

Cover Sheet

PRS for MUSIC

ONLINE MUSIC LICENCE MUSIC DOWNLOAD SCHEME

NAME OF LICENSEE	("the Licensee")
COMPANY REGISTRATION NUMBER	
REGISTERED ADDRESS OF LICENSEE	
LICENSED SERVICE	("the Licensed Service")
FINANCIAL GUARANTEE (if applicable)	
QUARTERLY ADVANCE (if applicable)	
COMMENCEMENT DATE	("the Commencement Date")
SPECIAL CONDITIONS*: *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. 1. The Licensors shall have the right to exclude specific Repertoire Works from the licences granted under this Agreement by giving notice in writing (which may be by email) to the Licensee. Such notice shall take effect two working days after it is sent. The Licensee will promptly remove such Repertoire Works from the Licensed Service (unless the relevant rights have been validly licensed from an alternative source).	

Projected Royalty Fee for the first year of the Agreement -

Transactional accounting pursuant to Clause 5.10 of Appendix 1: Yes / No

Signed on behalf of the Licensee:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Mechanical-Copyright Protection Society Limited ("MCPS") of 2 Pancras Square, London, N1C 4AG contracting for and on behalf of itself and for and on behalf of and as agent of its various members and its Affiliated Societies:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Performing Right Society Limited ("PRS") of 2 Pancras Square, London, N1C 4AG contracting on behalf of itself and for and on behalf of and as agents of its Affiliated Societies:

Name: _____

Position: _____

Date: _____

Appendix 1

STANDARD 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 Cover Sheet and annexes to the terms and conditions and the application form completed by the Licensee.

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

"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.

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

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

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

"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 clauses 3.2 and 4.5, 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.

"Cover Sheet" means the cover sheet to this Agreement detailing, among other things, the Licensee details and the Licensed Services covered by the Agreement.

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

"Dramatico-Musical Work" means any ballet, opera, operetta, musical, musical play or work of a similar nature.

"Electronic Reporting Format" means the format set out in Appendix 4. If and when the DDEX format is agreed within the industry, the DDEX format shall replace the format set out in Appendix 4 within 6 months of such agreement unless otherwise agreed between the parties, acting reasonably.

"Gross Revenue" shall have the meaning set out in Appendix 3

"Licensed Service" means the service set out on the Cover Sheet insofar that it is a Permanent Download Service.

"Licensee" means the party set out as such in the Cover Sheet.

"Licensee Accounting Statement" means a royalty accounting statement in the form set out in Appendix 5.

"Licensors" means PRS and MCPS.

"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.

"Minimum Royalties" means the applicable minima set out in Appendix 2 to this Agreement.

"Month" means a calendar month.

"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 the Licensed 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;

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.

"Music Videogram" means any audio-visual production:

- (a) which has as the main feature of the soundtrack thereof a recording of a single Repertoire Work copies of which recording have been or are intended to be released as audio records for sale to the general public; and
- (b) the making of which was carried out by or on behalf of the record company releasing that recording or by or on behalf of the main artist(s) featured in that recording.

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

"Permanent Download" means a Musical Work communicated to the public via a Network in the form of a download and where such download may be retained by the User on a permanent basis. For the avoidance of doubt, a Permanent Download excludes ringtones.

"Permanent Download Service" means a service (or the relevant part of a service) offering Permanent Downloads.

"Permitted Excerpts" refers only to Dramatico-Musical Works and means excerpts where the use of all such excerpts in any Audio-Visual Material complies with all the following limitations:

- (a) the total duration of the excerpts does not exceed 20 minutes;
- (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 five 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.

"PRS for Music" means the MCPS-PRS Alliance Limited trading under the brand name of PRS for Music whose registered office is at 2 Pancras Square London N1C 4AG.

"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).

"Relevant Party" means a party which is involved in the provision of the Licensed Services, as set out in clause 17.2.

"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 Appendix 6 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:

- (a) where the Licensee is undertaking monthly accounting in accordance with clause 6, one week following the end of the Month to which the reporting relates; or
- (b) where the Licensee is undertaking quarterly accounting in accordance with clause 7, one month following the Quarter to which the Music Usage Information relates.

"Royalty Fee" means the royalties payable as set out in Appendix 2.

"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 15.1 (unless terminated earlier under clauses 4.6, 15.2, 15.3, 15.4 or 15.5).

"Territory" means the UK, and those territories (if any) listed in the Cover Sheet (subject always to clause 4.6) 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 and each like tax imposed in addition to or in substitution therefore.

