancel your contract with us with immediate effect.

In the event of invoicing by a third party (such as PayPal), the payment terms of that third party will apply.

5. CODE OF CONDUCT FOR THE USE OF THE SERVICES

You agree to use the Services in compliance with the following code of conduct:

1. You will keep all information provided to you via the Service private and confidential and will not disclose that information to anyone without the written permission of the Provider or the person that provided you with the information;
2. You will not use the Services to engage in any form of harassment or offensive behaviour, including but not limited to the posting of communications , photographs or recordings which contain defamatory, libellous, crude, abusive or scandalous statements, or racist, pornographic, obscene or offensive language or images;
3. You will not use the Services to infringe the privacy rights, property rights or any other rights of the Provider or of any person;
4. You will not post messages, photographs or recordings or use the Services in a manner that infringes, plagiarises or breaches the rights of the Provider or of any third party, including but not limited to any copyright, or privacy or other personal or proprietary right or that is fraudulent or otherwise unlawful or that violates the law or public morality;
5. You will not use the Services to promote charities, advertising or goods or services;
6. You will not in any way post or pass on contact information through your publicly posted information, including but not limited to telephone numbers, postal addresses, e-mail addresses, websites or full names;
7. You will not reproduce, copy, sell, resell or use the Services, in whole or in part;
8. You will not use the Services for commercial purposes;
9. You will not use the Services to send unsolicited e-mail messages, including but not limited to mass commercial advertising or informative notices ('Spam'). Furthermore, you will not use the Services to (a) send e-mail messages that are excessive and/or are intended to harass or trouble other persons, (b) continue sending e-mail messages to the Provider or a recipient who has stated that he/she does not wish to receive these, (c) send e-mail with deceptive or misleading header information, (d) send malicious e-mail, including but not limited to 'mail bombing', or (e) send or receive e-mail messages in a manner that breaches the terms of use of an internet service provider.

The Provider reserves the right, at its reasonable discretion, to suspend or terminate your subscription, and/or to terminate the relationship with you and/or to deny you the use of the Services or a part thereof, now or in the future, without owing you any compensation in that regard, for any breach of the above provisions.

6. OBLIGATION TO REGISTER FOR THE SERVICES

In order to ensure safe use of the Services as well as payment of the applicable fees, you guarantee that the personal information provided in the registration form (hereinafter referred to as 'the Registered Information') is correct and complete. If the Provider, at its reasonable discretion, believes that the Registered Information is not correct or is incomplete, the Provider has the right to suspend or cancel your subscription and/or to terminate the relationship with you and/or to deny you the use of the Services, or a part thereof, now or in the future, without owing you any compensation in that regard.

You are responsible for maintaining the confidentiality of any password and/or other information issued to you by the Provider and you are fully liable for all actions performed with the use of your password or this other information. You undertake to close your visit to the Sites at the end of each session (by closing your browser) and to contact the Provider if you observe or suspect unauthorised use of your password or account with the Provider, or that the security or protection of the Registered Information is no longer guaranteed for any other reason. The Provider may grant you access to certain Services without you being registered as a user, such as the sign-up page / link for the Services via your mobile telephone. In each of those cases, your identification is based on the identification method that we deem appropriate, such as confirming the number of your mobile telephone.

7. COMPETITIONS AND AVAILABILITY OF PRIZES

If prizes can be won as part of the Services, you must be registered with the Provider in compliance with Article 6 of these General Terms and Conditions in order to be able to receive the prizes. Where the Services(s) include a skill competition the Provider's Game Terms and Conditions will apply and can be viewed on the Sites. The information provided must be correct and complete in order to be able to claim the prize.

8. PRIVACY POLICY AND DATA PROCESSING

The Provider attaches great importance to the privacy of its users. For that reason, we have established a separate privacy policy which forms an integral part of the Provider's General and Specific Terms and Conditions. You acknowledge that the Provider may collect and process 'personal information', 'financial information' or 'demographic and user information' ('the Information') in connection with the Services. We may pass on the Information to your (mobile) network provider and/or gateway services provider for the collection of fees that you owe and such Information collected by the Provider may be stored and processed in the country where the Provider or its representatives possess certain facilities. By making use of the Services, you consent to such a transfer of Information outside your country. By making use of the Provider's Services, you agree to this privacy policy, the copyright policy and the General and Specific Terms and Conditions. If you cannot agree to these, you should not make use of our Services. We reserve the right to vary, supplement or limit this privacy policy, the copyright policy and the General and Specific Terms and Conditions at any time. Any material changes to the privacy policy will be notified to you via a free text message. All other changes will either be posted on the app or on the website, as appropriate.

