

# PRS FOR MUSIC PODCAST LICENCE



NAME OF LICENSEE	[ ] ("the Licensee")
COMPANY REGISTRATION NUMBER OF LICENSEE	[ ]
REGISTERED ADDRESS OF LICENSEE	[ ]
LICENSED SERVICE	[insert description of licensed service] ("the Licensed Service")
COMMENCEMENT DATE	[ ] (the "Commencement Date")
QUARTERLY ADVANCE	[ ] (the "Quarterly Advance")
<b>SPECIAL CONDITIONS*:</b>  <small>*For the avoidance of doubt, any special conditions included in this section, override the attached terms and conditions to the extent there is any conflict.</small>	

The fact that this scheme operates only for one year reflects the fact that the market for podcast services is still developing. MCPS and PRS may not consider that the current terms and conditions are appropriate following expiry of this scheme and reserves the right at that time to propose different terms and conditions to those of this scheme.

**Signed on behalf of the Licensee:**

\_\_\_\_\_ Date: \_\_\_\_\_

**Signed on behalf of the Mechanical-Copyright Protection Society Limited ("MCPS") of Copyright House, 29-33 Berners Street, London W1T 3AB, contracting for and on behalf of itself and for and on behalf of and as agent of its various members and its affiliated Societies:**

\_\_\_\_\_ Date: \_\_\_\_\_

**Signed on behalf of the Performing Right Society Limited ("PRS") of Copyright House, 29-33 Berners Street, London W1T 3AB, contracting on behalf of itself and for and on behalf of and as agents of its affiliated societies:**

\_\_\_\_\_ Date: \_\_\_\_\_

## PODCAST 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 application form completed and signed by the Licensee.

**"Associated Society"** means each collecting society (or other body representing rights in Musical Works) with which MCPS and/or PRS has, from time to time, an agreement under which MCPS and/or PRS is authorised to grant licences in relation to the other society's (or body's) repertoire for the purpose of this Agreement PROVIDED THAT where such an agreement is only entered into after the commencement of the Term, a collecting society (or other body) shall only be regarded as an "Associated Society" for the purposes of this Agreement with effect from the date of signature of such agreement with MCPS and/or PRS (as applicable).

**"Associated Society Member"** means any person, firm or company who or which has been notified, from time to time, as being a member of an Associated Society by the relevant Associated Society to MCPS and/or PRS.

**"Commencement Date"** means the date specified in the cover sheet.

**"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 clause 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.

**"Electronic Reporting Format"** means *PRS for Music's* "Online V2.1" format. If and when the

DDEX format is agreed within the industry, the DDEX format shall replace *PRS for Music's* Online V2.1 format within 6 Months of such agreement unless otherwise agreed between the parties, acting reasonably.

**"Gross Revenue"** shall have the meaning set out in schedule 2.

**"Licensed Service(s)"** means the service(s) set out in the cover sheet.

**"Licensee"** means the party set out in the cover sheet.

**"Licensors"** means PRS and MCPS.

**"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 Associated 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.

**"Month"** means a calendar month.

**"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 Podcasting 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 Information”** means the information referred to in the Electronic Reporting Format.

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

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

**“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 the Associated Societies.

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

**“Quarter”** means each of the periods from 1st January to 31st March, 1st April to 30th June, 1st July to 30th September, and 1st October to 31st December, throughout the Term.

**“Quarterly Advance”** means the sum set out in the cover sheet, excluding VAT (or other equivalent sales tax, as applicable) which shall be not less than £50 per quarter (plus VAT).

**“Quarterly Royalty Statement”** means the document supplied by the Licensors to the Licensee quarterly to be completed by the Licensee and returned to the Licensors in accordance with clause 5.6 below.

**“Relevant Party”** means a party which is involved in the provision of the Licensed Services, as set out in clause 14.2.

**“Repertoire Work”** means each Musical Work the relevant copyright in which is owned or controlled, from time to time, in the UK by:

- (a) 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
- (b) 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.

