

# Music Services (Business to Business) Scheme: Agreement



NAME OF LICENSEE	( <b>"the Licensee"</b> )
REGISTERED ADDRESS OF LICENSEE	
COMMENCEMENT OF AGREEMENT	( <b>"the Commencement Date"</b> )
ADVANCE	( <b>"the Advance"</b> )
SPECIAL CONDITIONS (if any)  For the avoidance of doubt any special conditions included in this section, override the attached terms and conditions to the extent that they conflict.	
<b>The terms and conditions for this Agreement are contained in the attached schedule</b>	

Signed on behalf of the LICENSEE:

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

Signed on behalf of the Mechanical-Copyright Protection Society Limited ("MCPS"), contracting for and on behalf of itself and for and on behalf of and as agent of its various Members and the Associated Societies:

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

Signed on behalf of the Performing Right Society Limited ("PRS"), contracting for and on behalf of itself and for and on behalf of and as agent of the Associated Societies:

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

## 1. DEFINITIONS

The following words and expressions shall have the following meanings save where the context otherwise requires: -

**"the Act"** shall mean the Copyright Designs and Patents Act 1988, as amended from time to time.

**"Agreement"** shall mean these terms and conditions, the Appendix to these terms and conditions and the covering sheet completed and signed by the Licensee and the Licensors.

**"Advance"** shall mean the figure set out as such in the covering sheet to this Agreement.

**"Alliance"** shall mean the MCPS-PRS Alliance Limited of 29-33 Berners Street, London, W1T 3AB.

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

**"Application Form"** shall mean the application, substantially in the form attached at Appendix 1, submitted to the Licensors prior to entering into this Agreement.

**"Associated Society"** shall mean a collecting society with which the Licensors have at the relevant time an agreement under which the Licensors are authorised to grant licences in relation to the other society's repertoire for the Authorised Exploitation.

**"Associated Society Member"** shall mean any person, firm or company who or which has been notified, from time to time, as being a member of an Associated Society.

**"Audio-Only Recording"** means any audio-only recording embodying a Musical Work whether or not such recording was originally made by or for the Licensee.

**"Audio-Visual Material"** shall mean any specific presentation of Musical Works in synchronisation or otherwise with images, whether moving or still.

**"Background Service"** shall mean a Licensed Service which does not allow members of the public present at the End Customer's Site to select the Musical Work(s) or Audio-Visual Material that is played at the End Customer's Site.

**"Catalogue Number(s)"** shall mean the identifying mark(s) applied by the Licensee for the purposes of clause 14.4.

**"Commercial Work"** shall mean any Repertoire Work other than a PMSR (where PMSR includes, for these purposes any Musical Work embodied on that PMSR).

**"Copyright Owner"** shall mean in relation to any Musical Work each person firm or company wholly or partially owning or controlling the right.

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

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**"EEA"** shall mean those countries which from time to time constitute full member states of the European Economic Area.

**"Electronic Means"** shall mean any distribution of data in an electronic form and not in a physical hard copy, whether wire or wireless and shall include without limitation, public and private telecommunication networks, satellite and, for the avoidance of doubt, the Internet.

**"End Customer"** shall mean a customer of the Licensee or, where the Licensee appoints an authorised intermediary, a customer of such intermediary.

**"Game"** shall mean any content which consists of a game or competition of whatsoever nature and which involves some degree of interaction by the listener/viewer.

**"Gross Advertising Revenue"** shall mean:

- (a) the total sums payable by the advertisers, sponsors or any other party on their behalf or connected therewith to the Receiving Party (or to any party associated or connected with the same or to any other party at the express or implied direction of the Licensee, End Customer or authorised intermediary, or any party associated or connected with the same) in relation to each and every advertisement and sponsorship message included in the Licensed Service thereof pursuant to this Agreement; and/or
- (b) the total value of the goods or services supplied free of charge or the total value of any discount where such goods or services are provided below normal price or of any other advantage or privilege in relation to each and every such advertisement or sponsorship message whether such goods or services are supplied to or advantage or privilege conferred on the Receiving Party or to any party associated or connected with the same or to any other party at the express or implied direction of the Receiving Party or any party associated or connected with the same.

