

COVER SHEET

**IMRO/MCPSI
JOINT GENERAL ENTERTAINMENT
ONLINE LICENCE**

(Download-To-Own and On Demand Rental Version)

NAME OF LICENSEE	[] ("the Licensee")
COMPANY REGISTRATION NUMBER	[]
REGISTERED ADDRESS OF LICENSEE	[]
LICENSED SERVICE	[insert description of licensed service] ("the Licensed Service")
COMMENCEMENT DATE	[] ("the Commencement Date")
QUARTERLY ADVANCE	[] ("the Quarterly Advance")
ROYALTY FEE	<p>The higher of:</p> <ul style="list-style-type: none">(a) 2.5% of the Applicable Revenue; and(b) the following minimum royalties ("Minimum Royalties"), as applicable:<ul style="list-style-type: none">(i) € 0.12 in respect of each item of film content (film content being full length feature films and other audiovisual content similar to feature films made for television broadcast or online transmission) purchased and/or downloaded as a Permanent Download;(ii) € 0.04 in respect of each item of Content other than film content purchased and/or downloaded as a Permanent Download;(iii) € 0.04 in respect of each item of film content streamed (or cached for later viewing) and/or purchased by a User from an On Demand Rental Service;(iv) € 0.01 in respect of each item of Content other than film content streamed (or cached for later viewing) and/or purchased by a User from an On Demand Rental Service.

	(“the Royalty Fee”)
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SPECIAL CONDITIONS*:

*For the avoidance of doubt, any special conditions included in this section, override the attached terms and conditions to the extent there is any conflict.

Signed on behalf of the Licensee:

_____ **Date:** _____

Signed on behalf of the Mechanical-Copyright Protection Society Ireland Limited (“MCPSI”) of Copyright House, Pembroke Row, off Lower Baggot Street, Dublin 2 contracting for and as agent on behalf of MCPS and for and on behalf of and as agent of the various members and affiliated Societies of MCPS:

:

_____ **Date:** _____

Signed on behalf of the Irish Music Rights Organisation Limited (“IMRO”) of Copyright House, Pembroke Row, off Lower Baggot Street, Dublin 2, contracting on behalf of itself and for and on behalf of and as agents of its affiliated societies:

_____ **Date:** _____

IMRO/ MCPSI
GENERAL ENTERTAINMENT ONLINE LICENCE
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TERMS AND CONDITIONS

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 Cover Sheet and the AFL completed and signed by the Licensee and signed by the Licensors.

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

"Application for Licence" or "AFL" means the *PRS for Music* General Entertainment Online Licence (Download to Own and On Demand Rental) application form.

"Broadcast Service" means a service (or the relevant part of a service) by which Content is broadcast (as that term is defined in the Broadcasting Act to Users via a Network, including simulcasts of a broadcast service. For the avoidance of doubt, to constitute a Broadcast Service, there must be 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 or personalise in any way the content made available in the stream.

"Commercial Work" means each Musical Work the copyright in which is owned or controlled in the United Kingdom and Ireland by MCPS (or an MCPS member or an affiliated society or an affiliated society member) but excluding:

- (a) Production Music Works; and
- (b) a Commissioned Work, PROVIDED THAT for the purposes of clauses 3.2 and 4.3, a Commissioned Work shall not be excluded from such definition where the commissioning agreement does not authorise the Licensee to use the Commissioned Work in the context set out in those clauses.

"Commissioned Work" means a Musical Work specially and expressly commissioned by the Licensee from composer/writer members of IMRO and/or MCPS.

"Content" means, unless stated otherwise in the Cover Sheet, audio-visual material incorporating Musical Works and which is in the form of films, television programmes (including programmes equivalent to television programmes but which

have not been broadcast on traditional television channels) and Trailers. Audio-visual material which is licensable under the Licensors' Online Music Licence scheme (for example but without limitation, music videos, live concert performances or films of live concert performances by the artist performing particular Musical Works) shall not be deemed Content for the purposes of this Agreement and shall not be licensed hereunder.

"Content Usage Declaration" means the information set out in the Licensors' reporting format attached to this Agreement as Appendix 2.

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

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

"Download" means the making available to the public of Content, whereby such Content may be retained by the User on a temporary or permanent basis.

