

PRS FOR MUSIC LIMITED ONLINE EXPLOITATION LICENCE

TERMS AND CONDITIONS

1. Definitions

“**the Act**” means the Copyright Designs and Patents Act 1988, as amended from time to time.

“**Agreement**” means these terms and conditions, the schedules to these terms and conditions and the AFL completed and submitted online by the Licensee.

“**AFL**” means the online application form with which the Licensee applies for a licence under this Agreement.

“**Audio-Visual Material**” means any specific presentation of Musical Works in conjunction with images, whether moving or still. For the avoidance of doubt (but without prejudice to the express restrictions contained in this Agreement), the following shall not be treated as Audio-Visual Material for the purpose of this Agreement:

- (a) the fact that ordinary web pages (or equivalent) are visible to the User while the User is listening to music; or
- (b) the fact that the media player used to play the music generates random visual images while the music is playing;

provided, in both cases, that the User would not reasonably be expected to associate the Repertoire Works being played with the images presented or think that there is any deliberate association by the Licensee of the Repertoire Works with such images.

“**Clip**” means an audio-only or audio-visual sound recording of a Musical Work which a User may receive by streaming on-demand via a Network (where the time and place at which such Musical Work is received is selected by the User), provided that the duration of any Clip shall be no longer than 30 seconds in length for all Musical Works except for Musical Works of 10 minutes duration or longer where Clips shall last no longer than 60 seconds.

“**Clips Service**” means a service (or the relevant part of a service), other than an Excluded Service, whereby a User may receive a Clip to listen to a Musical Work before purchasing a product or service other than a full track download.

“**Commencement Date**” means the later of the launch date of the Licensed Services and 1 January 2010.

“**Commercial Work**” means any Repertoire Work other than:

- (a) one where the Member owning or controlling the copyright in such Repertoire Work has authorised MCPS to license it as so-called production or library music; or
- (b) a Commissioned Work, PROVIDED THAT for the purposes of clauses 3.2 and 4.3, a Commissioned

Work shall not be excluded from such definition where the commissioning agreement does not authorise the Licensee to use the Commissioned Work in the context set out in those clauses.

“**Commissioned Work**” means a Musical Work specially and expressly commissioned by the Licensee from composer/writer members of PRS and/or MCPS.

“**Data Storage Device**” means any medium on which data can be stored (whether temporarily or permanently) whether existing now or invented in the future.

“**Download**” means the communication to the public of any one Musical Work, whereby such Musical Work may be retained by the User on a permanent basis. For the avoidance of doubt, the communication to the public for retention by the User on a permanent basis of ten (10) Musical Works shall be treated as ten (10) separate Downloads.

“**Excluded Service**” means any service (or the relevant part of a service) which falls within the scope (from time to time) of any of the following MCPS/PRS licensing schemes:

- (a) MCPS – Ringtone licensing scheme;
- (b) PRS – Ringtone licensing scheme;
- (c) MCPS – Karaoke and MIDI scheme;
- (d) MCPS – Music-on-hold scheme;
- (e) MCPS & PRS – Music Services B2B;
- (f) MCPS – Premium Telephone Line Services scheme;
- (g) PRS – Premium Telephone Line Services scheme;
- (h) MCPS & PRS Joint Ringback scheme;
- (i) MCPS & PRS B2B Music Preview scheme.

“**General Entertainment On-Demand Licence**” means a licence agreement for the operation of online general entertainment on-demand services known as the “General Entertainment On Demand Licence”.

“**Gross Revenue**” shall have the meaning set out in the Online Music Licence. A full text of the Online Music Licence is available from *PRS for Music's* website at <http://www.prsformusic.com/>. Broadly, Gross Revenue means all revenue received (or receivable) by the Licensee from Users in consideration of the provision of the Licensed Services and all other revenue received (or receivable) by the Licensee as a result of the provision of the Licensed Services such as, without limitation, advertising and sponsorship fees. For the avoidance of

doubt, this is by way of a summary only. The definition of Gross Revenue applicable to this Agreement is the definition set out in the Online Music Licence.