**"Gross Revenue"** shall mean:

- (a) all revenue received (or receivable) by the Licensee from End Customers in consideration for the provision of the Licensed Services; and
- (b) to the extent that the revenue received by way of paragraph (a) above is separate from any of the following amounts such amounts shall be added:
  - (i) the expenses, fees or charges of whatsoever nature of any direct or indirect distributors, sub-distributors, agents, sub-agents, producers, or the like; and
  - (ii) any sums paid (or payable) directly or indirectly by the recipient of the copy of the Master Copies in relation to such supply or the intended exploitation of the Master Copies, including without limitation the cost of masters and copies thereof, duplication, shipping, the costs of making, freight, customs, storage, press kits, advertising and insurance; and
  - (iii) the Gross Advertising Revenue.

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

**"Hard Disc"** shall mean a computer or server based storage medium which can store sound recordings or other material and which is not primarily intended to be a means of physically distributing such material.

**"Karaoke Service"** shall mean a Licensed Service consisting of the supply of one or more audio-visual recordings of Musical Works whereby the lyrics are reproduced graphically on the screen as the music plays so that members of the general public can sing as the music plays.

**"Licensed Service"** shall mean the Licensee's service consisting of the provision of music to End Customers (whether directly or through an authorised intermediary) for the sole purpose of the playing thereof by End Customers as background music or background audio-visual material by means of loudspeakers and/or monitors installed in and only intended to be viewed/heard within Sites owned or occupied by such End Customer.

**"Licences"** shall mean the licences granted by MCPS under clause 2.1 and by PRS under clause 2.2 of this Agreement.

**"Licensor(s)"** shall mean MCPS and PRS.

**"Master Copy"** shall mean:

- (a) a master tape (whether magnetic or digital, reel to reel or endless loop and in cassette or cartridge form); or
- (b) a laser read disc (including for the avoidance of doubt compact discs and DVDs); or
- (c) a Hard Disc; or
- (d) such other format as the Licensors shall have authorised in writing in advance;

embodying a Recording (or Recordings) made for the purposes of duplication therefrom.

**"MCPS"** shall mean Mechanical Copyright Protection Society Limited (a company incorporated in England under registered number 3444246) whose registered office is at 29/33 Berners Street, London W1T 3AB.

**"Member"** shall mean:

- (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 the exploitation of Musical Works as set out in this Agreement PROVIDED THAT a member who has so appointed MCPS after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed MCPS; and
- (b) in the case of PRS, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of PRS has been admitted either before or during the Term as a member of PRS other than where such person, firm or company has reserved to himself the

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relevant rights pursuant to Article 7(cd) of the Articles of Association of PRS (or other equivalent article), PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date of admission into PRS.

**"Month"** shall mean a calendar month or part thereof.

**"Music Usage Information"** shall mean the information detailed in Appendix 3.

**"Music Videogram"** shall mean 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.

**"Musical Work(s)"** shall mean any work consisting of music and/or any lyrics or words written to be used with music. It includes any part of such work.

**"On-Demand Service"** shall mean a Licensed Service which allows members of the public present at the End Customer's Site to select the Musical Work(s) or Audio-Visual Material to be played at the End Customer's Site, for example (without limitation) a jukebox system.

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

- (a) the total duration of the excerpts does not exceed 20 minutes;
- (b) the use is not a "potted version" of the Dramatico-Musical Work;
- (c) the use is not or does not cover a complete act of the Dramatico-Musical Work;
- (d) each excerpt is not presented in a "dramatic form" as defined below; and
- (e) as regards ballets specifically devised for television or excerpts from existing ballets, the total duration does not exceed five minutes.

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

**"PRS"** shall mean the Performing Right Society (a company incorporated in England under registered number 134396) whose registered office is at 29/33 Berners Street, London W1T 3AB.

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**"Physical Media"** shall mean physical media (such as, without limitation, tape, compact disc, DVD, CD-Rom, portable hard drive, laser disc) used for the physical distribution of content to users.

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

**"Quarter"** shall mean each of the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December.

**"Receiving Party"** shall mean the Licensee, the End Customer or authorised intermediary.

**"Recording"** means any audio-only or audio-visual recording embodying a Musical Work whether or not such recording was originally made by or for the Licensee.

