

**Production Company S4C Channels Primary and Secondary Exploitation Licence Agreement**

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| --- | --- |
| NAME OF LICENSEE |  |
| REGISTERED ADDRESS OFLICENSEE  |  |
| BILLING/CORRESPONDENCE ADDRESS |  |
| COMMENCEMENT OF AGREEMENT | 1 January 2020 (“**the Commencement Date**”) |

The terms of this Agreement are contained in this Cover Sheet and in the attached Annexes A, B, C, D, E, and F and Schedules.

**Signed by an authorised signatory for and on behalf of the Licensee:**

**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Position: \_\_\_\_\_\_\_\_\_\_\_­­\_\_\_\_\_\_\_\_\_\_**

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signed by an authorised signatory for and 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 or licensee of its various members and affiliated societies, and as agent for and on behalf of Phonographic Performance Limited (“PPL”):**

**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Position: \_\_\_\_\_\_\_\_\_\_\_­­\_\_\_\_\_\_\_\_\_\_**

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

***ANNEX A***

***SPECIAL CONDITIONS***

***ANNEX B***

***STANDARD TERMS AND CONDITIONS***

1. **Definitions**

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| **“Ad-bumper”**  | means a short piece of audio-visual material played at the start and end of commercial breaks during the broadcast of a Programme and which displays the name of the Programme but is not, for the avoidance of doubt, a Sponsorship Message.  |
| **“Advance”** | shall have the meaning set out in clause 6.1 below. |
| **“Agreement”** | means the terms and conditions set out in the Cover Sheet, annexes A to F and the schedules. |
| **“Authorised Exploitation”** | applies only to a Programme or item of Made for Online Material with a Delivery Date within the Term and means:(a) the broadcast of the relevant Programme on the Television Channel(s) and the simultaneous retransmission of that broadcast via S4C’s website in the United Kingdom; and(b) the making available on demand in the United Kingdom of each episode of the Programme during a 35 day window before and a 35 day window after the date of first broadcast of the episode; and(c) the making available on demand in the United Kingdom of all episodes of the Programme during a 35 day window after the date of first broadcast of the final episode of the relevant Programme;(d) in respect of Welsh Commercial Music only, the making available on demand in the United Kingdom of an item of Made for Online Material during a 35 day window on up to 5 separate occasions on the Licensed GEOL Service;(e) in respect of Production Music only, the making available on demand in the United Kingdom of an item of Made for Online Material on the Licensed GEOL Service.Where the Licensee offers an episode of a Programme on demand in segments outside of its original linear formatting (unaltered in any other way), notwithstanding paragraphs “(b)” and “(c)” above, the Licensee may not separately make the entire episode (as a whole) available on demand. |
| **“Additional Authorised Exploitation”** | means: (a) the copying and supplying to third parties of Programme(s) and Made for Online Material containing Production Music, or the retention of such Programme(s) and Made for Online Material by the Licensee, for all forms of communication to the public (aside from theatric, radio, or public location use) by such third parties or by the Licensee, including for the avoidance of doubt broadcast and on demand transmissions, throughout the world including but not restricted to terrestrial, satellite, cable, internet and mobile transmissions and for any (non-theatric, non-radio and non-public location) use on any media; and(b) the manufacture and distribution worldwide for retail sale copies of Programme(s) and Made for Online Material containing Production Music on DVD. |
| **“Ballet”****“broadcast” or “broadcasting”** | shall mean a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences.shall have the meaning ascribed thereto in section 6 of the Copyright Designs and Patents Act 1988 as amended. |
| **“Commercial Music”** | means Commercial Works and PPL Sound Recordings.  |
| **“Commercial Work”** | means each Musical Work to the extent the relevant copyright is owned or controlled, from time to time, by MCPS by virtue of its agreements with its members and affiliated societies, but excluding Production Music Works. If one or more of those who own or control the copyright in a relevant Musical Work is not MCPS, the expression “Commercial Work” shall only apply to such interest in the Musical Work as is owned or controlled by MCPS. |
| **“Contract Year”**  | means any one of the periods 1 January to 31 December during the Term. |
| **“Cue Sheet”** | means a document, in the form set out in Schedule 1, containing the relevant reporting information.  |
| **“Delivery Date”** | means, in relation to a Programme, or an item of Made for Online Material, the date of delivery of the final version of the Programme to the Television Channel, or Made for Online Material to the Licensed GEOL Service, or where the Programme consists of a series of episodes, the date of delivery of each individual episode to the Television Channel. |
| **"Dramatico-Musical Work”** | shall mean any Ballet, opera, operetta, musical, musical play or work of a similar nature in so far that it consists of words and music expressly written therefor. |
