

Cover Sheet

**Production Company Primary Exploitation
Licence Agreement**

NAME OF LICENSEE	
REGISTERED ADDRESS OF LICENSEE	Registered Company No:
COMMENCEMENT OF AGREEMENT	1 April 2011 ("the Commencement Date")
END DATE OF AGREEMENT	31 March 2012 ("the End Date") (subject to the terms of Annex A/B)

The terms of this Agreement are contained in the attached Annexes A, B, C and D

Signed by an authorised signatory for and on behalf of the Licensee:

Name: _____ **Position:** _____

Signature: _____ **Date:** _____

Signed by an authorised signatory for and on behalf of the Mechanical-Copyright Protection Society Limited ("MCPS"), contracting for and on behalf of itself and for and on behalf of and as agent of its various members and associated societies:

_____ **Date:** _____

ANNEX A
SPECIAL CONDITIONS

[This section can be used for:

(i) Details of any deposit paid by the Licensee and how it will be held (e.g. until the end of the Term in an interest-bearing account); or

(ii) Variations to the standard Terms and Conditions

(iii) Provisions relating to a Licensee that is a holding company which amend clause 10.1 to permit 100% owned subsidiary companies to benefit from the licences granted under the Agreement, subject to the Licensee taking on full liability for performance of the obligations under the Agreement and for any breach of the terms and conditions – in such circumstances use the wording immediately below. If it does not apply, delete the wording below.]

1. The following companies are wholly owned subsidiaries of the Licensee:

- (a) [] Limited at registered address, []; and
- (b) [] Limited at registered address, []; and
- (c) [] Limited at registered address, []; and
- (d) [] Limited at registered address, [].

(together the “Companies”).

2. Without prejudice generally to clause 11.1 of Annex B to the Agreement, the benefit of the rights granted to the Licensee under this Agreement will extend, during the Term, to the Companies, such extension to remain effective only insofar as the Companies are wholly owned subsidiaries of the Licensee. The Licensee warrants that the Companies will comply fully with all Licensee obligations in this Agreement and shall indemnify MCPS against all and any losses MCPS, its members or affiliated societies or MCPS-PRS Alliance Limited suffers as a result of the extension of rights under the Agreement to the Companies. For the avoidance of doubt, the Licensee is liable for payment of all fees under the Agreement and for all breaches of this Agreement by the Companies.

ANNEX B

STANDARD TERMS AND CONDITIONS

1. Definitions

“Ad-bumper” means a short piece of audio-visual material played at the start and end of commercial breaks during the broadcast of a Programme and which displays the name of the Programme but is not, for the avoidance of doubt, a Sponsorship Message.

“Agreement” means these terms and conditions, the Cover Sheet and annexes to the terms and conditions and any application form completed by the Licensee.

“Authorised Exploitation” means:

(a) the broadcast of the relevant Programme on the Television Channel in the United Kingdom and the Republic of Ireland; and

(b) the making available on demand of each episode of the Programme during a 30 day window before and a 30 day window after the date of first broadcast of the episode; and

the making available on demand of all episodes of the Programme during a 30 day window after the date of first broadcast of the final episode of the relevant Programme.

Where the Television Channel is a television channel in Category 4, 5 or 6 in the table set out in Annex C, “Authorised Exploitation” shall also include the broadcast of the relevant Programme in the United Kingdom and the Republic of Ireland on any television channel in Category 1, 2, or 3 of the said table.

“Additional Authorised Exploitation” means:

(a) the copying and supplying to third parties, during the Term, of Programme(s) containing Production Music for all forms of communication to the public by such third parties (including for the avoidance of doubt broadcast and on demand transmissions) throughout the world including but not restricted to terrestrial, satellite, cable, internet and mobile transmissions and for any non-theatrical use on any media. The authorisation granted hereunder shall not apply to the supply of a Programme where the broadcast for which the Programme is supplied is by way of its first Terrestrial Broadcast within the United Kingdom (“World Sales”); and

(b) the manufacture and distribution worldwide for retail sale copies of Programme(s) containing Production Music on DVD (“Retail DVD Sales”); and

(c) the making available of Programme(s) containing Production Music via the world wide web or other similar technology (“Online and Mobile”); and

(d) all of (a) to (c) above (“All Media”).

For the avoidance of doubt, Additional Authorised Exploitation shall only apply in respect of Production Music. For the further avoidance of doubt, the Additional Authorised Exploitation granted hereunder does not grant the right to communicate to the public the Programmes containing Production Music.