“Licensed Service(s)” means the service(s) set out in the AFL.

“Licensee” means the party that submits an AFL and is granted a licence by the Licensors.

“Licensors” means PRS and MCPS.

“Limited Download / On Demand Streaming Service (LD/ODS)” means a service (or the relevant part of a service), other than an Excluded Service, whereby a User may receive a Musical Work by streaming on-demand via a Network (where the time and place at which such Musical Work is received is selected by the User) and/or may download via a Network that Musical Work but where such download may not be retained by the User on a permanent basis. Any service falling primarily within the foregoing definition but which also includes elements which fall within the definition of Premium and Interactive Webcasting Service and/or Pure Webcasting Service shall be deemed in its entirety to be a LD/ODS Service.

“Limited GEOD Licence” means a licence agreement for a limited amount of general entertainment on-demand content which a Licensee may also purchase through the AFL.

“MCPS” means Mechanical-Copyright Protection Society Limited whose registered office is at 29-33 Berners Street London W1T 3AB, contracting for and on behalf of itself and for and on behalf of and as agents of its various Members and affiliated societies.

“Member” means:

- (a) in the case of MCPS, each person, firm or company who or which, from time to time, has appointed MCPS as agent in relation to online exploitation either before or during the Term, other than where such person, firm or company has opted not to participate in the licensing scheme pursuant to which this Agreement has been entered into, PROVIDED THAT a member who has so appointed MCPS after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed MCPS; and
- (b) in the case of PRS, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of PRS has been admitted either before or during the Term as a member of PRS, other than where such person, firm or company has reserved to himself the relevant rights pursuant to Article 7(cd) of the Articles of Association of PRS (or other equivalent article) PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date of admission into PRS.

“Music Podcasting Service” means a service (or the relevant part of a service) whereby Podcasts (as opposed to individual Musical Works) containing music may be communicated to the public via a Network to Users such

that Users may retain a copy of such Podcast on their Data Storage Devices (whether permanently or temporarily).

“Musical Work” means any musical work (as defined in the Act) and any lyrics or words written to be used with such musical work (if applicable). It includes any part of such a work.

“Music Service Provider” means, the party which, in relation to a Music Service, most closely meets the following criteria:

- (a) contracts with the User in relation to the provision of the Licensed Service;
- (b) sets and controls the price the User pays;
- (c) can fully report on all elements of Gross Revenue (including relevant advertising revenues);
- (d) can fully report on all elements of music usage (or can procure such reporting);
- (e) controls how content is offered and bundled within the Licensed Service; and
- (f) carries out or authorises, on their instruction, the carrying out of the copyright restricted acts licensed under this Agreement.

“Music Usage Declaration” means the information referred to in clause 6.1, to be provided in the form set out at Schedule 1.

“Music Service” means a service or the relevant part of a service which is:

- (a) a Permanent Download Service;
- (b) a LD/ODS Service;
- (c) a Premium and Interactive Webcasting Service;
- (d) a Pure Webcasting Service;
- (e) a Music Podcasting Service;
- (f) a Clips Service; or
- (g) any combination of (a) to (f) above;

subject always to the limits as set out in AFL.

“Network” means the internet, a mobile network or any other wired or wireless network.

“Online Music Licence” means a licence agreement under the Licensors’ online music licensing scheme known as the “Online Music Licence” as published by the Licensors from time to time.

“Permanent Download Service” means a service (or the relevant part of a service), other than an Excluded Service, by which a Musical Work is communicated to the public via a Network in the form of a Download and where such Download may be retained by the User on a

permanent basis, and the term "Permanent Download" shall be construed accordingly.

"Podcast" means a downloadable, audio only programme that contains both music and speech where the Podcast cannot be disaggregated into its individual tracks.

