

"Archival Sound Recordings service" means the service available from <http://www.bl.uk/sounds> providing access to selected recordings held in the British Library Sound Archive for the benefit of teachers, learners and researchers in Higher and Further Education in the United Kingdom.

"Authorised Users" means individuals who are authorised by the Sub-Licensee to access the Sub-Licensee's information services whether on-site or off-site via Secure Authentication and who are affiliated to the Sub-Licensee as a current student (undergraduates and postgraduates), member of staff (whether on a permanent or temporary basis) or contractor of the Sub-Licensee. Persons who are not a current student, member of staff or a contractor of the Sub-Licensee, but who are permitted to access the Sub-Licensee's information services from computer terminals within the physical premises of the Sub-Licensee ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Sub-Licensee. Walk-In Users may not be given means to access the Licensed Works when they are not within the physical premises of the Sub-Licensee.

"Commercial Use" means use of the Licensed Works for the purpose of monetary reward (whether by or for the Sub-Licensee or an Authorised User) including but not limited to by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Works. For the avoidance of doubt, neither the recovery of direct cost by the Sub-Licensee from Authorised Users, nor use by the Sub-Licensee or Authorised Users of the Licensed Works in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.

"Educational Purposes" means for the purpose of education, teaching, distance learning, private study and/or research not for a direct or indirect commercial purpose.

"Intellectual Property Rights" means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

"Licensed Works" means the material licensed to the BL to encode (i.e. to create or cause to create a digital copy both compressed and uncompressed (of any part)) which is licensed in this Sub-Licence.

"Proprietary Works" means published phonograms not yet in the public domain for which Phonographic Performance Limited acts as the collection society, such material forming a sub-set of the Licensed Works.

"Secure Authentication" means access to the Licensed Works by ATHENS authentication, Internet Protocol ("IP") ranges or by another means of authentication agreed between the parties from time to time.

"Secure Network" means a network which is only accessible by Secure Authentication.

"Sub-Licensee" means the sub-licensee whose details are set out in the Acceptance of Sub-Licence Form attached hereto and made a part hereof.

1.2 Headings contained in this Sub-Licence are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. GRANT OF SUB-LICENCE

2.1 The BL agrees to grant to the Sub-Licensee a non-exclusive sub-licence to access and use the Licensed Works and to allow Authorised Users to access and use the

Licensed Works throughout the term of this Sub-Licence by Secure Authentication for Educational Purposes only.

3. USE OF THE LICENSED WORKS

3.1 Throughout the term of this Sub-Licence the Sub-Licensee may for Educational Purposes only:

3.1.1 make such local electronic copies of all or part of the Licensed Works as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Sub-Licence;

3.1.2 allow Authorised Users to access the Licensed Works by Secure Authentication in order to search, retrieve, display and view, listen to and otherwise use portions thereof;

3.1.3 allow Authorised Users to electronically save (download) the whole or parts of the Licensed Works;

3.1.4 allow Authorised Users to print out copies of the whole or parts of the Licensed Works;

3.1.5 provide single printed or electronic copies of the whole or parts of the Licensed Works at the request of individual Authorised Users;

3.1.6 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a paper copy of an electronic original of parts of the Licensed Works;

3.1.7 incorporate parts of the Licensed Works for use by Authorised Users in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;

3.1.8 allow Authorised Users to incorporate parts of the Licensed Works in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including

reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Sub-Licensee. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;

3.1.9 display, download and print parts of the Licensed Works for the purpose of promotion of the Archival Sound Recordings service, testing of the Licensed Works, or for training Authorised Users;

3.1.10 publicly display or publicly perform the whole or parts of the Licensed Works as part of a presentation at a seminar, conference, or workshop, or other such similar activity, and in such cases to obtain the necessary public performance licence as appropriate with respect to the specific Licensed Works being publicly displayed for performed;

3.1.11 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Works in accordance with this Sub-Licence.

3.2 Access to Proprietary Works using streaming and/or download technologies is limited to Authorised Users located in the United Kingdom at the time of access. This specific limitation is implemented by the use of geo-identification technology.

3.3 Phonographic Performance Limited, acting for original owners or holders of rights in the Proprietary Works, will receive a copy of this signed Sub-Licence.

3.4 This Sub-Licence shall be deemed to complement and extend the rights of the Sub-Licensee and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Sub-Licence shall constitute a waiver of any statutory rights held by the Sub-Licensee and Authorised Users from time to time under these Acts or any amending legislation.

4. RESTRICTIONS

4.1 Save as provided herein, the Sub-Licensee and Authorised Users may not:

4.1.1 sell or resell the Licensed Works unless the Sub-Licensee or an Authorised User has been granted prior written consent by BL to do so;

- 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
- 4.1.4 display or distribute any part of the Licensed Works on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network;
- 4.1.5 use all or any part of the Licensed Works for any Commercial Use or for any purpose other than Educational Purposes.
- 4.2 This Clause 4 shall survive termination of this Sub-Licence for any reason.