**"Repertoire Work"** shall mean:

- (a) in relation to the licences granted by MCPS, each PMSR, and each Musical Work the copyright in which is owned or controlled, from time to time, in the UK by MCPS or a Member or an Associated Society or an Associated Society Member PROVIDED THAT (i) if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the Associated Society or the relevant Member or Associated Society Member, and (ii) it shall exclude any Musical Work that a Member of MCPS or an Associated Society has withdrawn or withheld from this Agreement (or a particular form of exploitation licensable under this Agreement); and
- (b) in relation to the licences granted by PRS, each Musical Work the copyright in which is owned or controlled, from time to time, in the UK by PRS 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 PRS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by PRS or the Associated Society or the relevant Member or Associated Society Member, and (ii) it shall exclude any Musical Work that PRS or an Associated Society has withdrawn or withheld from this Agreement (or a particular form of exploitation licensable under this Agreement).

For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor.

**"Reporting Form"** shall mean the form provided at Appendix 2.

**"Royalty Fee"** shall mean the royalties payable as set out in clause 4.5.

**"Sites"** shall mean premises to which members of the public have access including shops, restaurants, public houses, shopping malls, hotels, night clubs,

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aircraft, ships, trains, coaches and similar premises it being understood that if background music is played through a centrally located system and relayed to separate and distinct parts of such premises occupied by separate entities each such part shall be deemed to be a separate Site for the purposes of this agreement. By way of example only if a copy of a Master Copy is played in a shopping mall and is also played in individual shops within such shopping mall the mall and each shop shall be regarded as separate Sites. Sites shall include all forms of public transport and each vehicle for which a copy of a Master Copy is supplied pursuant to this Agreement shall be treated as a separate Site for the purposes of this Agreement.

**"Term"** shall mean the period starting on the Commencement Date and ending on the termination of the Agreement in accordance with clause 13.

**"Territories of Distribution"** shall mean the EEA and such other countries or territories (if any) as are notified by the Licensors to the Licensee from time to time.

**"Territories of Manufacture"** shall mean the United Kingdom and such other countries or territories (if any) as are notified by the Licensors to the Licensee from time to time.

**"United Kingdom"** shall mean the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.

## 2. LICENCE

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

- (a) to reproduce Repertoire Works within the Territories of Manufacture onto Master Copies; and
- (b) to import into the Territories of Manufacture Master Copies which reproduce Repertoire Works (provided that the manufacture of such Master Copies was duly licensed by the Copyright Owner in the country of manufacture); and
- (c) to make copies of Master Copies within the Territory of Manufacture in the form of Physical Media or Hard Discs; and
- (d) to distribute by means only of rental, Physical Media to End Customers within the Territories of Distribution; and
- (e) where Repertoire Works are delivered to End Customers by Electronic Means, to authorise such End Customers to cause temporary copies of Repertoire Works to be made on a Hard Disc at the End Customers' Sites in the United Kingdom only; and
- (f) to communicate to the public PMSRs from within the Territories of Manufacture by Electronic Means;

all for the sole purpose of providing the Licensed Service.

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- 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 clause 3, PRS grants the Licensee a non-exclusive licence, during the Term, to communicate to the public (as that term is defined in the Act) and to authorise the communication to the public of Repertoire Works from the UK for the sole purpose of providing the Licensed Service.
- 2.3 All rights in each Repertoire Work other than those expressly granted to the Licensee herein are reserved to the Licensors.
- 2.4 To the extent that the Act is amended so that the terminology in clauses 2.1 and 2.2 is not consistent with that found in the Act, then the provisions of clauses 2.1 and 2.2 shall be deemed to be modified so as to grant the equivalent rights to those currently set out in clauses 2.1 and 2.2, with effect from the date when the Act is amended.

## 3. EXCEPTIONS AND LIMITATIONS

- 3.1 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) 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) the lyrics of the Commercial Work(s) reproduced graphically on the screen as the music plays for the purpose singing along to the Commercial Work(s); or
  - (e) a performance of Permitted Excerpts of the Dramatico-Musical Work of which the Commercial Works forms part.

For the avoidance of doubt, such Audio-Visual Material as is licensed under 3.1(a) to (d) above is only licensed insofar as it is reproduced or communicated to the public via the Licensed Services.

- 3.2 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.
- 3.3 For the avoidance of doubt, the Licences granted under clause 2 of this Agreement shall not extend to the public performance (as that term is used in the Act) of Repertoire Works at the End Customers Sites, whether as part of the Licensed Services or otherwise. A separate licence for the public performance of the Repertoire Work(s) must be obtained (by the entity requiring such a licence) from PRS, and elsewhere from the relevant performing right society in the relevant country.
- 3.4 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

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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.