"Podcasting Agreement" shall mean a licence agreement under the Licensors' "Licensing Scheme for the Provision of Online and Mobile Music Podcasting Services to the Public for Private Use"

"Premium and Interactive Webcasting Service" means a service (or the relevant part of a service), other than an Excluded Service, by which Musical Works are communicated to the public via a Network and:

- (a) no permanent or temporary copy of any Musical Work is retained by the User; and
- (b) such service is neither a Pure Webcasting Service, a Permanent Download Service, a LD/ODS Service or a Simulcast Service.

"PRS" means Performing Right Society Limited whose registered office is at 29-33 Berners Street London W1T 3AB, contracting for and on behalf of itself and for and on behalf of and as agents of its various affiliated societies.

"PRS for Music" means MCPS-PRS Alliance Limited whose registered office is at 29-33 Berners Street London W1T 3AB.

"Pure Webcasting Service" means a service (or the relevant part of a service), other than an Excluded Service or a Simulcast Service, by which Musical Works are broadcast (as that term is defined in the Act as at 1 January 2008) to Users via a Network. For the avoidance of doubt, to constitute a Pure Webcasting Service, there must be:

- (a) no interactive functionality, for example (without limitation), no use of controls that enable the User to pause, skip, move forward or backwards through the stream;
- (b) no personalisation of the service by the User or the ability for the User to offer preferences which then dictate the tracks that are provided to that User, for example (without limitation), no ability for the User to rate tracks so as to influence subsequent tracks that are played;
- (c) no advanced notification to the User of titles of specific tracks to be played or specific albums from which tracks will be played (other than the introduction of the next track in DJ led services);
- (d) in any 3 hour period:
 - (i) no more than 3 songs from a particular album (including no more than 2 consecutively);
 - (ii) no more than 4 songs from a particular artist or from any compilation of tracks (including no more than 3 consecutively);

- (e) no archived programmes less than 5 hours in duration or available for more than 2 weeks;
- (f) no continuous programmes of less than 3 hours duration;
- (g) effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent:
 - (i) a User or any other person or entity from automatically scanning the Licensee's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the User; and
 - (ii) a User from making copies, other than transient copies, of the sound recordings; and
- (h) no automatic or intentional cause by the Licensee of the device receiving a transmission to switch from one program channel to another.

"Repertoire Work" means

- (a) each Musical Work the relevant copyright in which is owned or controlled, from time to time, in the UK by:
 - (i) MCPS or a Member or an associated society or an associated society member PROVIDED THAT (i) if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS or a Member or an associated society or associated society member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the associated society or the relevant Member or associated society member, and (ii) it shall exclude any Musical Works that a Member of MCPS or an associated society has withdrawn or withheld from this Agreement; and
 - (ii) PRS or a Member or an associated society or an associated society member PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not PRS or a Member or an associated society or associated society member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by PRS or the associated society or the relevant member or associated society member;
- (b) but excluding Musical Works (or such shares of Musical Works, where applicable) owned by EMI Music Publishing and controlled for the purposes of licensing in online and mobile services by CELAS GmbH.

For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor.

“**Royalty Fees**” means the royalties published on the Licensors’ website and payable in accordance with the terms of clause 5.

“**Server Territory**” means the European Economic Area, Switzerland, the United States of America, Canada and such other territories as may be agreed in writing by the parties.

“**Simulcast Service**” means the broadcast (as that term is defined in the Act) of a programme via a Network where such broadcast:

- (a) is simultaneous with the broadcast of such programme via a traditional terrestrial, satellite or cable television or radio service; and
- (b) is made from the website or other service of the originating broadcaster.

“**Stream**” means the communication to the public of any Musical Work. For the avoidance of doubt, the communication to the public of for example, ten (10) Musical Works shall be treated as ten (10) separate Streams.

“**Term**” means the period starting on the Commencement Date and ending upon either the expiry of this Agreement in accordance with clause 5 or upon termination of this Agreement in accordance with clause 10.

“**Territory**” means the UK and such other countries as the Licensors and the Licensee may agree in writing.

“**UK**” means the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.

“**User**” means a natural person in the Territory who receives the Licensed Services for their own private and non-commercial use.

