

**JOINT MCPSI AND IMRO LICENSING SCHEME FOR THE  
PROVISION OF ONLINE AND MOBILE MUSIC SERVICES TO  
THE PUBLIC FOR  
PRIVATE USE (2011 – 2012)**

1. ONLINE AGREEMENT

1.1 The terms and conditions contained in the standard form Online Agreement (“the Online Agreement”) which is set out in Appendix 1 will apply to an online and/or mobile Music Service where:-

(a) the service provider has applied to MCPSI and IMRO for that Agreement; and

(b) MCPSI and IMRO have granted that application in writing;

1.2 Application for an Online Agreement shall initially be in the form set out in Appendix 2, but MCPSI and IMRO shall be entitled to ask reasonable further questions to satisfy themselves of the eligibility of the applicant.

2. AVAILABILITY OF ONLINE AGREEMENT

2.1 The Online Agreement is available to providers of online and mobile music services:

(a) who, in relation to such services, are the Music Service Provider (as that term is defined within the Online Agreement); and

(b) where the royalties payable (as defined in the Online Agreement) in relation to such music service(s) would be likely to be more than three hundred euro (€300) per year.

2.2 Where a Quarterly Advance is payable under the Online Agreement, it shall be a minimum of one hundred euro (€100) per Quarter.

2.3 Where 2.1(b) above does not apply, alternative licensing arrangements may be offered to the provider.

3. TERRITORY

The territory covered by the Online Agreement is Ireland. The position as to which additional countries (and in respect of which repertoire) can be included within the definition of ‘Territory’ may change throughout the Term. MCPSI and IMRO will inform the applicant for an Online Agreement as to which additional countries may be covered at the time of application.

4. LINKS TO UNLICENSED MUSIC

MCPSI and IMRO shall have the right to refuse to license any service which provides internet or mobile "links" to unlicensed music (whether in the form of recordings or notation, scores, lyrics, etc).

5. DEPOSITS AND FINANCIAL GUARANTEES

MCPSI and IMRO may make the grant of an Online 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 MCPSI and IMRO may not receive such royalties as may be payable under the Online Agreement. Upon termination of an Online Agreement, MCPSI and IMRO 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 for a period of not less than one year 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.

For the avoidance of doubt, any guarantees under this provision are separate from the Quarterly Advance referred to in clause 7 of the Online Agreement and no interest shall be payable on any Quarterly Advance.

6. COMMENCEMENT AND TERM OF SCHEME

This scheme shall take effect on 1 January 2008 and shall continue until 30th June 2012.

## APPENDIX 1

### THIS AGREEMENT IS MADE BETWEEN

**IRISH MUSIC RIGHTS ORGANISATION LIMITED** whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2, Ireland (“IMRO”) contracting for and on behalf of itself and for and on behalf of and as agent of the Associated Societies (as defined below); and

**MECHANICAL-COPYRIGHT PROTECTION SOCIETY IRELAND LIMITED** whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2, Ireland (“MCPSI”) contracting for and on behalf of and as agent of **MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED** having its registered office at 29/33 Berners Street, London W1T 3AB, England (“MCPS”) and its various Members and the Associated Societies (as defined below); and

**THE LICENSEE** (as set out in schedule 6)

### WHEREAS

- (A) The Licensee wishes to offer an online and/or mobile music service within the meaning set out in this Agreement;
- (B) IMRO and MCPSI have developed a joint licensing scheme for licensing musical works for use in such online and mobile music services;
- (C) IMRO and MCPSI have agreed to license musical works to the Licensee on the above basis and upon the terms and conditions contained in this Agreement.
- (D) Given the fast evolving nature of the Irish online and mobile market, this Agreement shall operate only in relation to the period 15<sup>th</sup> January 2011 to 30<sup>th</sup> June 2012.

### NOW IT IS HEREBY AGREED AS FOLLOWS

#### 1. Definitions

- “the Act”** means the Copyright, and Related Rights Act 2000, as amended from time to time.
- “Agreement”** means these terms and conditions, the schedules to the terms and conditions and part A of the application form completed by the Licensee.
- “Associated Society”** means each collecting society (or other body representing rights in Musical Works) with which MCPS and/or IMRO has, from time to time, an agreement under which MCPS and/or IMRO 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 IMRO (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 IMRO.

**"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 schedule 6.

**"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 IMRO and/or MCPS.

**“Data Storage Device”**

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

**“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 schedule 4. If and when the DDEX format is agreed within the industry, the DDEX format shall replace the format set out in schedule 4 within 6 months of such agreement unless otherwise agreed between the parties, acting reasonably.

**“Gross Revenue”**

shall have the meaning set out in schedule 3.

**“Licensed Services”**

means the Music Services listed in schedule 6.

**“Licensee”**

means the party set out as such in schedule 6.

**“Licensors”**

means IMRO and MCPSI.

**“Member”**

means:

(a) in the case of MCPSI, 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 IMRO, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of IMRO has been admitted either before or during the Term as a member of IMRO other than where such person, firm or company has reserved to himself or itself the relevant rights pursuant to the Articles of Association and Rules and Regulations of IMRO, 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 IMRO.

**“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 a Music Service, most closely meets the following criteria:

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

**“Music Usage Information”**

means the information referred to in the Electronic Reporting Format.

**“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.

**“Music Service”** means a music service falling within the definition set out in schedule 1.

**“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.

- “Quarter”** means each of the periods from 1<sup>st</sup> January to 31<sup>st</sup> March, 1<sup>st</sup> April to 30<sup>th</sup> June, 1<sup>st</sup> July to 30<sup>th</sup> September, and 1<sup>st</sup> October to 31<sup>st</sup> December, throughout the Term.
- “Quarterly Advance”** means the sum set out in schedule 6, 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 15.2.
- “Repertoire Work”** means each Musical Work the relevant copyright in which is owned or controlled, from time to time, in Ireland by:
- (a) MCPSI on behalf of 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 MCPSI on behalf of 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 MCPSI on behalf of 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) IMRO 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 IMRO 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 IMRO or the Associated Society or the relevant member or Associated Society Member.

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.



<b>“Reporting Date”</b>	means:  (a) where the Licensee is undertaking monthly accounting in accordance with clause 6, 5.00pm on the Friday following 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.
<b>“Royalty Fee”</b>	means the royalties payable as set out in schedule 2.
<b>“Server Territory”</b>	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.
<b>“Term”</b>	means the period starting on the Commencement Date and ending upon the date set out in clause 13.1 (unless terminated earlier under clauses 4.6, 13.2, 13.3, 13.4 or 13.5).
<b>“Territory”</b>	means Ireland, and those territories (if any) listed in schedule 6 (subject always to clause 4.6 and schedule 2, paragraph 5) and such other countries as the Licensors and the Licensee may agree in writing.
<b>“Ireland”</b>	means the territory under the government of Ireland and known as the Republic of Ireland.
<b>“User”</b>	means a natural person in the Territory who receives the Licensed Services for their own private and non-commercial use.
<b>“VAT”</b>	means value added tax pursuant to the Value Added Tax Act 1972-2004 and each like tax imposed in addition to or in substitution therefor.
<b>“Week”</b>	means a week starting on Monday and ending on Sunday.

## **2. Grant of Licence**

2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions

and restrictions set out in clauses 3 and 4, MCPSI grants the Licensee a non-exclusive licence to do the following during the Term:

- (a) to reproduce Repertoire Works on servers within the Server Territory for the purpose of transmitting the same to Users (for the User's own private and non-commercial use) by means of the Licensed Services; and
- (b) where the Licensed Services expressly authorise the temporary or permanent reproduction of Repertoire Works on Users' Data Storage Devices, to cause such copies to be made in the Territory for the User's own private and non-commercial use; and
- (c) to authorise the reproduction of "pre-loaded" copies of Musical Works on Data Storage Devices and distribute such Data Storage Devices to the public within the Territory in an encrypted or other protected form within consumer electronic equipment where the Repertoire Works are solely intended to be accessible at a later date only to Users (for their own private and non-commercial use) through the Licensed Services. For the avoidance of doubt, the royalties set out in schedule 2 (including the Minimum Royalties) shall be payable in respect of Musical Works "pre-loaded" in accordance with this sub-clause 2.1(c). However, the royalties in respect of such "pre-loaded" Musical Works shall not accrue until the User has become able to access and play such Musical Works. This is without prejudice to the obligation of the Licensee to pay the Quarterly Advance.

For the avoidance of doubt (but subject to all terms of this Agreement, in particular clause 3.3), it is intended that this Agreement licenses all reproductions of Repertoire Works necessary in the ordinary operation of the Licensed Services.

- 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, IMRO grants the Licensee a non-exclusive licence, during the Term, to make available (as that term is defined in section 40 (1) (a) of the Act (but not for the avoidance of doubt section 40 (1) (b) to (g) inclusive of the Act) and to authorise the making available to the public of Repertoire Works within the Territory solely as part of and for the purposes of the provision of the Licensed Services.
- 2.3 The above licences shall apply where Repertoire Works are used in audio-only material and, subject to clause 3.2, Audio Visual Material.
- 2.4 The Licensors will not unreasonably refuse or delay any request by the Licensee to include further services of the Licensee within the scope of this Agreement provided that:

- (a) they are a Music Service; and
  - (b) the Licensee is, in relation to that service, the Music Service Provider; and
  - (c) they are otherwise within the scope and limitations set out in this Agreement.
- 2.5 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 Services in the manner described under the relevant clause on such terms and conditions (including, if required, the payment of royalties or fees in addition to those specified under this Agreement) as the owner thinks fit.
- 2.6 The licences granted in clauses 2.1 and 2.2 above 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 a Licensed Service shall constitute a material breach of this Agreement (which is capable of remedy).
- 2.7 Where the Licensee wishes to launch a service where music is the primary theme of such service, but such service does not fall within the definition of Music Service as set out schedule 1 to this Agreement, then the Licensors agree to enter into good faith discussions with the Licensee concerning the inclusion of such new service within the scope of this Agreement and the appropriate royalty rate and minima which shall be applicable.

### **3. Exceptions and Limitations**

- 3.1 The licences granted under clause 2 of this Agreement are valid only insofar as:
- (a) the Licensed Services are Music Services; and
  - (b) the Licensee is the Music Service Provider in relation to the Licensed Services.
- 3.2 Subject to clause 2.5, 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 made available to the public via the Licensed Services.