3.5 For the avoidance of doubt (but without prejudice to the generality of clause 3.4), 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 promotions; or
- (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion.

3.6 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 other than where lyrics are provided on-screen in a Karaoke Service.

3.7 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to Repertoire Works which are made available by the Licensee outside of the Licensed Service. 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.

3.8 Where any Repertoire Work forms part of any Dramatico-Musical Work, the Licences shall not apply, in relation to Audio-Visual Material, to the reproduction of:

- (a) the whole Dramatico-Musical Work; or
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
  - (i) that which is copied or communicated to the public via the Licensed Services under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; and
  - (ii) neither of the Licensors has notified the Licensee in writing that their Member or the Associated Society Member objects to the reproduction of any such Repertoire Work.

3.9 Where any Repertoire Work forms part of any Dramatico-Musical Work, the Licences granted under this Agreement shall not apply, in relation to material

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other than Audio-Visual Material, to the reproduction of the whole or substantially the whole Dramatico-Musical 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 3.9, 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.

3.10 In any event, the Licences only apply to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.

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

- (a) any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work) or the communication to the public or reproduction in the form of a sample of such part of a Repertoire Work; or
- (b) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
- (c) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

However, provided that such alterations do not amount to an adaptation of a Repertoire Work and do not contravene clause 3.12, 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.

3.12 The Licences granted under this Agreement shall not extend to:

- (a) the reproduction or communication to the public of any Commercial Work or part thereof in the form of a parody or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or
- (b) the use of any Commercial Work in any context which the Licensee ought reasonably to consider as being likely to be insulting or detrimental to the composer or artist featured on the commercially released sound recording of the music or the relevant Member or Associated Society Member.

3.13 Any additional limitations in relation to the Associated Societies' rights to grant the licences set out in clause 2 of this Agreement which have been notified to

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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.

- 3.14 All rights not specifically granted under this Agreement are hereby reserved.
- 3.15 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings (other than PMSRs), films, dramatic works, performers' rights, moral rights or rights in performances. 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 (other than PMSRs) containing Repertoire Works or performers of that Repertoire Work. .
- 3.16 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.
- 3.17 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the UK or any other territory.
- 3.18 The Licensee shall not reproduce or authorise or permit the reproduction in the form of any Master Copy or copy thereof or import or distribute or authorise the importation or distribution of any Master Copy or copy thereof embodying any Repertoire Work (whether in the form of an audio-only or audio-visual recording):
- (a) which has not previously been reproduced in the form of any Audio-Only Recording of any nature with the consent of the Copyright Owner thereof; or
  - (b) where copies of any such Audio-Only Recording have not been made available by or with the consent of the Copyright Owner thereof for the purposes of the commercial exploitation thereof; or
  - (c) where the Audio-Only Recording embodying such Repertoire Work was not made with the consent of the Copyright Owner thereof in the territory in which such Audio-Only Recording was made or where the Audio-Only Recording was made in a territory in which copyright does not subsist in such Repertoire Work.

## 4. LICENCE FEES

- 4.1 In consideration of the Licences granted by the Licensors, the Licensee shall pay to the Licensors:
- (a) the Advance; and
  - (b) subject to clause 4.2, the Royalty Fee.
- 4.2 The Advance is recoupable against the Royalty Fee, but is non-returnable. For the avoidance of doubt, in the event that, throughout the Term, the total Royalty Fees paid by the Licensee to the Licensors is less than the Advance, no part of the Advance shall be repayable to the Licensee by the Licensors.

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- 4.3 Where, in relation to any particular Quarter, the Licensee fails to provide the information necessary to allow the calculation referred to in clause 4.1(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.
- 4.4 The licence fees referred to in clause 4.1 are subject to VAT. The Licensee shall pay to the Licensors VAT (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 4.5 In respect of delivery of content via Physical Media the Royalty Fee is:
- (a) for a Background Service, 6% of the Applicable Revenue and a minimum royalty of £2.00 per Site per month; and/or
  - (b) for an On-Demand Service, 6% of the Applicable Revenue and a minimum royalty of £2.50 per Site per month; and/or
  - (c) for a Karaoke Service, 9.5% of the Applicable Revenue and a minimum royalty of £2.50 per Site per month.