“**VAT**” means value added tax pursuant to the Value Added Tax Act 1994 and each like tax imposed in addition to or in substitution therefor.

2. Grant of Licence

2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, MCPS grants the Licensee a non-exclusive licence to do the following during the Term:

- (a) to reproduce Repertoire Works on servers within the Server Territory for the purpose of transmitting the same to Users (for the User’s own private and non-commercial use) by means of the Licensed Services; and
- (b) where the Licensed Services expressly authorise the temporary or permanent

reproduction of Repertoire Works on Users’ Data Storage Devices, to cause such copies to be made in the Territory for the User’s own private and non-commercial use.

2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, PRS grants the Licensee a non-exclusive licence, during the Term, to communicate to the public (as that term is defined in the Act) and to authorise the communication to the public of Repertoire Works within the Territory solely as part of and for the purposes of the provision of the Licensed Services.

2.3 The above licences shall apply where Repertoire Works are used in audio-only material and, subject to clause 3.2, Audio Visual Material.

3. Exceptions and Limitations

3.1 The licences granted under clause 2 of this Agreement are valid only insofar as:

- (a) the Licensed Services are Music Services; and
- (b) the Licensee is the Music Service Provider in relation to the Licensed Services.

3.2 The incorporation of Commercial Works into Audio-Visual Material is only licensed under this Agreement where the Audio-Visual Material consists of:

- (a) a music videogram; or
- (b) a live concert performance or a film of a live concert performance by the artist performing that particular Commercial Work; or
- (c) subject to clause 4.3, such Commercial Works being combined with photographs or other images relating to the artist performing the Commercial Work or the composer of the Commercial Work; or
- (d) subject to clause 4.3, an interview with an artist, composer, producer or other person involved in the creation, performance or production of music where the Commercial Work(s) used are associated with the interviewee(s).

For the avoidance of doubt, such Audio-Visual Material as is licensed under 3.2(a) to (d) above is only licensed insofar as it is reproduced or communicated to the public via the Licensed Services.

3.3 For the avoidance of doubt, this Agreement does not grant any “synchronisation licence” (to the extent that such a licence may be required by the Licensee) covering the initial fixation of Repertoire Works in combination with visual images to create and produce Audio-Visual Material.