Details of major groupings of repertoire (such as repertoire of significant publishers or significant Associated Societies) that are excluded from the Repertoire Works licensable under this Agreement (as at the date of this Agreement) are set out in Schedule 3 to this Agreement. The Licensors shall notify the Licensee in writing of any further inclusions or exclusions of any such major groupings of repertoire throughout the Term of this Agreement.

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, and the applicable split between mechanical and performing rights in the United Kingdom from time to time shall be used to evaluate the licence fee payable.

**“Reporting Date”** means one Month following the Quarter to which the Music Usage Information relates.

**“Royalty Fees”** means the royalties payable as set out in 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.

**“Term”** means the period starting on the Commencement Date and ending upon the date set out in clause 11.1 (unless terminated earlier under clauses 11.2 or 11.3).

**“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.

**“Voucher”** means a physical or online voucher or token which is pre-paid and allows a User to redeem that pre-payment against purchase of music from the Licensed Service.

**“Week”** means a week starting on Monday and ending on Sunday.

## 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 within Podcasts on servers within the Server Territory (including temporary copies on servers between the originating server and the ultimate destination of the Repertoire Work) 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 within Podcasts 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.

For the avoidance of doubt, it is intended that this Agreement licenses all reproductions of Repertoire Works within Podcasts necessary in the ordinary operation of the Licensed Services, but subject always to the terms of this Agreement.

- 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 Podcasts within the Territory solely as part of and for the purposes of the provision of the Licensed Services.
- 2.3 The Licensors will not unreasonably refuse or delay any request by the Licensee to include further services of the Licensee within the scope of this Agreement provided that:
  - (a) they are a Music Podcasting Service; and
  - (b) the Licensee is, in relation to that service, the Music Service Provider; and
  - (c) they are otherwise within the scope and limitations set out in this Agreement.
- 2.4 The restrictions set out in clauses 4.1, 4.2, and 4.3 shall not apply to a particular Repertoire Work where the owner of the relevant rights in such Repertoire Work has granted permission to the Licensee for the use of that Repertoire Work on the Licensed Services in the manner described under the relevant clause on such terms and conditions (including, if required, the payment of royalties or fees in addition to those specified under this Agreement) as the owner thinks fit.
- 2.5 The licences granted in clauses 2.1 and 2.2 above shall not apply to any Licensed Service which provides internet or mobile “links” to unlicensed music (whether in the form of recordings or notation, scores, lyrics, etc). The inclusion of such links on a Licensed Service shall constitute a material breach of this Agreement.

## 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 Podcasting Services; and
  - (b) the Licensee is the Music Service Provider in relation to the Licensed Services.
- 3.2 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 Podcasting Service, but which are distributed by mail.
- 3.3 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.
- 3.4 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.
- 3.5 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 3.4), 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.
- 3.6 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 Podcasting Service.
- 3.7 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 3.4 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 3.4, has the benefit of a right to copy the Repertoire Work for use in that advertisement (and on the Licensed Service(s)).
- 3.8 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.

3.9 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.

3.10 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.

3.11 For the avoidance of doubt, the licences granted under clause 2 shall not extend to any exploitation on a Music Podcasting Service from recordings which are themselves infringing copies.

#### **4. Further Restrictions**

4.1 Subject to clause 2.5, 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 Subject to clause 2.5, 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 4.8 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 Subject to clause 2.5, 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 Any additional limitations in relation to the Associated Societies' rights to grant the licences set out in clause 2 of this Agreement which have been notified to the Licensors shall be notified to the Licensee in writing (which may include by email) and shall be binding no less than 10 days following such notice. Where any restriction of a material nature is added, the Licensee shall have the right to terminate this Agreement by giving written notice to the Licensors.

- 4.5 All rights not specifically granted under this Agreement are hereby reserved.
- 4.6 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.
- 4.7 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.
- 4.8 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the UK or any other territory.