9. INDEMNIFICATION

You agree to indemnify, defend and hold harmless the Provider and its holding companies, members, subsidiaries, affiliated companies, service providers, contractors, agents, representatives, licensors, managers, officers, directors, shareholders and employees in connection with any claim, lawsuit, action, demand or other proceeding filed by a third party caused by, as a result of or in connection with your (i) use of the Services, the Digital Content, the Software and the Sites, including but not limited to your streaming from the Sites and/or Digital Content, (ii) infringement of these General and Specific Terms and Conditions or (iii) breaches of any law, regulation or the rights of any third party. You shall pay any and all costs, damages and expenses, including but not limited to the reasonable legal fees incurred and the costs charged to or otherwise incurred by the Provider in connection with or arising from such a claim, lawsuit, action, demand or other proceeding.

10. USE, STORAGE, MONITORING AND DELETION OF INFORMATION

We reserve the right to monitor all advertising messages, text messages, public announcements and messages in order to ensure that these comply with the guidelines that apply at any particular time. Although we do not (and are not able to) review every message sent by the users of the Services and are not responsible for the content of those messages, we reserve the right, but are not required to delete or move content, including but not limited to profiles, public announcements and (text) messages that we, at our own discretion, regard as contrary to these General and Specific Terms and Conditions or other applicable guidelines, or as unacceptable in other ways. You shall remain solely responsible for the content of profiles, public announcements and (text) messages that you store via the Services, or send to the users of the Services. If you think that an advertising message, text message or a public announcement on the Sites breaches your copyright, please read the copyright policy. All text messages may be screened and content of an explicit pornographic character will be deleted. Users who conduct themselves inappropriately will be removed from the Sites. The Provider has the right to terminate/cancel subscriptions and/or accounts that have not been active for a considerable time. The Provider is not liable or responsible if information provided or sent via the Services is not saved or is removed in error.

11. TERMINATION

The Provider offers users the possibility of discontinuing the Services. We provide you with information on this in the Specific Terms and Conditions, on the web pages belonging to the Services, in the Services themselves and/or via our (email) messages. The free registration message from the Provider (if applicable) also contains information on how to cancel the Services. For further details, see the Specific Terms and Conditions. You can also send an email to the address provided in the Specific Terms and Conditions or call the number, cited in the Specific Terms and Conditions. In that case, the cancellation will take effect within 48 hours after receipt of the request for termination.

The Provider may, at its reasonable discretion, interrupt or cancel your subscription and/or delete or deactivate the Registered Information and/or destroy any messages and lists of files (or other information) at any time with immediate effect and without notice if we have reason to believe you are in serious breach. The Provider reserves the right to refuse access to any further Services.

12. CANCELLATION

Unless otherwise specified in the Specific Terms and Conditions a right of withdrawal, a trial period or a cancellation period does not apply to the services

13. TRANSACTIONS WITH ADVERTISERS AND/OR SPONSORS

We may use advertisers and sponsors in order to reduce the costs of our Services for you. As a condition for the use of our

Services, you agree that we may post advertising and other promotions on our Sites and/or in our Services and may send advertising and promotions via email or by other means in connection with our Services. You also agree not to attempt to block such advertising and promotions or to hinder it in any other way. The posting of advertising or promotions on our Sites does not constitute any endorsement by the Provider of such content, service product or company. We aim to ensure that the advertising and promotions are appropriate for our users. You have the right at all times to request us not to contact you via direct marketing (any longer). The Provider shall not be a party to, or in any way responsible for any transaction relating to products or services made available by the said third parties, or for the content or information provided in connection with third party products or services. You agree to the fact that the Provider is not liable for damages of any kind resulting from such transactions.

14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

You are aware and agree that the content and software used in connection with the Services, hereinafter to be referred to as 'the Software', contain confidential information that is protected by valid and applicable intellectual property rights.

Except as otherwise set forth herein, all right, title and interest in and to any Intellectual Property Rights (as defined below), proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Services, or in the promotion of the Services, are owned by Provider or its licensors, and you agree to make no claim of interest in or ownership of any such Intellectual Property Rights. You acknowledge that no title to the Intellectual Property Rights is transferred to you, and that you do not obtain any rights, express or implied, in the Service, other than the rights expressly granted in these General and Specific Terms and Conditions.