“Ballet”	shall mean a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences.
“broadcast” or “broadcasting”	shall have the meaning ascribed thereto in section 6 of the Copyright Designs and Patents Act 1988.
“Commercial Work”	means each Musical Work the copyright in which is owned or controlled in the United Kingdom and the Republic of Ireland by MCPS (or an MCPS member or an affiliated society or an affiliated society member) but excluding Production Music Works.
“Delivery Date”	means, in relation to a Programme, the date of delivery of the final version of the Programme to the Television Channel, or where the Programme consists of a series of episodes, the date of delivery of each individual episode to the Television Channel.
"Dramatico-Musical Work"	shall mean any Ballet, opera, operetta, musical, musical play or work of a similar nature in so far that it consists of words and music expressly written therefor.
“Excluded Work(s)”	means any Musical Work(s) which MCPS notifies to the Licensee as being excluded from the licences granted under this Agreement. An up-to-date list of Excluded Works will be available at the following website address www.prsformusic.com/ipc .
“making available on demand”	shall have the meaning ascribed thereto in section 20(2)(b) of the Copyright Designs and Patents Act 1988.
“Music Programme”	<p>means a programme where the musical audio material and/or audio-visual material with a musical soundtrack is the primary theme and not merely secondary or incidental to the storyline or documentary material featured in the programme. A “Music Programme” includes but is not limited to the following (including any combination thereof):</p> <p>A programme which consists of:</p> <ul style="list-style-type: none"> (a) one or more audio-visual live music performances by an artist, a group or a number of artists and/or groups; (b) an audio-visual documentary where the featured subject matter is one or more music artists, groups, songwriters or composers or a musical style or genre; (c) one or more promotional audio-visual productions which have a music sound recording as their main element; (d) audio-visual programming which has music as its primary theme, including, without limitation, archive collections of previously exploited television material; (e) an audio-visual recording of a music award event.
“Musical Work”	means any work consisting of music and any lyrics or words written to be used with the music (if applicable). It includes any part of such a work.
"Permitted Excerpts"	<p>refers only to Dramatico-Musical Works and shall mean excerpts where the use of all such excerpts in any Programme complies with all the following limitations:</p> <ul style="list-style-type: none"> (a) the total duration of the excerpts does not exceed 20 minutes in any single Programme; (b) the use is not a "potted version" of the Dramatico-Musical

Work;

- (c) the use is not or does not cover a complete act of the Dramatico-Musical Work;
- (d) each excerpt is not presented in a "dramatic form" as defined below; and
- (e) as regards Ballets specifically devised for television or excerpts from existing Ballets, the total duration does not exceed 5 minutes.

A dramatic form shall be deemed to be created only by a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-Musical Work and/or its associated words is woven into and carries forward the plot and its accompanying action (a dramatic form shall not, for example, be deemed to be created by the use of costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph the word "actors" shall include actors, singers, mimics and/or puppets.

“PMSR”	means any production music sound recording being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in the United Kingdom and the Republic of Ireland by MCPS or any member (or any affiliated society or affiliated society member) and where such party has authorised MCPS to license such recordings as so-called production or library music.
“Production Music”	means Production Music Works and PMSRs.
“Production Music Work”	means any Musical Work: <ul style="list-style-type: none"> (a) embodied on a PMSR; and (b) the copyright in which is owned or controlled in the United Kingdom and the Republic of Ireland by MCPS (or an MCPS member or an affiliated society or an affiliated society member).
“Programme”	means a programme or series of episodes of a programme produced by the Licensee that is not a Music Programme.
“Programme Related Material”	means, in relation to a Programme, a piece of ancillary audio-visual material that is connected to a Programme and is created by the Licensee at the time of production of that Programme, including Re-versions. By means of example only, this may be ‘backstage footage’ or a ‘best-of’ or highlights programme.
“Re-version”	means a piece of audio-visual material that is produced by editing the content of a Programme into a different form. Re-versions will comprise substantially the same content as was contained in the original Programme, but may include some new content, provided that it is related to the original content.
“Repertoire Work”	means Commercial Works, Production Music Works and PMSRs, but excludes (i) commissioned music (i.e. Musical Works specially commissioned from MCPS composer/writer members) and (ii) Excluded Works except where the relevant MCPS member gives its prior written consent to the Licensee for the use of the Excluded Work(s) in accordance with the provisions of clause 4 of this Agreement.
“Sponsorship Message”	means any item which includes a specific audio and/or visual reference to a Programme sponsor.