## 5. Payment and Accounting

- 5.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors:
- (a) the Quarterly Advance; and
- (b) subject to clause 5.2, the Royalty Fee.
- 5.2 The Quarterly Advance is recoupable against the Royalty Fee. If any part of the Quarterly Advance remains unrecouped at the end of a Quarter, such unrecouped amount may be carried over to subsequent quarters, but for the avoidance of doubt, shall not (except as set out in clause 5.3 below) have the effect of reducing any subsequent Quarterly Advance. If any part remains unrecouped upon termination or expiry of the Agreement, the Licensors shall return such part to the Licensee.
- 5.3 The Quarterly Advance shall be reviewed at the end of each calendar year. It may also be reviewed during a calendar year if the royalties calculated for any particular Quarter under schedule 2 differ from the Quarterly Advance by 20% or more.
- 5.4 Where, in relation to any particular Quarter, the Licensee fails to provide by the required date the information required under the Agreement to allow the calculation referred to in clause 5.1(b), then the Licensors shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Quarters and (b) any other relevant factors

which could reasonably lead the Licensors to believe that the Royalty Fees payable would be materially different to those paid or payable in previous Quarters.

- 5.5 The Quarterly Advance shall be payable by direct debit on the first day of each Quarter. Where the Agreement begins (and/or a Licensed Service comes into operation) within a Quarter, the first Quarterly Advance payment shall be pro-rated (according to the Commencement Date) and shall be payable upon the later of signature of this Agreement and the date on which the first Licensed Service is made available to Users for the first time.
- 5.6 Within 15 working days of the end of each Quarter, the Licensee shall provide to the Licensors a fully and accurately completed Quarterly Royalty Statement. The address for delivery of the Quarterly Royalty Statement is Online Licensing Team, PRS for Music, Copyright House, 29-33 Berners Street, London, W1T 3AB or to an email address specified by the Licensors from time-to-time.
- 5.7 *PRS for Music* shall, on behalf of the Licensors, each of the Members and, subject to clause 4.4, the associated societies, raise an invoice for the due amount, and the Licensee shall pay such invoice by electronic bank transfer (or, if agreed by the Licensee, direct debit) within 21 days of the invoice date.
- 5.8 All licence 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.
- 5.9 Except as expressly set out in this Agreement, 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.
- 5.10 Notwithstanding the provisions of this clause 5, the Licensors confirm and warrant that *PRS for Music* is authorised to receive all payments under this Agreement as agent on behalf of the Licensors, each of the Members and, subject to clause 4.4, the Associated Societies.
- 5.11 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date (or the date on which such fees should

ordinarily have been paid in circumstances where the Licensors have been unable to submit an invoice) due to default of the Licensee, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment should have been made to the date on which the payment was made.

5.12 All payments made under this Agreement shall be in Sterling unless otherwise agreed by the parties in writing. Where it is necessary to convert an amount payable to Sterling from another currency, the exchange rate used shall be the Financial Times closing mid market rate on the last working day of the Quarter to which the payment relates. The Licensee shall pay all bank charges on transfers of sums payable by the Licensee to the Licensors (or *PRS for Music* pursuant to clause 5.10).

5.13 In respect of Music Podcasting Services where a significant proportion of Musical Works accessed by Users are either no longer in copyright in the relevant part of the Territory or are otherwise not Repertoire Works (by way of example, services specialising in classical music), the Licensors shall agree an appropriate deduction to the Gross Revenue and Minimum Royalties to apply as from the Commencement Date. This deduction shall be reviewed every six Months.

5.14 The provisions of paragraph 3.4 of Schedule 2 shall apply if any dispute arises in relation to the application of the provisions of clauses 5.13 above or if agreement cannot be reached between the parties in relation to the appropriate adjustment or deduction to be made pursuant to those provisions.

## 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 the Music Usage Information to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) in the Electronic Reporting Format quarterly by the Reporting Date.