In respect of delivery of content via Electronic Means the Royalty Fee is:

- (a) for a Background Service, 7% of the Applicable Revenue and a minimum royalty of £2.50 per Site per month; and/or
- (b) for an On-Demand Service, 8% of the Applicable Revenue and a minimum royalty of £3.50 per Site per month; and/or
- (c) for a Karaoke Service, 10.5% of the Applicable Revenue and a minimum royalty of £3.50 per Site per month.

For the purposes of this Agreement the number of Sites per month will be the highest number of Sites at any time during the calendar month.

## 5. PAYMENT

- 5.1 The Licensee shall pay the Advance to the Licensors upon signature of this Agreement.
- 5.2 Within 30 days of the end of each Quarter the Licensee shall provide to the Licensors (at the address provided to the Licensee by the Licensors, or electronically if notified by the Licensors that this is acceptable) a fully and accurately completed self-accounting royalty statement in the Reporting Form attached at Appendix 2.
- 5.3 Within 7 days of receipt of the Reporting Form referred to in clause 5.2, the Alliance shall, on behalf the Licensors, each of the Members and the Associated Societies, raise an invoice for the Royalty Fee due, and the Licensee shall pay such amount to the Alliance no later than 15 days after the invoice is delivered to the Licensee (such delivery to be deemed to have occurred in accordance with clause 14).
- 5.4 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

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this Agreement are not paid by the due date, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment should have been made to the date on which the payment was made.

- 5.5 No deductions in respect of tax or any other deductions or allowances of whatever nature and no set-off shall be made in relation to any payment due hereunder except where expressly provided for in this Agreement or agreed in writing between the Licensors and the Licensee prior to the delivery of the applicable remittance.

## 6. SUPPLY OF INFORMATION

- 6.1 In relation to any and all Repertoire Works reproduced under this Agreement, 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 standard electronic reporting format (a copy of which is attached at Appendix 3) not later than 2 months following the end of the Quarter to which the Music Usage Information relates.
- 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 best 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 and distributed under this Agreement or to verify that the Licensee is abiding by the terms and conditions of this Agreement.
- 6.3 The Licensee acknowledges that the Licensors have a responsibility to maximise the efficiency of their reporting to its Members and the Associated Societies. Therefore, if the Licensors wish to make any reasonable upgrade or alteration of whatsoever nature to the Reporting Form as specifically referred to in Appendix 2, and/or Music Usage Information or data specification referred to in Appendix 3 during the Term, the Licensee agrees to use its best 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 within 3 months of the date on which the request is made, and in each case of a change the following procedures shall apply:
- (a) the Licensors shall give full details thereof in writing to the Licensee;
  - (b) the Licensee will respond in writing within 4 weeks of receipt of the request, stating the date by which it commits to comply with the change and the Licensors shall provide full assistance to the Licensee in order to assist the Licensee in complying with the change; and

the parties will then finalise the details and undertake tests to ensure that the change operates satisfactorily within the terms of this Agreement, satisfactory operation of which will be deemed acceptance of the change and Appendix 2 and/or Appendix 3 and/or the definition of the Reporting Form and/or Music Usage Information will be amended or replaced accordingly.

## 7. LATE REPORTING

- 7.1 The following provision applies where the Licensee has:
- (a) failed to deliver prior to the required date fully complete Music Usage Information; or
  - (b) delivered such Music Usage Information prior to the required date, but it contains any material omission or error of whatsoever nature (by way of example only, a Repertoire Work having been omitted therefrom or incorrectly or misleadingly named) and the Licensee has failed to give notice in writing to the Licensors correcting the omission or error by the required date.
- 7.2 In such circumstances, the Licensee shall pay the fees set out in clauses 7.3 and 7.4 (in addition to those set out in clause 4).
- 7.3 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 the Licensors to its Member(s) in relation to the Music Usage Information which was submitted prior to the required date.
- 7.4 The Licensee will also pay interest on such additional fees computed in accordance with clause 5.4 and calculated from the date on which the Licensors first made a distribution to its Member(s) 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.
- 7.5 The provisions of this clause 7 apply notwithstanding any other provision of this Agreement, but are without prejudice to any other right which the Licensors have in relation to any failure to submit Reporting Form and/or Music Usage Information fully or accurately completed within the time stipulated in clause 6.1.