| **“Excluded Work(s)”** | means any Musical Work(s) which MCPS notifies to the Licensee as being excluded from the licences granted under this Agreement. An up-to-date list of Excluded Works will be available at the following website address [www.prsformusic.com/ipc](http://www.prsformusic.com/ipc). |
| **“Licensed GEOL Service”** | means an LD/ODS or Permanent Download Service on the website(s) owned or controlled by S4C. |
| **“Limited Download / On Demand Streaming Service (LD/ODS)”** | shall mean a service (or the relevant part of a service) whereby a User may receive audio-visual material by streaming on-demand via a Network (where the time and place at which such audio-visual material is received is selected by the User) and/or may download via a Network that audio-visual material but where such download may not be retained by the User on a permanent basis. |
| **“Made for Online Material”** | means audio-visual material commissioned and/or produced for primary exploitation on a Licensed GEOL Service. |
| **“making available on demand”** | shall have the meaning ascribed thereto in section 20(2)(b) of the Copyright Designs and Patents Act 1988 as amended. |
| **“Music Programme”** | means a programme where the musical audio material and/or audio-visual material with a musical soundtrack is the primary theme and not merely secondary or incidental to the storyline or documentary material featured in the programme. A “Music Programme” includes but is not limited to the following (including any combination thereof): A programme which consists of:(a) one or more audio-visual live music performances by an artist, a group or a number of artists and/or groups;(b) an audio-visual documentary where the featured subject matter is one or more music artists, groups, songwriters or composers or a musical style or genre;(c) one or more promotional audio-visual productions which have a music sound recording as their main element;(d) audio-visual programming which has music as its primary theme, including, without limitation, archive collections of previously exploited television material;(e) an audio-visual recording of a music award event. |
| **“Musical Work”** | means any work consisting of music and any lyrics or words written to be used with the music (if applicable). It includes any part of such a work. |
| **“Network”** | shall mean the internet, a mobile network or any other wired or wireless network. |
| **“Permanent Download Service”** | shall mean a service (or the relevant part of a service), by which a piece of audio-visual material 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.  |
| **"Permitted Excerpts"** | refers only to Dramatico-Musical Works and shall mean excerpts where the use of all such excerpts in any Programme complies with all the following limitations:(a) the total duration of the excerpts does not exceed 20 minutes in any single Programme;(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 5 minutes.An excerpt will be deemed to be presented in dramatic form if it is accompanied by any dramatic action, whether acted, danced or mimed, and thereby (and/or through the use of costume, scenery or other visual effects) given a visual impression of or otherwise portrays the writers’ original conception of the Dramatico-Musical Work from which the excerpt is taken. By way of example, an excerpt will not normally be deemed to be presented in dramatic form if:1. the excerpt is presented on a fixed set which is not based on the set of the original Dramatico-Musical Work. (A ‘fixed set’ would be one which is used for the whole or a substantial part of the television or stage show);
2. the performer(s) is/are wearing a costume which is not a costume from or based on the original Dramatico-Musical Work; or
3. scenic effects are limited to the use of either a single prop, and/or a backcloth or a piece of scenery (whether physically present or created by technical means e.g., lighting effects) provided that the use thereof is not combined with costume from or based on the Dramatico-Musical Work from which the excerpt is taken.
 |
| **“PMSR”** | means any production music sound recording being a sound recording (as opposed to a Musical Work) to the extent the relevant copyright is owned or controlled, from time to time, by MCPS by virtue of its agreements with its members and affiliated societies and where MCPS has been authorised to license such recordings as so-called production or library music. If one or more of those who own or control the copyright in a relevant sound recording is not MCPS, the expression “PMSR” shall only apply to such interest in the sound recording as is owned or controlled by MCPS. |
| **“PPL Sound Recording** | shall mean each Sound Recording the ownership or control of the relevant copyright in which shall be vested in PPL from time to time.  |
| **“Production Music”** | means Production Music Works and PMSRs. |
| **“Production Music Work”** | means any Musical Work embodied on a PMSR to the extent the relevant copyright is owned or controlled, from time to time, by MCPS by virtue of its agreements with its members and affiliated societies. If one or more of those who own or control the copyright in a relevant Musical Work is not MCPS, the expression “Production Music Work” shall only apply to such interest in the Musical Work as is owned or controlled by MCPS. |
| **“Programme”** | means a programme or series of episodes of a programme produced by the Licensee. |
| **“Programme Related Material”** | means, in relation to a Programme, a piece of ancillary audio-visual material that is connected to a Programme and is created by the Licensee using some or all of the material produced at the time of production of that Programme (whether or not it appeared in the Programme itself), including Re-versions. By means of example only, this may be ‘backstage footage’ or a ‘best-of’ or highlights or extended coverage programme. |