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 To assist the Licensors in developing a new scheme to apply to Music Podcasting Services following the expiry of this scheme, if the Licensors so request, the Licensee agrees to share with the Licensors on a confidential basis (and otherwise in a manner and at a time to be agreed between the parties) generic data and information collected during the Term, including, but not limited to, the following:

(a) a general description of Podcasts (for example, a download of a previously broadcast radio programme or new, customised content);

(b) the period during which each Podcast was on offer for;

(c) how each Podcast was promoted;

(d) the number of downloads per week for the time during which each Podcast was offered;

(e) the objective(s) of offering each Podcast (for example, brand building; new opportunities to connect with core market; attracting new market/listeners); and

(f) a description of the 'market' reaction to each Podcasts.

6.4 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 or to provide free access to a mobile phone network or internet access.

6.5 The Licensee acknowledges that the Licensors have a responsibility to maximise the efficiency of their reporting to their Members and the Associated Societies. Therefore, if the Licensors wish to make any reasonable upgrade or alteration of whatsoever nature to the Electronic Reporting Format or the Quarterly Royalty Statement format during the Term,

the Licensee agrees to use its reasonable endeavours to implement the changes required as soon as is reasonably practicable, PROVIDED THAT the Licensors shall not request that the Licensee implements the change in less than six Months from the making of the request, and in each case of a change the following procedures shall apply:

- (a) the Licensors shall give full details thereof in writing to the Licensee;
- (b) the Licensee will respond in writing within 4 Weeks of receipt of the request, stating the date by which it commits to comply with the change and the Licensors shall provide full assistance to the Licensee in order to assist the Licensee in complying with the change; and

the parties will then finalise the details and undertake tests to ensure that the change operates satisfactorily within the terms of this Agreement, satisfactory operation of which will be deemed acceptance of the change and the definition of Electronic Reporting Format, Music Usage Information and/or the Quarterly Royalty Statement will be amended or replaced accordingly. For the purpose of this clause, in determining what change may be reasonable, regard shall be had to the DDEX project.

- 6.6 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. Late Reporting

- 7.1 The following provision applies where the Licensee has:
  - (a) failed to deliver prior to the required date Music Usage Information for the Licensed Service; or
  - (b) delivered such Music Usage Information prior to the required date, but it contains any omission or error of whatsoever nature (by way of example only, Repertoire Works having been omitted therefrom or incorrectly or misleadingly named, or the duration of any Repertoire

Works having been under-reported) which is material and the Licensee has failed to give notice in writing to the Licensors correcting the omission or error by the date upon which such reporting should have been provided.

- 7.2 In such circumstances (and without prejudice to any other rights which either or both Licensors may have against the Licensee) if one or both of the Licensors has distributed some (or all) royalties received (excluding any commission) to Members and/or associated societies based on the usage data supplied, but, as a result of clause 7.1(a) or (b) applying, the royalties distributed do not accurately or fairly represent that which each of the Members and/or Associated Societies should have received (when considering the true usage of Repertoire Works), then the Licensee shall pay the fees set out in clauses 7.3 and 7.4 (in addition to those set out in clause 5).
- 7.3 Where clause 7.2 applies, separately in relation to each relevant Repertoire Work either omitted from the relevant Music Usage Information or as regards which there was a material omission or error of whatsoever nature or in relation to which the relevant Music Usage Information was not delivered, the additional fees shall be calculated at the rate equivalent to that which has been or will be paid by MCPS and/or PRS (as applicable) to their members (or associated societies) in relation to the Music Usage Information which was submitted prior to the required date.
- 7.4 Where clause 7.2 applies, the Licensee will also pay interest on the additional fees as referred to in clause 7.3 above computed in accordance with clause 5.11 and calculated from the date on which MCPS and/or PRS (as applicable) first made a distribution to their members (or associated societies) in relation to the relevant period to the date on which the Music Usage Information was received by the Licensors or the date on which the Licensors received written notice of the relevant error, as the case may be.
- 7.5 The provisions of this clause apply notwithstanding any other provision of this Agreement, but are without prejudice to any other right which MCPS and PRS have in relation to any failure to submit Music Usage Information fully or accurately completed within the time stipulated in clause 6.1.