"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.

2. Grant of Licence

- 2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, MCPS grants the Licensee a non-exclusive licence to do the following during the Term:
- (a) to reproduce Repertoire Works on servers within the Server Territory (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 Service; and
 - (b) to cause permanent copies (as applicable) of Repertoire Works to be made on Users' Data Storage Devices in the Territory for the User's own private and non-commercial use.

For the avoidance of doubt (but subject to all terms of this Agreement, in particular clause 3.4), it is intended that this Agreement licenses all

reproductions of Repertoire Works necessary in the ordinary operation of the Licensed Service.

- 2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, PRS grants the Licensee a non-exclusive licence, during the Term, to communicate to the public (as that term is defined in the Act) and to authorise the communication to the public of Repertoire Works within the Territory solely as part of and for the purposes of the provision of the Licensed Service.
- 2.3 The above licences shall apply where Repertoire Works are used in audio-only material and, subject to clause 3.2, Audio Visual Material.
- 2.4 The provisions of clauses 3.2, 3.6, 4.1, 4.2, 4.4 and 4.5 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 Service 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 shall not apply to any Licensed Service which knowingly or recklessly provides internet or mobile "links" to music which requires a licence, but is unlicensed (whether in the form of recordings or notation, scores, lyrics, etc). The inclusion of such links on the Licensed Service shall constitute a material breach of this Agreement (which is capable of remedy).

3. Exceptions and Limitations

- 3.1 The licences granted under clause 2 are valid only insofar as:
- (a) the Licensed Service is a Permanent Download Service; and
 - (b) the Licensee is the Music Service Provider in relation to the Licensed Service.
- 3.2 Subject to clause 2.4, the incorporation of Commercial Works into Audio-Visual Material is only licensed under this Agreement where the Audio-Visual Material consists of:
- (a) a Music Videogram; or
 - (b) a live concert performance or a film of a live concert performance by the artist performing that particular Commercial Work; or
 - (c) subject to clause 4.5, such Commercial Works being combined with photographs or other images relating to the artist performing the Commercial Work or the composer of the Commercial Work; or
 - (d) subject to clause 4.5, an interview with an artist, composer, producer or other person involved in the creation, performance or production of music where the Commercial Work(s) used are associated with the interviewee(s); or
 - (e) where permitted under clause 4.1, a performance of Permitted Excerpts of the

Dramatico-Musical Work of which the Commercial Work forms part.

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

- 3.3 For the avoidance of doubt, this Agreement does not grant any "synchronisation licence" (to the extent that such a licence may be required by the Licensee) covering the initial fixation of Repertoire Works in combination with visual images to create and produce Audio-Visual Material.
- 3.4 For the avoidance of doubt, the licences granted under clause 2 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 the Licensed Service, but which are distributed by mail.
- 3.5 For the avoidance of doubt, the licences granted under clause 2 shall not extend to the public performance (as that term is used in the Act) of Repertoire Works, whether as part of the Licensed Service or otherwise.
- 3.6 Subject to clause 2.4, the licence granted under clause 2.1 shall not permit the use of Repertoire Work(s) with any advertising or sponsorship of whatsoever nature where:
- (a) such Repertoire Work(s) are incorporated into such advertising or sponsorship; or
 - (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising or sponsorship.
- 3.7 For the avoidance of doubt (but without prejudice to the generality of clause 3.6), the licences granted under clause 2 shall not apply to any Repertoire Work(s) made available for the purpose of (whether in whole or in part):
- (a) directly or indirectly encouraging the User to purchase or obtain goods or services of whatsoever nature (other than music via the Licensed Service); or
 - (b) promoting the branding of the Licensee, any affiliate of the Licensee or any third party;
- in such a manner that:
- (i) one or more particular Repertoire Works, composers or writers are associated with such promotion; or
 - (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion.
- 3.8 Except where expressly agreed otherwise in writing between the parties, the licences granted under clause 2 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 this Agreement shall not apply to any "karaoke" service within the Licensed Service.

3.9 Subject to the provisions of this clause 3.9, the licence granted under clause 2.2 shall apply to the communication to the public of Repertoire Works within the Licensed Service where such communication to the public is not as part of a music download constituting the substantial offering of the Licensed Service. However, the licence granted under clause 2.2 only applies if all of the following conditions are met:

- (a) 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 this Agreement or otherwise; and
- (b) the licence of the communication to the public of such Repertoire Work is not otherwise excluded under the terms of this Agreement; and
- (c) the Licensors and the Licensee have agreed the additional fee that shall be payable in respect of such communication to the public and that fee has been paid by the Licensee to the Licensors.