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

"Generic Promotions" means any item of Content the purpose of which is to promote or advertise the Licensee, the Licensed Service (or specific Content made available on the Licensed Service) and/or any other service of the Licensee, including but not limited to an item of Content which merely features the logo and/or image and/or words associated with the Licensee or a 'channel' forming part of the Licensed Service (sometimes known otherwise as an 'ident'), but excluding all Trailers.

"GEOL Service" means a Permanent Download Service and/or an On Demand Rental Service.

"Gross Revenue" shall have the meaning set out in Appendix 1.

"Licensed Service(s)" means the service(s) set out on the Cover Sheet.

"Licensors" means IMRO and MCPSI.

"MCPS" means Mechanical-Copyright Protection Society Limited whose registered office is at 29-33 Berners Street London W1T 3AB.

"Member" means:

- (a) in the case of MCPS, each person, firm or company who or which, from time to time, has appointed MCPS as agent in relation to online exploitation either before or during the Term, PROVIDED THAT a member who has so appointed MCPS after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed MCPS; and
- (b) in the case of 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, 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 MCPSI.

"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.

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

"On-Demand Rental Service" means a service (or the relevant part of a service) whereby a User may, in return for a payment to the Licensee, access a specific item of Content for a limited rental period (i.e. 48 hours) either by streaming the Content on-demand via a Network or in the form of a Temporary Download downloaded to the Users Data Storage Device.

"Online Music Licence" means the Licensors' scheme known as the "Joint Online Music Licence" as published by the Licensors from time to time.

"Permanent Download Service" means a service (or the relevant part of a service), by which a piece of Content is communicated to the public via a Network in the form of a Download and where such Download may be retained by the User on a permanent basis, and the term "Permanent Download" shall be construed accordingly.

"Permitted Excerpts" refers only to Dramatico-Musical Works and means excerpts where the use of all such excerpts in any Content 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.

"PMSR" means any production music sound recording being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in the United Kingdom and Ireland by MCPS (or an MCPS Member or an associated society or an associated society member) and where such party has authorised MCPS to license such recordings as so-called production or library music.

"Production Music" means Production Music Works and PMSRs.

"Production Music Work" means any Musical Work:

- (a) embodied on a PMSR; and
- (b) the copyright in which is owned or controlled in the United Kingdom and Ireland by MCPS (or an MCPS Member or an associated society or an associated society member).

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

"Quarterly Advance" means the sum set out in the Cover Sheet, excluding VAT (or other equivalent sales tax, as applicable).

"Repertoire Work" means:

- (a) in relation to the licence granted by MCPSI, Commercial Works, Production Music Works

and PMSRs, but excludes (i) any musical work forming part of a Dramatico-Musical Work and (ii) Commissioned Music; and

- (b) in relation to the licence granted by IMRO, each Musical Work the relevant copyright in which is owned or controlled, from time to time, in Ireland by 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.

"Royalty Fees" means the royalties payable, as set out in Cover Sheet.

"Server Territory" means the European Economic Area, Switzerland, the United States of America, Canada and such other territories as may be agreed in writing by the parties.

"Service Provider" means, the party which, in relation to a Licensed Service, most closely meets the following criteria:

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

"Subscription Service" means a service offered to consumers whereby consumers may access Content for a limited period of time (i.e. while the subscription continues) and in respect of which there would ordinarily be a subscription fee payable.

"Temporary Download" means a Download where the User is entitled to retain a copy of the

Download for a defined temporary period of time (i.e. not more than 30 days).

"Term" means the period starting on the Commencement Date and ending upon the date set out in clause 13.1 (unless terminated earlier under clauses 13.2 or 13.3).

"Territory" means Ireland and such other countries as the Licensors and the Licensee may agree in writing.

"Trailer" means an item of Content which is either:

- (a) the official film or television trailer produced and released by the producer of the relevant item of Content; or
- (b) an unedited clip of up to 30 seconds duration of the relevant item of Content being made available on the Licensed Service.

