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## TERMS AND CONDITIONS

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### BACKGROUND:

This agreement applies as between you, the User of this Web Site and Percussion Orchestration, the owner(s) of this Web Site. Your agreement to comply with and be bound by these terms and conditions is deemed to occur upon your first use of the Web Site. If you do not agree to be bound by these terms and conditions, you should stop using the Web Site immediately.

### 1. Definitions and Interpretation

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

<b>“Account”</b>	means collectively the personal information, payment information and credentials used by Users to access Paid Content and / or any communications System on the Web Site;
<b>“Content”</b>	means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on or forms part of this Web Site;
<b>“Free Content”</b>	means any Content that is accessible without the payment of a Subscription Fee;
<b>“Learning Establishment”</b>	means any provider of education to persons of any age including, but not limited to, schools, colleges, universities and professional / adult education providers;
<b>“Percussion Orchestration”</b>	means Percussion Orchestration Ltd, registered address 30 Wyverne Rd, Chorlton, Manchester M21 0ZN, UK
<b>“Paid Content”</b>	means Content accessible only upon the creation of an Account and the payment of a Subscription Fee;
<b>“Service”</b>	means collectively any online facilities, tools, services or information that Percussion Orchestration makes available through the Web Site either now or in the future;
<b>“Subscription Fee”</b>	means the sum of money paid by Users at Yearly intervals to keep their Account active and to enable them to access Paid Content;
<b>“Subscription Period”</b>	means the period for which a subscription has been purchased and refers to one year accordingly;
<b>“System”</b>	means any online communications infrastructure that Percussion Orchestration makes available through the Web Site either now or in the future. This includes, but is not limited to, web-based email, message boards, live chat facilities and email links;

- “User” / “Users”** means any third party that accesses the Web Site and is not employed by Percussion Orchestrations and acting in the course of their employment; and
- “Web Site”** means the website that you are currently using (<http://www.percorch.com>) and any sub-domains of this site (e.g. [subdomain.http://www.percorch.com/index.asp](http://subdomain.http://www.percorch.com/index.asp)) unless expressly excluded by their own terms and conditions.

## 2. Intellectual Property

- 1.1 Subject to the exceptions in Clause 5 of these Terms and Conditions, all Content included on the Web Site, unless uploaded by Users, including, but not limited to, text, graphics, logos, icons, images, sound clips, video clips, data compilations, page layout, underlying code and software is the property of Percussion Orchestrations, or our affiliates. By continuing to use the Web Site you acknowledge that such material is protected by applicable United Kingdom and International intellectual property and other laws.
- 1.2 Material from the Web Site may be re-used without written permission where any of the exceptions detailed in Chapter III of the Copyright Designs and Patents Act 1988 or those detailed in Clauses 3 and 4 of these Terms and Conditions apply.

## 3. Use of Free Content

You may print, reproduce, copy, distribute, store or in any other fashion re-use Free Content from the Web Site for personal or educational purposes only unless otherwise indicated on the Web Site or unless given express written permission to do so by Percussion Orchestrations. Specifically you agree that:

- 1.1 You will not use the Free Content of the Web Site for commercial purposes unless given express written permission to do so by Percussion Orchestrations.
- 1.2 You will not systematically copy Free Content from the Web Site with a view to creating or compiling any form of comprehensive collection, compilation, directory or database unless given express written permission to do so by Percussion Orchestrations.
- 1.3 You may, as a student of a recognised Learning Establishment, use the Free Content of the Web Site for educational purposes provided an appropriate reference is given for all Content so applied using a suitable referencing system of your choice or as stipulated by your Learning Establishment.
- 1.4 Employees of Learning Establishments may use the Free Content of the Website for teaching purposes subject to the following conditions:
- 4.a.1 no further consent is required for use in not-for-profit Learning Establishments. This may include, but is not limited to, schools that charge no fees for tuition; and
- 4.a.2 for use in profit-making Learning Establishments, prior written consent is required. This may include, but is not limited to, private schools charging fees, universities and adult education providers.

#### 4. **Use of Paid Content**

- 1.1 Payment of a Subscription Fee grants you a licence to use all Paid Content on the Web Site for the duration of your subscription. You may use such Content in the following ways:
  - 1.a.1 for personal purposes; or
  - 1.a.2 as a student only, for educational purposes
- 1.2 Commercial use of Paid Content is not permitted under the terms of a normal subscription. Please contact Percussion Orchestrations for details of Commercial level subscriptions and the accompanying Terms and Conditions.
- 1.3 Employees of Learning Establishments are not permitted to use Paid Content for teaching purposes under the terms of a normal subscription. Please contact Percussion Orchestrations for details of Education level subscriptions and the accompanying Terms and Conditions.
- 1.4 Under such a licence, you agree that:
  - 4.a.1 you will not use the Paid Content of the Web Site for commercial purposes unless given express written permission to do so by Percussion Orchestrations;
  - 4.a.2 you will not systematically copy Paid Content from the Web Site with a view to creating or compiling any form of comprehensive collection, compilation, directory or database unless given express written permission to do so by Percussion Orchestrations; and
  - 4.a.3 you may, as a student of a recognised Learning Establishment, use the Paid Content of the Web Site for educational purposes provided an appropriate reference is given for all Content so applied using a suitable referencing system of your choice or as stipulated by your Learning Establishment.