- 3.4 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not authorise the manufacture or distribution of physical products containing Repertoire Works, such as (without limitation) the ordering of compact discs (or any other type of physical media) via a Music Service, but which are distributed by mail.
- 3.5 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not extend to the public performance (as that term is used in the Act) of Repertoire Works, whether as part of the Licensed Services or otherwise.
- 3.6 Unless (i) the relevant Member has expressly consented to such use being covered under the MCPS licence granted herein, (ii) the Licensee has entered into an agreement with the relevant Member to this effect and (iii) evidence of such agreement has been provided to the Licensors, the licence granted under clause 2.1 of this Agreement shall not permit the use of Repertoire Work(s) with any advertising or sponsorship where:
- (a) such Repertoire Work(s) are incorporated into such advertising or sponsorship; or
 - (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising or sponsorship.
- 3.7 Unless (i) the relevant Member has expressly consented to such use being covered under the MCPS licence granted herein, (ii) the Licensee has entered into an agreement with the relevant Member to this effect and (iii) evidence of such agreement has been provided to the Licensors, for the avoidance of doubt (and without prejudice to the generality of clause 3.6), the licences granted under these terms and conditions shall not apply to any Repertoire Work(s) made available for the purpose of (whether in whole or in part):
- (a) directly or indirectly encouraging the User to purchase or obtain goods or services of whatsoever nature (other than music via the Licensed Service); or
 - (b) promoting the branding of the Licensee, any affiliate of the Licensee or any third party; in such a manner that:
 - (i) one or more particular Repertoire Works, composers or writers are associated with such promotion; or
 - (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion;
- 3.8 The licence granted under clause 2.1 shall not apply to graphic copies (meaning, without limitation, copies of lyrics, notation or scores) of Repertoire Works. For the avoidance of doubt, the licences granted under these terms and conditions shall not apply to any "karaoke" service within a Music Service.
- 3.9 The licence granted under clause 2.2 shall only apply to a Repertoire Work communicated to the public as part of a Licensed Service where the Licensee has the benefit of a valid licence for or a right to make a reproduction of that particular Repertoire Work and for that particular form of exploitation via the Licensed Service either pursuant to these terms and conditions or otherwise. By way of example only, the licence granted by MCPS under clause 2.1 does not cover the copying of Repertoire Works in an advertisement (save in certain specified circumstances, see clause 3.6 above). However, a parallel restriction does not apply to the licence granted by PRS under clause 2.2. The licence granted by PRS under clause 2.2 would not apply (in the context of this example) unless the Licensee, pursuant to clause 3.6, has the benefit of a right to copy the Repertoire Work for use in that advertisement (and on the Licensed Service(s)).
- 3.10 The licences granted under clause 2 of this Agreement shall not apply to any Repertoire Works reproduced or communicated to the public within a Podcast unless:
- (a) each programme comprising each Podcast contains both speech and music with the speech interspersed throughout the programme;
 - (b) such Podcast is provided only in the form of a programme in its entirety and not in the form of individual tracks or portions of such a programme;
 - (c) there can be no guide providing details of the time at which particular tracks appear; and
 - (d) no flags or other markers are inserted within such Podcast which may directly indicate or which may be used to indirectly infer the start and end point of tracks or segments of tracks.
- 3.11 The licences granted under clause 2 of this Agreement shall not apply to any Repertoire Works reproduced or communicated to the public within a Podcast if:
- (a) there is any Audio-Visual Material incorporated into the Podcast (unless *PRS for Music* provides its prior written approval in relation to such Audio-Visual Material); or
 - (b) the Podcast includes more than 2 Repertoire Works from a particular album or more than 2 Repertoire Works performed by a particular artist or written by a particular composer without prior written approval of *PRS for Music*; or

- (c) more than 50% of the Repertoire Works included within such Podcast are written by the same composer or writing partnership or are performed by the same artist without prior written approval of *PRS for Music*,

unless the relevant Member has expressly consented thereto.

- 3.12 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to Repertoire Works which are made available by the Licensee outside of the Licensed Service. However, such other exploitation of Repertoire Works may fall within the scope of other licensing schemes operated by the Licensors, details of which shall be made available to the Licensee on request.

4. Further Restrictions

- 4.1 The licences granted under this Agreement do not cover any Repertoire Works which are dramatico-musical works unless otherwise agreed by the Licensors.
- 4.2 The licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work to be copied or communicated to the public as part of a Licensed Service unless the relevant Member has consented to such adaptation. By way of example only, this applies to:
 - (a) any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work) or the communication to the public or reproduction in the form of a sample of such part of a Repertoire Work; or
 - (b) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
 - (c) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

However, subject always to clause 4.7 and provided that such alterations do not amount to an adaptation of a Repertoire Work and do not contravene clause 4.3 then this Agreement shall apply in relation to Repertoire Works that have been modified (including music and/or lyrics) for the purpose of satisfying the requirements of the relevant recording.

- 4.3 The licences granted under this Agreement shall not extend to:
 - (a) the reproduction or communication to the public of any Commercial Work or part thereof in the form of a parody or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or

- (b) the use of any Commercial Work in any context which the Licensee ought reasonably to consider as being likely to be insulting or detrimental to the composer featured on the commercially released sound recording of the music or the relevant Member or associated society member.

- 4.4 All rights not specifically granted under this Agreement are hereby reserved.

- 4.5 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), rights in sound recordings, films, dramatic works, performers' rights or rights in performances. The Licensee is required to obtain the appropriate waivers, consents and/or licences from the person(s) owning or controlling rights in relation to sound recordings containing Repertoire Works or performers of that Repertoire Work.

- 4.6 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.

- 4.7 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the UK or any other territory.