- 3.3 For the avoidance of doubt, this Agreement does not grant any “synchronisation licence” (to the extent that such a licence may be required by the Licensee) covering the initial fixation of Repertoire Works in combination with visual images to create and produce Audio-Visual Material.
- 3.4 For the avoidance of doubt and except as specifically provided for in clause 2.1(c), the licences granted under clause 2 of this Agreement shall not authorise the manufacture or distribution of physical products containing Repertoire Works, such as (without limitation) the ordering of compact discs (or any other type of physical media) via a Music Service, but which are distributed by mail.
- 3.5 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not extend to the performing, showing or playing a copy in public, broadcasting a copy, including a copy in a cable programme service, issuing copies of, or renting or lending (as those terms are used in the Act) of Repertoire Works, whether as part of the Licensed Services or otherwise.
- 3.6 Subject to clause 2.5 and paragraph 5 of schedule 3, the licence granted under clause 2.1 of this Agreement 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 Subject to paragraph 5 of schedule 3, for the avoidance of doubt (but without prejudice to the generality of clause 3.6), the licences granted under this Agreement shall not apply to any Repertoire Work(s) made available for the purpose of (whether in whole or in part):
  - (a) directly or indirectly encouraging the User to purchase or obtain goods or services of whatsoever nature (other than music via the Licensed Service); or
  - (b) promoting the branding of the Licensee, any affiliate of the Licensee or any third party;in such a manner that:
  - (i) one or more particular Repertoire Works, composers or writers are associated with such promotion; or
  - (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion.
- 3.8 The licence granted under clause 2.1 shall not apply to graphic copies (meaning, without limitation, copies of lyrics, notation or scores) of Repertoire Works. For the avoidance of doubt, the licences granted under this Agreement shall not apply to any “karaoke” service within a Music Service.
- 3.9 The licence granted under clause 2.2 shall only apply to a Repertoire Work made available to the public as part of a Licensed Service where the Licensee has the benefit of a valid licence for or a right to make a reproduction of that particular Repertoire Work and for that particular form of exploitation via the Licensed Service either pursuant to this Agreement or otherwise. By way of example only, the licence granted by MCPSI 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 IMRO under clause 2.2. Therefore, pursuant to this clause 3.9, the licence granted by IMRO under clause 2.2 would not apply (in the context of this example) unless the Licensee has the benefit of a right to copy the Repertoire Work for use in that advertisement (and on the Licensed Services).
- 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 Services. 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, this Agreement grants no licence whatsoever in relation to Repertoire Works which are made available by the Licensee to Users outside the Territory. However it is acknowledged that Users in the Territory may receive the Licensed Services for their own private and non commercial use while outside the Territory and to the extent that this occurs the Licensee agrees to abide by the terms of this Agreement in respect of the Licensed Services as so received unless the Licensee establishes to the reasonable satisfaction of the Licensors that the Licensee is otherwise licensed by the copyright owners in respect of the use of the Repertoire Works as aforesaid.

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

4.1 Subject to clause 2.5, 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 made available 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 2.5, 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 2.5, the licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work to be copied or made available 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 making available of 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 Services of audio clips of Repertoire Works of up to 30 seconds (or, for "classical" genre Repertoire Works, up to 1 minute) duration to promote the supply of music via the Licensed Services does not of itself constitute an adaptation or sample.

- 4.5 Subject to clause 2.5, the licences granted under this Agreement shall not extend to:
- (a) the reproduction or making available 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 Licensors or the Associated Societies' rights to grant the licences set out in clause 2 of this Agreement which have been notified to the Licensors shall be notified to the Licensee in writing (which may include by email) and shall be binding no less than 10 days following such notice. Where any restriction of a material nature is added, the Licensee shall have the right to terminate this Agreement by giving written notice to the Licensors.
- 4.7 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 Ireland 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 seven hundred thousand euro (€700,000) (excluding VAT or other equivalent sales tax), such figure to be increased each calendar year in accordance with the Consumer 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 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.
- 5.4 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.
- 5.5 Notwithstanding the provisions of clauses 6 and 7 below, the Licensors confirm and warrant that the MCPSI and IMRO are authorised to receive all payments under this Agreement as agent on behalf of in the case of MCPSI, MCPS and in both cases on behalf of each of the Members and, subject to clause 4.6, the Associated Societies.
- 5.6 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 prime overdraft rate, current from time to time, of Bank of Ireland payable from the date on which the payment should have been made to the date on which the payment was made.
- 5.7 All payments made under this Agreement shall be in euro unless otherwise agreed by the parties in writing. Where it is necessary to convert an amount payable to euro from another currency, the exchange rate used shall be the Irish Times closing mid market rate on the last working day of the Month or Quarter as applicable to which the payment relates. The Licensee shall pay all bank charges on transfers of sums payable by the Licensee to the Licensors.
- 5.8 The address for delivery of the royalty statement referred to in clauses 6.2 and 7.5 is MCPSI/IMRO Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2.
- 5.9 In relation to Permanent Download Services and LD/ODS Services only, if and insofar as, (i) a Musical Work is not in copyright in the relevant

part of the Territory, or (ii) it is not a Repertoire Work, credit shall be given by either or both of the Licensors (as the case may be) for any overpayment of royalties. The parties shall discuss in good faith the mechanism for calculating and granting any rebate for Musical Works which are not Repertoire Works. Unless and until agreed otherwise, the terms set out in this Agreement shall apply, it being acknowledged by the Licensors that it may then be necessary to make adjustments to payments that have already been made by the Licensee to the Licensors as from the Commencement Date so as to allow for royalties paid on Musical Works that are not Repertoire Works.

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

## **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 8 working days of the end of each Month, the Licensee shall send to the Licensors a fully and accurately completed royalty statement (in the form attached in schedule 5).
- 6.3 The Licensors shall on behalf of 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 unrecouped at the end of a Quarter, such unrecouped amount may be carried over to subsequent quarters, but for the avoidance of doubt, shall not (except as set out in clause 7.3 below) have the effect of reducing any subsequent Quarterly Advance. If any part remains unrecouped upon termination or expiry of the Agreement, the Licensors shall return such part to the Licensee.
- 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 schedule 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 electronic funds transfer (or if agreed by the Licensee, 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 royalty statement (in the form attached in schedule 5).
- 7.7 The Licensors shall, on behalf of 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 made available to the public (or otherwise accessed through a Licensed Service if from “pre-loaded” copies pursuant to clause 2.1(c)) under this Agreement via all Licensed Services, the Licensee will deliver the Music Usage Information to the Licensors or to the Licensors’ duly authorised agent (details of which will be provided to the Licensee) in the Electronic Reporting Format 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 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.
- 8.3 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 free of charge for the purposes of the Licensors verifying that the Licensee is acting in accordance with this Agreement. For the avoidance of doubt, the Licensee shall not be required to provide free access to downloads under a Permanent Download Service or to provide free access to a mobile phone network or internet access.
- 8.4 The Licensee acknowledges that the Licensors have a responsibility to maximise the efficiency of their reporting to the 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 schedule 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 schedule 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.

- 8.5 Without prejudice to any right in law that the Licensors may have to obtain such information, the Licensee shall not be obliged to provide to the Licensors any information which identifies Users or which otherwise constitutes “personal data” as defined in the Data Protection Acts 1988 and 2003. 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”.
- 8.6 The Licensee shall notify the Licensors in writing in advance of all arrangements which it enters into for “pre-loading” content on Data Storage Devices pursuant to clause 2.1(c), such notification to include details of the relevant Data Storage Devices.
- 8.7 Subject to the permitted uses and disclosures of its confidential information provided for in this agreement, IMRO and MCPSI shall each keep confidential all confidential information provided to IMRO or MCPSI by Licensee pursuant to this Agreement. Licensee though acknowledges that IMRO and MCPSI may disclose the said confidential information to any of its directors, officers, employees, members or sister organisations to the extent that disclosure is reasonably necessary for the purposes of this Agreement and for the purposes of administering the Repertoire Works and accounting to members and sister organisations for the administration of the Repertoire Works.
- 8.8 IMRO may disclose the confidential information referred to in sub clause 1 if and to the extent that:
- (a) this is required by the law of any relevant jurisdiction or pursuant to a request or order of a regulator or court of a competent jurisdiction;
  - (b) this is required by any securities, exchange or regulatory or governmental body to which IMRO or MCPSI is subject;
  - (c) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of IMRO or MCPSI;
  - (d) the information has come into the public domain through no fault of IMRO or MCPSI;
  - (e) the information was in the possession of IMRO or MCPSI before disclosure by Licensee;
  - (f) it is required to enable IMRO or MCPSI to enforce its rights under this Agreement.

## **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 MCPSI and/or IMRO (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 5.6 and calculated from the date on which MCPSI and/or IMRO (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 MCPSI and IMRO have in relation to any failure to submit Music Usage Information fully or accurately completed within the time stipulated in clause 8.1.

## **10. Credits and Notices**

The Licensee shall include on each of the Licensed Services:

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

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

## **11. Auditing**

11.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each Relevant Party keeps and makes available for inspection upon reasonable notice), both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) 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 Services, together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit.

11.2 For the purposes of this clause 11, 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.

11.3 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 5.6).

- 11.4 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 11.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefor.
- 11.5 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 5.6)). 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.
- 11.6 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 11, 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.
- 11.7 For the avoidance of doubt, books, records and accounting records as referred to in clauses 11.1 and 11.2 above shall include data, information and records held on computers.
- 11.8 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.



## **12. Security and Encryption**

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

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

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

## **13. Termination and Expiry**

13.1 This Agreement shall expire on 30<sup>th</sup> June 2012 unless terminated earlier by written agreement or in accordance with the terms of this clause 13.

13.2 This Agreement may be terminated by either party by the terminating party giving the other party not less than three months notice in writing.

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

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt of notice of such breach; or
- (b) commits a material breach of this Agreement which is not capable of remedy;

and, for the avoidance of doubt, any breach which consists of a failure by either party to perform an obligation under this Agreement within any period required or by any date specified under this Agreement shall be deemed to be capable of remedy if such obligation is performed by such party within the 14 day cure period specified in clause 13.3(a) above.

13.4 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 they become due (as that term is defined in Companies Acts 1963-2006) 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 examinership, 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 examinership petition within 2 days, of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, examinership, or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an examiner, provisional liquidator, 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).

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

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

#### **14. Effect of Termination**

14.1 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 making available to the public of Repertoire Works via the Licensed Services. Termination shall be without prejudice to the ability of Users to retain a copy of a Repertoire Work supplied to them under a Permanent Download Service.

14.2 Clauses 5, 6, 7, 8, 9, 14, 11, 17 and 18 shall survive the termination of this Agreement, but only in relation to the Licensee's activities during the Term.

#### **15. No Assignment**

15.1 Subject to clause 15.2, 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 MCPSI and IMRO 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.

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

- (a) the Licensee retains complete control and direction over the provision of the Licensed Services to Users; and
- (b) the Licensors are able to audit such third party in accordance with clause 11.

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

- (a) that any Repertoire Works made available to Users may only be copied as permitted under this Agreement or by applicable law; and
- (b) that, save as may be permitted by law, no attempt shall be made by Users to:

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

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

## **16. Controlled Composition Agreements**

Where any person, firm or company is or becomes a member of MCPS or IMRO 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 in the case of MCPSI procure that MCPS does so and in the case of IMRO will provide the Licensee with evidence that the relevant Member has become a Member and has given the MCPS or IMRO 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 Ireland, 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 16 does not operate so as to override the terms of that licence.

## **17. Notices**

17.1 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 13 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.

17.2 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.

17.3 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 9.00 to 17.00 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.

17.4 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.

## **18. Miscellaneous**

18.1 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.

18.2 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.

18.3 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.

18.4 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.

18.5 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.

18.6 This Agreement shall be construed according to the laws of Ireland and the parties agree to submit to the jurisdiction of the Irish Courts.