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 (see clause 3.6 above). However, clause 3.6 does not apply to the licence granted by PRS under clause 2.2. Therefore, pursuant to this clause 3.9, the licence granted by PRS under clause 2.2 would only apply (in the context of this example) if the Licensee has a licence to copy the Repertoire Work for use in that advertisement (and on the Licensed Service) and if the Licensee has paid the agreed fee to the Licensors.

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 (or outside the scope of this Agreement).

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 Licensed Service from recordings which are themselves infringing copies.

4. Further Restrictions

4.1 Subject to clause 2.4, where any Repertoire Work forms part of any Dramatico-Musical Work, the licence granted under clause 2.1 shall not apply, in relation to Audio-Visual Material, to the reproduction of:

- (a) the whole Dramatico-Musical Work; or
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
 - (i) that which is copied or communicated to the public via the Licensed Services under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; and

- (ii) neither of the Licensors has notified the Licensee in writing that their Member or the Associated Society Member objects to the reproduction of any such Repertoire Work.

4.2 Subject to clause 2.4, where any Repertoire Work forms part of any Dramatico-Musical Work, the licence granted under clause 2.1 shall not apply, in relation to material other than Audio-Visual Material, to the reproduction of the whole or substantially the whole Dramatico-Musical Work unless:

- (a) the Licensee has specifically notified the Licensors that it wishes to reproduce the whole or substantially the whole work; and
- (b) the Licensors have notified the Licensee that all relevant Members consent to such reproduction.

For the purposes of this clause 4.2, the expression "Dramatico-Musical Work" shall include any version of such work (with or without cuts, additions, interpolations or the like) which has been publicly performed. Furthermore, for the avoidance of doubt, substantially the whole work shall be deemed to be reproduced where all or nearly all the individual songs or other music included in the work are reproduced.

4.3 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.

4.4 Subject to clause 2.4, 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 4.10 and provided that such alterations do not amount to an adaptation of a Repertoire Work and do not contravene clause 4.5, 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.

For the avoidance of doubt, the Licensors acknowledge, for the purposes of the restriction set out in this clause 4.4, that the production and inclusion as part of the Licensed Service of audio clips of Repertoire Works of up to 30 seconds duration (for Repertoire Works which are 2 minutes 30 seconds or less in length) or 90 seconds duration (for Repertoire Works over 2 minutes 30 seconds in

length) to promote the supply of music via the Licensed Services does not of itself constitute an adaptation or sample.

4.5 Subject to clause 2.4, 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.

4.6 Any additional limitations in relation to the Associated Societies' rights to grant the licences set out in clause 2 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 (other than exclusions of Musical Works from the definition of Repertoire Works), the Licensee shall have the right to terminate this Agreement by giving written notice to the Licensors.

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

4.8 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.

4.9 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.

4.10 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 Where the Licensors are satisfied that:

- (a) the projected Gross Revenue of the Licensee during the first year of the Agreement is over £500,000 (excluding VAT or other equivalent sales tax), such figure to be increased each calendar year in accordance with the Retail Price Index change over the previous calendar year; and
- (b) there is no adverse credit risk causing the Licensors to have reasonable concerns over the Licensee's ability to pay royalties due under this Agreement; and

(c) the Licensee is capable of accurately reporting and paying royalties on a monthly basis in accordance with the provisions of this Agreement;

then the Licensee shall pay royalties in accordance with clause 6 below.

- 5.2 Otherwise, the Licensee shall pay royalties in accordance with clause 7 below.
- 5.3 For the purposes of calculating the Royalty Fee for a particular download as set out in Appendix 2 such calculation shall be carried out individually in respect of each download to each User and then the Royalty Fees, calculated on that basis to all Users shall be added together in order to calculate the full Royalty Fees due.
- 5.4 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.
- 5.5 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.
- 5.6 Notwithstanding the provisions of clauses 6 and 7 below, 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 4.6, the Associated Societies.
- 5.7 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.
- 5.8 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 Bank of England 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 5.6).
- 5.9 The address for delivery of the Licensee Accounting Statement is Online Licensing Team, PRS for Music, 2 Pancras Square London N1C 4AG
- 5.10 In respect of the Licensed Service where the projected Royalty Fee during the first year of the Agreement is £30,000 (excluding VAT or other equivalent sales tax) or more or otherwise where the Licensors require (as set out in the Cover Sheet), the Licensors will invoice in respect of all Musical Works provided to Users through the Licensed Service with the exception of:

(a) Musical Works identified as no longer being in copyright, and

(b) Musical Works identified as not being Repertoire Works.