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

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

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

2. Grant of Licence

2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, MCPS grants the Licensee a non-exclusive licence to do the following during the Term:

- (a) to reproduce Repertoire Works incorporated into Content on servers within the Server Territory for the purpose of communicating to the public such Content 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 Content on Users' Data Storage Devices, to cause copies of Repertoire Works incorporated into Content to be made in the Territory for the User's own private and non-commercial use; and

- (c) to make available to the public (as that term is defined in Section 40 (1) (a) only and to authorise the making available to the public of PMSRs incorporated into Content within the Territory solely as part of and for the purposes of the provision of the Licensed Services; and
 - (d) notwithstanding clause 3.2, to extend an existing synchronisation licence which has previously been granted by the copyright owner to reproduce Repertoire Works in Content for exploitation in an alternative media to that licensed under this Agreement so that such synchronisation is licensed for the purpose of making available the Content on the Licensed Service.
- 2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, IMRO grants the Licensee a non-exclusive licence, during the Term, to make available to the public (as that term is defined in Section 40 (1) (a) only within the Territory and to authorise the making available to the public within the Territory of Repertoire Works incorporated into Content solely as part of and for the purposes of the provision of the Licensed Services.
- 2.3 The provisions of clauses 3.5, 3.6, 4.1, 4.2, and 4.3 shall not apply to a particular Repertoire Work where the owner of the relevant rights in such Repertoire Work has granted permission to the original producer of the Content for the use of that Repertoire Work in the Content 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.
- 2.4 The licence granted under clause 2.1 above shall not apply to Commercial Works included in Generic Promotions.
- 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 GEOL Services; and
 - (b) Content is made available in consideration of the payment by the User of a charge or fee for each item of Content purchased or rented. Content made available as part of a Subscription Service shall not be licensed under this Agreement; and
- (b) the Licensee is the Service Provider in relation to the Licensed Services.
- 3.2 For the avoidance of doubt, this Agreement does not grant any "synchronisation licence" covering the initial fixation of Repertoire Works in combination with visual images to create and produce Content.
- 3.3 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not authorise the manufacture or distribution of physical products containing Content, such as (without limitation) the ordering of compact discs (or any other type of physical media), but which are distributed by mail.
- 3.4 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not extend to the performing, sharing or playing of a copy (as that term is used in the Act) of Repertoire Works, whether as part of the Licensed Services or otherwise.
- 3.5 Unless (i) the relevant Member has expressly consented to such use being covered under the MCPSI licence granted herein, (ii) the Licensee has entered into an agreement with the relevant Member to this effect and (iii) evidence of such agreement has been provided to the Licensors, the licence granted under clause 2.1 of this Agreement shall not permit the use of Repertoire Work(s) with any advertising or sponsorship where:
- (a) such Repertoire Work(s) are incorporated into such advertising or sponsorship; or
 - (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising or sponsorship.
- 3.6 Unless (i) the relevant Member has expressly consented to such use being covered under the MCPSI licence granted herein, (ii) the Licensee has entered into an agreement with the relevant Member to this effect and (iii) evidence of such agreement has been provided to the Licensors, for the avoidance of doubt (and without prejudice to the generality of clause 3.5), the licence granted under clause 2.1 of this Agreement shall not apply to any Content 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; 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;

3.7 The licence granted under clause 2.1 shall not apply to graphic copies (meaning, without limitation, copies of lyrics, notation or scores) of Repertoire Works. For the avoidance of doubt, the licences granted under these terms and conditions shall not apply to any "karaoke" service.

3.8 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to:

(a) Repertoire Works which are made available by the Licensee outside of the Licensed Service(s); or

(b) material containing Repertoire Works (other than Content) that is made available by the Licensee, even where such material is made available together with Content.

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.

4. Further Restrictions

4.1 Where any Repertoire Work forms part of any Dramatico-Musical Work, the licence granted under clause 2.1 shall not apply, in relation to Content, to the reproduction of:

(a) the whole Dramatico-Musical Work; or

(b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:

(i) that which is copied or communicated to the public via the Licensed Services under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; and

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

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.