Signed by:

Signed by:

\_\_\_\_\_  
**Duly authorised signatory on  
behalf of MCPSI**

\_\_\_\_\_  
**Duly authorised signatory on  
behalf of IMRO**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

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

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

Signed by:

\_\_\_\_\_  
**Duly authorised signatory on  
behalf of the Licensee**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

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

## SCHEDULE 1

### Definition of Music Service

“Broadcast”	<p>means an electronic transmission of visual images, sounds or other information which</p> <p>(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or</p> <p>(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public;</p> <p>and which is not excepted by subclause 1 and references to Broadcasting shall be construed accordingly.</p> <p>1. Excepted from the definition of “Broadcast” is any internet transmission unless it is:</p> <p style="padding-left: 40px;">(i) a transmission taking place simultaneously on the internet and by other means,</p> <p style="padding-left: 40px;">(ii) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.</p> <p style="text-align: center;">For the avoidance of doubt the terms “broadcast” or “broadcasting” when used in this agreement without a capital “B” shall have the meaning given to them by the Act.</p>
“Excluded Service”	<p>means any service (or the relevant part of a service) which is a Podcasting Service or which falls within the scope (from time to time) of any of the following MCPSI/IMRO joint licensing schemes or any licensing schemes operated by IMRO or MCPSI:</p> <p>(a) IMRO – Ringtone/Ringback Licensing Scheme</p>

	<ul style="list-style-type: none"> <li>(b) MCPSI – Ringtone Licensing Scheme</li> <li>(c) MCPSI – Ringback Licensing Scheme</li> <li>(d) MCPSI – Karaoke and MIDI Scheme</li> <li>(e) MCPSI – Music-on-hold Scheme</li> <li>(f) MCPSI – Supply of Background Music Services Scheme</li> <li>(g) MCPSI – Premium Telephone Line Services Scheme</li> <li>(h) IMRO – Online Licensing Scheme – excluding Music Services and Ringtones</li> <li>(i) IMRO/MCPSI – Limited On-Line Exploitation Licensing Scheme</li> <li>(j) IMRO/MCPSI General Entertainment on Demand Licensing Scheme</li> </ul>
<p>“Limited Download / On-Demand Streaming Service “ or “LD/ODS Service”</p>	<p>means a service (or the relevant part of a service), other than an Excluded Service, whereby a User may receive a Musical Work by streaming on-demand via a Network (where the time and place at which such Musical Work is received is selected by the User) and/or may download via a Network that Musical Work but where such download may not be retained by the User on a permanent basis. Any service falling primarily within the foregoing definition but which also includes elements which fall within the definition of Premium and Interactive Webcasting Service and/or Pure Webcasting Service shall be deemed in its entirety to be a LD/ODS Service.</p>
<p>“Music Service”</p>	<p>means a service or the relevant part of a service which is:</p> <ul style="list-style-type: none"> <li>(a) a Permanent Download Service;</li> <li>(b) an LD/ODS Service;</li> <li>(c) a Premium and Interactive Webcasting Service;</li> <li>(d) a Pure Webcasting Service; or</li> </ul>



	(e) any combination of (a) to (d) above.
“Network”	means the internet, a mobile network or any other wired or wireless network.
“Permanent Download Service”	means a service (or the relevant part of a service), other than an Excluded Service, by which a Musical Work is made available 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.
“Podcasting Service”	means a service (or the relevant part of a service) whereby “programmes” (as opposed to individual Musical Works) may be downloaded to Users’ Data Storage Devices (whether permanently or temporarily) and any tracks included within such programme cannot be disaggregated.
“Premium and Interactive Webcasting Service”	means a service (or the relevant part of a service), other than an Excluded Service, by which Musical Works are made available to the public via a Network and: <ul style="list-style-type: none"> <li>(a) no permanent or temporary copy of any Musical Work is retained by the User; and</li> <li>(b) such service is neither a Pure Webcasting Service, a Permanent Download Service, a LD/ODS Service or a Simulcast Service.</li> </ul>
“Pure Webcasting Service”	means a service (or the relevant part of a service), other than an Excluded Service or a Simulcast Service, by which Musical Works are Broadcast (as that term is defined in this Schedule 1) to Users via a Network. For the avoidance of doubt, to constitute a Pure Webcasting Service, there must be: <ul style="list-style-type: none"> <li>(a) no interactive functionality, for example (without limitation), no use of controls that enable the User to pause, skip, move forward or backwards through the stream;</li> <li>(b) no personalisation of the service by the User or the ability for the User to offer preferences which then dictate the tracks that are provided to that User, for example (without limitation), no ability for the User to rate tracks so as to</li> </ul>

	<p>influence subsequent tracks that are played;</p> <p>(c) no advanced notification to the User of titles of specific tracks to be played or specific albums from which tracks will be played (other than the introduction of the next track in DJ led services);</p> <p>(d) in any 3 hour period:</p> <p>(i) no more than 3 songs from a particular album (including no more than 2 consecutively);</p> <p>(ii) no more than 4 songs from a particular artist or from any compilation of tracks (including no more than 3 consecutively);</p> <p>(e) no archived programmes less than 5 hours in duration or available for more than 2 weeks; and</p> <p>(f) no continuous programmes of less than 3 hours duration; and</p> <p>(g) effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent:</p> <p>(i) a User or any other person or entity from automatically scanning the Licensee's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the User; and</p> <p>(ii) a User from making copies, other than transient copies, of the sound recordings; and</p> <p>(h) no automatic or intentional cause by the Licensee of the device receiving a transmission to switch from one program channel to another.</p>
<p>"Simulcast Service"</p>	<p>means the Broadcast (as that term is defined in this Schedule 1) of a programme via a Network where such Broadcast:</p>

	<p>(a) is simultaneous with the Broadcast of such programme via a traditional terrestrial, satellite or cable television or radio service; and</p> <p>(b) is made from the website or other service of the originating Broadcaster.</p>
<p>“Special Webcasting Service”</p>	<p>means a Pure Webcasting Service or Premium and Interactive Webcasting Service where more than 50% of the sound recordings of the Musical works made available to the public (i) are by a single artist or band or (ii) comprise a live performance by a single artist or band with related performances by other artists and/or bands.</p>

## SCHEDULE 2

### Royalty Fee

#### 1. Definitions

“Applicable Revenue”	means the Gross Revenue less VAT (or other equivalent sales tax, as applicable).
“Limited Subscription Service”	means an LD/ODS Service whereby the User:  (a) pays to the Licensee a regular fee in order to access such service; and (b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to 20,000 different Musical Works or less.
“Minimum Royalties”	means the applicable minima set out in paragraphs 2.1(b), 2.2(b), 2.3(b), 2.4(b) and 2.5 (b) below.
“Mobile Licensed Service”	means a Licensed Service which is provided to Users and where, subject to paragraph 4.5 of schedule 3, the charge to the User for the Licensed Service includes all mobile network delivery charges applicable to the provision of such service.  References to Mobile Permanent Download Service, Mobile LD/ODS Service, etc. shall be construed accordingly.
“PC Subscription Service”	means an LD/ODS Service whereby the User: (a) pays to the Licensee a regular fee in order to access such service; and  (b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to in excess of 20,000 different Musical Works; and  (c) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a personal computer; and

	<p>(d) is unable to store and listen to Musical Works accessed through such service on a portable Data Storage Device (such as an mp3 or WMA player).</p>
<p>“Portable Subscription Service”</p>	<p>means an LD/ODS Service whereby the User:</p> <p>(a) pays to the Licensee a regular fee in order to access such service; and</p> <p>(b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to in excess of 20,000 different Musical Works; and</p> <p>(c) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a personal computer; and</p> <p>(d) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a portable Data Storage Device (such as an mp3 or WMA player).</p>
<p>“Subscriber”</p>	<p>means a User who is a subscriber to a PC Subscription Service, a Portable Subscription Service, a Limited Subscription Service or a Webcasting Subscription Service as the case may be.</p>
<p>“Subscription Permanent Download Service”</p>	<p>means a Permanent Download Service whereby the User pays to the Licensee a regular periodic fee in order to obtain permanent downloads.</p>
<p>“Webcasting Subscription Service”</p>	<p>means a Pure Webcasting Service or Premium and Interactive Webcasting Service (but not a Special Webcasting Service) whereby the User pays to the Licensee a regular fee in order to access such service.</p>

## 2. Royalty Fee

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

- (a) 8% of the Applicable Revenue; and
- (b) either (subject to (c) and (d) below):
  - (i) €0.06 in respect of each Musical Work downloaded per download; or
  - (ii) if a Musical Work is downloaded as part of a bundle of eight to twelve (inclusive) Musical Works, €0.05 in respect of each Musical Work downloaded.
  - (iii) if a Musical Work is downloaded as part of a bundle of thirteen to seventeen (inclusive) Musical Works, €0.045 in respect of each Musical Work downloaded.
  - (iv) if a Musical Work is downloaded as part of a bundle of eighteen to twenty-nine (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 thirty or more Musical Works, €0.03 in respect of each Musical Work downloaded.
- (b) For the purposes of paragraph 2.1 (a) and (b) 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 2.1 (a) and (b).
- (d) 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.
- (e) For the avoidance of doubt and for the purposes of paragraphs 2.1(b) (ii) to (v) 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 67.5 cent.

- (f) Only one royalty (or one minimum, as applicable) shall be charged for so called “dual-downloads” where for a single price, the same track is delivered to a User’s PC and mobile device.
- (g) The parties shall discuss in good faith Minimum Royalties in respect of long and short tracks.
- (h) 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 30 seconds duration (or for “classical” genre up to one minute’s duration) without payment of any Minimum Royalty provided that such clip is used solely to promote the sale or other use of the Musical Work as part of the Licensed Service.

2.2 In respect of an LD/ODS Service (subscription), the Royalty Fee shall be the higher of:

- (a) 8% of the Applicable Revenue; and
- (b) either:
  - (i) where the Music Service is a Portable Subscription Service, €0.86 per Subscriber per Month; or
  - (ii) where the Music Service is a PC Subscription Service, €0.57 per Subscriber per Month; or
  - (iii) where the Music Service is a Limited Subscription Service, €0.29 per Subscriber per Month; or

2.3 In respect of an LD/ODS Service (other than by subscription), the Royalty Fee shall be the higher of:

- (a) 10.5% of the Applicable Revenue; and
- (b) €0.001236 per Musical Work made available to the public per User. For the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of €1.24

- 2.4 In respect of a Special Webcasting Service (subscription) the Royalty Fee shall be the higher of:
- (a) 8% of the Applicable Revenue; and
  - (b) a Minimum Royalty per Subscriber per month to be negotiated between the parties in good faith.
- 2.5. In respect of a Special Webcasting Service (other than by subscription) the Royalty Fee shall be the higher of:
- (a) 10.5 % of Applicable Revenue: and
  - (b) €0.0012 per Musical Work made available to the public per User. In relation to the non subscriber based minimum, for the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of €1.20.
- 2.6 In respect of a Premium and Interactive Webcasting Service (subscription), other than a Special Webcasting Service , it shall be the higher of:
- (a) 6.5% of the Applicable Revenue; and
  - (b) €0.32 per Subscriber per Month
- 2.7 In respect of a Premium and Interactive Webcasting Service (other than a Special Webcasting Service and other than by subscription), it shall be the higher of:
- (a) 8% of the Applicable Revenue; and
  - (B) €0.0009 per Musical Work made available to the public per User. For the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of €0.90.
- 2.7 In respect of a Pure Webcasting Service (subscription),(other than a Special Webcasting Service, it shall be the higher of:
- (a) 5.75% of the Applicable Revenue; and
  - (b) €0.29 per Subscriber per Month
- 2.8 In respect of a Pure Webcasting Service (other than a Special Webcasting Service and other than subscription), it shall be the higher of:



- (a) 6.5% of Applicable Revenue: and
  - (b) €0.0007 per Musical Work made available to the public per User. For the avoidance of doubt, by way of example, a webcast of one Musical Work to 1000 Users incurs a Minimum Royalty of €0.70.
- 2.9 For the avoidance of doubt, the calculation leading to the Royalty Fee for a particular download, subscription or stream being either (a) or (b) above (in each of paragraphs 2.1 to 2.8 above, as applicable) shall be carried out individually in respect of each download, subscription or stream (as applicable) to each User and then the Royalty Fees, calculated on that basis, for all downloads, subscriptions or streams (as applicable) to all Users shall be added together in order to calculate the full Royalty Fees due. For the purposes of the foregoing calculation, where there is any Gross Revenue arising which is not attributable to a particular download, subscription or stream (for example, revenue arising from advertising or sponsorship etc), this shall be apportioned equally between all downloads, subscriptions or streams (as applicable).