#### 5. **Third Party Intellectual Property**

Where expressly indicated, certain Content and the Intellectual Property Rights subsisting therein belongs to other parties. This Content, unless expressly stated to be so, is not covered by any permission granted by Clauses 3 and 4 of these Terms and Conditions to use Content from the Web Site. Any such Content will be accompanied by a notice providing the contact details of the owner and any separate use policy that may be relevant.

#### 6. **Links to Other Web Sites**

This Web Site may contain links to other sites. Unless expressly stated, these sites are not under the control of Percussion Orchestrations or that of our affiliates. We assume no responsibility for the content of such web sites and disclaim liability for any and all forms of loss or damage arising out of the use of them. The inclusion of a link to another site on this Web Site does not imply any endorsement of the sites themselves or of those in control of them.

#### 7. **Links to this Web Site**

Those wishing to place a link to this Web Site on other sites may do so only to the home page of the site <http://www.percorch.com> without prior permission. Deep linking (i.e. links to specific pages within the site) requires the express permission of Percussion Orchestrations. To find out more please contact us by email at [mail@percorch.com](mailto:mail@percorch.com).

## **8. Use of Communications Facilities**

- 1.1 When given using the forums and / or any other System on the Web Site you should do so in accordance with the following rules:
  - 1.a.1 you must not use obscene or vulgar language;
  - 1.a.2 you must not submit Content that is unlawful or otherwise objectionable. This includes, but is not limited to, Content that is abusive, threatening, harassing, defamatory, ageist, sexist or racist;
  - 1.a.3 you must not submit Content that is intended to promote or incite violence;
  - 1.a.4 it is advised that posts on message boards, chat facilities or similar and communications with Percussion Orchestration are made using the English language(s) as we may be unable to respond to enquiries submitted in any other languages;
  - 1.a.5 you must not post links to other web sites containing any of the above types of Content;
  - 1.a.6 the means by which you identify yourself must not violate these terms of use or any applicable laws;
  - 1.a.7 you must not engage in any form of commercial advertising. This does not prohibit references to businesses for non-promotional purposes including references where advertising may be incidental;
  - 1.a.8 you must not impersonate other people, particularly employees and representatives of Percussion Orchestration or our affiliates; and
  - 1.a.9 you must not use our System for unauthorised mass-communication such as "spam" or "junk mail";
- 1.2 You acknowledge that Percussion Orchestration reserves the right to monitor any and all communications made to us or using our System.

## **9. Accounts**

- 1.1 In order to access Paid Content on this Web Site and to use the forums facilities you are required to create an Account which will contain certain personal details which may vary based upon the type of Account that you choose. By continuing to use this Web Site you represent and warrant that:
  - 1.a.1 all information you submit is accurate and truthful; and
  - 1.a.2 you will keep this information accurate and up-to-date.Your creation of an Account is further affirmation of your representation and warranty.
- 1.2 Sharing of accounts is not permitted unless expressly authorised in writing by Percussion Orchestration. You are required to keep your Account details confidential and must not reveal your Username and Password to anyone. If you use a shared computer, it is recommended that you do not save your Account details in your internet browser.
- 1.3 When choosing your Username and Password you are required to adhere to the terms set out above in Clause 8. Any failure to do so could result in the suspension and/or deletion of your Account.

## 10. Subscriptions

- 1.1 Subscription charges commence on the date that you activate your subscription. Your credit / debit card will be billed on activation and Yearly thereafter.
  - 1.2 Your first payment will be at the price advertised on the Web Site. Percussion Orchestration reserve the right to change Subscription Fees from time to time and any such changes may affect your subscription rate:
    - 2.a.1 increases in price will be reflected in your subscription on the date of the immediately subsequent renewal; and
    - 2.a.2 decreases in price will be reflected in your subscription on the date of the immediately subsequent renewal.
- For further information on subscriptions and pricing, please visit our Subscriptions page <http://www.percorch.com/join.html>
- 1.3 If you terminate your subscription or account you will continue to have access to the Paid Content for the remainder of the Subscription Period you are currently in up until the renewal date whereupon access will cease unless you choose to pay the Subscription Fee and reactivate your subscription.
  - 1.4 If you have subscribed in error you must inform Percussion Orchestration within 24 hours of subscribing and must not use the Web Site or its Content during that time. If any use can be traced to your Account, no refund will be provided.

