

MCPS/PRS PERFORMING RIGHT ONLINE LICENCE

TERMS AND CONDITIONS

1. Definitions

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

“**Agreement**” means these terms and conditions and the AFL completed and signed by the Licensees and signed by the Licensors.

“**Application for Licence**” or “**AFL**” means the Performing Right Online Licence application form.

“**Commencement Date**” means the launch date of the Licensed Services as set out in the AFL.

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

“**Licensed Service(s)**” means the music or general entertainment service(s) set out in the AFL.

“**Licensee**” means the party that submits an AFL and is granted a licence by the Licensors subject to this Agreement.

“**Licensors**” means PRS and MCPS.

“**MCPS**” means Mechanical-Copyright Protection Society Limited whose registered office is at 2nd Floor Synergy House, 114-118 Southampton Row, London, WC1B 5AA, contracting for and on behalf of itself and for and on behalf of and as agent or licensee of its various Members and affiliated societies.

“**Member**” means:

- (a) in the case of MCPS, each person, firm or company who or which, from time to time, has appointed MCPS as agent in relation to online exploitation either before or during the Term, 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, 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.

“**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.

“**PMSR**” means any production music sound recording being a sound recording (as opposed to a Musical Work) to the extent the relevant copyright owned or controlled in

the United Kingdom by MCPS, including, without limitation, by virtue of its agreements with Members and Foreign Societies, and where MCPS has been authorised to license such recordings as so-called production or library music. If one or more of those who own or control the relevant copyright in a sound recording is not MCPS, the expression “PMSR” shall only apply to such interest in the PMSR as is owned or controlled by MCPS.

“**PRS**” means Performing Right Society Limited whose registered office is at 1st Floor, Goldings House, 2 Hay's Lane, London, SE1 2HB, contracting for and on behalf of itself and for and on behalf of and as agents of its various affiliated societies.

“**PRS for Music**” means PRS for Music Limited whose registered office is at 1st Floor, Goldings House, 2 Hay's Lane, London, SE1 2HB.

“**Repertoire Work**” means:

- (a) in relation to the licence granted by MCPS, PMSRs; and
- (b) in relation to the licence granted by PRS, each Musical Work to the extent the relevant copyright is owned or controlled, from time to time, in the UK by PRS, including, without limitation, by virtue of its agreements with Members and Foreign Societies, PROVIDED THAT if one or more of those who own or control the relevant copyright in a Repertoire Work is not PRS, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by PRS;

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.

“**Retail Price Index**” shall mean the United Kingdom government's annual measure of the level of inflation, assessed by reference to the change in the average level of prices at retail of a defined group of goods and being the main index as published by the Office for National Statistics.

“**Royalty Fees**” means the royalties payable by the Licensee to the Licensors, as set out in clause 5.

“**Service Provider**” means, the party which, in relation to a 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 the gross revenue (including relevant advertising revenues) of the Licensed Service;

- (d) can fully report on all elements of music usage (or can procure such reporting);
- (e) controls how content is offered and bundled within the Licensed Service; and
- (f) carries out or authorises, on their instruction, the carrying out of the copyright restricted acts licensed under this Agreement.

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

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

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

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

“**VAT**” means value added tax and each like tax imposed in addition to or in substitution therefor.

2. Grant of Licence

- 2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, MCPS grants the Licensee a non-exclusive licence, 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 the PMSRs set out in the AFL within the Territory solely as part of and for the purposes of the provision of the Licensed Service to Users using the internet.
- 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 the Repertoire Works set out in the AFL within the Territory solely as part of and for the purposes of the provision of the Licensed Service to Users using the internet.
- 2.3 Where the Licensed Service involves the distribution of ringtones, subject to and conditional upon compliance with the terms and conditions contained herein, PRS grants the Licensee a non-exclusive licence during the Term to authorise the public performance (as that term is defined in the Act) in the United Kingdom of Repertoire Works in the form of ringtones resulting from the playing in public of ringtones on Users’ mobile devices as part of the ordinary use of such devices.
- 2.4 The Licensee shall comply at all times with the PhonepayPlus Code of Practice (twelfth edition as amended) (or any future edition or code of practice

which may replace it) to the extent that the PhonepayPlus Code of Practice is applicable to the Licensed Service, and all applicable codes of practice or guidelines published by Ofcom, or any successor organisation.

3. Exceptions and Limitations

- 3.1 The licences granted under this Agreement are valid only insofar as the Licensee is the Service Provider in relation to the Licensed Services.
- 3.2 For the avoidance of doubt, licences granted under this Agreement do not grant any “synchronisation licence” covering the initial fixation of Repertoire Works in combination with visual images to create and produce content.
- 3.3 Save as permitted under clause 2.3 above in respect of ringtones, for the avoidance of doubt, the licences granted under this Agreement shall not extend to the public performance (as that term is used in the Act) of Repertoire Works, whether as part of the Licensed Service or otherwise.
- 3.4 The licence granted under clause 2 shall only apply to a Repertoire Work or PMSR communicated to the public as part of the Licensed Service where the Licensee has the benefit of a valid licence for or a right to make a reproduction of that particular Repertoire Work or PMSR and for that particular form of exploitation via the Licensed Service.
- 3.5 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to Repertoire Works or PMSRs which are:
 - (a) made available by the Licensee outside of the Licensed Service; or
 - (b) made available (whether within or outside of the Licensed Service) and are licensable under MCPS-PRS’ other joint schemes for online and mobile services.