### **3. Bundling**

- 3.1 Where a Music Service (for the purposes of this clause “Service A”) is provided to Users in conjunction with a service which is not a Music Service (for the purpose of this clause “Service B”), then the price deemed to be payable by Users (“the User Price”) for the Music Service (for the purpose of calculating Gross Revenue) shall be calculated in accordance with this paragraph 3.
- 3.2 Where there are separate published prices for Service A and Service B when available alone, then the User Price shall be the proportion of the bundled price represented by the relative standalone prices for Service A and Service B.
- 3.3 Where there are no separate published prices for Service A and Service B, then the User Price shall be deemed to be the proportion of the bundled price represented by the relative standalone prices for comparable Irish services for Service A and Service B. If there is more than one comparable service, then the average shall be used.
- 3.4 If there are no comparable Irish standalone services for Service A and Service B, then the applicable Minimum Royalties shall be payable.
- 3.5 For the avoidance of doubt, where the User Price is set according to either of paragraphs 3.2 and 3.3 above, the royalty payable shall be the higher of the applicable royalty rate applied to the User Price and the applicable Minimum Royalty.

#### **4. Promotional Use**

- 4.1 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 its Music 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 Musical Works incorporated in such sound recordings to be made available for free to Users and no royalty shall be due under the Agreement in relation to such use on the terms set out in this paragraph 4, but not otherwise:
- 4.2 For a paid for PC Subscription Service, Limited Subscription Service, Portable Subscription Service and Webcasting Subscription Service, the Licensee may provide such Licensed Service to each User for free for 2 weeks as a one-off introductory discount.
- 4.3 For a paid for Subscription Permanent Download Service, 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.
- 4.4 For a Permanent Download Service (other than a Subscription Permanent Download Service) that has annual Gross Revenue exceeding eight hundred thousand euro (€800,000) but less than eight million euro (€8,000,000) (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.
- 4.5 For a paid for Permanent Download Service that has annual Gross Revenue exceeding eight million euro (€8,000,000) (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 4.4 (a) to (d) above.

- 4.6 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 4.4(d) and 4.5, 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.
- 4.7 For the avoidance of doubt, the Licensee may without restriction make the Licensed Services available for free over and above the limits set out in paragraphs 4.1 to 4.6 above, but the applicable Minimum Royalties shall apply in respect of any free access or downloads over and above such limits.
- 4.8 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.

## **5. Provision of Music Services to Users outside Ireland**

Without prejudice to the territorial restrictions set out in this Agreement (and, for the avoidance of doubt, subject to the availability of the repertoire), where this Agreement is to cover the accessing by Users of the Licensed Service(s) from outside Ireland, then the Licensee acknowledges that the Licensors may require that the royalties payable in respect of the Licensed Service(s) being accessed outside Ireland shall be calculated on the basis of the rates at that time published as applying in the additional countries in question. If the Licensors require such rates to be payable and the Licensee does not agree to pay on the basis of those rates, then it may not be possible for this Agreement to cover the availability of the Licensed Service(s) outside Ireland. The Licensors and Licensee shall discuss such issues in good faith, but if no agreement can be reached by such time as either party may decide at its discretion, then that party may terminate this Agreement (only in respect of the availability of the Licensed Services outside Ireland) by giving the other party one month's written notice.

**SCHEDULE 3**  
**Definition of Gross Revenue**

**“Gross Revenue”**

means, subject to the provisions of this Schedule:

- (a) all revenue received (or receivable) by the Licensee from Users in consideration for the provision of the Licensed Services; and
- (b) all revenue, including by way of sponsorship and commissions, received (or receivable) by the Licensee as a result of the inclusion of third party advertising “in-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 and commissions, received (or receivable) by the Licensee as a result of the placement of third party advertising 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 schedule 3, there shall be no other deduction or set-off from the above revenues other than refunds to Users for services that they were unable to use due to technical faults in the Licensed Services.

**“Relevant Page”**

means a page:

- (a) from which Licensed Services are “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).

Where more than one type of Music Service is actually offered from a Relevant Page, for the purpose of determining which Royalty Rate applies, any advertising revenue included in Gross Revenue shall be apportioned between such Music Services on the basis of the proportion of the page that they occupy.

## **1. General**

- (a) For the avoidance of doubt, the definition of Gross Revenue above shall be applied in conjunction with the provisions on bundling set out in paragraph 3 of schedule 2. The Licensors confirm that no revenue which is included in Gross Revenue under this Agreement shall form any part of the "revenue base" under any other licence or licensing scheme operated by the Licensors (or either of them) which grants all or some of the rights set out in clauses 2.1 and 2.2 of the main body of this Agreement (albeit in relation to a service which is not a Licensed Service hereunder).
- (b) 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.
- (c) 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 5% to reflect the costs of obtaining it.
- (b) For the avoidance of doubt, advertising revenue referred to in sub-paragraph (b) of the definition of Gross Revenue above shall not include revenue arising from sponsored searches or click-through commissions arising from such searches.

## **3. Audio-Visual**

- (a) Prior to the Date of Convergence (as defined below), Gross Revenue generated in relation to the use of Repertoire Works in Audio-Visual Material shall be discounted by 15%.
- (b) If and when Convergence has been reached shall be assessed by the Licensors using reporting data submitted to it and this shall then be notified to the Licensee.
- (c) “Convergence” means the aggregate number of unit sales in Ireland of Permanent Downloads in the form of Audio-Visual Material licensed under this Agreement is the same or greater than the aggregate number of unit sales in Ireland of Permanent Downloads during any period of three Months prior to or ending on 30 June 2012 calculated by reference to not less than 80% of the units of each form of Permanent Download sold and the “Date of Convergence” means the last date of that three Month period. The Licensors shall use reasonable endeavours to inform the Licensee from time to time of the anticipated Date of Convergence.
- (d) For the avoidance of doubt, the discount set out in this clause 3 applies only to Gross Revenue and the Minimum Royalties shall not be reduced in relation to Repertoire Works in Audio-Visual Material licensed under this Agreement.

#### **4. Mobile Delivery**

4.1 In relation to Mobile Licensed Services, for the purpose of calculating Gross Revenue under this Agreement, then, subject to paragraphs 4.2 to 4.5 below, the price paid by the User shall be reduced by:

- (a) 15% for Mobile Permanent Download Services; or
- (b) 7.5% for all other Mobile Licensed Services.

4.2 The reduction referred to in paragraph 4.1 (a) above will:

- (a) no longer apply, in relation to Mobile Permanent Download Services, from the point in time when the price of such downloads converges to 117.65% or less than the weighted standard average price of downloads (of a similar type) obtained from other Permanent Download Services. This will be deemed to have taken place when the weighted average sales price of downloads (of a similar type) obtained from Mobile Permanent Download Services operated by the top 3 (by royalty value paid to the Licensors in the previous 4 Quarters) Irish mobile network operators in a given Quarter is 117.65% or less than the weighted standard average price of downloads obtained from the top 3 (by royalty value paid to the Licensors in the preceding 4 Quarters) other Permanent Download Services for the same Quarter; or
- (b) not apply, in relation to a particular download obtained from a Mobile Download Service, if the retail price of that download is 117.65% or less than the weighted standard average price of a similar type of download obtained from other Permanent Download Services (to be calculated as set out in clause 4.2(a) above).

4.3 The reduction referred to in paragraph 4.1(b) above will no longer apply for a particular Mobile Licensed Service where the retail price of that service is 117.65% or less than the weighted standard average price of the top 3 (by royalty value paid to the Licensors in the preceding 4 quarters) equivalent Music Services (which are not Mobile Licensed Services) in the preceding Quarter

4.4 For the avoidance of doubt, for the purpose of paragraphs 4.1(b) and 4.3 above, where a Mobile Licensed Service is launched at a price point that means that it does not qualify for the reduction under paragraph 4.1(b) above, if the relative price of that service and the non-mobile services referred to in paragraph 4.3 change to the extent that it would subsequently qualify for the reduction, then it shall be entitled to the reduction in paragraph 4.1(b) above until such time as the threshold in paragraph 4.3 above is reached again.

- 4.5 Where content and delivery charges for music are quoted separately for a Mobile Music Service, then the royalty charged for the provision of such music shall be the equivalent amount to the royalty charged to that Licensee when the content and delivery charges for equivalent music products are quoted as a single price. Where the Licensee does not provide equivalent music products on the basis that content and delivery prices are quoted as a single price, then such provision of music shall be excluded from this Agreement and royalty terms shall be subject to a separate discussion in good faith between the parties.
- 4.6 All references in this paragraph 4 to prices shall be deemed to be excluding VAT or other equivalent sales taxes.

## **5. Vouchers**

- 5.1 This paragraph 5 applies only to a Licensee which runs a voucher scheme where each issued voucher ("the Voucher"):
- (a) 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; or
  - (b) does not refer to any specific artist(s), band(s) or Musical Work(s).

Repertoire Works provided via a Voucher scheme which is outside this paragraph 5.1 are not licensed under this Agreement and a separate licence for premium usage of this type must be sought from the Licensors.

- 5.2 The price of each Voucher, calculated in accordance with paragraph 5.3, below shall be included in Gross Revenue if and to the extent that it is redeemed by a User or Users.
- 5.3 The price of each Voucher shall be calculated as follows:
- (a) Where the Voucher does not contain any branding or no branding other than (i) that of the Licensee for the Licensed Service, (ii) that of a third party ordinarily engaged in the sale of vouchers to Users or (iii) as permitted under paragraph 5.1(a) above, the price shall be the price charged to each User.
  - (b) Except as set out in (a) above, where the Voucher contains branding of a third party (which includes for the purposes of this paragraph 5.3(b) an entity in the same corporate group as the Licensee) and/or is distributed as part of a promotion by a third party, the price shall be deemed to be the full usual retail price



charged by the Licensee for the Music Service to which the Voucher relates.

**SCHEDULE 4**

**Online Music Services**

**Music Usage Information Reporting Format**

# Online and Mobile Music Services

## Music Usage Information Reporting Format

### MCPSI-IMRO ONLINE Format Specification

#### Version 2.1

## Table of Contents

<b>1</b>	<b>Overview</b>	<b>52</b>
<b>2</b>	<b>Report Structure</b>	<b>52</b>
2.1	Audio Release Report .....	52
2.2	Audiovisual Release Report .....	53
2.3	User Uploaded Content Report .....	54
<b>3</b>	<b>File Header Data Fields</b>	<b>56</b>
<b>4</b>	<b>Audio Release Details Data Fields</b>	<b>58</b>
<b>5</b>	<b>Audio Track Details Data Fields</b>	<b>59</b>
<b>6</b>	<b>Audiovisual Release Details Data Fields</b>	<b>60</b>
<b>7</b>	<b>Music Cue Details Data Fields</b>	<b>61</b>
<b>8</b>	<b>User Uploaded Content Data Fields</b>	<b>62</b>
<b>9</b>	<b>Usage Details Data Fields</b>	<b>63</b>
<b>10</b>	<b>File Trailer Fields</b>	<b>64</b>
<b>11</b>	<b>Character Separated Version Specification</b>	<b>68</b>
<b>12</b>	<b>Fixed File Format Specification</b>	<b>69</b>
<b>13</b>	<b>Document Control</b>	<b>77</b>

## Figures

Figure 1: Organisation of Record Types in an Audio Release Report .....	53
Figure 2: Organisation of Record Types in an Audiovisual Release Report .....	54
Figure 3: Organisation of Record Types in a User Uploaded Content Report .....	55

## Tables

Table 1: Applicable IREJOL Service Definitions .....	67
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## Overview

The Music Usage Information Report is used to report On-line Music Usage in audio releases, audiovisual releases or user uploaded content on User Generated Content websites. It is designed to accommodate the reporting of music associated with online and mobile services and any 'non-linear' transmissions that are not organised around a pre-determined time schedule.