## 8. Credits and Notices

- 8.1 The Licensee shall include on each of the Licensed Services:

- (a) the logo of *PRS for Music*
- (b) details of the following website and, where practical, hypertext links to it: [www.prsformusic.com](http://www.prsformusic.com)
- (c) where reasonably practicable, the name of the composer and publisher of the Repertoire Works provided via the Licensed Services; and
- (d) a notice explaining that use of the musical works is subject to restrictions and that a summary of these restrictions may be obtained by accessing the Licensors' website through the link referred to above.

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.

## 9. Auditing

- 9.1 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. Where any agreement between the Licensee and the Licensors replaces this Agreement or licenses substantially the same activities (the "**Replacement Agreement**"), the twelve month time-limit referred to above shall begin following termination or expiry of the Replacement Agreement.
- 9.2 For the purposes of this clause 9, 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.

- 9.3 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 (at the rate set out in clause 5.11).
- 9.4 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 6.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefor.
- 9.5 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.
- 9.6 For the avoidance of doubt, books, records and accounting records as referred to in clauses 9.1 and 9.2 above shall include data, information and records held on computers.
- 9.7 The Licensee shall, if requested by the Licensors, provide a statement from its auditors (but not more than once per year) confirming that the financial information submitted by the Licensee for the relevant requested period is in accordance with the actual Gross Revenue (as defined under this agreement) for that period.

## 10. Security and Encryption

10.1 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.

10.2 Save as may be permitted by law, the Licensee agrees it shall not (and shall procure that any Relevant Party shall not) attempt to:

- (a) remove or alter any rights management or identifier information that may be associated with any Repertoire Works; or
- (b) circumvent any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

## 11. Termination and Expiry

11.1 This Agreement shall expire on 31 December 2010 unless terminated earlier by written agreement or in accordance with the terms of this clause 11.

11.2 This Agreement may be terminated by the Licensee, by giving not less than three Months written notice to the Licensors or upon written notice in circumstances where the Licensee is ceasing to engage in activities covered by this Agreement.

11.3 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,

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 11.3(a) above.

11.4 The Licensors shall have the right to terminate this Agreement by notice forthwith if the Licensee:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts (as that term is defined in section 123 of the Insolvency Act 1986) or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or

restrained, in each case within 30 days thereafter; or

(h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).

11.5 The licences granted under clause 2 of this Agreement are so granted on the basis of the representations made by the Licensee in the application form.

11.6 Termination of this Agreement for whatever reason shall be without prejudice to any rights which have already accrued to the parties under this Agreement.

## 12. Effect of Termination

12.1 Upon termination of this Agreement all licences granted under this Agreement shall terminate and the Licensee shall immediately cease to be licensed by the Licensors for the reproduction or communication to the public of Repertoire Works via the Licensed Services. Termination shall be without prejudice to the ability of Users to retain a copy of a Repertoire Work received by them pursuant to the Licensed Service where such Licensed Service authorises the retention of copies.

12.2 Clauses 5, 6, 7, 9, 12, 15 and 16 shall survive the termination of this Agreement, but only in relation to the Licensee's activities during the Term.

## 13. No Assignment

13.1 Subject to clause 13.2, 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.

13.2 Subject always to the other provisions of this Agreement, the Licensee shall be permitted to use the services of a third party in operating the Licensed Services, provided that:

(a) the Licensee retains complete control and direction over the provision of the Licensed Services to Users; and

(b) the Licensors are able to audit such third party in accordance with clause 9.

13.3 The Licensee shall include the following provisions in its terms and conditions for the supply of the Licensed Services to Users:

(a) that any Repertoire Works communicated to Users may only be copied as permitted under this Agreement or by applicable law; and

(b) that, save as may be permitted by law, no attempt shall be made by Users to:

(i) remove or alter any rights management or identifier information that may be associated with any Repertoire Works; or

(ii) circumvent any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

13.4 The Licensee shall, upon request by either Licensor, supply such Licensor forthwith with a copy of the Licensee's standard terms and conditions applying to the provision of any or all of the Licensed Services.