5. Fees and Payment

- 5.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors the Royalty Fees annually in advance for each consecutive 12 month licence period until expiry or termination of the Agreement.

- 5.2 The first 12 month licence period shall commence on the Commencement Date. For each consecutive 12 month licence period thereafter the Licensee shall pay the Royalty Fee no later than the final day of the preceding 12 month licence period. In the event that the Licensee fails to pay the Royalty Fee by such time, this Agreement will automatically expire and the notice provisions in clause 10 shall not apply.

- 5.3 The Royalty Fees shall be payable online via the Licensors' website by debit/credit card or, where agreed otherwise, by cheque. For the avoidance of doubt, this Agreement shall not come into force until the Licensee has paid the Royalty Fees.

- 5.4 The Licensors shall be entitled to increase the Royalty Fees at the start of each calendar year based on the annual increase in the retail price index over the preceding year. The new Royalty Fees will be published on the Licensors' website and will apply to any 12 month extension (or an extension of less than 12 months, where the case may be) of the licences granted under this Agreement that calendar year.

- 5.5 Provided that the Licensee has specifically requested in the AFL a licence period of less than 12 months, the Royalty Fees shall be pro-rated in respect of that Music Service, subject always to a minimum fee of £54 (+VAT).
- 5.6 The Licensee may at any time during the Term purchase a licence for additional Music Services online via the Licensors' website. The licence for the additional Music Services purchased shall commence once the Royalty Fees have been paid for such additional Music Services. The additional Music Services shall be licensed for the period corresponding to the unexpired portion of the 12 month licence period covered by the Royalty Fees for the Music Services previously licensed and the Royalty Fees for the additional Music Services shall be pro-rated accordingly.
- 5.7 The Licensee may at any time during the Term change from a lower band to a higher band within a particular Music Service by paying the difference between the lower band Royalty Fee already paid and the higher band Royalty Fee via the Licensors' website. The Licensee may not change from a higher band to a lower band and the Licensors shall not refund the Licensee in the event that the Licensee's actual exploitation of Repertoire Works is such that the Licensee would be eligible for a lower band Royalty Fee but has paid the Royalty Fee for a higher band.
- 5.8 The Royalty Fees shall be cumulative and for any service which combines more than one Music Service, an aggregate fee shall be payable. By way of example only, the Royalty Fees payable for a service which provides 40,000 on demand streams and 4,000 Permanent Downloads per annum shall be £321.
- 5.9 By way of a further example, if a Music Podcasting Service makes 2 Podcasts available as follows: Podcast A contains 3 Musical Works (or part thereof) and is downloaded 400 times; Podcast B contains 7 Musical Works (or part thereof) and is downloaded 250 times. For the purposes of deciding whether the above limits have been exceeded, the number of downloaded Musical Works in this case would be $(3 \times 400) + (7 \times 250) = 2950$ downloaded Musical Works.
- 5.10 The Licensee shall notify the Licensors immediately if the maximum usage limits in Band E in any one Music Service (excluding a Clips Service) are exceeded. Such limits shall be pro-rated in respect of any licence period which is less than 12 months. If the maximum usage limits are exceeded, this Agreement shall terminate and the Licensee shall apply for an Online Music Licence or Podcasting Agreement (whichever is applicable). If the maximum usage limits for a Clips Service are exceeded, *PRS for Music* will inform the Licensee of alternative licensing arrangements.
- 5.11 The Licensee shall notify the Licensors immediately if the Licensee's usage of any of the Music Services exceeds the amount stated in the Licensee's AFL, so that the amount the Licensee pays as Royalty Fees may be adjusted accordingly.
- 5.12 The Licensee shall notify the Licensors if the Gross Revenue from the Licensed Services (including the Gross Revenue from any Limited GEOD License applied for pursuant to the AFL) exceeds the sum of £12,500 (excluding VAT) per annum. In such circumstances, this Agreement shall terminate and the Licensee shall apply for an Online Music Licence and, if required, a Podcasting Agreement and/or a General Entertainment On Demand Licence, which if granted, shall replace this Agreement.
- 5.13 The Licensee shall notify the Licensors immediately if the Licensee is to launch a new service which constitutes a Music Service and therefore requires a licence from the Licensors. The Licensee shall submit to the Licensors a fully and accurately completed AFL 28 days before the launch of any such new service.
- 5.14 The Licensee shall notify the Licensors promptly of any material change in the information provided in the AFL and the effective date of such change.
- 5.15 All Royalty Fees and payments referred to in this Agreement are subject to VAT or other equivalent sales tax. The Licensee shall pay to the Licensors VAT or other equivalent sales tax (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 5.16 Except as expressly set out in these terms and conditions, no deduction in respect of any tax, or any other deduction or set-off of whatsoever nature, shall be made in calculating or paying any sum due under this Agreement.
- 6. Supply of Information**
- 6.1 In relation to any and all Repertoire Works reproduced and communicated to the public under this Agreement via all Licensed Services, the Licensee will deliver a fully and accurately completed Music Usage Declaration to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) within 14 days of the end of each 12 month licence period.
- 6.2 The Licensee must also supply the Licensors with any further information or documentation in its possession, power, custody or control (and use its reasonable endeavours to supply the Licensors with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensors at any time, in order to enable the Licensors to verify the Repertoire Work(s) which have been reproduced or distributed via all Licensed Services.
- 6.3 Where any or all of the Licensed Services are accessible by Users only on payment of subscription or other similar payment (or access is otherwise limited or controlled in some way), the Licensee shall, upon request of the Licensors,