This report is capable of describing the following details relating to the music Usage, including:

- Revenue Details
- Audio or Audiovisual Release Details
- Recording Details
- Musical Work details (including work title, writers and publishers)
- User Uploaded Content Details
- Price Details
- Usage Totals
- Usage Territories

The data can be delivered as a report in either a CSV Pipe delimited format or as a fixed length field format. See sections 10 and 11 of this document for further details of the specifications for each format.

## Report Structure

There are eight record types designed to include information for music reporting purposes:-

<u>Type</u>	<u>Record Name</u>
00	File Header
10	Audio Release Details
11	Audio Track Details
15	Audiovisual Release Details
16	Music Cue Details
19	User Uploaded Content
20	Usage Details
99	File Trailer

The following sections explain how these record types are combined within three separate reports depending on the context in which the music is being used. Each service requires a separate file. Licensees cannot compile data for more than one service into one file when reporting. This is because the Service Type forms a part of the File Header (Field 11).

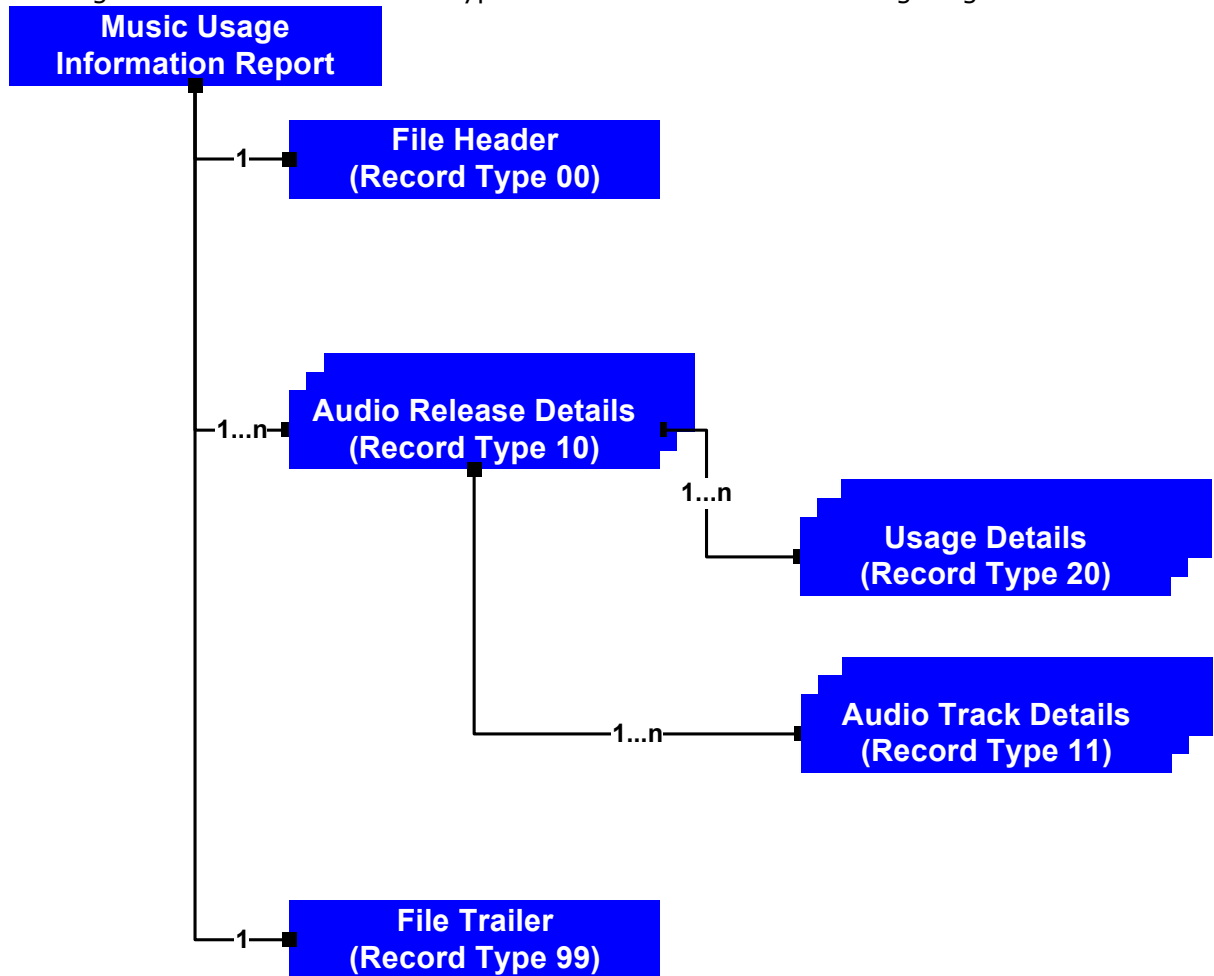
### Audio Release Report

**For the supply of music usage details in an audio release** (including music videos) the following **five** record types **must** be completed:

<u>Type</u>	<u>Record Name</u>
00	File Header
10	Audio Release Details
11	Audio Track Details

20 Usage Details  
 99 File Trailer

The organisation of these record types is illustrated in the following diagram:



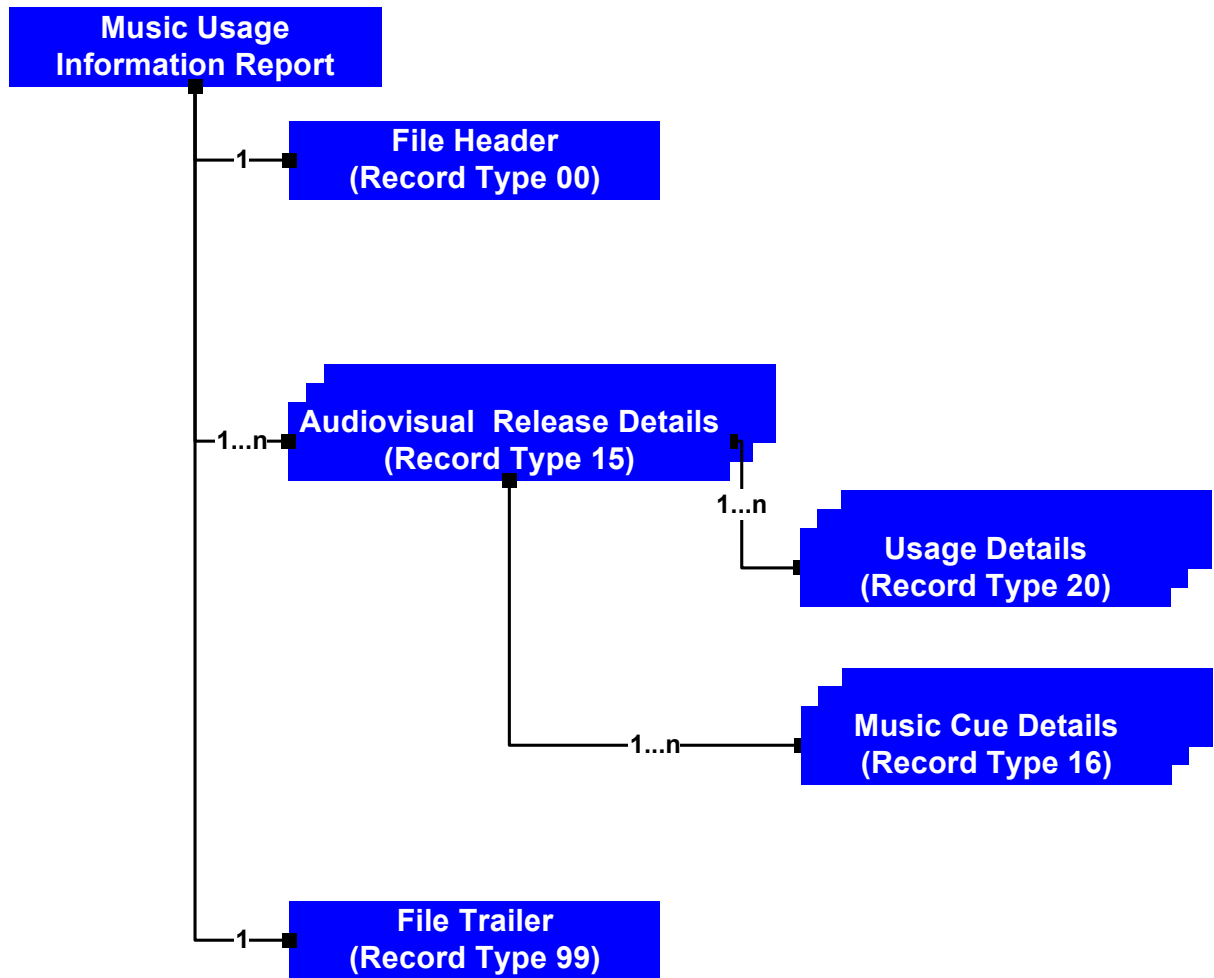
**Figure 1: Organisation of Record Types in an Audio Release Report**

## Audiovisual Release Report

**For the supply of music usage details in an audiovisual release** (such as television productions and feature films) the following **five** record types **must** be completed:

<u>Type</u>	<u>Record Name</u>
00	File Header
15	Audiovisual Release Details
16	Music Cue Details
20	Usage Details
99	File Trailer

The organisation of these record types is illustrated in the following diagram:



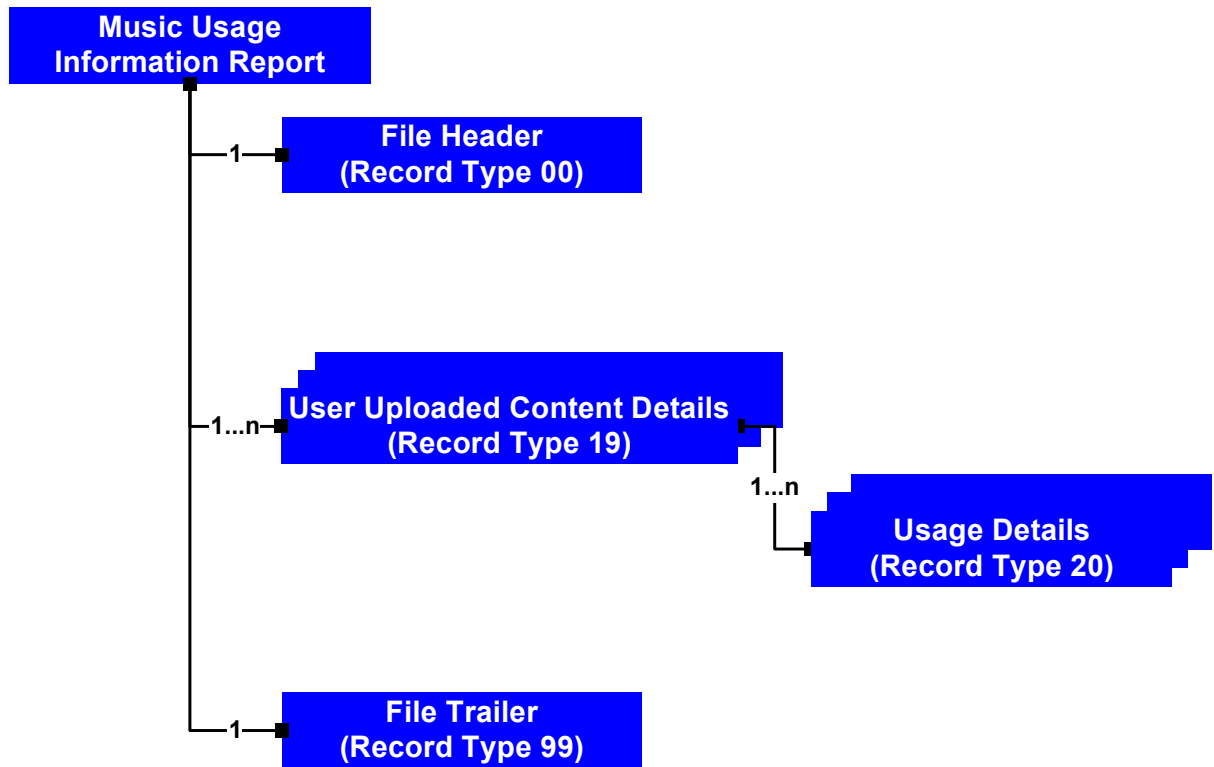
**Figure 2: Organisation of Record Types in an Audiovisual Release Report**

## User Uploaded Content Report

**For the supply of music usage details in user uploaded content** (such as video content created or compiled by a user of a social networking site and uploaded for others to view) the following **four** record types **must** be completed:

<u>Type</u>	<u>Record Name</u>
00	File Header
19	User Uploaded Content Details
20	Usage Details
99	File Trailer

The organisation of these record types is illustrated in the following diagram:



**Figure 3: Organisation of Record Types in a User Uploaded Content Report**

## File Header Data Fields

The **record type 00** marks the beginning of the file and contains high-level Licensing and Usage data for the Service within the Reporting Period.