“Television Channel”	means, in respect of the relevant Programme, the television channel in respect of which such Programme has been commissioned or, where the Programme is a licence fee secured programme, the channel which has secured the right of first broadcast in the United Kingdom.
“Term”	means the period starting on the Commencement Date and ending on the End Date or any earlier termination of the Agreement in accordance with clause 9.
“Terrestrial Broadcast”	means a broadcast by means of ‘free to air’ wireless transmission. For the avoidance of doubt, it does not include Broadcast via a cable service, digital terrestrial television or by satellite.
“Use”	means each unit of 30 seconds (or part thereof) of a Repertoire Work which is included in an episode of the Programme. Each inclusion of a Repertoire Work (or part thereof) shall constitute a separate Use (although the inclusion of a Production Music Work and the PMSR on which it is embodied shall together constitute only one Use), even if the duration of such use is less than 30 seconds. All copies of Repertoire Works including those which might constitute acts of copying permitted under Part I Chapter III of the Copyright Designs and Patents Act 1988 shall be included when calculating the number of Uses under this Agreement.

2. Rights Licensed

2.1 Subject to the terms and conditions set out in this Agreement, MCPS hereby grants to the Licensee a non-exclusive licence during the Term to:

- (a) reproduce (including by way of synchronisation) Repertoire Works in the United Kingdom into Programmes solely for the purpose of the Authorised Exploitation; and
- (b) reproduce (including by way of synchronisation) Repertoire Works in the United Kingdom into Programme Related Material solely for the purpose of supplying such Programme Related Material to a third party (or for retaining the material itself) for online and mobile exploitation; and
- (c) reproduce (including by way of synchronisation) Production Music in the United Kingdom into Programmes solely for the purpose of the Additional Authorised Exploitation.

Any copying of Repertoire Works for purposes beyond those set out in (a), (b) and (c) above is not licensed under this Agreement.

2.2 In circumstances where the Licensee wishes to record into a Programme, prior to supplying such Programme for any of the Additional Authorised Exploitations, alternative music to that originally recorded in the Programme, then MCPS shall grant to Licensee for the foregoing sole purpose the non-exclusive right to reproduce in the United Kingdom Production Music into Programmes for such purpose during the Term. The Licensee fees shall be those set out in Annex D.

2.3 In certain circumstances the right to reproduce Repertoire Works into Programmes by a production company for the purpose of the Programme’s first UK television broadcast will have been licensed pursuant to a broadcaster’s blanket licence and not pursuant to this Agreement. The right to subsequently exploit that Programme for other forms of subsequent media exploitation (for example, sale of international television broadcast rights or for DVD retail sale) may in some cases be retained by the production company or in other cases may revert to the production company from the commissioning broadcaster after a fixed period of time. In such circumstances the Licensee may wish to clear the rights in the Production Music in such Programmes for the Additional Authorised Exploitation. If the Licensee so wishes to clear such rights for the Additional Authorised Exploitation the Licensee may do so pursuant to clause 2.1(c) above and subject to paying the license fees for such Additional Authorised Exploitation as set out in Annex D.

3. Extent of the Licence

3.1 This Agreement does not extend to or permit the inclusion of any adaptation of any Repertoire Work in an episode of the Programme unless the relevant MCPS member has expressly consented thereto for the purposes of the Agreement. By way of example only, this applies to:

- (a) making any arrangement of the music; or
- (b) making any alteration to the lyrics, save for any minor change which does not alter the meaning thereof; or
- (c) any sampling (as that expression is commonly used in the music industry) of the music and/or lyrics or
- (d) reproduction in the form of a sample of the music and/or lyrics; or
- (e) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
- (f) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

3.2 The Agreement does not extend to the reproduction of any Commercial Work:

- (a) in the form of a parody, pastiche 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) where there is a derogatory, facetious, obscene or demeaning reference to the Commercial Work, its composer(s) and author(s) or the performing artist; or
- (c) without prejudice to clauses 3.3 and 3.4 below, in any manner which is likely to or causes the public to believe that the Commercial Work (or the composer(s) thereof) is endorsing or promoting any product or service, or the views expressed in the Programme.

Whether a use of a Commercial Work breaches this clause 3.2 shall be decided by MCPS in its reasonable discretion.

3.3 For the avoidance of doubt, the licences granted under this Agreement do not cover the use of any Repertoire Work with any advertising where:

- (a) such Repertoire Work is incorporated into such advertising; or
- (b) such Repertoire Work is otherwise presented in such a way that a reasonable person might associate the Repertoire Work with the advertising.

3.4 The licences granted under this Agreement do not cover the use of any Commercial Work with any Sponsorship message where:

- (a) such Commercial Work is incorporated into such Sponsorship Message; or
- (b) such Commercial Work is otherwise presented in such a way that a reasonable person might associate the Commercial Work with the Sponsorship Message.

3.5 The use of any Commercial Work in title and/or credit sequences and/or Ad-bumpers is excluded from this Agreement. Commercial Works for use in title and/or credit sequences and/or Ad-bumpers must be licensed in advance individually with the copyright owner or via MCPS.

