

MCPS-PRS JOINT SHORT-TERM GENERAL ENTERTAINMENT ON-DEMAND LICENCE



NAME OF LICENSEE	("the Licensee")
COMPANY REGISTRATION NUMBER	
REGISTERED ADDRESS OF LICENSEE	
LICENSED SERVICE	("the Licensed Service")
ROYALTY FEE	("the Royalty fee")
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.	

This agreement is a short-term experimental licence and should not be regarded as any kind of precedent as to the licence terms that may be offered following the end of its term.

Signed on behalf of the Licensee:

_____ **Date:** _____

Signed on behalf of the Mechanical-Copyright Protection Society Limited ("MCPS") of Copyright House, 29-33 Berners Street, London W1T 3AB, contracting for and on behalf of itself and for and on behalf of and as agent of its various members and its affiliated Societies:

_____ **Date:** _____

Signed on behalf of the Performing Right Society Limited ("PRS") of Copyright House, 29-33 Berners Street, London W1T 3AB, contracting on behalf of itself and for and on behalf of and as agents of its affiliated societies:

_____ **Date:** _____

TERMS AND CONDITIONS

1. Definitions

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

“Agreement” means these terms and conditions, the cover sheet to these terms and conditions and the AFL completed and signed by the Licensee and signed by the Licensors.

“Alliance” means MCPS-PRS Alliance Limited whose registered office is at 29-33 Berners Street London W1T 3AB.

“Application for Licence” or “AFL” means the MCPS-PRS Short Term General Entertainment On Demand Licence application form.

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

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

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

“Broadcast Service” means a service (or the relevant part of a service) by which Content is broadcast (as that term is defined in the Act as at 1 January 2007) 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.

“Commencement Date” means the Launch Date of the service as stated on the cover sheet of this Agreement.

“Commercial Work” means any Repertoire Work other than:

- (a) one where the Member owning or controlling the copyright in such Repertoire Work has authorised MCPS to license it as so-called production or library music; or
- (b) a Commissioned Work, PROVIDED THAT for the purposes of clauses 3.2 and 4.3, 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 PRS and/or MCPS.

“Content” means, unless stated otherwise in the cover sheet to this Agreement, Audio-Visual Material other than (a) content licensable under the Joint Online Licence, Joint Podcasting Scheme, the Limited Online Exploitation Licence or the Limited Podcasting Exploitation Licence, (b) Karaoke Content, (c) content consisting of an audio-visual ringtone (or so-called “vid-tone”) or (d) Generic Promotions.

“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 communication to the public of Content, whereby such Content may be retained by the User on a 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 a purpose of which is to promote or advertise the Licensee, the Licensed Service and/or any other service of the Licensee.

"**GEOD Service**" means a Permanent Download Service, LD/ODS Service or Premium and Interactive Webcasting Service.

"**Joint Online Licence**" means the Licensors' scheme known as the "Licensing Scheme for the provision of Online and Mobile Music Services to the Public for Private Use" as published by the Licensors from time to time.

"**Karaoke Content**" means content consisting of a karaoke recording; i.e. a recording of a Repertoire Work where the lyrics are reproduced graphically as music plays and which is specifically designed for members of the general public to sing the Repertoire Work as the music plays.

"**Licensed Service(s)**" means the GEOD Service(s) set out on the cover sheet of this Agreement.

"**Licensee**" means the party identified on the cover sheet to this Agreement.

"**Licensors**" means PRS and MCPS.

"**Limited Download / On Demand Streaming Service (LD/ODS)**" means a service (or the relevant part of a service) whereby a User may receive Content by streaming on-demand via a Network (where the time and place at which such Content is received is selected by the User) and/or may download via a Network that Content but where such download may not be retained by the User on a permanent basis.

"**MCPS**" means Mechanical-Copyright Protection Society Limited whose registered office is at 29-33 Berners Street London W1T 3AB, contracting for and on behalf of itself and for and on behalf of and as agents of its various Members and affiliated societies.

"**Member**" means:

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

MCPS after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed MCPS; and

- (b) in the case of PRS, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of PRS has been admitted either before or during the Term as a member of PRS, PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date of admission into PRS.

"**Musical Work**" means any musical work (as defined in the Act) and any lyrics or words written to be used with such musical work (if applicable). It includes any part of such a work.

"**Music Usage Declaration**" means the information set out in the Licensors' reporting format known as the "Alliance Online V2.1" format.

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

"**Permanent Download Service**" means a service (or the relevant part of a service), 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 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.

"Premium and Interactive Webcasting Service" means a service (or the relevant part of a service) by which Content is communicated to the public via a Network and:

- (a) no permanent or temporary copy of any Musical Work is retained by the User; and
- (b) such service is neither a Broadcast Service, a Permanent Download Service or a LD/ODS Service.

"PRS" means Performing Right Society Limited whose registered office is at 29-33 Berners Street London W1T 3AB, contracting for and on behalf of itself and for and on behalf of and as agents of its various affiliated societies.

"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.

"Repertoire Work" means:

- (a) in relation to the licence granted by MCPS, each Musical Work the relevant 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 Works that a Member of MCPS or an associated society has withdrawn or withheld from this Agreement; and

- (b) in relation to the licence granted by PRS, each Musical Work the relevant 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 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.

but excluding in all cases any Musical Works licensable by CELAS GmbH.

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 of this Agreement.

"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.

"Stream" means the communication to the public of any Content.

"Term" means the period starting on the Commencement Date and ending upon the date set out in clause 10.1 (unless terminated earlier under clauses 10.2 or 10.3).