4.2 The licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work to be copied or communicated to the public as part of a Licensed Service unless the relevant Member has consented to such adaptation. By way of example only, this applies to:

(a) any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work) or the communication to the public or reproduction in the form of a sample of such part of a Repertoire Work; or

(b) using with music lyrics other than those written to be used with the music or authorised for use with the music; or

(c) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

4.3 The licences granted under this Agreement do not extend to the reproduction of any Commercial Work:

(a) where the Content is of an overtly political, sexual, violent or religious nature; or

(b) in the form of a parody, pastiche or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or

(c) where there is a derogatory, facetious, obscene or demeaning reference to the Commercial Work, its composer(s) and author(s) or the performing artist; or

(d) without prejudice to clauses 3.5 and 3.6 above, in any manner which is

likely to or causes the public to believe that the Commercial Work (or the composer(s) thereof) is endorsing or promoting any product or service, or the views expressed in the Content; or

- (e) where the making available of the Content constitutes a criminal offence under the laws of Ireland.

Whether a use of a Commercial Work breaches this clause 4.3 shall be decided by the Licensors in their reasonable discretion.

- 4.4 All rights not specifically granted under this Agreement are hereby reserved.
- 4.5 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 other than PMSRs, films, dramatic works, performers' rights or rights in performances. The Licensee is required to obtain the appropriate waivers, consents and/or licences from the person(s) owning or controlling rights in relation to sound recordings containing Repertoire Works or performers of that Repertoire Work.
- 4.6 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.
- 4.7 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in Ireland or any other territory.

5. Fees and Payment

- 5.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors:
 - (a) the Quarterly Advance; and
 - (b) subject to clause 5.2, the Royalty Fees.
- 5.2 The Quarterly Advance is recoupable against the Royalty Fees. If any part of the Quarterly Advance remains unrecouped at the end of a Quarter, such unrecouped amount may be carried over to subsequent Quarters, but for the avoidance of doubt, shall not (except as set out in clause 5.3 below) have the effect of reducing any subsequent Quarterly Advance. If any part remains unrecouped upon termination or expiry of the Agreement, the Licensors shall return such part to the Licensee.

- 5.3 The Quarterly advance shall be reviewed by the Licensors at the end of each calendar year. It may also be reviewed by the Licensors during a calendar year if the royalties calculated for any particular Quarter differ from the Quarterly Advance by 20% or more.
- 5.4 Where, in relation to any particular Quarter, the Licensee fails to provide by the required date the information required under the Agreement to allow the calculation referred to in clause 5.1(b), then the Licensors shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Quarters and (b) any other relevant factors which could reasonably lead the Licensors to believe that the Royalty Fees payable would be materially different to those paid or payable in previous Quarters.
- 5.5 The Quarterly Advance shall be payable by direct debit on the first day of each Quarter. Where the Agreement begins (and/or a Licensed Service comes into operation) within a Quarter, the first Quarterly Advance payment shall be pro-rated (according to the Commencement Date) and shall be payable upon the later of signature of this Agreement and the date on which the first Licensed Service is made available to Users for the first time.
- 5.6 Upon receipt of the Content Usage Declaration from the Licensee pursuant to clause 6.1 below, IMRO shall, on behalf of the Licensors, each of the Members, raise an invoice for the due amount, and the Licensee shall pay such invoice by electronic bank transfer (or, if agreed by the Licensee, direct debit) within 21 days of the invoice date.
- 5.7 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.
- 5.8 Except as expressly set out in these terms and conditions, no deduction in respect of any tax, or any other deduction or set-off of whatsoever nature, shall be made in calculating or paying any sum due under this Agreement.
- 5.9 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.

5.10 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 first working day of the Quarter to which the payment relates. The Licensee shall pay all bank charges on transfers of sums payable by the Licensee to the Licensors.

5.11 The Licensee shall notify the Licensors promptly of any change in the Licensed Service details provided in the Application for Licence (or set out on the Cover Sheet) and the effective date of such change. If the Licensee wishes to launch an additional Licensed Service, it shall not be licensed under this Agreement until the parties have agreed an appropriate increase to the Royalty Fees.

5.12 The Licensee shall be entitled to include as part of a Licensed Service free audio-visual clips and Trailers incorporating Musical Works without the payment of any additional Minimum Royalty provided that such clip or Trailer is used solely to promote the sale or other use of the Content as part of the Licensed Service.

5.13 On a non-precedential basis, the Licensors shall not apply an CPI based increase to the Minimum Royalties at the start of the second calendar year of the Term.

6. Supply of Information

6.1 In relation to any and all Content reproduced and communicated to the public under this Agreement via the Licensed Services, the Licensee will deliver a fully and accurately completed Content Usage Declaration to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) within 14 days of the end of each Quarter throughout the Term.