- 5.11 In respect of Licensed Service where the projected Royalty Fee during the first year of the Agreement is less than £30,000 or where the Licensors otherwise require accounting pursuant to clause 5.10 above (as set out in the Cover Sheet), the Licensors shall agree an appropriate deduction to the Gross Revenue and Minimum Royalties to apply as from the Commencement Date to take account of the fact that some Musical Works exploited through the Licensed Service are not Repertoire Works. This deduction shall be reviewed every six months.
- 5.12 The provisions of paragraph 2(d) of Appendix 3 shall apply if any dispute arises in relation to the application of the provision of clause 5.11 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.
- 5.13 The Licensors may at their discretion make the grant of this Agreement conditional upon the provision of such financial guarantees (by way of example only, deposits or advances) as are reasonably necessary to provide security against the risk that the members of MCPS and PRS may not receive such royalties as may be payable under this Agreement. If the Licensors elect such financial guarantee then upon termination of this Agreement, MCPS and PRS shall release or repay any guarantee or similar security and shall repay any deposit or similar payment with accrued interest within 14 days of the latest of (a) termination, or (b) the licensee having materially complied with all of its obligations under the Online Agreement or (c) resolution of any claim under any audit or other claim in relation to which notice was given to the Licensee prior to such termination.
- 5.14 For the avoidance of doubt, any guarantees under the above clause 5.13 are separate from the Quarterly Advance referred to in clause 7 below and no interest shall be payable on any Quarterly Advance.

6. Fees and Payment – Monthly Accounting

- 6.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors the Royalty Fee.
- 6.2 Within one week of the end of each Month, the Licensee shall send to the Licensors a fully and accurately completed Licensee Accounting Statement.
- 6.3 PRS for Music shall, on behalf of the Licensors, each of the Members and, subject to clause 4.6, 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 10 days of the invoice date.
- 6.4 Where, in relation to any particular Month, the Licensee fails to provide by the required date the information required under the Agreement to calculate the Royalty Fee, then the Licensors shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Months and (b)

any other relevant factors which could reasonably lead the Licensors to believe that the Royalty Fees payable would be materially different from those paid or payable in previous Months.

7. Fees and Payment – Quarterly Accounting

7.1 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 7.2, the Royalty Fee.

7.2 The Quarterly Advance is recoupable against the Royalty Fee. If any part of the Quarterly Advance remains unrecovered at the end of a Quarter, such unrecovered amount may be carried over to subsequent quarters, but for the avoidance of doubt, shall not (except as set out in clause 7.3 below) have the effect of reducing any subsequent Quarterly Advance. If any part remains unrecovered upon termination or expiry of the Agreement, the Licensors shall return such part to the Licensee.

7.3 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 Appendix 2 differ from the Quarterly Advance by 20% or more.

7.4 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 7.1(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.

7.5 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.

7.6 Within 15 working days of the end of each Quarter the Licensee shall provide to the Licensors a fully and accurately completed Licensee Accounting Statement.

7.7 PRS for Music shall, on behalf of the Licensors, each of the Members and, subject to clause 4.6, 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.

8. Supply of Information

8.1 In relation to any and all Repertoire Works reproduced and communicated to the public under this Agreement via the Licensed Service, 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 monthly (where the Licensee is undertaking monthly

accounting) or quarterly (where the Licensee is undertaking quarterly accounting) by the Reporting Date.

8.2 The Licensee shall supply within the Electronic Reporting Format any data and/or metadata that is associated with the sound recording of Repertoire Works reproduced and communicated to the public via the Licensed Services that it obtains from record labels, sound recording aggregators and other third parties. 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 the Licensed Service.

8.3 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 Music Usage Information or data specification referred to in Appendix 4 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 Appendix 4 and/or the definition of Music Usage Information 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.

8.4 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".

9. Late Reporting

9.1 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.

9.2 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 9.1(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 9.3 and 9.4 (in addition to those set out in clauses 6 and 7).

9.3 Where clause 9.2 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.

9.4 Where clause 9.2 applies, the Licensee will also pay interest on the additional fees as referred to in clause 9.3 above computed in accordance with clause 5.7 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.