3.6 Where any Repertoire Work forms part of any Dramatico-Musical Work, the licences granted under this Agreement shall not apply to the reproduction of:

- (a) the whole Dramatico-Musical Work;
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
 - (i) the Programme contains only excerpt(s) within the definition of Permitted Excerpts; and
 - (ii) MCPS has not notified the Licensee in writing that the Member or the Foreign Society Member objects to the reproduction of any such Repertoire Work.

- 3.7 In any event, any licence hereunder only applies to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.
- 3.8 All rights not specifically granted under this Agreement are hereby reserved, and the parties hereby agree that no implied licences are to be construed hereunder.
- 3.9 The acts of broadcasting and making available of Repertoire Works within the Programme and within Programme Related Material are not licensed hereunder.
- 3.10 The provisions of this Agreement authorise the making of the Programme for the Authorised Exploitation and/or the Additional Authorised Exploitation only. In the event that a copy of the Programme or the soundtrack thereof is made or used in any way for any other purpose (including, without limitation, retail sale (except in the case of Production Music within the Additional Authorised Exploitation), rental and/or lending, cinematic performance) whether by any party to this Agreement or any other party then that copy shall not be licensed under this Agreement. MCPS reserves all rights including those of its members and the affiliated societies and the affiliated society members to take action in relation to any such copy.
- 3.11 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings other than PMSRs, films, dramatic works, performers' rights, moral rights or rights in performances. MCPS, for and on behalf of its members, warrants that all the necessary performers' waivers and consents have been obtained from the relevant performers insofar as their performances are embodied on PMSRs.
- 3.12 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work (or part thereof) which is not a Repertoire Work, and nothing in this Agreement applies in relation to any such Musical Work or sound recording or film producing any such Musical Work.
- 3.13 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the United Kingdom and the Republic of Ireland or any other territory.

4. Excluded Works

- 4.1 The licences granted under clause 2.1 do not permit the reproduction of an Excluded Work unless (i) the relevant MCPS member has expressly consented to its reproduction, (ii) the Licensee has entered into an agreement with the relevant MCPS member to this effect and (iii) evidence of such agreement has been provided to MCPS.
- 4.2 Where the Licensee has obtained the prior written consent of the relevant MCPS member for the reproduction of an Excluded Work in a Programme or Programme Related Material then the Excluded Work shall, in respect of the specific Programme or Programme Related Material for which the consent has been granted, be deemed a Repertoire Work and shall be licensed under this Agreement. The terms and conditions governing the reproduction of the Excluded Work set out in this Agreement will be subject to any specific terms and conditions agreed between the Licensee and the relevant MCPS member. Where a conflict arises between the terms and conditions agreed between the Licensee and the relevant MCPS member and the terms and conditions set out in this Agreement, then the former shall prevail over the latter in respect of the Excluded Work.
- 4.3 It is the responsibility of the Licensee to contact the relevant MCPS member directly for consent to reproduce Excluded Works.
- 4.4 MCPS will notify the Licensee of those Musical Works that are Excluded Works on or before 1 April 2010 and the restriction on the reproduction of such Excluded Works pursuant to clause 4.1 shall apply to all Programmes and Programme Related Material with a Delivery Date of 1 July 2010 or later. Thereafter, MCPS will notify the Licensee by email on or around the first working day of each month of any up-date to the list of Excluded Works. Any new Musical Works added to the list of Excluded Works will be Excluded Works in respect of all Programmes and Programme Related Material with a Delivery Date on or after the first working day of the second calendar month after the month in which MCPS provided notification of the new Excluded Works. By way of example, Excluded Works notified to the Licensee on the 1 July 2010 will apply to all Programmes and Programme Related Material with a Delivery Date on or after 1 September 2010.

5. Licence Fees – Commercial Works

- 5.1 In respect of Commercial Works, the Licensee shall pay to MCPS the licence fees set out in Annex C of this Agreement. These licence fees and the associated exploitation of Repertoire Works are

offered by MCPS on a strictly non-precedential basis and shall be subject to review upon expiry or termination of this Agreement.

6. Licence Fees – Production Music

6.1 In respect of Production Music, the Licensee shall pay to MCPS the licence fees set out in Annex D of this Agreement.

7. Payment

7.1 All payments and sums referred to in this Agreement are subject to VAT.

7.2 MCPS will issue invoices as set out in Annexes C and D to this Agreement. All invoices are due for payment in full within 28 days of the date of issue ("the Due Date").