6.2 The Licensee must also supply the Licensors with any further information or documentation in its possession, power,

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

6.3 The email address for delivery of the Content Usage Declaration referred to in clauses 6.1 is onlinelicensing@IMRO.ie

6.4 Without prejudice to any right in law that the Licensors may have to obtain such information, the Licensee shall not be obliged to provide to the Licensors any information which identifies Users or which otherwise constitutes "personal data" as defined in the Data Protection Acts 1988. For the avoidance of doubt, the Licensee must still provide all required information in the Content Usage Declaration (or other information to be provided under this Agreement), but is entitled to remove any element of it which reveals the identity of Users or otherwise causes it to include or constitute "personal data".

7. Late Reporting

7.1 The following provision applies where the Licensee has:

(a) failed to deliver prior to the required date the Usage Declaration for the Licensed Service; or

(b) delivered such Content Usage Declaration prior to the required date, but it contains any omission or error of whatsoever nature (by way of example only, Content having been omitted therefrom or incorrectly or misleadingly named, or the duration of any Content having been under-reported) which is material and the Licensee has failed to give notice in writing to the Licensors correcting the omission or error by the date upon which such reporting should have been provided.

7.2 In such circumstances (and without prejudice to any other rights which either or both Licensors may have against the Licensee) if one or both of the Licensors has distributed some (or all) royalties received (excluding any commission) to Members and/or Associated Societies based on the usage data supplied, but, as a result of clause 7.1(a) or (b) applying, the royalties distributed do not accurately or fairly represent that which each of the Members and/or Associated Societies

should have received (when considering the true usage of Content), then the Licensee shall pay the fees set out in clauses 7.3 and 7.4 (in addition to those set out in clause 5).

- 7.3 Where clause 7.2 applies, separately in relation to each relevant item of Content either omitted from the relevant Content Usage Declaration or as regards which there was a material omission or error of whatsoever nature or in relation to which the relevant Content Usage Declaration 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 Content Usage Declaration which was submitted prior to the required date.
- 7.4 Where clause 7.2 applies, the Licensee will also pay interest on the additional fees as referred to in clause 7.3 above computed in accordance with clause 5.9 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 Content Usage Declaration was received by the Licensors or the date on which the Licensors received written notice of the relevant error, as the case may be.
- 7.5 The provisions of this clause apply notwithstanding any other provision of this Agreement, but are without prejudice to any other right which MCPSI and IMRO have in relation to any failure to submit Content Usage Declaration fully or accurately completed within the time stipulated in clause 6.1.

8. Vouchers

- 8.1 The licence under clause 2.1 only applies to Licensed Services purchased using Vouchers where each such Voucher:
- (a) contains no branding other than that of the Licensee; and
 - (b) does not refer to any specific item of Content; and
 - (c) does not otherwise contravene the limitations and restrictions set out in this Agreement (in particular clause 3.5 and 3.6).

Content provided via a Voucher scheme which is outside this clause 8.1 are not licensed under this Agreement and a separate licence for premium usage of this type must be sought from the Licensors.

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

9. Bundling

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

10. Credits and Notices

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

- (a) the logo of *IMRO and MCPSI*; and
- (b) details of the following website and, where practical, hypertext links to it:
<http://www.imro.ie>

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

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 or expiry of this Agreement, proper, detailed books and records relating to (a) the use of all Content and (b) any income or other consideration received by or on behalf of the Licensee in relation to the Licensed Services, together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit. Where any agreement between the Licensee and the Licensors replaces this Agreement or licenses substantially the same activities (the "**Replacement Agreement**"), the twelve month time-limit referred to above shall begin following termination or expiry of the Replacement Agreement.
- 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 5.9).
- 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 Content 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 therefore.
- 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 5.9)). 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.

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 progress in relation to fulfilling this obligation.

13. Termination and Expiry

- 13.1 This Agreement shall expire on 31 December 2014 (or such other date as may be stated on the Cover Sheet) unless terminated earlier in accordance with the terms of this clause 13.
- 13.2 This Agreement may be terminated by the Licensee, by giving not less than three months written notice to the Licensors or upon written notice in circumstances where the Licensee is ceasing to engage in activities covered by this Agreement.
- 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; or
 - (c) the other goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts,

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

14. No Assignment

14.1 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.