9.5 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 8.1.

10. Vouchers

10.1 The licence under clause 2.1 only applies to the Licensed Service 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 3.6 and 3.7).

Repertoire Works provided via a Voucher scheme which is outside this clause 10.1 are not licensed under this Agreement and a separate licence for premium usage of this type must be sought from the Licensors.

10.2 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.

11. Bundling

11.1 Unless specified in the Cover Sheet the licences granted in this Agreement do not apply to the bundling of Permanent Downloads with other content, goods or services.

12. Credits and Notices

The Licensee shall include on the Licensed Service:

- (a) the logo of PRS for Music; and
- (b) details of the following website and, where practical, hypertext links to it: <http://www.prsformusic.com>; and
- (c) where reasonably practicable, the name of the composer and publisher of the Repertoire Works provided via the Licensed Service; 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 where it is not reasonably practical to position such information elsewhere.

13. Auditing

13.1 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 or expiry of this Agreement, proper, detailed books and records relating to (a) the 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 Service, 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.

13.2 For the purposes of this clause 13, 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 the provisions of this Agreement.

13.3 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 5.7).

13.4 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 13.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefore.

13.5 If tests under any audit and verification process indicate over-payment of the correct Royalty Fee during the period under audit, then the Licensors shall, as soon as is reasonably practical, pay the amount of the overpayment back to the Licensee (but, for the avoidance of doubt, no interest shall be payable unless the overpayment is a result of an act or omission of the Licensors (in which case interest shall be payable at the rate set out in clause 5.7)). However, where the overpayment does not result from an act or omission of the Licensors and the Licensors have already distributed such overpayment to their Members and/or Associated Societies, the Licensors shall be entitled to deduct its reasonable internal and/or external costs in administering the payment back of the overpayment.

13.6 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 13, 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.

13.7 For the avoidance of doubt, books, records and accounting records as referred to in clauses 13.1 and 13.2 above shall include data, information and records held on computers.

13.8 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.

14. Security and Encryption

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.

15. Termination and Expiry

15.1 This Agreement shall expire on 31 March 2020 unless terminated earlier by written agreement or in accordance with the terms of this clause 15.

15.2 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.

15.3 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 (a) above.

15.4 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).

15.5 The licences granted under clause 2 are so granted on the basis of the representations made by the Licensee in part A of the application form.

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

16. Effect of Termination

16.1 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 Service. Termination shall be without prejudice to the ability of Users to retain a copy of a Repertoire Work supplied to them in the form of a Permanent Download.

16.2 Clauses 5, 6, 7, 8, 9, 13, 16, 19 and 20 shall survive the termination of this Agreement, but only in relation to the Licensee's activities during the Term.

17. No Assignment

17.1 Subject to clause 17.2, 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 except where the Licensee wishes to assign or transfer its rights and obligations to a direct or indirect subsidiary or direct or indirect holding company of the Licensee in which case the Licensors may not unreasonably withhold consent.

17.2 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 Service, provided that:

- (a) the Licensee retains complete control and direction over the provision of the Licensed Service to Users; and
- (b) the Licensors are able to audit such third party in accordance with clause 13.

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

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

17.4 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 the Licensed Service.

18. Controlled Composition Agreements

18.1 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 18 does not operate so as to override the terms of that licence.

19. Notices

- 19.1 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 15 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.
- 19.2 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.
- 19.3 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.

19.4 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.

20. Miscellaneous

- 20.1 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.
- 20.2 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.
- 20.3 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.
- 20.4 The parties shall (and shall procure that any other necessary party within its control shall) execute and do all such documents 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.
- 20.5 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.
- 20.6 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.

Appendix 2

Royalty Fees

1. Definitions

“**Permanent Download Service**” shall have the meaning set out in Appendix 1.

2. Royalty Fee

In respect of a Permanent Download Service the Royalty Fee throughout the Term per download shall be the higher of:

- (a) 8% of the Applicable Revenue; and
- (b) either (subject to (c) and (d) below):
 - (i) £0.05 in respect of each Musical Work downloaded per download; or
 - (ii) if a Musical Work is downloaded as part of a bundle of two to four (inclusive) Musical Works, £0.045 in respect of each Musical Work downloaded.
 - (iii) if a Musical Work is downloaded as part of a bundle of five to eight (inclusive) Musical Works, £0.04 in respect of each Musical Work downloaded.
 - (iv) if a Musical Work is downloaded as part of a bundle of nine to twelve (inclusive) Musical Works, £0.035 in respect of each Musical Work downloaded.
 - (v) if a Musical Work is downloaded as part of a bundle of thirteen to sixteen (inclusive) Musical Works, £0.03 in respect of each Musical Work downloaded.
 - (vi) if a Musical Work is downloaded as part of a bundle of seventeen to twenty-nine (inclusive) Musical Works, £0.025 in respect of each Musical Work downloaded.
 - (vii) if a Musical Work is downloaded as part of a bundle of thirty or more Musical Works, £0.02 in respect of each Musical Work downloaded.
- (c) Where a single Musical Work is available for download and:
 - (i) the relevant sound recording (or remaster or remix if applicable) of such Musical Work was released (whether in a physical or online form), two or more years previously; and
 - (ii) it is sold for a retail price of 49 pence (including VAT) or less;then the minimum royalty applicable under paragraph 2(b)(i) above shall be £0.03.
- (d) Where a bundle of Musical Works is available for download and:
 - (i) every sound recording (or remaster or remix if applicable) of a Musical Work in the bundle was originally released (whether in a physical or online form) two or more years previously; or
 - (ii) the same bundle (or remaster or remix if applicable) was originally released (whether in a physical or online form) two or more years previously;then the minimum royalty applicable under paragraph 2(b)(ii) above shall be £0.03 or, for bundles of more than five tracks, shall be as set out in paragraphs 2(b) (iii) to (vii) above.
- (e) The Minimum Royalties set out in paragraph 2(b), (c) and (d) above shall be adjusted for long and short tracks as follows:
 - (i) in respect of each Musical Work downloaded per download for tracks which are 6 minutes or longer in duration, but less than 9 minutes, the relevant Minimum Royalty multiplied by 2; or
 - (ii) in respect of each Musical Work downloaded per download for tracks which are 9 minutes or longer in duration, but less than 12 minutes, the relevant Minimum Royalty multiplied by 2.25; or
 - (iii) in respect of each Musical Work downloaded per download for tracks which are 12 minutes or longer in duration, but less than 15 minutes, the relevant Minimum Royalty multiplied by 2.5; or