7.3 Without imposing any obligation on MCPS to accept late payment and without prejudice to any rights and remedies MCPS may have by virtue of any failure of the Licensee to pay the licence fees specified in this Agreement by the Due Date, MCPS will be entitled to charge interest on the licence fees from the Due Dates at 3% above the National Westminster Bank base rate. MCPS shall in addition be entitled to charge interest at the same rate where payment is later than it would otherwise be as a result of the Licensee failing to deliver full and accurate reporting information in accordance with the timescales set out in clause 8 below.

8. Reporting

8.1 In respect of the licence granted under clause 2.1(a) above, the Licensee shall supply to MCPS within 7 days (or within 14 days, where this is agreed in advance by MCPS) of the Delivery Date full and accurate details of all Repertoire Works copied into each episode of a Programme and the name of the television channel on which the Programme is to be (or has been) first broadcast.

The Licensee's reports must be in the format attached at Schedule 1 or such alternative format which the Licensee uses to report to broadcasters, provided that:

- (a) such format complies with MCPS' reasonable requirements; and
- (b) it contains all the information that MCPS requires (as set out in Schedule 1).

8.2 In respect of the licence granted under clause 2.1(b) above, the Licensee shall supply to MCPS full and accurate details of all Repertoire Works copied into each piece of Programme Related Material within 7 days (or within 14 days, where this is agreed in advance by MCPS) from the date that such material is made available to the public for the first time. The Licensee's reports must be in the format attached at Schedule 1.

8.3 In respect of the licence granted under clause 2.1(c) above, the Licensee shall inform MCPS of which of the Additional Authorised Exploitations the Licensee wishes to license, at any time prior to the supply by the Licensee of the relevant Programme to a third party for the form of Additional Authorised Exploitation so licensed.

8.4 In respect of the licence granted under clause 2.2 above, the Licensee shall supply to MCPS full and accurate details of all Production Music copied into each Programme, at any time prior to the supply by the Licensee of the relevant Programme to a third party for the form of Additional Authorised Exploitation so licensed. The Licensee's reports must be in the format attached at Schedule 1.

8.5 The Licensee shall also supply MCPS with any further information or documentation in its possession, power, custody or control (and will supply MCPS with reasonable assistance to obtain any further information or documentation not in its possession, power, custody or control) reasonably requested by MCPS at any time, in order to enable MCPS to verify the Musical Works which are contained with a Programme or to verify that the Licensee is abiding by the terms and conditions of this Agreement.

8.6 MCPS reserves the right to charge additional royalty fees in respect of those Uses of Repertoire Works which are reported inaccurately to MCPS. Furthermore, MCPS shall be entitled to charge royalty fees on any Uses of Repertoire Works that are not initially reported by the Licensee (when reporting is delivered for a Programme) but are subsequently identified, as well as those Uses that cannot be identified as Repertoire Works at the time that reporting is initially processed by MCPS but are subsequently found to be Repertoire Works. The royalty fee charged per additional Use

identified will be based on the Use fees referred to in Annexes C and D. MCPS shall in addition have the right to charge interest at 3% above the National Westminster Bank base rate.

- 8.7 In order to facilitate the preparation of reporting, MCPS will (upon request) grant the Licensee access to its online works database(s), subject to the Licensee's acceptance of MCPS' standard terms and conditions of access. For the avoidance of doubt, should MCPS withdraw access to such a database or should a database become unavailable (whether temporarily or permanently) for any reason, this shall in no way affect the obligations of the Licensee to deliver full, accurate and timely reporting as set out in this clause 8.
- 8.8 The Licensee shall supply to MCPS throughout the Term a fully completed notification form (in the form set out in Schedule 2) for each new Programme within 14 days of being commissioned to produce the Programme (or within 14 days of the Licensee commencing production, if the Programme has not been commissioned) and shall notify MCPS in writing immediately should any information contained on the notification form change at any time subsequently, including but not limited to the Programme title and scheduled Delivery Date.
- 8.9 Upon request, the Licensee shall supply to MCPS a copy of any Programme (or episode of a Programme) produced by it under this Agreement within 7 days of such a request following the Delivery Date, in order that MCPS may confirm that the Licensee is complying with the terms and conditions of this Agreement.

9. Auditing

- 9.1 The Licensee shall keep and make available for inspection upon reasonable notice, both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to the use of all Musical Works in Programmes, together with any supporting documentation relating thereto. Where any agreement between the Licensee and MCPS 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 access to its premises to inspect accounting and reporting records, but not more than once per annum. The duly authorised representatives of MCPS 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 the provisions of this Agreement.
- 9.3 If tests under any audit and verification process indicate under-payment of the correct licence fees during the period for which monitoring has been carried out by or on behalf of MCPS, then, without prejudice to MCPS' 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 MCPS to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of National Westminster Bank Plc).
- 9.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct licence fees during the period for which monitoring has been carried out by or on behalf of MCPS and/or (b) failures to report correctly amounting to at least 7.5% of the music usage during the period monitored by or on behalf of MCPS, then, without prejudice to MCPS' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 9.3, MCPS' reasonable costs of such audit and verification within 28 days of receipt of MCPS' VAT invoice therefor.
- 9.5 For the avoidance of doubt, books, records and accounting records as referred to in clauses 9.1 and 9.2 above shall be deemed to include data, information and records held on computers.