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The File Header record contains the following fields:

- 1) **Record Type [M]** -Value of "00" which identifies the record as the File Header Record
- 2) **Format [M]** - Indicates the file format. A value of "JOLS" identifies the file as a Joint Online Sales file.
- 3) **Version [M]** - Indicates which version of the file format has been used [Format=N.N] (e.g. 2.1)
- 4) **Extract Date [M]** - The date the Usage Reporting File was produced by the Reporting Company. [Format=CCYYMMDD]
- 5) **Reporting Company Name [M]** - Name of company providing the Usage Data - Licensee's Name
- 6) **Trading Name [O]** - Brand Name of Reporting Company (if different from Reporting Company Name). This will apply if the licensee has chosen to trade under a different trading name for that service.
- 7) **Supplier Number [O]** - The Reporting Company's identifier with the Licensing Body. *This identifier will be assigned by MCPSI -IMRO during the licencing process.*
- 8) **Purchase Order Number [O]** - The Purchase Order Number which must be associated with the invoice for the usage reported.
- 9) **Reporting Period Start Date [M]** - The start date of the period the Usage data relates to. [Format=CCYYMMDD]
- 10) **Reporting Period End Date [M]** - The start date of the period the Usage data relates to. [Format=CCYYMMDD]
- 11) **Service Type [M]** - A code which classifies how the Online Service operates for the given licensing scheme. The allowed values are:

Service Type	Definition	Licensing Scheme		
PDS	Permanent Download Service	IRE JOL	CELAS	
LDS	Limited Download / On Demand Streaming Service	IRE JOL		
PIW	Premium and Interactive Webcasting Service	IRE JOL		
PWS	Pure Webcasting Service	IRE JOL		
LSS	Limited Subscription Service	IRE JOL		
PCS	PC Subscription Service	IRE JOL		
PSS	Portable Subscription Service	IRE JOL		
SPD	Subscription Permanent Download Service	IRE JOL		
WSS	Webcasting Permanent Download Service	IRE JOL		



SWS	Special Webcasting Service	IRE JOL		
<b>RTS</b>	Ringtone Service	MCPSI	IMRO	
<b>RSS</b>	Ringtone Service Subscription	MCPSI	IMRO	
<b>RBS</b>	Ringback Service	MCPSI	IMRO	
<b>RBU</b>	Ringback Service – Subscription	MCPSI	IMRO	
<b>POS</b>	Podcast Service	MCPSI	IMRO	
<b>UGC</b>	User Generated Content			UGC

See Table 1 in this document for definitions of the IREJOL service types

- 12) **Additional Direct Revenue [C]** – Additional revenue related directly to the Usage of the Releases but not reported at track level (Record 20). If there is no Additional Direct Revenue or if the total applicable revenue for each Release has been reported on the Usage detail record (on Record 20) then “0.00” must be provided. If the revenue as a whole or part thereof is not related to track usage (eg: members fees or subscription) the amount of said revenue should be detailed in that field. Please note this is not a total revenue entry, it should not add up to the total of each usage. [Format = 999999999.99]
- 13) **Indirect Revenue Advertising [M]** – Revenue related to advertising revenue for the Service. If there is no advertising Revenue then “0.00” must be provided. [Format = 999999999.99].
- 14) **Indirect Revenue Other [M]** – Revenue related to other indirect revenue for the Service, such as subscription fees. If there is no other indirect revenue for the Service then “0.00” must be provided. [Format = 999999999.99].
- 15) **Revenue Currency [M]** – The ISO 4217 Currency Code (3 alpha code) which identifies the currency of the revenue amounts.  
<http://www.xe.com/iso4217.php>
- 16) **Total Number of Subscriptions [C]** – If reporting monthly, the total number of subscribers in the month. If reporting quarterly, the sum of the total subscribers each month. This information is mandatory for subscription based Services. [Format = 999999999].
- 17) **Mobile Service Flag [O]** – Indicates if the Service is classified as a Mobile Service and thereby potentially eligible for the ‘Mobile Discount’ as decided by the specific terms of each license. This only applies to Mobile Services providers. For further information about the definition of “Mobile Services”, please consult your Online Licensing consultant. [Format = Y or N].

**Note: Validation Rule for fields 12, 13 and 14**

Where revenue data is provided in the File Header record type 00 (and the revenue value is greater than 0.00) all Usage Detail record type 20’s in the file must apply to the same territory. Where revenue is being provided for multiple territories a separate file will need to be provided for each territory.

Where revenue is provided in the Usage Detail record type 20, a different territory may be reported in each occurrence of the Usage Detail record.

**Note: Validation Rule for field 16**

Where revenue data is provided in the File Header record type 00 for a subscription service (and the revenue value is greater than 0.00) all Usage Detail record type 20’s in the file must apply to the same territory. Where

revenue for a subscription service is being provided for multiple territories a separate file will need to be provided for each territory.

## Audio Release Details Data Fields

The **record type 10** contains details of the Release (bundles of works). This record type will be used to report information about releases of sound recordings and, where applicable, music videos. There will be one record of this type for each Release which is sold as an individual unit. Detailed about the recording(s) and work(s) contained in each release will be reported in the following record type 11.

The letters in brackets confirm whether or not the supply of the information is Mandatory [**M**], Conditional [**C**] or Optional [**O**]. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The Release Details record contains the following fields

- 1) **Record Type [M]** -Value of "10" which identifies the record as the Release Detail Record.
- 2) **Reporting Company ID [M]** - The Reporting Company's unique identifier for the Release.
- 3) **Multi-Track Release Indicator [M]** - Indicates if the Release consists of a multiple or single tracks ("M"=Multi-Track, "S"=Single Track)
- 4) **Customised Release Indicator [C]** - Indicates that the tracks contained in a release have been selected by a consumer and therefore the release has been customised. This indicator is mandatory where the Multi-Track Release Indicator is **M**. The values are: **Y** = Yes; **N** = No.
- 5) **Release Title [M]** - The Title of the Release.
- 6) **Featured Artist [O]** - Names of artist(s) associated with the Release. If several artists feature on one track, please separate using a backward slash (\). This field cannot be greater than 80 characters, please feature the main artists first, and trim as necessary.
- 7) **Release/Record Catalogue Number [O]** -The Catalogue Number of the original Release from the track or tracks have been taken.
- 8) **Original Issue Date of Release [O]** - The date when the Release was originally issued. If the Release was previously issued on physical media then this field should contain the issue date of the physical product.
- 9) **Total Release Duration [O]** - The total duration of the Release including non-Music items. The format shall be MMMSS. For example: 011737 not 11737 (one hundred and seventeen minutes, thirty seven seconds).

## Audio Track Details Data Fields

The **record type 11** contains details of the works which are used within an Audio Release. There will be one record of this type for each work that is used,

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The Audio Track Details record contains the following fields

- 1) **Record Type [M]** –Value of “11” which identifies the record as the Audio Track Detail Record.
- 2) **Reporting Company ID [M]** – The Reporting Company’s unique identifier for the Release. This must be the same as the Production Identifier contained on the associated **Audio Release Details** record.
- 3) **Reporting Company Track Identifier [O]** – The Reporting Company’s unique identifier for the track within the Release (this may be the same as the Reporting Company’s Release Identifier for single track products).
- 4) **Work Identifier [O]** – Either the Tunecode of the Work or the ISWC.
- 5) **Recording ISRC [O]** –The ISRC of the Recording.
- 6) **Track Title [M]** – Title of the Track. This is normally the same as the title of the Musical Work.
- 7) **Featured Artist [M]** – Names of artist(s) responsible for performing the work/recording. If several artists feature on one track, please separate using a backward slash (\). This field cannot be greater than 80 characters, please feature the main artists first, and trim as necessary.
- 8) **Writer [C]** –The names of the composer, authors or arrangers of the Musical Work. If several writers exist on the same musical work, please separate using a backward slash (\).This field cannot be greater than 80 characters, please feature the main writers first and trim as necessary. **Mandatory if Work Identifier is not supplied.**
- 9) **Publisher [C]** – The names of publisher(s) of the Work. If several publishers feature on one track, please separate using a backward slash (\). This field cannot be greater than 80 characters, please feature the main publishers first, and trim as necessary. **Mandatory if Work Identifier is not supplied.**
- 10) **Music Duration [M]** – For music only items, this will be the full duration of the recording. If audio-visual items, (E.g. an interview with the band) this will be the duration of the individual track used within the audio-visual item. The format shall be MMMSS. For example: 000137 not 137 (one minute, thirty seven seconds).
- 11) **Original Issue Date of Recording [O]** – The date then the recording was first issued as part of Release.
- 12) **Music Video Indicator [O]** – Set to “Y” if the track is a music video.
- 13) **Non-Music Flag [O]** – Must be “Y” if item is a non-Music Item, such as a Spoken Word track.

## **Audiovisual Release Details Data Fields**

The **record type 15** contains details about the release of an audiovisual production. This record type will be used to report information about releases of television programmes, feature films and where applicable, advertisements and promos. All of the music cues relating to each audiovisual production will be reported in the following record type 16.

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The Production Details record contains the following fields:

- 1) **Record Type [M]** – Value of “15” which identifies the record as the Production Detail Record.
- 2) **Reporting Company Identifier [M]** – This is the Reporting Company’s unique identifier assigned to the production. For IRE television commercials this can be the Clock Number.
  - a) **Society Production Identifier [O]** – This is the unique identifier assigned to the production by the Society receiving the Reporting Company’s release details.
- 3) **ISAN [O]** – The International Standard Audiovisual Number assigned to the production.
- 4) **Production Name [M]** – This is the name of the production or commercial.
- 5) **Series Indicator [M]** – This indicator is used to show whether the production is part of a series. The Values are **Y** = Part of A Serie or **N** = Not Part of A Serie
- 6) **Episode Number [C]** – This is the number of the Episode. This information is mandatory where the Series Indicator is **Y**.
- 7) **Episode Name [C]** – This is the name of the Episode. This information is mandatory where the Series Indicator is **Y**.
- 8) **Production Indicator [M]** – This indicator is used to describe the type of production being reported. The values are: **P** = Promo/Trailer; **N** = Programme; **F** = Feature Film; **C** = Commercial.
- 9) **Year of Production [C]** – The year in which the production was produced. This information is mandatory where the Production Indicator is **F**.
- 10) **Music Content Indicator [M]** – This indicator is used to describe the status of the music used in the production. The values are: **Y** = Contains music; **N** = Contains no music; **S** = Cue sheet previously supplied.
- 11) **Production Company Name [O]** – The name(s) of the production company(s) that created the production.