- (iv) in respect of each Musical Work downloaded per download for tracks which are 15 minutes or longer in duration, the relevant Minimum Royalty multiplied by 2.75; or
 - (v) in respect of each Musical Work downloaded per download for tracks which are less than 45 seconds in duration, the relevant Minimum Royalty multiplied by 0.5.
- (ee) The Minimum Royalties set out in paragraph 2(b), (c) and (d) above shall apply to Standard MP3 tracks, i.e. tracks up to 320kbps. The Minimum Royalties set out in paragraph 2(b), (c) and (d) above shall be adjusted for Lossless (i.e. CD quality) tracks and Hi-Res (i.e. 24 bit) tracks as follows:
- (i) in respect of each Musical Work downloaded per Lossless track, the relevant Minimum Royalty shall be multiplied by 1.2; or
 - (ii) in respect of each Musical Work downloaded per Hi-Res track, the relevant Minimum Royalty shall be multiplied by 2.
- (f) The Minimum Royalties set out in paragraphs 2(b)(ii) to (vii), 2(c) and 2(d) above shall be adjusted in the same proportions as set out in paragraph 2(e) and 2(ee) above so that, by way of example only, the Minimum Royalty in respect of a standard MP3 track which is of duration 7 minutes and is downloaded as part of a bundle of 10 tracks shall be £0.07 and the Minimum Royalty in respect of a standard MP3 track which is of duration 40 seconds and is downloaded as part of a bundle of 10 tracks shall be £0.0175. By way of further example only, the Minimum Royalty in respect of a Hi-Res track which is of duration 7 minutes and is downloaded as part of a bundle of 10 tracks shall be £0.14 and the Minimum Royalty in respect of a Hi-Res track which is of duration 40 seconds and is downloaded as part of a bundle of 10 tracks shall be £0.035
- For the avoidance of doubt, when tracks are downloaded as part of a bundle, only those tracks that are of duration less than 45 seconds or which are 6 minutes or longer in duration shall be subject to the adjusted Minimum Royalty.
- (g) The Minimum Royalties set out in paragraphs 2(c) and (d) shall only apply where the Licensee includes the relevant release date of each applicable sound recording in the Electronic Reporting Format. In the absence of such release dates, the applicable Minimum Royalties set out in paragraphs 2(b)(i) to (vii) will apply.
 - (h) For the purposes of paragraph 2(a) to (d) above, a collection of tracks shall only be considered a bundle if is (i) put together or otherwise approved by the relevant record company (or companies) or (ii) put together by the Licensee (provided permission of the owner of the relevant sound recording rights or artist (or artists) has been obtained and that the bundle is purchased as a whole. Collections of tracks assembled by Users are therefore not "bundles" for the purposes of paragraphs 2(a) to (d).
 - (i) Tracks which consist of either public domain Musical Works or non-music works (for example, spoken word) shall not be regarded as "tracks" for the purposes of counting the number of Musical Works in a bundle.
 - (j) For the avoidance of doubt and for the purposes of paragraphs 2(b)(ii) to (vii) above, by way of example, in respect of a bundle of 15 different sound recordings (including mixes) of the same Musical Work, the applicable Minimum Royalty for the whole of the bundle would be 45p.
 - (k) Only one royalty (or one Minimum Royalty, as applicable) shall be charged for dual downloads where for a single price, the same Permanent Download is delivered to a User's PC and mobile device. The provision by the Licensee of additional copies to the User shall not be licensed under this Agreement save as otherwise agreed in writing by the Licensors. In instances where the Licensee wishes to provide for a single price, multiple copies of a Permanent Download to a User and/or where the Licensee intends to permit the User who has purchased a Permanent Download to access a copy of that Permanent Download from a cloud-based storage and access system, the Licensors shall discuss in good faith the appropriate royalty to apply to such Permanent Downloads taking into account the extent of the additional copies and/or the added functionality in respect of the User's ability to access such additional copies. For the avoidance of doubt, the provision by the Licensee of multiple copies to the User for a single price and/or the provision of copies from a cloud-based storage and access system shall not be licensed under this Agreement save as otherwise agreed in writing by the Licensors.
 - (l) The Licensee shall be entitled to produce and include as part of a Licensed Service free audio-only or audio-visual clips of a Musical Work embodied in a sound recording of up to (1) 30 seconds duration for Musical Works which are 2 minutes 30 seconds or less in length and (2) 90 seconds duration for Musical Works which are over 2 minutes 30 seconds in length without payment of any Minimum Royalty provided that such clip is used solely to promote the sale of the Musical Work as part of the Licensed Service and the clip is made available to stream only on the web page containing the purchase option for such Musical Work.
 - (m) The Licensors shall be entitled to increase the Minimum Royalties set out in paragraphs 2(a) to (f) at the start of each new calendar year during the Term based on any percentage increase in the rate of the Retail Price Index. The Licensors shall provide not less than one month's notice of any such increase to the Minimum Royalties.

3. Promotional Use

- 3.1 Provided that the owner of the copyright in the sound recording has agreed to allow the Licensee to make the sound recording available for free to Users of the Licensed Service and that such owner is not entitled to payment of any royalty or any other consideration whether in monetary form or otherwise in relation to such use, the Licensors shall permit Repertoire Works incorporated in such sound recordings that are made available for free to Users such that no royalty shall be due under the Agreement in relation to such use but subject always to the limitations set out in this paragraph 3, but not otherwise.
- 3.2 For a paid for Permanent Download Service provided by way of subscription, the Licensee may provide such Licensed Service to each User for free for 2 weeks as a one-off introductory discount provided that the User is limited during this period to accessing no more than ten (10) Permanent Downloads of Musical Works for free.
- 3.3 For a Permanent Download Service (provided other than by subscription) that has annual Gross Revenue exceeding £625,000 but less than £6,250,000 (excluding VAT) calculated by reference to the four preceding full quarters' reporting data, the Licensee may make available to Users at any one time up to two (2) Permanent Downloads of Musical Works for free provided that:
 - (a) such promotional usage is solely to promote sales of paid-for Permanent Downloads of Musical Works by the same artist/band or songwriter as the Permanent Download of the Musical Work being made available for free;
 - (b) the length of time that any one Permanent Download of a Musical Work is made available to Users for free is limited to one period of no more than thirty (30) days;
 - (c) any vouchers issued in relation to such promotional usage must be redeemed by Users within thirty (30) days of their first distribution; and
 - (d) the publisher(s) owning the rights to the Musical Work has/have granted prior written consent to such use.
- 3.4 For a paid for Permanent Download Service (provided other than by way of subscription) that has annual Gross Revenue exceeding £6,250,000 (excluding VAT) calculated by reference to the four preceding full quarters reporting data, the Licensee may make available to Users at any one time up to five (5) Permanent Downloads of Musical Works for free provided that it satisfies each of the terms set out in paragraphs 3.3(a) to (d) above.
- 3.5 For the avoidance of doubt, where prior written consent of the publisher(s) owning the rights to the Musical Work is required pursuant to paragraphs 3.3(d) and 3.4, the Licensors shall put in place reasonable procedures to seek to ensure that such consent is granted or withheld within five (5) working days of the Licensee's written request, and if such consent is provided by the publisher(s), then the Licensors shall forthwith provide any additional consents in relation to such use of the rights which they or either of them administer.
- 3.6 For the avoidance of doubt, the Licensee may without restriction make the Licensed Service available for free over and above the limits set out in paragraphs 3.2 to 3.5 above, but the applicable Minimum Royalties shall apply in respect of any free access or downloads over and above such limits.
- 3.7 Insofar as any particular music publisher shall request that the promotional allowances set out above should be exceeded for the purposes of a specific promotion, the Licensors shall consider such request in good faith.