10. Termination of Agreement

- 10.1 Either party shall have the right to terminate this Agreement immediately by notice to the other party if:
- (a) the other commits a material breach of this Agreement which is not capable of remedy; or
 - (b) the other commits a material breach of this Agreement which is capable of remedy but which has not been so remedied within 14 days of notice thereof;
 - (c) the other is dissolved, becomes insolvent or otherwise unable to pay its debts, ceases to trade, has a trustee, administrator or receiver appointed, has a resolution passed for its

winding up or liquidation or makes a general assignment, arrangement or composition with or for the benefit of its creditors.

10.2 Where MCPS terminates this Agreement as a result of the non-payment of licence fees by the Licensee, any episode(s) of a Programme made during the period in which the licence fees were unpaid (whether in full or in part) shall be deemed to be unlicensed.

10.3 Any breach of clause 3.2 of this Agreement shall be deemed to be a material breach incapable of remedy for the purposes of clause 10.1(a). In the case of termination in these circumstances, the licence granted under this Agreement shall not apply to the episode(s) of the Programme containing the material which breached clause 3.2 (as well as any episode made after the date of termination).

10.4 For the avoidance of doubt, any exploitation of Repertoire Works by the Licensee following termination of this Agreement will be unlicensed.

11. Other

11.1 Other than as set out herein, this Agreement is personal and the Licensee shall not assign, sub-contract or otherwise transfer this Agreement or any of its rights or obligations under this Agreement in whole or in part without the prior written consent of MCPS, not to be unreasonably withheld or delayed.

11.2 The Licensee acknowledges that this is a 'blanket' licence agreement, and that for both parties to take advantage of the administrative simplicity of such a licence, the mechanism for calculating the licence fees must take account of all copying of Repertoire Works, including where some such copying might fall within one of the exceptions set out in Part I Chapter III of the Copyright Designs and Patents Act 1988.

11.3 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 of any other rights and remedies.

11.4 No waiver shall be binding or effectual unless expressed in writing and signed by the party giving it and such waiver shall be effective only in the specific instance and for the purpose given.

11.5 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.

11.6 This Agreement shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

ANNEX C

COMMERCIAL MUSIC – LICENCE FEES

The licence fees for Commercial Music shall be calculated on a per-Programme basis, as follows:

1. Where a Programme consists of a single episode, once reporting has been received for that Programme in accordance with clause 8.1, 8.3 and 8.4, it will be analysed by MCPS and the Commercial Music licence fees will be calculated based on the fees per Use listed in the table below. MCPS will then send the Licensee an invoice for the licence fee. Where a Programme consists of a number of episodes, then invoicing shall take place monthly or quarterly (at MCPS' discretion) and there shall be no obligation on MCPS to wait until reporting all episodes have been delivered before it starts to invoice the Licensee.

Category	Television Channel	Number of initial broadcasts	Each additional broadcast	Authorised Exploitation (Clause 2.1(a)) Use Rate	Clause 2.1(b) Use Rate
1	BBC1/ ITV1	2	Charged at 50% of Use rate	£169 per Use	£54 per Use
2	BBC2/ Channel 4	2	Charged at 50% of Use rate	£115 per Use	£39 per Use
	C4 Learning programmes	8	Charged at 12.5% of Use rate		
3	Five	2	Charged at 50% of Use rate	£87 per Use	£28 per Use
4	E4/ More 4/ BBC 3/BBC4/ ITV 2/ITV3/ITV4 (and any other channel within the same broadcasting organisation , other than those already set out in categories 1 to 8 of this table)	Up to 2 broadcasts on each of 8 different broadcast weeks	Charged at full Use rate*	£84 per Use	£28 per Use
5	Five Life/Five US (and any other channel within the same broadcasting organisation, other than those already set out in categories 1 to 8 of this table)	Up to 2 broadcasts on each of 8 different broadcast weeks	Charged at full Use rate*	£70 per Use	£25 per Use
6	All other satellite/ digital terrestrial channels	Up to 2 broadcasts on each of 8 different broadcast weeks	Charged at full Use rate*	£68 per Use	£23 per Use

*this payment covers an additional 2 broadcasts on each of 8 different broadcast weeks

2. In respect of the licence granted under clause 2.1(a) of this Agreement, the total number of Uses in the Programme shall be calculated and multiplied by the appropriate Use rate. The resulting licence fee covers the supply of the Programme by the Licensee to the Television Channel for an initial number of broadcasts (together with the making available of the Programme on-demand, as detailed in the definition of Authorised Exploitation), as indicated. Where the Television Channel wishes to undertake additional broadcasts over and above this allowance, the Licensee shall pay an additional licence fee in respect of each such broadcast, based on the 'additional broadcast' Use rate set out above.