## Music Cue Details Data Fields

The **record type 16** contains details about the music cues contained in the audiovisual production described in record type 15. All of the music cues relating to each audiovisual production must be reported. Unless the Society Production Identifier has been provided in record type 15 (see Section 6 Audiovisual Release Details Data Fields) the Reporting Company will be required to provide details about all of the music cues contained in the audiovisual production.

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The Music Details record contains the following fields:

- 1) **Record Type [M]** –Value of “16” which identifies the record as the Music Detail Record.
- 2) **Reporting Company Identifier [M]** – This is the Reporting Company’s unique identifier assigned to the production. This must be the same as the Production Identifier contained on the associated **Audio Visual Release Details** record.
- 3) **Work Identifier [O]** – Either the Tunecode or the ISWC assigned to the Work.
- 4) **Recording ISRC [O]** –The ISRC of the Recording.
- 5) **Music Cue Title [M]** – Title of the music cue. This is normally the same as the title of the Musical Work.
- 6) **Featured Artist [M]** – Names of artist(s) responsible for performing the work/recording. If several artists feature on one track, please separate using a backward slash (\). This field cannot be greater than 80 characters, please feature the main artists first, and trim as necessary.
- 7) **Writer [C]** –The names of the composer, authors or arrangers of the Musical Work. If several writers feature on one track, please separate using a backward slash (\). This field cannot be greater than 80 characters, please feature the main writers first, and trim as necessary. **Mandatory if Work Identifier is not supplied.**
- 8) **Publisher [C]** – The names of publisher(s) of the Work. If several publishers feature on one track, please separate using a backward slash (\). This field cannot be greater than 80 characters, please feature the main publishers first, and trim as necessary. **Mandatory if Work Identifier is not supplied.**
- 9) **Music Duration [M]** – For music only items, this will be the full duration of the recording. If audio-visual items, (E.g. an interview with the band) this will be the duration of the individual track used within the audio-visual item. The format shall be MMMSS. For example: 000137 not 137 (one minute, thirty seven seconds).
- 10) **Library Work Indicator [M]** – This indicator is used to show whether the music cue has been taken from a production music library. The values are: **Y** = Yes; **N** = No.

## User Uploaded Content Data Fields

The **record type 19** contains details about the music contained in the audiovisual content uploaded on User Generated Content sites. This record type is specifically for the description of content that cannot be described in the preceding audio and audiovisual release record types.

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The Music Details record contains the following fields:

- 1) **Record Type [M]** –Value of “19” which identifies the record as the Music Detail Record.
- 2) **Reporting Company Identifier [M]** – This is the Reporting Company’s unique identifier assigned to the uploaded content.
- 3) **URL [M]** – the Uniform Resource Locator that will resolve to the location of the content on the reporting company’s website.
- 4) **Video Title [M]** – the title that the user has assigned to the uploaded content.
- 5) **Category [M]** – the video category or genre selected and assigned by the user to the uploaded content. Possible values are: Auto & Vehicles, Comedy, Entertainment, Film & Animation, Gadgets & Games, Howto & DIY, Music, News & Politics, People & Blogs, Pets & Animals, Sports, Travel & Places.
- 6) **Keywords [M]** – Keywords or tags assigned by the user to the uploaded content to facilitate searching.
- 7) **Music Duration [M]** – The duration of the music used in the uploaded content. In some cases this will be less than the Total Video Duration (for example, where an interview with the band is included) [format = MMMMSS]. For example: 000137 not 137 (one minute, thirty seven seconds).
- 8) **Total Video Duration [M]** – The total duration of the uploaded content [Format= MMMMSS]. For example:005635 not 5635 (fifty six minutes, thirty five seconds).
- 9) **Upload Date [M]** – The date the content was uploaded to the Reporting Company’s website [Format=CCYYMMDD].

## Usage Details Data Fields

The **record type 20** contains details of the Usage of the Release according to territory, price, Usage Type. There must be one record for each Release, by Usage Type, by Territory, and Price.

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The Usage Details record contains the following fields

- 1) **Record Type [M]** –Value of “20” which identifies the record as the Release Detail Record.
- 2) **Reporting Company Identifier [M]** – The Reporting Company’s unique identifier for an Audio Release, Audiovisual Production or User Uploaded Content.
- 3) **Territory Code [M]** – The ISO 3166-1 code (alpha-2 code) which identifies the territory of Usage.  
[http://en.wikipedia.org/wiki/ISO\\_3166-1\\_alpha-2](http://en.wikipedia.org/wiki/ISO_3166-1_alpha-2)
- 4) **Usage Type [M]** – A code which classifies how the Release used:
  - **PD** = Permanent Download
  - **LD** = Limited Download
  - **ST** = Stream
  - **PW** = Pure Webcast
  - **IW** = Interactive Webcast
  - **RT** = Ringtones
  - **RB** = Ringbacks
- 5) **Release Price [M]** – Price charged per use for the Release. This can be zero if the Service does not charge on a per use basis. [Format=9999.99] (Also see Additional Direct Revenue, page 7)
- 6) **Price Currency [M]** – The ISO Code which identifies the currency of the price amounts.  
<http://www.xe.com/iso4217.php>
- 7) **Premium Upgrade Indicator [M]** – Indicates where an additional amount has been paid for a release for a premium value release (for example, where the release is not protected by DRM, the audio compression quality is higher, etc). The values are: **Y** = Yes; **N** = No.  
**Note:** The minima royalty calculation will not apply where this indicator is set to **Y**.
- 8) **Number of Uses [M]** – The total number of Uses of the Release for the specific Usage Type within the territory. [Format = 999999999]

## File Trailer Fields

There will be one record per file. The purpose of this record is to mark the end of the file

The letters in brackets confirm whether or not the supply of the information is Mandatory **[M]**, Conditional **[C]** or Optional **[O]**. A Conditional field may be Mandatory depending on the other fields completed and the type of service.

The File Trailer record contains the following fields

- 1) **Record Type [M]** -Value of "99" which identifies the record as the File Trailer Record
- 2) **Number of Records [M]** - This will be the total number of records contained in the data file including Header and Trailer records.
- 3) **Number of Audio Releases [M]** -The total number of Releases contained in the data file. This will equate the total number of unique Reporting Company Release Identifiers
- 4) **Number of Tracks [M]** - This will be the total number of Tracks contained in the data file. This will equate to the total number of type '11' records.
- 5) **Number of Audiovisual Releases [M]** - This will be the total number of Productions contained in the data file. This will equate to the total number of type '15' records.
- 6) **Number of User Uploaded Content Videos [M]** - This will be the total number of User Uploaded Content Videos. This will equate to the total number of type '19' records.
- 7) **Number of Usage Detail records [M]** - This will be the total number of Usage Detail records (type '20') contained in the data file.



Check

<p>“Broadcast”</p>	<p>means an electronic transmission of visual images, sounds or other information which</p> <p>(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or</p> <p>(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public;</p> <p>and which is not excepted by subclause 1 and references to broadcasting shall be construed accordingly.</p> <p>1. Excepted from the definition of “Broadcast” is any internet transmission unless it is:</p> <p>(i) a transmission taking place simultaneously on the internet and by other means,</p> <p>(ii) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.</p> <p>For the avoidance of doubt the terms “broadcast” or “broadcasting” when used in this agreement without a capital “B” shall have the meaning given to them by the Act.</p>
<p>“Permanent Download Service”</p>	<p>means a service (or the relevant part of a service) by which a Musical Work is made available 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.</p>
<p>“Limited Download / On-Demand Streaming Service “ or “LD/ODS Service”</p>	<p>means a service (or the relevant part of a service) whereby a User may receive a Musical Work by streaming on-demand via a Network (where the time and place at which such Musical Work is received is selected by the User) and/or may download via a Network that Musical Work but where such download may not be retained by the User on a permanent basis. Any service falling primarily within the foregoing definition but which also includes elements which fall within the definition of Premium and Interactive Webcasting Service and/or Pure Webcasting Service shall be deemed in its entirety to be a LD/ODS Service.</p>
<p>“Premium and Interactive Webcasting Service”</p>	<p>means a service (or the relevant part of a service) by which Musical Works are made available to the public via a Network and:</p> <p>(a) no permanent or temporary copy of any Musical Work is retained by the User; and</p> <p>(b) such service is neither a Pure Webcasting Service, a Permanent</p>

	Download Service, a LD/ODS Service or a Simulcast Service.
"Pure Webcasting Service"	<p>means a service (or the relevant part of a service) by which Musical Works are Broadcast (as that term is defined in this Schedule 1) to Users via a Network. For the avoidance of doubt, to constitute a Pure Webcasting Service, there must be:</p> <ul style="list-style-type: none"> <li>(a) no interactive functionality, for example (without limitation), no use of controls that enable the User to pause, skip, move forward or backwards through the stream;</li> <li>(b) no personalisation of the service by the User or the ability for the User to offer preferences which then dictate the tracks that are provided to that User, for example (without limitation), no ability for the User to rate tracks so as to influence subsequent tracks that are played;</li> <li>(c) no advanced notification to the User of titles of specific tracks to be played or specific albums from which tracks will be played (other than the introduction of the next track in DJ led services);</li> </ul>
"Limited Subscription Service"	<p>means an LD/ODS Service whereby the User:</p> <ul style="list-style-type: none"> <li>(a) pays to the Licensee a regular fee in order to access such service; and</li> </ul> <p>gains access, only while such fee continues to be paid and controlled by appropriate DRM, to 20,000 different Musical Works or less.</p>
"PC Subscription Service"	<p>means an LD/ODS Service whereby the User:</p> <ul style="list-style-type: none"> <li>(a) pays to the Licensee a regular fee in order to access such service; and</li> <li>(b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to in excess of 20,000 different Musical Works; and</li> <li>(c) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a personal computer;</li> <li>(d) is unable to store and listen to Musical Works accessed through such service on a portable Data Storage Device (such as an mp3 or WMA player).</li> </ul>
"Portable Subscription Service"	<p>means an LD/ODS Service whereby the User:</p> <ul style="list-style-type: none"> <li>(a) pays to the Licensee a regular fee in order to access such service; and</li> <li>(b) gains access, only while such fee continues to be paid and controlled by appropriate DRM, to in excess of 20,000 different Musical Works;Id</li> <li>(c) is able, only while such fee continues to be paid and controlled by appropriate DRM, to store and listen to Musical Works accessed through such service on a personal computer and</li> <li>(d) is able, only while such fee continues to be paid and controlled by</li> </ul>

	appropriate DRM, to store and listen to Musical Works accessed through such service on a portable Data Storage Device (such as an mp3 or WMA player).
“Subscription Permanent Download Service”	means a Permanent Download Service whereby the User pays to the Licensee a regular periodic fee in order to obtain permanent downloads.
“Webcasting Subscription Service”	means a Pure Webcasting Service or Premium and Interactive Webcasting Service (but not a Special Webcasting Service) whereby the User pays to the Licensee a regular fee in order to access such service.
“Special Webcasting Service”	means a Pure Webcasting Service or Premium and Interactive Webcasting Service where more than 50% of the sound recordings of the Musical works made available to the public (i) are by a single artist or band or (ii) comprise a live performance by a single artist or band with related performances by other artists and/or bands.