use reasonable endeavours to ensure that such Licensed Services are at all times accessible by the Licensors (and *PRS for Music*) free of charge for the purposes of the Licensors verifying that the Licensee is acting in accordance with this Agreement. For the avoidance of doubt, the Licensee shall not be required to provide free access to Downloads under a Permanent Download Service or to provide free access to a mobile phone network or internet access.

6.4 The email address for delivery of the Music Usage Declaration is onlinelicensing@prsformusic.com

6.5 Without prejudice to any right in law that the Licensors may have to obtain such information, the Licensee shall not be obliged to provide to the Licensors any information which identifies Users or which otherwise constitutes "personal data" as defined in the Data Protection Act 1998. For the avoidance of doubt, the Licensee must still provide all required Music Usage Information (or other information to be provided under this Agreement), but is entitled to remove any element of it which reveals the identity of Users or otherwise causes it to include or constitute "personal data".

7. Credits and Notices

7.1 The Licensee shall include on each of the Licensed Services:

- (a) the logos of *PRS for Music*; and
- (b) details of the following website and, where practical, hypertext links to it:
<http://www.prsformusic.com/>

Approval of the Licensors shall be deemed to be given to the positioning of the above credits and notices within the terms and conditions of the Licensed Service(s) where it is not reasonably practical to position such information elsewhere.

8. Auditing

8.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each relevant party keeps and makes available for inspection upon reasonable notice), both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) use of all Musical Works and (b) any income or other consideration received by or on behalf of the Licensee in relation to the Licensed Services, together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit.

8.2 For the purposes of this clause 8, the Licensee shall allow upon reasonable notice (and shall procure that each relevant party shall allow) access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives (who shall be external qualified accountants or auditors unless otherwise agreed between the parties) of the Licensors shall have such access to the Licensee's premises and shall be entitled to

inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with this Agreement.

8.3 If tests under any audit and verification process indicate under-payment of the correct Royalty Fee during the period under audit, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to the Licensors to the date when it was actually paid.

8.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct Royalty Fee during the period under audit and/or (b) failures to report correctly (so as to affect a distribution by the Licensors to their Members) amounting to at least 7.5% of the music usage during the period under audit, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 8.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefor.

8.5 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee's written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 8, save that such confidential information may be disclosed to the Licensors' directors, board sub-committee members officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.