5. RESPONSIBILITIES OF THE SUB-LICENSEE

5.1 The Sub-Licensee will:

- 5.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
- 5.1.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Works;
- 5.1.3 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Sub-Licence;
- 5.1.4 use all reasonable efforts to monitor compliance with the terms of this Sub-Licence and notify BL immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised access to or use of the Licensed Works or unauthorised use of any of the Sub-Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Sub-Licence. Upon becoming aware of any breach of the terms of this Sub-Licence the Sub-Licensee further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Sub-Licensee's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;
- 5.1.5 comply with all computer security procedures required by BL and/or a third party duly appointed by BL and take all reasonable steps to ensure the security of the Licensed Works; and

5.1.6 provide lists of valid IP addresses to BL and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time.

6. RESPONSIBILITIES OF BL

6.1 BL shall use reasonable efforts to ensure access and use of the Licensed Works in accordance with the provisions as laid down in this Sub-Licence.

6.2 BL shall use reasonable efforts to cause customer support services to be provided to the Sub-Licensee and to Authorised Users.

7. USAGE DATA

7.1 The parties shall co-operate in gathering any data on usage of the Licensed Works that is available to them during the term of this Sub-Licence, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall neither assemble nor provide data from which an individual user could be identified.

8. TERM AND TERMINATION

8.1 The term of this Sub-Licence will commence upon the date of signature and will remain in full force and effect until 25th September 2016, unless terminated earlier as provided for in this Clause 8.

8.2 Either party may terminate this Sub-Licence at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Sub-Licence by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach insofar as it is capable of remedy.

8.3 Notwithstanding anything to the contrary herein, this Sub-Licence will be treated as if terminated if the Archival Sound Recordings Project Agreement between BL and the Licensor terminates until either party remedies the breach. BL will notify the Sub-Licensee of such termination and when the breach has been remedied. BL shall make reasonable endeavours not to cause the Archival Sound Recordings Project Agreement between BL and the Licensor to terminate.

8.4 Further, notwithstanding anything to the contrary herein, upon a breach by the Sub-Licensee, on-line access to the Licensed Works shall be terminated.

8.5 Upon termination of this Sub-Licence, copies of parts of the Licensed Works made by the Sub-Licensee or Authorised Users may be retained. Print copies may be used after termination of this Agreement subject to the terms of Clauses 3 and 4 of this Sub-Licence, which terms shall survive any termination of this Sub-Licence. Save as provided for in Clause 3.1.12, the use of electronic copies after termination of this Sub-Licence requires the authorisation from BL (and no such use shall be made without such authorisation) and the conditions of use are not subject to this Sub-Licence.

9. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

9.1 The Sub-Licensee acknowledges that the Intellectual Property Rights in the Licensed Works are the sole and exclusive property of Licensor or are duly licensed to the Licensor and that this Sub-Licence does not assign or transfer to the BL, the Sub-Licensee or any Authorised User any right, title or interest therein except for the right to use the Licensed Works in accordance with the terms and conditions of this Sub-Licence.

9.2 Save as provided for in clause 9.1 above, any and all Intellectual Property Rights in the encodings of the Licensed Works which are licensed in this Sub-Licence shall be the property of the BL and the Licensor has waived claim to future Intellectual Property Rights generated by the encodings of the Licensed Works. For the avoidance of doubt, the Sub-Licensee and any Authorised User agree to waive claim to future any Intellectual Property Rights generated by the encodings of the Licensed Works.

10. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

10.1 The Sub-Licensee represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Sub-Licence.

10.2 BL represents and warrants that it has the right to grant the Sub-Licence and that to the best of its knowledge the use of the Licensed Works by the Sub-Licensee and Authorised Users in accordance with the terms of this Sub-Licence shall not infringe the copyright of any third party. The foregoing shall not apply to improper usage of the Licensed Works by the Sub-Licensee or Authorised Users. BL makes no representation or warranty, and expressly disclaims any liability with respect to the content of the Licensed Works, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential

information.

- 10.3 The Sub-Licensee agrees to notify BL immediately and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Works. It is expressly agreed that upon such notification, or if the Licensor becomes aware of such a claim from other sources, BL may remove such work(s) from the Licensed Works. At the request of BL, the Sub-Licensee will make all reasonable efforts to remove such work(s) from any copies of the Licensed Works maintained by the Sub-Licensee. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Sub-Licence.
- 10.4 Nothing in this Sub-Licence shall make the Sub-Licensee liable for breach of the terms of this Sub-Licence by any Authorised User provided that the Sub-Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of a an actual breach having occurred.
- 10.5 Subject to the above and to the extent permitted by law, BL shall not be liable to the Sub-Licensee for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Sub-Licensee as a result of an action brought by a third party.
- 10.6 BL reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Works and to make changes in any software used to deliver the Licensed Works at their sole discretion. BL will notify the Sub-Licensee of any substantial change to the Licensed Works.
- 10.7 Other than the express warranties stated in this Clause 10, the Licensed Works are provided on an "as is" basis, and BL disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Works or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. BL further expressly disclaims any warranty or representation to Authorised Users, or to any third party. BL accepts no liability for loss suffered or incurred by the Sub-Licensee or Authorised Users as a result of their reliance on the Licensed Works.
- 10.8 The Sub-Licensee represents to BL that its computer system through which the Licensed Works will be used is configured, and procedures are in place, to prohibit

access to the Licensed Works by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the Licensed Works; and that during the term of this Sub-Licence, the Sub-Licensee will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