## 14. Controlled Composition Agreements

Where any person, firm or company is or becomes a member of either of the Licensors or an Associated Society and that party itself or that party's predecessor in title or grantor has a current contract with the Licensee or the Licensee's predecessor in title or grantor:

(a) to the extent that such contract would otherwise apply in relation to the grant of any or all of the licences referred to in this Agreement and/or the terms and conditions on which such licences are granted, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract; and

(b) upon the written request of the Licensee the relevant Licensor will provide the Licensee with evidence that the relevant Member has become a Member and has given the relevant Licensor or the relevant Associated Society authority to bind the Member as regards this Agreement.

This clause does not prevent the Licensee from obtaining a licence only in relation to the rights referred to in clause 2.1 from the relevant party owning or controlling such rights where such licence is validly obtained whether before or after the Commencement Date but other than as a result of a contract with an individual composer or recording group.

For the avoidance of doubt, where the Licensee is exploiting the relevant rights outside the United Kingdom, and has in relation to such exploitation a valid licence from the Associated Society entitled to grant that licence in relation to the relevant territory or territories, this clause 15 does not operate so as to override the terms of that licence.

## 15. Notices

15.1 Except where expressly stated otherwise, any notice or other written communication given under or in connection with this Agreement shall only be effective if it is in writing. Faxes and e-mails are permitted save that notices under clause 12 of this Agreement shall not be served by e-mail. In the absence of any legitimate electronic signature system, either party shall be permitted to require the confirmation in writing (signed by an authorised signatory) of any notice originally sent by email.

15.2 The address for service of any party shall be its registered office marked for the attention of the Chief Executive or Managing Director, or, if any other address or addressee for service has previously been notified to the server, to the address so notified. A single notice served on or sent to *PRS for Music* and addressed to either Licensor shall be treated as validly served on both Licensors.

15.3 Any such notice or other written communication shall be deemed to have been served:

- (a) if personally delivered, at the time of delivery;
- (b) if posted, at the expiry of two business days or in the case of airmail four business days after it was posted;
- (c) if sent by facsimile message or e-mail, at the time of receipt of transmission (if received during normal business hours that is 09.30 to 17.30 local time) in the place to which it was sent or (if not received during such normal business hours) at the beginning of the next business day at the place to which it was sent.

15.4 In proving service of a notice it shall be sufficient proof that personal delivery was made, or that such notice or other written communication was properly addressed

stamped and posted or in the case of a facsimile message or e-mail that an activity or other report from the sender's facsimile machine or computer can be produced in respect of the notice or other written communication, in the case of a fax, showing the recipient's facsimile number and the number of pages transmitted.

## 16. Miscellaneous

16.1 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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 Royalty Fee

### 1. Definitions

**"Applicable Revenue"** means the Gross Revenue less VAT (or other equivalent sales tax, as applicable).

**"Minimum Royalties"** means the applicable minima set out in paragraph 2.1(b) below.

### 2. Royalty Fee

2.1 The Royalty Fee shall be the higher of:

- (a) 8% of the Applicable Revenue; and
- (b) £0.0015 in respect of each Musical Work (or part thereof, subject to (ii) below) included within a Podcast in respect of each occasion that such Podcast is downloaded by a User.

2.2 For the avoidance of doubt, the calculation leading to the Royalty Fee for a particular Podcast, being either (a) or (b) above shall be carried out individually in respect of each Podcast to each User and then the Royalty Fees, calculated on that basis, for all Podcasts to all Users shall be added together in order to calculate the full Royalty Fees due. For the purposes of the foregoing calculation, where there is any Gross Revenue arising which is not attributable to a particular Podcast (for example, revenue arising from advertising or sponsorship etc), this shall be apportioned equally between all Podcasts.

### 3. Bundling

3.1 Where a Music Podcasting Service (for the purposes of this clause "Service A") is provided to Users in conjunction with a service which is not a Music Podcasting Service (for the purpose of this clause "Service B"), then the price deemed to be payable by Users ("the User Price") for the Music Podcasting Service (for the purpose of calculating Gross Revenue) shall be calculated in accordance with this paragraph 3. For the avoidance of doubt, the principle for unbundling enshrined in this paragraph 3 shall apply irrespective of how many services are included in the bundle. For forgoing reference to merely two services, "Service A" and "Service B", is for simplicity only.