3. Where the Television Channel of a Programme is in category 4, 5 or 6 above, and the relevant Programme is broadcast on a category 1, 2 or 3 television channel (see definition of Authorised Exploitation), the standard Use rate for that channel shall be applied to the initial number of broadcasts set out above. Thereafter, the 'additional broadcast' Use rate for that channel shall be applied.
4. Where the Television Channel wishes to undertake additional broadcasts over and above those covered by any licence fees that MCPS has already invoiced, the Licensee shall notify MCPS in writing as soon as it receives notice of the additional broadcasts itself so that MCPS may calculate the additional licence fees due and invoice the Licensee accordingly. For the avoidance of doubt (and without prejudice to MCPS' rights under this Agreement), nothing in this clause shall prevent MCPS from issuing invoices earlier should it become aware of additional broadcasts prior to receiving written notification of them from the Licensee.
5. In respect of the licence granted under clause 2.1(b) of this Agreement, the Licensee shall pay a one-off fee to MCPS for each piece of Programme Related Material, based on the number of Uses of Commercial Works in the Programme Related Material multiplied by the Use rate set out above. This fee shall become due once the piece of Programme Related Material is made available to the public for the first time. Once the Licensee has reported to MCPS in accordance with clause 8.2 above, MCPS will invoice the Licensee for the relevant amount.
6. The Licensee acknowledges that MCPS may not be able to identify all Uses of Commercial Works at the time that it initially receives reporting for a Programme from the Licensee. MCPS shall be entitled to reprocess reporting at later dates and where Uses of Commercial Works are identified that have not previously been invoiced, to raise an invoice for the relevant licence fee, which the Licensee shall pay in accordance with clause 7.2.

The Appendix to this Agreement contains worked examples illustrating how MCPS will undertake the licence fee calculation process.

ANNEX D**PRODUCTION MUSIC – LICENCE FEES**

The licence fees for Production Music shall be calculated as follows:

MCPS may at its sole discretion agree with the Licensee a single one-off licence fee to cover the use of Production Music under this Agreement in an entire series or to cover the Licensees' use of Production Music under this Agreement on an annual basis. In such circumstances, the amount of the licence fee and the terms of invoicing shall be subject to agreement between the parties and shall be detailed separately in Annex A. In all other circumstances, the licence fees for the use of Production Music under this Agreement shall be calculated on a per-Use or per-Programme basis as follows:

1. Where a Programme consists of a single episode, once reporting has been received for that Programme, in accordance with clause 8.1, 8.3 and 8.4, it will be analysed by MCPS and the Production Music licence fees will be calculated based on the fees per Use listed in the table below. MCPS will then send the Licensee an invoice for the licence fee. Where a Programme consists of a number of episodes, then invoicing shall take place monthly or quarterly (at MCPS' discretion) and there shall be no obligation on MCPS to wait until reporting all episodes have been delivered before it starts to invoice the Licensee.

	Authorised Exploitation		Additional Authorised Exploitation		
	UK TV	World Sales	Retail DVD Sales	Online and Mobile	All Media
Per 30 Seconds	£35	£10	£25	£5	£75
Per programme	£350	£100	£250	£50	£750

2. In respect of the licence granted under clause 2.1(a) of this Agreement, the total number of Uses in the Programme shall be calculated and multiplied by the appropriate Use rate. The resulting licence fee covers the supply of the Programme to the Television Channel for an unlimited number of broadcasts.
3. In respect of the licence granted under clause 2.1(b) of this Agreement, the Licensee shall pay a one-off fee to MCPS for each piece of Programme Related Material, based on the number of Uses of Production Music Works in the Programme Related Material multiplied by the Use rate set out in the Online section of the table above. This fee shall become due once the piece of Programme Related Material is made available to the public for the first time. Once the Licensee has reported to MCPS in accordance with clause 8.2 above, MCPS will invoice the Licensee for the relevant amount.
4. In respect of the licence granted under clause 2.1(c) and 2.2 of this Agreement, the total number of Uses in the Programme shall be calculated and multiplied by the appropriate Use rate. The resulting licence fee covers the supply of the Programme for the requested Additional Authorised Exploitation.
5. MCPS will aggregate durations of the same Production Music Work contained in a single episode of a Programme and shall apply the relevant Use rate to the total aggregated duration of that Production Music Work when calculating licence fees for the episode in accordance with this Annex D.
6. The licence fee for the use of Production Music in a Programme shall be capped at the per programme rate set out in paragraph 1 above.
7. The Licensee acknowledges that MCPS may not be able to identify all Uses of Production Music at that the time that it initially receives reporting for a Programme from the Licensee. MCPS shall be entitled to reprocess reporting at later dates and where Uses of Production Music are identified that have not previously been invoiced, to raise an invoice for the relevant licence fee, which the Licensee shall pay in accordance with clause 7.2.