15. Miscellaneous

15.1 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.

15.2 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.

15.3 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.

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

15.5 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.

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

Appendix 1

Gross Revenue Definition

Definitions

“**Gross Revenue**” means, subject to the provisions of this Appendix 1:

- (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 Content to a User; and
- (c) all revenue, including by way of sponsorship, click-throughs and other commissions, received (or receivable) by the Licensee as a result of the placement of third party advertising, buy or click-through buttons on a Relevant Page (as defined below) of the Licensed Service (and including any page which directly follows such Relevant Page leading up to and including the downloading or streaming of the Content offering);

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

Subject to the remainder of this Appendix 1, there shall be no other deduction or set-off from the above revenues other than reasonable refunds to Users for services that they were unable to use (but had paid for) due to technical faults in the Licensed Services.

“**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 Content is 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 Content 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 media player controls).

1. General

- (a) The Licensors’ experience of the “Relevant Page” concept is that it does not always work in practice. As a result, the Licensors reserve the right to discuss with the Licensee an alternative construct for ensuring that appropriate revenue is accounted to the Licensors and that it can be accounted accurately. Any agreed alternative construct shall be set out in the special conditions on the Cover Sheet. If the parties are unable to agree on such alternative construct, the Licensors reserve the right to apply the dispute resolution procedure referred to in paragraph 2(d) below.
- (b) For the avoidance of doubt, the definition of Gross Revenue above shall be applied in conjunction with the provisions on bundling set out in clause 19 of the terms and conditions. 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 terms and conditions (albeit in relation to a service which is not a Licensed Service hereunder).
- (c) For the further avoidance of doubt, revenue which relates solely to services other than the Licensed Service shall not be included in the Gross Revenue.
- (d) For the further avoidance of doubt, Gross Revenue shall not be reduced by credit card commissions or similar payment process charges.

2. Advertising and Sponsorship Revenue

- (a) Gross Revenue obtained in the form of advertising or sponsorship revenue shall be reduced by any commission amount that has been deducted only by external third party advertising agencies (not being in any way affiliated to the Licensee) used to sell advertising on behalf of the Licensee, subject the maximum deduction being 15%.
- (b) For the avoidance of doubt, advertising revenue referred to in sub-paragraph (c) of the definition of Gross Revenue above shall not include revenue arising from sponsored searches or click-through commissions arising from such searches.
- (c) The provisions of paragraph 2(d) below shall apply if a dispute (a “Dispute”) arises in relation to the application of the provisions of this Appendix 1 as to what revenue is included within the definition of Gross Revenue.
- (d) Provided that the Licensors and the Licensee shall have held substantive negotiations in good faith regarding the subject matter of the Dispute over a period of at least 21 days from the date on which the Licensors notify the Licensee or the Licensee notifies the Licensor (as the case may be) in writing of the existence of such Dispute, the Licensors or the Licensee shall then be entitled by notice in writing from the Licensors to the Licensee or by the Licensee to the Licensors

to refer the Dispute for determination to an independent online adjudicator acting as an expert. The identity of such expert shall either be agreed or, in the absence of such agreement within 7 days of the written notice of referral, shall be determined by the President for the time being of the Institute of Chartered Accountants, and shall be an independent chartered accountant, unless the Licensors and the Licensee agree that another type of expert would be more suitable to determine such Dispute. The Licensors and the Licensee will seek to agree the procedure for the conduct of any expert determination. If such agreement is not reached within 7 days of the appointment of the expert, the expert shall have power to set the procedure for the expert determination. The expert shall be required, in particular, to take into account any part of the Copyright Tribunal's decision in Reference 84-90/05 relevant to the Dispute in reaching his decision. The expert shall make his determination as soon as reasonably practicable. The expert shall have power to award costs in the expert's determination, unless the Licensors and the Licensee agree otherwise. The decision of the expert is final and binds the parties to the Dispute unless there is manifest error, wilful default or fraud. For the avoidance of doubt, it is hereby confirmed that the expert shall have no jurisdiction to amend any term of the Agreement.

Appendix 2

Content Usage Declaration

(to be inserted)