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

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

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

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

2. Grant of Licence

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

2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, PRS grants the Licensee a non-exclusive licence, during the Term, to communicate to the public (as that term is defined in the Act) and to authorise the communication to the public of Repertoire Works incorporated into Content within the Territory 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 Licensee for the use of that Repertoire Work on the Licensed Services in the manner described under the relevant clause on such terms and conditions (including, if required, the payment of royalties or fees in addition to those specified under this Agreement) as the owner thinks fit

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 GEOD Services; 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 public performance (as that term is used in the Act) of Repertoire Works, whether as part of the Licensed Services or otherwise.
- 3.5 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 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 The licence granted under clause 2.2 shall only apply to a Repertoire Work communicated to the public as part of a Licensed Service where the Licensee has the benefit of a valid licence for or a right to make a reproduction of that particular Repertoire Work and for that particular form of exploitation via the Licensed Service either pursuant to these terms and conditions or otherwise. By way of example only, the licence granted by MCPS under clause 2.1 does not cover the copying of Repertoire Works in an advertisement (see clause 3.4 above). However, clause 3.5 does not apply to the licence granted by PRS under clause 2.2. Therefore, pursuant to this clause 3.8, the licence granted by PRS under clause 2.2 would not apply (in the context of this example) unless the Licensee has the benefit of a right to copy the Repertoire Work for use in that advertisement (and on the Licensed Service(s)).
- 3.9 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 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.

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) 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
- (b) 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
- (c) 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.

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, 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 the UK 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 the Royalty Fees.
- 5.2 Except where stated otherwise on the cover sheet of this Agreement, the Royalty Fee shall be payable (by electronic bank transfer or cheque, or where agreed by the parties, direct debit) Quarterly in advance within 28 days of receipt of an invoice from the Alliance (who shall be entitled to invoice on the Licensors' behalf). Except where stated otherwise on the cover sheet of this Agreement, the Alliance shall be entitled to invoice prior to the beginning of the relevant Quarter, provided that the amount shall not become due any earlier than the first day of the relevant Quarter.
- 5.3 All licence fees and payments referred to in this Agreement are subject to VAT or other equivalent sales tax. The Licensee shall pay to the Licensors VAT or other equivalent sales tax (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 5.4 Except as expressly set out in 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.
- 5.5 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date (or the date on which such fees should ordinarily have been paid in circumstances where the Licensors have been unable to submit an invoice) due to default of the Licensee, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment should have been made to the date on which the payment was made.
- 5.6 All payments made under this Agreement shall be in Sterling unless otherwise agreed by the parties in writing. Where it is necessary to convert an amount payable to Sterling from another currency, the exchange rate used shall be the Financial Times closing mid market rate on the 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
- 5.7 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 of this Agreement) and the effective date of such change. If

the Licensee wishes to launch an additional service which is a GEOD Service.

6. Supply of Information

- 6.1 In relation to any and all Repertoire Works reproduced and communicated to the public under this Agreement via all Licensed Services, the Licensee will deliver a fully and accurately completed Music 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 Where any or all of the Licensed Services are accessible by Users only on payment of subscription or other similar payment (or access is otherwise limited or controlled in some way), the Licensee shall, upon request of the Licensors, use reasonable endeavours to ensure that such Licensed Services are at all times accessible by the Licensors (and the Alliance) free of charge for the purposes of the Licensors verifying that the Licensee is acting in accordance with this Agreement. For the avoidance of doubt, the Licensee shall not be required to provide free access to Downloads under a Permanent Download Service or to provide free access to a mobile phone network or internet access.
- 6.4 The email address for delivery of the Music Usage Declaration referred to in clauses 6.1 is onlinelicensing@mcps-prs-alliance.co.uk
- 6.5 Without prejudice to any right in law that the Licensors may have to obtain

such information, the Licensee shall not be obliged to provide to the Licensors any information which identifies Users or which otherwise constitutes "personal data" as defined in the Data Protection Act 1998. For the avoidance of doubt, the Licensee must still provide all required Music Usage Information (or other information to be provided under this Agreement), but is entitled to remove any element of it which reveals the identity of Users or otherwise causes it to include or constitute "personal data".

7. Credits and Notices

- 7.1 The Licensee shall include on each of the Licensed Services:
 - (a) the logos of PRS and MCPS; and
 - (b) details of the following website and, where practical, hypertext links to it:
<http://www.mcps-prs-alliance.co.uk>

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

8. Auditing

- 8.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each relevant party keeps and makes available for inspection upon reasonable notice), both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) use of all Musical Works and (b) any income or other consideration received by or on behalf of the Licensee in consideration for the provision 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 relevant party shall allow) access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives (who shall be external qualified accountants or auditors unless otherwise agreed between the parties) of the Licensors shall have such access to the Licensee's premises and shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with this Agreement.
- 8.3 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee's written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 8, save that such confidential information may be disclosed to the Licensors' directors, board sub-committee members officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.
- 8.4 For the avoidance of doubt, books, records and accounting records as referred to in clauses 8.1 and 8.2 above shall include data, information and records held on computers.

9. Security and Encryption

- 9.1 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.

10. Termination and Expiry

- 10.1 This Agreement shall expire on 31 December 2008 (or such other date as may be stated on the cover sheet of this Agreement) unless terminated earlier in accordance with the terms of this clause 10.
- 10.2 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.
- 10.3 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 9.3(a) above.

11. No Assignment

11.1 The licences granted under this Agreement are personal to the Licensee and the Licensee may not assign, sublicense or otherwise transfer any or all of its rights or obligations under this Agreement without the written agreement of both MCPS and PRS.

12. Miscellaneous

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

12.2 This Agreement sets forth the entire agreement of the parties in relation to the subject matter hereof and each of the parties hereto acknowledges that it has not entered into this Agreement in reliance on any representation or term

not contained in this Agreement. This Agreement shall not be modified or varied except by a written instrument signed by the parties hereto.

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

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

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

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