## 11. Termination

- 1.1 Either Percussion Orchestration or you may terminate your account and (where relevant) your subscription. If Percussion Orchestration terminates your Account or subscription, you will be notified by email and an explanation for the termination will be provided. Notwithstanding the foregoing, we reserve the right to terminate without giving reasons.
- 1.2 If Percussion Orchestration terminates your account as a result of your breach of these Terms and Conditions you will not be entitled to any refund.
- 1.3 If Percussion Orchestration terminates your account or subscription for any other reason, you will be refunded any remaining balance of your Subscription Fee. Such a refund will be calculated based upon the fee being divided by the number of days in the applicable Subscription Period and multiplied by the number of days remaining until the end of the Subscription Period.
- 1.4 If Percussion Orchestration terminates your account or subscription, you will cease to have access to Paid Content from the date of termination.
- 1.5 If you terminate your account or subscription, you will continue to have access to Paid Content for the remainder of your subscription period as per Clause 9.3.

## 12. Privacy

Use of the Web Site is also governed by our Privacy Policy which is incorporated into these terms and conditions by this reference. To view the Privacy Policy, please click go to [www.percorch.com/PrivacyPolicy.pdf](http://www.percorch.com/PrivacyPolicy.pdf).

## 13. Disclaimers

- 1.1 Percussion Orchestration makes no warranty or representation that the Web

Site will meet your requirements, that it will be of satisfactory quality, that it will be fit for a particular purpose, that it will not infringe the rights of third parties, that it will be compatible with all systems, or that it will be secure.

- 1.2 Whilst every reasonable endeavour has been made to ensure that all information provided on this Web Site will be accurate and up to date, Percussion Orchestrations makes no warranty or representation that this is the case. We make no guarantee of any specific results from the use of our services.
- 1.3 No part of this Web Site is intended to constitute advice and the Content of this Web Site should not be relied upon when making any decisions or taking any action of any kind.
- 1.4 The information on this Web Site is not designed with commercial purposes in mind. Percussion Orchestrations makes no representation or warranty that this Content is suitable for use in commercial situations or that it constitutes accurate data and / or advice on which business decisions can be based.
- 1.5 Whilst every effort has been made to ensure that all descriptions of services available from Percussion Orchestrations correspond to the actual services available, Percussion Orchestrations is not responsible for any variations from these descriptions.

#### **14. Availability of the Web Site**

The Service is provided “as is” and on an “as available” basis. We give no warranty that the Service will be free of defects and / or faults. To the maximum extent permitted by the law we provide no warranties (express or implied) of fitness for a particular purpose, accuracy of information, compatibility and satisfactory quality.

Percussion Orchestrations accepts no liability for any disruption or non-availability of the Web Site resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, power failure, natural events, acts of war or legal restrictions and censorship.

#### **15. Limitation of Liability**

- 1.1 Percussion Orchestrations’s liability for any direct or indirect loss or damage, foreseeable or otherwise, including any indirect, consequential, special or exemplary damages arising out of our breach of these Terms and Conditions shall be limited to the value of a User’s current subscription. For all other direct or indirect loss or damage, foreseeable or otherwise, including any indirect, consequential, special or exemplary damages arising from the use of the Web Site or any information contained therein, to the maximum extent permitted by law, Percussion Orchestrations accepts no liability. Users should be aware that they use the Web Site and its Content at their own risk.
- 1.2 Nothing in these terms and conditions excludes or restricts Percussion Orchestrations’s liability for death or personal injury resulting from any negligence or fraud on the part of Percussion Orchestrations.
- 1.3 Whilst every effort has been made to ensure that these terms and conditions adhere strictly with the relevant provisions of the Unfair Contract Terms Act 1977, in the event that any of these terms are found to be unlawful, invalid or otherwise unenforceable, that term is to be deemed severed from these terms and conditions and shall not affect the validity and enforceability of the remaining terms and conditions. This term shall apply only within jurisdictions where a particular term is illegal.

16. **No Waiver**

In the event that any party to these Terms and Conditions fails to exercise any right or remedy contained herein, this shall not be construed as a waiver of that right or remedy.

17. **Previous Terms and Conditions**

In the event of any conflict between these Terms and Conditions and any prior versions thereof, the provisions of these Terms and Conditions shall prevail unless it is expressly stated otherwise.

18. **Notices**

All notices / communications shall be given to us either by post to our Premises (see address above) or by email to [mail@percorch.com](mailto:mail@percorch.com). Such notice will be deemed received 3 days after posting if sent by first class post, the day of sending if the email is received in full on a business day and on the next business day if the email is sent on a weekend or public holiday.

19. **Law and Jurisdiction**

These terms and conditions and the relationship between you and Percussion Orchestrations shall be governed by and construed in accordance with the Law of England and Wales and Percussion Orchestrations and you agree to submit to the exclusive jurisdiction of the Courts of England and Wales.