| **“Qualifying Programme”** | means a Programme made for the purpose of Authorised Exploitation and where such Programme has already been broadcast or transmitted (or scheduled for broadcast or transmission) within the United Kingdom. For the avoidance of doubt, only full-length Programmes shall be deemed to be Qualifying Programmes and no clips or extracts of such Programmes shall be deemed to be Qualifying Programmes under this Agreement.  |
| **“Quarter”** | means each successive period of 3 months, the first beginning on 1 January 2020. |
| **“Red Button Service”** | means a digital service whereby additional linear content is “overlaid” in a conventional linear digital television channel giving the viewer the option of watching such content instead of (or in addition to) the main content available on the television channel.  |
| **“Re-version”** | means a piece of audio-visual material that is produced by editing the content of a Programme into a different form. Re-versions will comprise substantially the same content as was contained in the original Programme, but may include some new content, provided that it is related to the original content.  |
| **“Repertoire Work”** | means Commercial Works, Production Music Works and PMSRs, but excludes (i) commissioned music (i.e. Musical Works specially commissioned from MCPS composer/writer members) and (ii) Excluded Works except where the relevant MCPS member gives its prior written consent to the Licensee for the use of the Excluded Work(s) in accordance with the provisions of clause 4 of this Agreement. |
| **“Sales Information”** | shall mean the information specified in Schedule 2. |
| **“Sponsorship Message”** | means any item which includes a specific audio and/or visual reference to a Programme sponsor. |
| **“Sound Recording”** | shall have the same meaning as set out in section 5 of the Copyright Designs and Patents Act 1988 as amended. |
| **“Television Channel(s)”** | means the television channel currently known as “S4C”and the Red Button Services and such new channels as agreed between the parties, such agreement not to be unreasonably withheld by MCPS and subject always to agreement of the appropriate rates. |
| **“Term”** | means the period starting on the Commencement Date (except that in respect of the rights granted under clauses 2.1(b) and 2.2(b), it shall mean the period starting on 1 April 2020) and ending upon termination of the Agreement in accordance with clause 12. |
| **“Terrestrial Broadcast”** | means a broadcast by means of ‘free to air’ wireless transmission (whether in analogue or digital form). For the avoidance of doubt, it does not include the broadcast via a cable service or by satellite.   |
| **“Territory”** | shall mean the World excluding the USA and Canada. |
| **“Use”** | 1. in respect of Commercial Music, means each unit of 30 seconds (or part thereof) of a Commercial Work or a PPL Sound Recording which is included in an episode of the Programme. Each inclusion of a Commercial Work or a PPL Sound Recording (or part thereof) shall constitute a separate Use, even where this relates to the inclusion of a Commercial Work and the PPL Sound Recording on which it is embodied, and even if the duration of each such use is less than 30 seconds;
2. in respect of Production Music, means the inclusion of a unit of 30 seconds (or part thereof) of a Production Music Work and the PMSR on which it is embodied (which shall for the avoidance of doubt together constitute only one Use), even if the duration of such use is less than 30 seconds (save that the duration of each inclusion of the same Production Music shall be aggregated in order to establish the number of “Uses”, so that the inclusion of the same Production Music Work (and the PMSR on which it is embodied) four times for a duration of ten seconds each time within an episode of a Programme shall be treated as two “Uses”);
3. in respect of both Commercial Music and Production Music, all copies of Repertoire Works and/or PPL Sound Recordings including those which might constitute acts of copying permitted under Part I Chapter III of the Copyright Designs and Patents Act 1988 as amended shall be included when calculating the number of Uses under this Agreement. However, any copies made which would constitute copies under section 28A of the Copyright Designs and Patents Act 1988 as amended shall be excluded when calculating the number of uses under this Agreement.
 |
| **“User”** | means a natural person in the United Kingdom, who receives the Licensed GEOL Service for their own private and non-commercial use.  |
| **“Welsh Commercial Music”** | means Welsh Commercial Works and Welsh PPL Sound Recordings. |
| **“Welsh Commercial Work”** | means each Commercial Work to the extent the relevant copyright is owned or controlled, from time to time, by MCPS by virtue of its agreements with the Welsh language members listed in Annex E (as updated from time to time). If one or more of those who own or control the copyright in a relevant Musical Work is not MCPS, the expression “Welsh Commercial Work” shall only apply to such interest in the Musical Work as is owned or controlled by MCPS. |
| **“Welsh PPL Sound Recordings”** | means a PPL Sound Recording mandated to PPL by the Welsh-language members of PPL which are affiliated to a member of MCPS, as set out at Annex F to this Agreement, as may be amended from time to time.  |