3.2 Where there are separate published prices for Service A and Service B, etc. when

available alone, then the User Price shall be the proportion of the bundled price represented by the relative standalone prices for Service A and Service B and any further services provided in the bundle.

3.3 Where there are no separate published prices for Service A and Service B, etc. then the User Price shall be deemed to be the proportion of the bundled price represented by the relative standalone prices for comparable UK services for Service A, Service B, etc. If there is more than one comparable service, then the average shall be used.

3.4 If there are no comparable UK standalone services for Service A, Service B, etc. then the parties will agree in good faith a suitable comparator on which to base the apportionment of revenue.

3.5 For the avoidance of doubt, where the User Price is set according to either of paragraphs 3.2 and 3.3 above, the royalty payable shall be the higher of the applicable royalty rate applied to the User Price and the applicable Minimum Royalty.

3.6 The provisions of paragraph 3.4 of Schedule 2 shall apply if any dispute arises in relation to the application of the provisions of this paragraph 3 of Schedule 1 as to whether and if so at what level the User Price shall be set pursuant to paragraphs 3.2 and 3.3 above.

### 4. Promotional Use

For the avoidance of doubt

(a) where the Licensee provides to Users Musical Works for free, then the Royalty Fee shall still be calculated in accordance with the applicable Minimum Royalties;

(b) where the Licensee sells credits to access music on the Licensed Service at a discount to a third party so that such third party can supply credits to Users that can be redeemed on the Licensed Service, then such of those credits as are redeemed shall be deemed to attract the same Applicable Revenue (for the purposes of 2.1(a) above) as if the Licensed Service had been supplied directly to the User by the Licensee at the undiscounted price

charged at that time by the Licensee

for such Licensed Service.

## SCHEDULE 2 Gross Revenue

### 1. Definitions

**"Gross Revenue"** means, subject to the provisions of this Schedule:

- (a) all revenue received (or receivable) by the Licensee from Users in consideration for the provision of the Licensed Services; and
- (b) all revenue, including by way of sponsorship and commissions, received (or receivable) by the Licensee as a result of the inclusion of third party advertising "in-download" as part of the Licensed Service, being advertising placed immediately at the start, end or during the actual delivery (by way of downloading) of a Podcast to a User; and
- (c) all revenue, including by way of sponsorship, click-throughs and other commissions, received (or receivable) by the Licensee as a result of the placement of third party advertising, buy or click-through buttons on any page, player or other media which forms part of the Licensed Service;

and in each of the above cases such revenue shall, for the avoidance of doubt, include any such revenue whether received or receivable by the Licensee or any associate, affiliate, agent or representative of such party.

Subject to the remainder of this schedule 2, there shall be no other deduction or set-off from the above revenues other than reasonable refunds to Users for services that they were unable to use (but had paid for) due to technical faults in the Licensed Services.

### 2. General

- 2.1 For the avoidance of doubt, the definition of Gross Revenue above shall be applied in conjunction with the provisions on bundling set out in paragraph 3 of schedule 1. The Licensors confirm that no revenue which is included in Gross Revenue under this Agreement shall form any part of the "revenue base" under any other licence or licensing scheme operated by the Licensors (or either of them) which grants all or some of the rights set out in clauses 2.1 and 2.2 of the main body of this Agreement (albeit in relation to a service which is not a Licensed Service hereunder).
- 2.2 For the further avoidance of doubt, where the Licensed Service is provided as part of a "portal based service" of which the Licensed Service form only one part of a suite of services including some that do not relate to

music in any way, it is not intended that the definition of Gross Revenue set out above includes the entire revenue of the portal or indeed any revenue of the portal which is not attributable to the Licensed Service.

- 2.3 For the further avoidance of doubt, Gross Revenue shall not be reduced by credit card commissions or similar payment process charges.