8.6 For the avoidance of doubt, books, records and accounting records as referred to in clauses 8.1 and 8.2 above shall include data, information and records held on computers.

9. Security and Encryption

Unless agreed otherwise, the Licensee will utilise or require the utilisation of an industry security standard which is developed and is available for use in the protection of Repertoire Works. Until such time, the Licensee must use its reasonable endeavours to prevent unauthorised copying and/or the unauthorised issuing of copies of Repertoire Works by whatever technical means are practicable. Upon request the Licensee will inform the Licensors concerning its progress in relation to fulfilling this obligation.

10. Termination and Expiry

10.1 The Licensee may terminate this Agreement by giving not less than three months written notice to the Licensors. No refund of Royalty Fees shall be

provided to the Licensee where the Licensee terminates the Agreement under this clause 10.1.

10.2 The Licensors may terminate this Agreement by giving not less than three months written notice to the Licensee provided that:

- (a) where the Licensors replace the Limited Online Exploitation Licence with a similar licensing scheme, the Licensors will credit to the Licensee under such new licensing scheme a pro-rated portion of the Royalty Fees paid by the Licensee corresponding to the unexpired portion of the 12 month licence period remaining after the expiry of the notice period; or
- (b) where no replacement licence to the Limited Online Exploitation Licence is to be offered by the Licensors, the Licensors will refund a pro-rated portion of the Royalty Fees paid by the Licensee corresponding to the unexpired portion of the 12 month licence period remaining after the expiry of the notice period.

10.3 Each party shall have the right to terminate this Agreement by notice forthwith where the other party:

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt of notice of such breach; or
- (b) commits a material breach of this Agreement which is not capable of remedy; or
- (c) the other goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts,

and, for the avoidance of doubt, any breach which consists of a failure by either party to perform an obligation under this Agreement within any period required or by any date specified under this Agreement shall be deemed to be capable of remedy if such obligation is performed by such party within the 14 day cure period specified in clause 10.3(a) above.

11. No Assignment

The licences granted under this Agreement are personal to the Licensee and the Licensee may not assign, sub-license or otherwise transfer any or all of its rights or obligations under this Agreement without the written agreement of both MCPS and PRS.

12. Miscellaneous

12.1 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.

12.2 This Agreement sets forth the entire agreement of the parties in relation to the subject matter hereof and each of the parties hereto acknowledges that it has not entered into this Agreement in reliance on any representation or term not contained in this Agreement. This Agreement shall not be modified or varied except by a written instrument signed by the parties hereto.

12.3 The headings to the clauses in this Agreement are included for ease of reference only and are not part of this Agreement and are not to be taken into account in its construction.

12.4 The parties shall (and shall procure that any other necessary party within its control shall) execute all such documents and do all such acts and things as may be reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.

12.5 If this Agreement creates any rights which would in the absence of this provision be enforceable by any person not a party to this Agreement, such rights shall not be enforceable.

12.6 This Agreement shall be construed according to the laws of England and Wales and the parties agree to submit to the jurisdiction of the English Courts.

**SCHEDULE 1
MUSIC USAGE DECLARATION FORM**

To be completed within 14 days of the end of each 12 month licence period

Licence Number	
Company Name	
Contact Name	
Contact Email Address	
Contact Address	
Telephone Number	
Name of the service	
Gross Revenue generated by the service in licence Term	

Music Usage Details (for the end of each 12 month licence period)		
Clips	Number made available at any one time	
Limited Download/On Demand Streaming Service	Number of Limited Downloads/Streams delivered	
Pure Webcasting Service	Number of Streams delivered	
Premium and Interactive Webcasting Service	Number of Streams delivered	
Permanent Download Service	Number of Downloads delivered	
Music Podcasting Service	Average Number of Musical Works on Podcasts delivered	
	Number of Podcasts downloaded	
	Total number of Musical Works downloaded	
General Entertainment: Limited Download/On Demand Streaming Service	Total number of Music Hours streamed	
General Entertainment: Permanent Download Service	Total number of Music Hours downloaded	