The Appendix to this Agreement contains worked examples illustrating how MCPS will undertake the licence fee calculation process.

Schedule 1

MCPS Reporting Format

Schedule 2

Programme notification form

Appendix

Worked Examples Of Licence Fee Calculations

IPC Blanket Licence – Appendix

This Appendix sets out three examples of how the licence fees set out in Annex C and Annex D will be calculated under the Agreement.

Example 1 (clause 2.1(a)) exploitation

A Programme is commissioned by Channel 4.

Reporting for the Programme, **consisting of 4 episodes each of 45 minutes duration first broadcast on Channel 4 (on or after 1st October 2010) and then broadcast on E4 at a later date**, shows that the Licensee has used:

	Commercial Music Uses	Production Music Uses
Episode 1	20	28
Episode 2	15	22
Episode 3	25	05
Episode 4	20	25
Total Uses	80	105

Note - It is assumed that aggregation of Uses of the same Production Music Works in the same episode has already taken place.

Primary exploitation on Channel 4:

The licence fees will be calculated as:

Commercial Music

$$80 \times \text{£}115 = \text{£}9,200$$

Production Music

$$\text{Episode 1 } 28 \times \text{£}35 = \text{£}980 \text{ but capped at } \text{£}350$$

$$\text{Episode 2 } 22 \times \text{£}35 = \text{£}770 \text{ but capped at } \text{£}350$$

$$\text{Episode 3 } 05 \times \text{£}35 = \text{£}175$$

$$\text{Episode 4 } 25 \times \text{£}35 = \text{£}875 \text{ but capped at } \text{£}350$$

$$\text{Total} = \text{£}1,225$$

Total licence fee

$$\text{£}9,200 + \text{£}1,225 = \underline{\text{£}10,425}$$

Further exploitation on E4:

This is not licensed under the IPC Licence Agreement and should be licensed through MCPS under its Secondary Exploitation Licensing Framework

Example 2 (clause 2.1(a)) exploitation

A Programme is licence fee funded by E4.

Reporting for the Programme, **consisting of 2 episodes each of 30 minutes duration first broadcast on E4 and then broadcast on Channel 4 (on or after 1st October 2010) at a later date**, shows that the Licensee has used:

	Commercial Music Uses	Production Music Uses
Episode 1	20	28

Episode 2	15	22
Total Uses	35	50

Note - It is assumed that aggregation of Uses of the same Production Music Works in the same episode has already taken place

The licence fees will be calculated as:

Primary exploitation on E4:

Commercial Music

Total 35 X £84 = £2,940

Production music

Episode 1 28 x £35 = £980 but capped at £350

Episode 2 22 x £35 = £770 but capped at £350

Total = £700

Total licence fee for E4 exploitation £2,940 + £700 = £3,640

Further exploitation on Channel 4 (see Clause 3. of Annex C and Clause x of Annex D)

Commercial Music

Total 35 X £115 = £4,025

Production music C

Note – Production Music costs are not applicable for any further broadcasts in the UK.

Total licence fee for Channel 4 exploitation = £4,,025

Example 3 (clause 2.1(b)) exploitation – Programme Related Material)

Upon completion of a Programme for Channel 4 (on or after 1st October 2010), the production company (Licensee) is also required to provide a 10 minute “making of” programme for use on Channel 4’s website and by a mobile network operator. This piece of Programme Related Material contains:

Commercial Music Uses	Production Music Uses
4	6

Note - It is assumed that aggregation of Uses of the same Production Music Works in the piece of Programme Related Material has already taken place

The licence fee for the piece of Programme Related Material is calculated as follows:

Commercial Music

4 x £39 = £156

Production Music

6 x £5 = £30

Total licence fee

£156 + £30 = £186

For the avoidance of doubt, the royalty rates used in these examples are purely for the purposes of illustration and the rates applicable to this Agreement are those set out in Annexes C and D.