## 8. BOOKS OF ACCOUNT AND AUDITS

- 8.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each End Customer 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.
- 8.2 For the purposes of this clause 8, the Licensee shall allow upon reasonable notice (and shall procure that each End Customer shall allow) access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives 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

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verify compliance with the provisions of this Agreement.

- 8.3 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 5.4),
- 8.4 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 clause 8.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefore.
- 8.5 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee's written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 8, save that such confidential information may be disclosed to the Licensors' directors, board and board sub-committee members, officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.
- 8.6 For the avoidance of doubt, books, records and accounting records as referred to in clauses 8.1 and 8.2 above shall include data, information and records held on computers.
- 8.7 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.

## 9. PERSONAL LICENCE

- 9.1 The Licence is personal to the Licensee and, except as expressly set out in this Agreement, the Licensee shall not assign, sub-license, transfer or dispose of or purport to assign, sub-license, transfer or dispose of the whole or any part thereof.
- 9.2 The Licensee may authorise a manufacturer to make and a distributor to distribute copies of any Master Copy on behalf of the Licensee provided that:
- (a) the Licensee shall notify the Licensors of the identity of any manufacturer and/or distributor it proposes to instruct, and provide the Licensors with a list of all manufacturers and/or distributors as part of their reporting requirements, and shall not authorise such manufacturer and/or distributor unless either:
    - (i) such manufacturer and/or distributor appears on the Licensors'

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- approved list in relation thereto; or
- (ii) the Licensors give their consent in writing such consent not to be unreasonably withheld; and
- (b) the Licensee shall procure that such manufacturer and/or distributor shall at all times:
- (i) act in accordance with the terms of this Agreement and not do anything which would if done by the Licensee be a breach hereof;
  - (ii) if requested by the Licensors send to the Licensors copies of all order despatch or consignment notes or other documents relating to the manufacture, distribution or supply of copies of any Master Copy to the Licensee reproducing any Repertoire Work(s);
  - (iii) allow the duly authorised representatives of the Licensors access to the premises of such manufacturer and/or distributor in order to inspect all documents relating to the manufacture distribution or supply of copies of any Master Copy and/or the stock of such copies from time to time in the possession power custody or control of such manufacturer and/or distributor; and
- (c) in the case of appointment by the Licensee of a distributor, that distributor has a direct contractual relationship with the End Customers. The purpose of this restriction is to ensure that the correct revenue is taken into account in calculating the Licensors' royalty. This restriction may be relaxed where arrangements are made with the Licensors to ensure that the correct revenue basis is used to calculate the royalty.
- 9.3 If the Licensee is in breach of any term or condition of this Agreement the Licensors may give notice to any manufacturer and/or distributor of the Licensee requiring them to cease such manufacture and/or distribution until further notice.
- 9.4 Each Master Copy shall at all times be retained in the possession of the Licensee or any manufacturer of copies thereof authorised hereunder provided that the Licensee shall procure that any Master Copy or copy thereof retained in the possession of such manufacturer shall be held to the order of the Licensee.
- 9.5 Where the Licensee has his own facilities for the making or duplication of Master Copies (or copies thereof) the Licensee shall at the request of the Licensors send to the Licensors within 7 days of the end of each Month details of all such copies made or duplicated by the Licensee on behalf of any third party together with all despatch or consignment notes or equivalent documents relating thereto to include the name and address of the party for or on behalf of whom the Licensee made or duplicated the same and of the consignee thereof.
- 9.6 If the Licensee or a manufacturer or distributor on behalf of the Licensee supplies copies of any Master Copy to a customer of the Licensee which acts as a central distribution operation such customer shall be permitted to supply and/or re-distribute such copies to End Customers for the sole purpose of the Authorised Exploitation.
- 9.7 The Licensee shall remain liable for all use and/or exploitation including (without limitation) any use and/or exploitation outside the Authorised Exploitation of any

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Master Copy and/or copies thereof whether by the Licensee, an End Customer or any other customer of the Licensee or a manufacturer or distributor appointed pursuant to clause 12.2 or any other third parties authorised by the Licensee and the Licensee undertakes to indemnify the Licensors and keep the Licensors indemnified from and against all actions, proceedings, claims, demands, costs (including reasonable legal costs on an indemnity basis) awards and damages arising directly or indirectly as a result of such use and/or exploitation.