**Table 1: Applicable IREJOL Service Definitions**  
**(The table above is for guidance only. Please refer to the terms and conditions of the scheme for full Service Definitions)**

## Character Separated Version Specification

The Report will be accepted in a character separated format. The order of Record Types and data fields must be consistent with the specification described in section 0.

The Pipe character (“|”) is recommended as the character to be used to separate the data fields as this character is unlikely to be contained within any data field values. An empty field must be provided in place of optional data which has not been supplied. For example:

If a Pipe separated record type contains Field 1, Field 2, Field 3 and Field 4 but only values for Fields 1, 3 and 4 have been provided, then the record should be as follows:

*Field 1 Value||Field 3 Value|Field 4 Value*

***Please note, in the example above Field 2 should remain in the report but be left blank.***

## Fixed File Format Specification

Record Type	Record Name	Min. Length	Max. Length	Comments
00	File Header	232	600	Page 15 (Mandatory)
10	Audio Release Details	244	600	Page 16 (Mandatory)
11	Audio Track Details	422	600	Page 17 (Mandatory)
15	Audiovisual Release Details	339	600	Page 18 (Mandatory)
16	Music Cue Details	401	600	Page 19 (Mandatory)
19	User Generated Content Details	588	600	Page 24 (Mandatory)
20	Usage Details	42	600	Page 20 (Mandatory)
99	File Trailer	50	600	Page 21 (Mandatory)

On-line Reporting Data						
File Header			Record ID: 00			
There will be one record per file; the purpose of this record is to mark the beginning of the file.						
Field No	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Values and Formats
1	Record Type	1	2	N	Y	Value = 00
2	Format	3	4	A	Y	Value = JOLS
3	Version	7	3	A	Y	Value = 2.0
4	Extract Date	10	8	N	Y	Format = CCYMMDD
5	Reporting Company Name	18	50	A	Y	
6	Trading Name	68	50	A	N	
7	Supplier Number	118	20	A	N	
8	Purchase Order Number	138	20	A	N	
9	Reporting Period Start Date	158	8	N	Y	Format = CCYMMDD
10	Reporting Period End Date	166	8	N	Y	Format = CCYMMDD
11	Service Type	174	10	A	Y	See Section 0 for list of valid codes.
12	Total Direct Revenue	184	12	N	C	Format = 999999999.99
13	Indirect Revenue Advertising	196	12	N	Y	Format = 999999999.99
14	Indirect Revenue Other	208	12	N	Y	Format = 999999999.99
15	Revenue Currency	220	3	A	Y	ISO 4217 (alpha-3) Currency Code
16	Total Number of Subscriptions	223	9	N	C	
17	Mobile Service Flag	232	1	A	Y	
18	Unused	233	368	A	N	Spaces
	Maximum Length	600				
	Minimum Length		232			

On-line Reporting Data						
Audio Release Details			Record ID: 10			
Column	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 10
2	Reporting Company Identifier	3	16	A	Y	The Reporting Company's unique identifier for the Release.
3	Multi-Track Release Indicator	19	1	A	Y	"M"=Multi-Track Release "S"=Single Track Release
4	Customised Release Indicator	20	1	A	C	Mandatory where the Multi-Track Release Indicator = "M" "Y" = Yes "N" = No
5	Release Title	21	100	A	Y	
6	Featured Artist	121	80	A	Y	
7	Release/Record Catalogue Number	201	30	A	N	
8	<i>Original Issue Date of Release</i>	231	8	N	N	Format = CCYYMMDD
9	<i>Total Release Duration</i>	239	6	N	N	Format = MMMMSS
10	Unused	245	355	A	N	
	Maximum Length	600				
	Minimum Length		244			

On-line Reporting Data						
Audio Track Details			Record ID: 11			
Column	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 11
2	Reporting Company Identifier	3	16	A	Y	The Reporting Company's unique identifier for the Release.
3	Reporting Company Track Identifier	19	16	A	N	
4	Work Identifier	35	16	A	N	Tunecode or ISWC
5	Recording ISRC	51	16	N	N	
6	Track Title	67	100	A	Y	
7	Featured Artist	167	80	A	Y	
8	Writer	247	80	A	C	
9	Publisher	327	80	A	N	
10	<i>Music Duration</i>	407	6	N	Y	Format = MMMSS
11	<i>Original Recording Issue Date</i>	413	8	N	N	Format = CCYYMMDD
12	<i>Audiovisual Indicator</i>	421	1	A	N	Set to "Y" if track is Audiovisual
13	<i>Non-Music Flag</i>	422	1	A	N	Set to "Y" if item is non-music
14	Unused	423	177	A	N	
	Maximum Length	600				
	Minimum Length		422			



On-line Reporting Data						
Audiovisual Release Details			Record ID:		15	
Column	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 15
2	Reporting Company Production Identifier	3	20	A	Y	The Reporting Company's unique identifier for the Production
3	Society Production Identifier	23	20	A	N	The receiving Society's unique identifier for the Production
4	ISAN	43	30	A	N	
5	Production Name	73	100	A	Y	
6	Series Indicator	173	1	A	Y	"Y" = Yes "N" = No
7	Episode Number	174	10	N	C	Mandatory where the Series Indicator = "Y"
8	Episode Name	184	100	A	C	Mandatory where the Series Indicator = "Y"
9	Production Indicator	284	1	A	M	"P" = Promo/Trailer "N" = Programme "F" = Feature Film "C" = Commercial
10	Year of Production	285	4	N	C	Format = CCYY
11	Music Content Indicator	289	1	A	Y	"Y" = Contains music "N" = Contains no music "W" = Waiting for cue sheet "S" = Cue sheet previously supplied
12	Production Company Name	290	50	A	N	
13	Unused	340	261	A	N	
	Maximum Length	600				
	Minimum Length		339			

On-line Reporting Data						
Music Cue Details			Record ID: 16			
Column	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 16
2	Reporting Company Identifier	3	20	A	Y	The Reporting Company's unique identifier for the Production
3	Work Identifier	23	16	A	N	
4	Recording ISRC	39	16	N	N	
5	Music Cue Title	55	100	A	Y	
6	Featured Artist	155	80	A	Y	
7	Writer	235	80	A	C	
8	Publisher	315	80	A	N	
9	<i>Music Duration</i>	395	6	N	Y	Format = MMMSS
10	<i>Library Work Indicator</i>	401	1	A	Y	"Y" = Yes "N" = No
11	Unused	402	198	A	N	
	Maximum Length	600				
	Minimum Length		401			

On-line Reporting Data						
User Uploaded Content Details			Record ID: 19			
Column	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 19
2	Reporting Company Identifier	3	16	A	Y	The Reporting Company's unique identifier for the Release.
3	URL	19	200	A	Y	The URL for locating the content
4	Video Title	219	150	A	Y	The title that the user has assigned to the uploaded content
5	Category	369	200	A	Y	Keywords or tags assigned by the user to the uploaded content to facilitate searching
6	<i>Music Duration</i>	569	6	N	Y	Format = MMMMSS
7	<i>Total Video Duration</i>	575	6	N	Y	Format = MMMMSS
7	<i>Upload Date</i>	581	8	N	Y	Format = CCYYMMDD
8	Unused	589	11	A	N	
	Maximum Length	600				
	Minimum Length		588			

On-line Reporting Data						
Usage Details			Record ID: 20			
Column	Item Name	Start Pos.	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 20
2	Reporting Company Identifier	3	16	A	Y	The Reporting Company's unique identifier for the Release or Production.
3	Territory Code	19	2	A	Y	ISO 3166-1 (alpha-2) Territory Code
4	Usage Type	21	2	N	Y	See Section 0 for list of valid codes.
5	Release Price	23	8	N	Y	Price charged per use for the Release. This can be zero if the service users are not charged directly per use. Format = 99999.99
6	Price Currency	31	3	A	Y	ISO 4217 (alpha-3) Currency Code
7	Premium Upgrade Indicator	34	1	A	Y	Value = Y or N
8	Number of Uses	35	9	N	Y	The number of Uses of the Release for the specific Usage Type
9	Unused	44	556	A	N	spaces
	Maximum Length	600				
	Minimum Length		42			

On-line Reporting Data						
File Trailer			Record ID: 99			
Column	Item Name	Start Pos	Size Bytes	Data Type	Mand	Comments, Values and Formats
1	Record Type	1	2	N	Y	Value = 99
2	Number of Records	3	8	N	Y	
3	Number of Releases	11	8	N	Y	
4	Number of Tracks	19	8	N	Y	
5	Number of Audiovisual Releases	27	8	N	Y	
6	Number of User Uploaded Content	35	8	N	Y	
7	Number of Usage Detail records	43	8	N	Y	
8	Unused	51	550	A	N	spaces
	Maximum Length	600				
	Minimum Length		50			

## SCHEDULE 5

### Form of Accounting Statement

Company name:

Contact name:

Monthly or Quarterly Reporting:

Month/Quarter ending:

Name of Licensed Service:

#### **Permanent Download Service**

##### **Details for the Month/Quarter**

Total Applicable Revenue for the Month/Quarter: €

(Gross Revenue exclusive of VAT, see clause 6 & 7 of Appendix 1)

Total Applicable Downloads for the Month/Quarter

Single Downloads:

Bundles:

8-12 Musical Works

13-17 Musical Works

18-29 Musical Works

30+ Musical Works

#### **Limited Download/On Demand Streaming Service**

##### **Details for the Month/Quarter**

Total Applicable Revenue for the Month/Quarter: €

(Gross Revenue exclusive of VAT, see clause 6 & 7 of Appendix 1)

Total Subscribers in Month/Quarter:

- Portable Subscription Service:

- PC Subscription Service

- Limited Subscription Service

Total Applicable Downloads for the Month/Quarter:

Singles Downloaded:

Bundles Downloaded:

8-12 Musical Works

13-17 Musical Works  
18-29 Musical Works  
30+ Musical Works

Total Applicable Musical Works played for the Month/Quarter:

**Special Webcasting Service**

**Details for the Month/Quarter**

Total Applicable Revenue for the Month/Quarter: €

(Gross Revenue exclusive of VAT, see clause 6 & 7 of Appendix 1)

Total Applicable Number of Musical works made available  
to the public per User :

Subscription/Non Subscription Service:

**Premium & Interactive Webcasting Service**

**Details for the Month/Quarter**

Total Applicable Revenue for the Month/Quarter: €

(Gross Revenue exclusive of VAT, see clause 6 & 7 of Appendix 1)

If a Webcasting Subscription Service  
the no. of Subscribers in Month/Quarter:

Total Applicable Number of Musical works made available  
to the public per User :

**Pure Webcasting Service**

**Details for the Month/Quarter**

Total Applicable Revenue for the Month/Quarter: €

(Gross Revenue exclusive of VAT, see clause 6 & 7 of Appendix 1)

If a Webcasting Subscription Service  
the no. of Subscribers in Month/Quarter:

Total Applicable Number of Musical works made available  
to the public per User :

**Date supplied:**

Please e-mail completed forms, within 14 days after the end of each calendar quarter,  
to: [onlinelicensing@mcps.ie](mailto:onlinelicensing@mcps.ie) and [onlinelicensing@imro.ie](mailto:onlinelicensing@imro.ie)



## SCHEDULE 6

### Licence Details

<b>Licensee</b>	
<b>Licensee Registered Address</b>	
<b>Agreement Number</b>	
<b>Licensed Services</b>	
<b>Additions to Definitions of "Territory"</b>	
<b>Quarterly Advance (if applicable)</b>	
<b>Commencement Date</b>	