'**Intellectual Property Rights**' means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide.

Provider hereby grants you, and you hereby accept, a personal, limited, non-transferable, non-exclusive, revocable and non-assignable license and permission to install the Software and download the content, to use the working code of its Software to use the Service on a designated compatible Digital Device solely for your own personal non-commercial use and to use the Software and the Sites solely in accordance with these General and Specific Terms and Conditions.

You may not copy, alter or amend any Software, source codes or content, reproduce, modify, perform, transfer, distribute, sell, resell, create a derived product or content from those, reverse engineer or reverse assembly those, or otherwise attempt to find a source code (nor allow third parties to do so), use or make available the Software and content except as expressly provided in these General and Specific Terms and Conditions and provided you do not sell any rights related to the content, the Software and the Intellectual Property Rights, code those, issue sub-licences for those, encumber those with security rights or otherwise transfer those.

You guarantee that you will only use the interface provided by the Provider in order to access the Services. Provider herewith grants permission to make only one copy of the Information on the equipment you use for gaining access to the Services and to use and display the copy of the Registered Information made on that equipment for private purposes.

15. EXCLUSION OF LIABILITY / NO WARRANTY

The provider makes no warranty that the sites/services will meet your requirements, that digital content will be accurate or reliable, that the functionality of the sites/services will be uninterrupted or error free, that defects will be corrected or that the sites/services are free of viruses or anything else which may be harmful or destructive.

Under no circumstances shall the provider, (including its officers, employees and agents) be liable to you or any third party for any loss or damage caused by your misuse of the services, the digital content, the software or the sites, or your breach of, or total or partial non-performance or inadequate performance of your obligations under these general and specific terms and conditions.

You accept that with regard to the chat services: the services, including the SMS service, are intended solely for entertainment purposes; images of persons shown on television, on the internet and/or on digital devices are intended solely for illustrative purposes. These are not the persons who actually provide the services to you.

16. LIMITATION OF LIABILITY

Nothing in the general and specific terms and conditions, the privacy policy or the copyright policy shall exclude or limit our liability for death or personal injury as a result of our negligence, nor any other liability which cannot be excluded or limited by law.

Nothing in the general and specific terms and conditions, including but not limited to clause 14 above, the privacy policy or the copyright policy, shall affect your statutory rights as a consumer.

To the fullest extent permitted by law, THE PROVIDER (including its officers, employees and agents) expressly excludes conditions, representations, warranties and other terms which might otherwise be implied by statute, common law or the law of equity; and any liability incurred by any user of our site, including, without limitation, any liability for:

1. loss of revenue, income, profits, contracts, business, goodwill, anticipated savings, reputation, data or information;
2. ANY LOSS OR CORRUPTION OF DATA;
3. any other loss or damage of any kind, however arising (including, but not limited to, negligence, breach of contract or otherwise), even if foreseeable whether arising directly or indirectly, including but not limited to any damage to your equipment used in connection with the services.

In any circumstances where the provider (including its officers, employees and agents) is held to be liable to you, this liability shall be limited to the amount paid by you to register for the services, the digital content, the software and the sites.

If any part of these general and specific terms and conditions is found to be illegal, invalid or otherwise enforceable by a court or regulator, then, where required, that part shall be deleted and the remaining parts of the general and specific terms and conditions will continue to be enforceable.

GENERAL INFORMATION

These General and Specific Terms and Conditions replace all previous agreements between you and Provider. If you use additional services, material or software from third parties, additional general terms and conditions of these third parties may be applicable to you. These General Terms and Conditions shall be subject to the exclusive jurisdiction of the courts of England and Wales. The applicable law shall be English law. Disputes will be submitted to final and binding arbitration under the rules of the arbitration association in Australia. Any failure by Provider to exercise or invoke certain rights or stipulations laid down in these

General and Specific Terms and Conditions in no way constitutes a waiver or renunciation of those rights or stipulations. In the event any provision of these General and Specific Terms and Conditions is determined to be invalid or unenforceable by a court of competent jurisdiction or appointed arbitrator, such determination shall in no way affect the validity or enforceability of any other provision herein. The failure by us to exercise rights granted to us hereunder upon the occurrence of any violations set forth in this Agreement shall not constitute a waiver of such rights upon the recurrence of such violation. The section headings appearing in these General and Specific Terms and Conditions are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

The Services are provided by: see the Specific Terms and Conditions for your country.