- 9.8 For the purposes of this Agreement, references to "distributor" include distributors involved in the distribution of copies of Master Copies by Electronic Means as well as in the form of Physical Media.

## 10. LABELS

- 10.1 The Licensee shall procure that there appears on each copy on Physical Media of any Master Copy in a prominent position the initials "MCPS" of reasonable size surrounded by a box.
- 10.2 Nothing in this Agreement shall give the Licensee any rights in the "MCPS" trademark and the Licensee may use that trademark only in accordance with clause 10.1.
- 10.3 The Licensee shall procure that the following words (or such other words as may subsequently be notified by the Licensors to the Licensee) appear on the label of each copy of any Master Copy and any packaging thereof in a prominent position and of reasonable size:

"FOR BACKGROUND MUSIC USE ONLY. COPYING, COMMUNICATING TO THE PUBLIC AND PUBLIC PERFORMANCE PROHIBITED EXCEPT AS SPECIFICALLY AUTHORISED."

## 11. SUPPLY FOR AUTHORISED EXPLOITATION

- 11.1 In providing the Music Service to any End Customer (or authorised distributor) the Licensee shall include the following specific terms and conditions:
- (a) that title to each Master Copy and copy thereof shall remain with the Licensee and that such End Customer or distributor shall return the same to the Licensee forthwith cessation of the provision of the Licensed Service to that End Customer or upon the Licensee being required to recover the same in accordance with the terms and conditions of this Agreement.
  - (b) that such End Customer or distributor shall only use such copy for the purposes of providing a background music service and in particular the End Customer or distributor shall not do or authorise or permit any other party to do any of the following (except as expressly permitted under this Agreement):
    - (i) copy or re-record the whole or any part of the same or alter or add material of any nature to the same; or
    - (ii) recite or play or add any advertisement or sponsorship message during or immediately before or after the playing of

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the same.

- (c) that such End Customer or distributor shall not make any use of the same unless it has and continues to have at all material times the necessary licence to perform publicly the Repertoire Work(s) from PRS or other appropriate person owning or controlling the right to grant licences for the public performance thereof.
  - (d) that any authorised distributor shall impose the same terms and conditions of supply as contained in clauses (a) to (c) in the supply of any copy or copies of any Master Copies to customers of such third party.
- 11.2 The Licensee shall upon request supply the Licensors forthwith with a copy of the Licensee's standard terms and conditions applying to the supply of copies of any Master Copy to third parties (whether by Electronic Means or on Physical Media).
- 11.3 The Licensee shall use its best endeavours to procure the return from any End Customer of any copy of any Master Copy (or, in the case of copies provided by Electronic Means, the destruction thereof) immediately after the cessation of the provision of the Licensed Service to that End Customer.
- 11.4 The Licensee shall procure that each Master Copy and copy thereof bears a Catalogue Number and that such Catalogue Number shall distinguish a Master Copy and copies thereof embodying one Recording (or a compilation of Recordings) from a Master Copy and copies thereof embodying a different Recording (or compilation of Recordings).
- 11.5 The Licensee will utilise or require the utilisation of any 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 best commercial endeavours to prevent unauthorised copying and/or the unauthorised issuing of copies of Repertoire Works by whatever technical means are practicable. The Licensee will keep the Licensors informed about progress made in relation to fulfilling this obligation.
- 11.6 Save as may be permitted by law, the Licensee agrees it shall not (and shall use best commercial endeavours to procure that any End Customer or distributor shall not) attempt to interfere with, remove or alter:
  - (a) any rights management or identifier information that may be associated with any Repertoire Works; or
  - (b) any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

## 12. CATALOGUES AND OTHER PROMOTIONAL MATERIAL

- 12.1 The Licensee shall send to the Licensors forthwith upon the printing thereof and without charge 2 copies of any advertising promotional or trade publication relating in any way to or containing details of any Master Copy made and/or copy thereof made or imported by or for the Licensee and/or the supply or distribution thereof.

## MUSIC SERVICES (B2B) LICENSING SCHEME

- 12.2 Upon the written request of the Licensors to the Licensee, the Licensee shall send to the Licensors 1 copy of any Master Copy (or copy thereof) for the purposes of the Licensors verifying that the Licensee has complied with his obligations hereunder.
- 12.3 The Licensee shall also use its best endeavours to supply the Licensors with any further information or material requested by the Licensors at any time in order to enable the Licensors to verify the Musical Work(s) embodied or to be embodied on any Master Copy or copy thereof made by or on behalf of the Licensee or to effect or administer this Agreement or to verify that the Licensee is complying with his obligations under this Agreement.