### 3. Advertising and Sponsorship Revenue

- 3.1 Gross Revenue obtained in the form of advertising or sponsorship revenue shall be reduced by any commission amount that has been deducted by external third party advertising agencies used to sell advertising on behalf of the Licensee, subject to the maximum deduction being 15%.
- 3.2 For the avoidance of doubt, advertising revenue referred to in sub-paragraph (c) of the definition of Gross Revenue above shall not include revenue arising from sponsored searches or click-through commissions arising from such searches.
- 3.3 The provisions of paragraph 3.4 below shall apply if a dispute (a "Dispute") arises in relation to the application of the provisions of Schedule 2 as to what revenue is included within the definition of Gross Revenue.
- 3.4 Provided that the Licensors and the Licensee shall have held substantive negotiations in good faith regarding the subject matter of the Dispute over a period of at least 21 days from the date on which the Licensors notify the Licensee or the Licensee notifies the Licensor (as the case may be) in writing of the existence of such Dispute, the Licensors or the Licensee shall then be entitled by notice in writing from the Licensors to the Licensee or by Licensee to the Licensors to refer the Dispute for determination to an independent online adjudicator acting as an expert. The identity of such expert shall either be agreed or, in the absence of such agreement within 7 days of the written notice of referral, shall be determined by the President for the time being of the Institute of Chartered Accountants, and shall be an independent chartered accountant, unless the Licensors and the Licensee agree that another type of expert would be more suitable to determine such Dispute. The Licensors and the Licensee will seek to agree the procedure for the conduct of any expert determination. If such agreement is not reached within 7 days of the appointment of the expert, the expert shall have power to set the procedure for the

expert determination. The expert shall be required, in particular, to take into account any part of the Copyright Tribunal's decision in Reference 84-90/05 relevant to the Dispute in reaching his decision. The expert shall make his determination as soon as reasonably practicable. The expert shall have power to award costs in the expert's determination, unless the Licensors and the Licensee agree otherwise. The decision of the expert is final and binds the parties to the Dispute unless there is manifest error, wilful default or fraud. For the avoidance of doubt, it is hereby confirmed that the expert shall have no jurisdiction to amend any term of the Agreement.

- 3.5 For the purposes of paragraph (c) of the definition of "Gross Revenue" above, where Music Podcasting Services are offered from a page together with other content licensable by MCPS and/or PRS to the Licensee (for example, under the Licensors' Ringtone Licence scheme), the parties will enter good faith discussions to determine, in respect of such content, how the royalty rate should be determined in relation to revenue gained from advertising and sponsorship on that page.

#### 4. Vouchers

- 4.1 The licence under clause 2.1 of the terms and conditions only applies to Licensed Services purchased using Vouchers where each such Voucher:

- (a) either
- (i) contains no branding other than that of the Licensee; or
  - (ii) is issued in conjunction with a festival or other musical event, and the voucher contains no branding other than that of the Licensee, the band/artist performing at the festival or other musical event, and/or the festival or other musical event;

and in the case of either (i) or (ii) above:

- (b) does not refer to any specific artist(s), band(s) or Musical Work(s); and
- (c) does not otherwise contravene the limitations and restrictions set out in this Agreement (in particular clause 3.4 and 3.5).

Repertoire Works provided via a Voucher scheme which is outside this paragraph 4.1 are not licensed under this Agreement and a separate licence for premium usage of this type must be sought from the Licensors.

- 4.2 The price of each Voucher shall be included in Gross Revenue if and to the extent that it is redeemed by a User or Users.

**SCHEDULE 3**  
**Excluded Repertoire**

**MCPS Repertoire Works**

*Major exclusions*

The Anglo-American repertoire of Universal Music Publishing, Sony/ATV Music Publishing and EMI Music Publishing and the Latin American Repertoire of Peer Music Publishing and SonyATV Music Publishing.

**PRS Repertoire Works**

*Major exclusions*

- a) Repertoire where the composer is a direct member of the following societies: SACEM, GEMA
- b) Repertoire licensable by CELAS GmbH (EMI Music Publishing Anglo-American repertoire).