- 10.9 The Sub-licensee shall indemnify BL against all losses, costs, damages and expenses incurred arising out of any act of default, negligence, or failure to fulfil statutory and contractual obligations by the Sub-licensee or its servants, and against all actions, claims, demands or legal proceedings in respect thereof.
- 10.10 BL and the Sub-Licensee do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised sub-contractors and agents.

11. FORCE MAJEURE

- 11.1 Either party's failure to perform any term or condition of this Sub-Licence as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Sub-Licence.
- 11.2 If either party to this Sub-Licence is prevented or delayed in the performance of any of its obligations under this Sub-Licence by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

12. ASSIGNMENT

- 12.1 Neither this Sub-Licence nor any of the rights and obligations under it may be assigned or sub-licensed by the Sub-Licensee without obtaining the prior written consent of BL, such consent not to be unreasonably withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Sub-Licence and agrees to be bound to all the terms

of this Sub-Licence.

13. GOVERNING LAW AND DISPUTE RESOLUTION

- 13.1 This Sub-Licence shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Sub-Licence will be subject to and within the exclusive jurisdiction of the English courts.
- 13.2 Where the parties agree that a dispute arising out of or in connection with this Sub-Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of the Committee of Vice-Chancellors and Principals.
- 13.3 Any person to whom a reference is made under Clause 13.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 13.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 13.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

14. NOTICES

- 14.1 All notices required to be given under this Sub-Licence shall be given in writing in English and sent by electronic mail, fax (backed up with a hard copy sent by registered mail) or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Sub-Licence, and all such notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

if to BL: Archival Sound Recordings
The British Library Sound Archive
96 Euston Road
London
NW1 2DB
Fax: 020-7412-7422
Email: asr@bl.uk

if to the Sub-Licensee:
As stated in the Acceptance of Sub-Licence Form

16. GENERAL

- 16.1 This Sub-Licence and its Schedules constitute the entire agreement between the parties relating to the Licensed Works and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 16.2 The Schedules shall have the same force and effect as if expressly set in the body of this Sub-Licence and any reference to this Sub-Licence shall include the Schedules.
- 16.3 No provision in this Sub-Licence is intended to be enforceable by a person who is not a party to this Sub-Licence.
- 16.4 The invalidity or unenforceability of any provision of this Sub-Licence shall not affect the continuation in force of the remainder of this Sub-Licence.
- 16.5 The rights of the parties arising under this Sub-Licence shall not be waived except in writing. Any waiver of any of a party's rights under this Sub-Licence or of any breach of this Sub-Licence by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Sub-Licence shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

ARCHIVAL SOUND RECORDINGS SUB-LICENCE AGREEMENT

ACCEPTANCE OF SUB-LICENCE FORM

The Sub-Licensee hereby accepts and agrees to the terms and conditions of this Sub-Licence and its Schedules.

Name of Sub-Licensee (name of institution):

Full postal address of Sub-Licensee:

Telephone:

Fax:

E-mail:

Signature:

Signed by:	
Position:	
Date:	

Contact persons for support and communications regarding the administration of the Sub-Licence

Primary contact for Sub-Licensee:	
Dept:	
Phone No:	
Fax No:	
E-mail Address:	

Deputy contact for Sub-Licensee:	
Dept:	
Phone No:	
Fax No:	
E-mail Address:	

Access requirements:

Access will be by username and password via the **ATHENS Authentication Service**. The Sub-Licensee is required to have an ATHENS domain administrator. Details can be located at <http://www.athens.ac.uk/site-admin-registration.html>

ATHENS domain administrator for Sub-Licensee:	
Dept:	
Phone No:	
Fax No:	
E-mail Address:	
Institutional IP Address Ranges:	

Note: any changes to these contact details must be notified to BL in writing.

One original copy of this whole Sub-Licence must be returned to:

Archival Sound Recordings
The British Library Sound Archive
96 Euston Road
London
NW1 2DB

Please retain **one** original copy for institutional records.

IN WITNESS the hands of the above parties on the date first above written: -

SIGNED by: _____

Position:
(Signature)

for and on behalf of

WITNESSED by: _____

Position: (Signature)

Address:

SIGNED by: _____

Position:
(Signature)

for and on behalf of
THE BRITISH LIBRARY BOARD

WITNESSED by: _____

Position:
(Signature)

Address:

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