## 13. TERMINATION

- 13.1 Each party shall have the right to terminate this Agreement on giving at least three months notice in writing to the other party.
- 13.2 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 13.2(a) above.

- 13.3 The Licensors shall have the right to terminate this Agreement by notice forthwith if the Licensee:
- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (b) becomes insolvent or is unable to pay its debts (as that term is defined in section 123 of the Insolvency Act 1986) or fails or admits in writing its inability generally to pay its debts as they become due;
  - (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
    - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation; or

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- (ii) is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;
  - (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
  - (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).
- 13.4 Any such termination shall be without prejudice to any rights or remedies arising under this Agreement in respect of such breach or any other antecedent breach and subject to clause 13.5 of the terms and conditions contained in this Agreement shall continue to have effect without limitation in time in relation to Master Copies or copies thereof to which this Agreement has applied.
- 13.5 Upon termination of this Agreement and howsoever occurring for any reason, the Licensee shall: -
- (a) cease to make or import any Master Copy or copy thereof and shall cease to supply the same to any third party and the Licence and any approval granted under clause 9.2 shall forthwith be of no further effect;
  - (b) procure that all copies of any Master Copy in the possession power custody or control of any third party shall be returned (or destroyed, if a copy not on Physical Media) forthwith to the Licensee and that every Master Copy or copy thereof shall, at the request of the Licensors be delivered up to the Licensors or be destroyed.
- 13.6 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.
- 13.7 The Licensors shall in addition have the right to terminate this Agreement where there has been a material change in the factors on the basis of which the Licensors granted the Licensee this Agreement provided that the Licensors shall have given the Licensee 28 days notice in writing specifying the material change relied on.

## 14. NOTICES

- 14.1 Except where expressly stated otherwise, any notice or other written

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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 notice to terminate 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.

- 14.2 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 for service has previously been notified to the server, to the address so notified. A single notice served on or sent to the Alliance and addressed to either Licensor shall be treated as validly served on both Licensors.
- 14.3 Any such notice or other written communication shall be deemed to have been served:
- (a) if personally delivered, at the time of delivery;
  - (b) if posted, at the expiry of two business days or in the case of airmail four business days after it was posted;
  - (c) if sent by facsimile message or e-mail, at the time of receipt of transmission (if received during normal business hours that is 09.30 to 17.30 local time) in the place to which it was sent or (if not received during such normal business hours) at the beginning of the next business day at the place to which it was sent.
- 14.4 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.

## 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 respectively shall (and shall procure that any other necessary party within its control shall) execute and do all such documents acts and things as

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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 England and Wales and the parties agree to submit to the jurisdiction of the English Courts.

# Appendix 1: Application for licence - MS (B2B) for the Supply of Music Services



THE MUSIC ALLIANCE

Company Name/Applicant				
Contact Name				
Company Type (mark X in in box)	Limited Company	<input type="checkbox"/>	Partnership	Sole Trader
Full Address				
Telephone Number				
Mobile Phone Number				
Fax Number				
Email Address				
Website				
Formats supplied to clients (e.g. hard disk, CD-ROM, DVD) plus brief description of business				
Do your clients rent or buy hardware to play the content you are supplying?				
Do you deliver music to your clients via <u>satellite</u> ? And if so what percentage of your business will be this activity?	Yes/No		Percentage	%
Do you deliver music to your clients via the <u>internet</u> ? And if so what percentage of your business will be this activity?	Yes/No		Percentage	%
Will your service include karaoke tracks?				
Will your clients be able to select music at the premises? If so, please provide us with details. (e.g. jukebox, in-flight audio)				
Do you include any PPL/VPL 'public performance' license charges within your music service charges to your client?				
Signature				
Print name and job title				
Date				

Send your completed forms to:

MCPS Licensing  
Elgar House  
41 Streatham High Road  
London  
SW16 1ER

## Appendix 2 : Reporting Form

See note below

## Appendix 3 : Music Usage Information

The Reporting and Music Usage Information forms will be supplied to you when you have been fully accepted onto the Music Services (B2B) Scheme.