4. Further Restrictions

- 4.1 The licence granted under clause 2.2 shall only apply to Repertoire Works not forming part of any Dramatico-Musical Work.
- 4.2 The licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work or PMSRs to be communicated to the public as part of a Licensed Service unless the owner of such rights has expressly consented to such adaptation.
- 4.3 The licences granted under this Agreement do not extend to the communication to the public of any Repertoire Work or PMSR:
 - (a) in the form of a parody, pastiche or burlesque of any Repertoire Work or of any composer or writer of any Repertoire Work PMSR or any band or other group of artists which includes any composer or writer of any Repertoire Work or PMSR; or

- (b) where there is a derogatory, facetious, obscene or demeaning reference to the Repertoire Work or PMSR, its composer(s) and author(s) or the performing artist.

- 4.4 All rights not specifically granted under this Agreement are hereby reserved.
- 4.5 This Agreement only covers Repertoire Works and PMSRs. It does not extend to other rights or interests, including (by way of example only), rights in sound recordings (other than PMSRs), 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 PMSRs or performers of that Repertoire Work or PMSR.
- 4.6 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.
- 4.7 Nothing in this Agreement affects the moral rights of authors of Repertoire Works or PMSRs whether subsisting in the UK or any other territory.

5. Fees and Payment

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

MUSIC SERVICES	£71 (+VAT) per annum
Permanent Downloads	Up to 5,000 downloads per annum
On-Demand Streams	Up to 45,000 streams per annum
Background to Webpage (akin to webcasting)	Up to 120,000 streams per annum
Ringtone Downloads	Up to 1000 downloads

GENERAL ENTERTAINMENT SERVICES	£71 (+VAT) per annum
Permanent Downloads	Up to 350 music hours downloaded per annum
On-Demand Streams	Up to 3,200 music hours streamed per annum

General entertainment services are licensed with reference to the amount of music hours consumed. For example, a streamed video featuring 3 minutes

of music streamed 20,000 times equates to 60,000 music minutes or 1,000 music hours. This is therefore within the limit allowed under the £71 minimum.

- 5.2 The first 12 month period shall commence on the Commencement Date. For each consecutive 12 month period thereafter the Licensee shall pay the Royalty Fee no later than the final day of the preceding 12 month period. In the event that the Licensee fails to pay the Royalty Fee by such time, this Agreement will automatically expire and the notice provisions in clause 10 shall not apply.
- 5.3 The Royalty Fees set out in clause 5.1 above shall be calculated as multiples of £71 only with a minimum fee of £71 (excluding VAT) per annum.
- 5.4 The Royalty Fees set out in clause 5.1 above shall be cumulative. By way of example only, the Royalty Fees payable for a music service which provides less than 45,000 on demand streams and up to 5,000 permanent downloads per annum shall be £142 (excluding VAT).
- 5.5 If the combined Royalty Fees in respect of the Licensed Services under this Agreement exceed £284 (excluding VAT) per annum, this Agreement shall not apply and the Licensee must contact the Licensors.
- 5.6 The Licensors shall be entitled to increase the Royalty Fees at the start of each calendar year based on the annual increase in the Retail Price Index over the preceding year. The new Royalty Fees will be published on the Licensors' website and will apply to any 12 month extension of the licences granted under this Agreement during that calendar year.
- 5.7 The Licensee shall notify the Licensors immediately if the maximum usage limits set out in clause 5.1 above are exceeded.
- 5.8 The Licensee shall notify the Licensors promptly of any material change in the information provided in the AFL and the effective date of such change.
- 5.9 *PRS for Music* shall, on behalf of the Licensors and the associated societies, raise an invoice for the due amount, and the Licensee shall pay such invoice in full by electronic transfer within 21 days of the invoice date. Such invoice shall be for the full amount payable for one year of the Term of the Agreement.
- 5.10 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.
- 5.11 Except as expressly set out in these terms and conditions, no deduction in respect of any tax, or any other deduction or set-off of whatsoever nature, shall be made in calculating or paying any sum due under this Agreement.

5.12 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.

5.13 All payments made under this Agreement shall be in Sterling unless otherwise agreed by the parties in writing. Where it is necessary to convert an amount payable to Sterling from another currency, the exchange rate used shall be the Financial Times closing mid market rate on the date of the invoice. The Licensee shall pay all bank charges on transfers of sums payable by the Licensee to the Licensors.

6. Supply of Information

6.1 In relation to any and all Repertoire Works that the Licensee expects to communicate to the public under this Agreement via all Licensed Services, the Licensee shall provide the Licensors with full and accurate details in the AFL for each consecutive 12 month period for the duration of the Term.

6.2 The Licensee must also supply the Licensors with any further information or documentation in its possession, power, custody or control (and use its reasonable endeavours to supply the Licensors with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensors at any time, in order to enable the Licensors to verify the Repertoire Work(s) which have been reproduced or distributed via all Licensed Services.

6.3 Where any or all of the Licensed Services are accessible by Users only on payment of subscription or other similar payment (or access is otherwise limited or controlled in some way), the Licensee shall, upon request of the Licensors, use reasonable endeavours to ensure that such Licensed Services are at all times accessible by the Licensors (and *PRS for Music*) free of charge for the purposes of the Licensors verifying that the Licensee is acting in accordance with this Agreement.

6.4 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".

7. Credits and Notices

The Licensee shall include on each of the Licensed Services:

- (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>

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

8. Auditing

8.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each relevant party keeps and makes available for inspection upon reasonable notice), both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to use of all Musical Works and PMSRs, 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.

8.2 For the purposes of this clause 8, the Licensee shall allow upon reasonable notice (and shall procure that each relevant party shall allow) access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives (who shall be external qualified accountants or auditors unless otherwise agreed between the parties) of the Licensors shall have such access to the Licensee's premises and shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with this Agreement.

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

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

9. Security and Encryption

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

10. Termination and Expiry

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

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

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

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

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

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

11. No Assignment

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

12. Miscellaneous

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

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

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

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

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

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