Appendix 3

Gross Revenue

Definitions

“**Gross Revenue**” means, subject to the provisions of this Appendix:

- (a) all revenue received (or receivable) by the Licensee from Users in consideration for the provision of the Licensed Service; 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-stream” or “in-download” as part of the Licensed Service, being advertising placed immediately at the start, end or during the actual delivery (by way of streaming or downloading as applicable) of a Repertoire Work 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 a Relevant Page (as defined below) of the Licensed Service (and including any page which directly follows such Relevant Page leading up to and including the downloading or streaming of the music offering);

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 Appendix 3A, 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 Service.

“**Relevant Page**” means a page:

- (a) from which the Licensed Service is “actually offered” to Users. A Licensed Service is “actually offered” to Users from a page if Musical Works are enabled or made directly available from that Licensed Service to the User to download or stream from that page (in most cases this will be where such Musical Works can be purchased by the User or their download or stream otherwise takes place); but only
- (b) where such offering forms all or the predominant part of that page, being for the purposes of this Agreement where the offering comprises 75% or more of the space on that page excluding space occupied by any advertising. For the purposes of performing the foregoing calculation, the “offering” shall include any content which directly relates to the actual offering of the Licensed Service pursuant to sub-paragraph (a) above (by way of example, but without limitation, an image of the artist or artwork closely associated with the offering, reviews of the offering, credits, and music player controls).

1. General

- (a) The Licensors’ experience of the “Relevant Page” concept is that it does not always work in practice. As a result, the Licensors reserve the right to discuss with the Licensee an alternative construct for ensuring that appropriate revenue is accounted to the Licensors and that it can be accounted accurately. Any agreed alternative construct shall be set out in the special conditions on the Cover Sheet. If the parties are unable to agree on such alternative construct, the Licensors reserve the right to apply the dispute resolution procedure referred to in paragraph 2(d) below.
- (b) 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 Appendix 1 (albeit in relation to a service which is not a Licensed Service hereunder).
- (c) For the further avoidance of doubt, revenue which relates solely to services other than the Licensed Service shall not be included in the Gross Revenue. By way of example, this includes:
 - (i) revenue derived from non-music voice, content and text services;
 - (ii) revenue derived from music or music-related services which is/are not a Music Service (including without limitation any ringtones services);
 - (iii) revenue derived from non-music products and services (including search services) supplied by the Licensee.
- (d) For the further avoidance of doubt, Gross Revenue shall not be reduced by credit card commissions or similar payment process charges.

2. Advertising and Sponsorship Revenue

- (a) Gross Revenue obtained in the form of advertising or sponsorship revenue shall be reduced by any commission amount that has been deducted only by external third party advertising agencies (not being in any way affiliated to the Licensee) used to sell advertising on behalf of the Licensee, subject the maximum deduction being 15%.
- (b) 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.
- (c) The provisions of paragraph 2(d) below shall apply if a dispute (a “Dispute”) arises in relation to the application of the provisions of this Appendix 3A as to what revenue is included within the definition of Gross Revenue.
- (d) 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 the 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.

Appendix 4

Electronic Reporting Format

PRS for Music Non Linear Reporting format v2.1 or DDEX Digital Sales Report

Appendix 5

Form of Licensee Accounting Statement

Appendix 6

Excluded Repertoire

MCPS Repertoire Works

Major exclusions

TBC

PRS Repertoire Works

Major exclusions

TBC