1. **Rights Licensed**

2.1 Subject to the terms and conditions set out in this Agreement (and in particular, subject to the payment of the applicable licence fees set out in Annexes A, C and/or D, as applicable), MCPS hereby grants to the Licensee a non-exclusive licence during the Term to:

1. reproduce (including by way of synchronisation) Commercial Works in the United Kingdom into Programmes solely for the purpose of the Authorised Exploitation; and
2. reproduce (including by way of synchronisation) Welsh Commercial Works in the United Kingdom into Made for Online Material solely for the purpose of the Authorised Exploitation; and

(c) reproduce (including by way of synchronisation) Production Music in the United Kingdom into Programmes and Made for Online Material solely for the purpose of the Authorised Exploitation and (where applicable) the Additional Authorised Exploitation; and

(d) reproduce (including by way of synchronisation) Repertoire Works in the United Kingdom into Programme Related Material solely for the purpose of supplying such Programme Related Material to S4C (or for retaining the material itself) for online and mobile exploitation, but only via websites and software applications owned or controlled by the Licensee or S4C.

Any synchronisation of Repertoire Works for purposes beyond those set out in (a), (b), (c), and (d) above is not licensed under this Agreement.

In circumstances where the Licensee wishes to record into a Programme or an item of Made for Online Material, prior to supplying (or retaining) such Programme or Made for Online Material for any of the Additional Authorised Exploitations, alternative music to that originally recorded in the Programme or item of Made for Online Material, then MCPS shall grant to Licensee for the foregoing sole purpose the non-exclusive right to reproduce in the United Kingdom Production Music into Programmes for such purpose during the Term. The Licensee fees shall be those set out in
Annex D.

2.2 Subject to the terms and conditions set out in this Agreement (and in particular, subject to the payment of the applicable licence fees set out in Annexes A, C and/or D, as applicable), MCPS, on behalf of PPL, hereby grants to the Licensee a non-exclusive licence during the Term to:

1. reproduce PPL Sound Recordings in the United Kingdom into Programmes solely for the purpose of the Authorised Exploitation;
2. reproduce Welsh PPL Sound Recordings in the United Kingdom into Made for Online Material solely for the purpose of the Authorised Exploitation; and

 (c) reproduce PPL Sound Recordings in the United Kingdom into Programme Related Material solely for the purpose of supplying such Programme Related Material to S4C (or for retaining the material itself) for online and mobile exploitation, but only via websites and software applications owned or controlled by the Licensee or S4C.

* 1. No rights shall be granted in respect of the Additional Authorised Exploitation of Programmes or Made for Online Material until such time as the Licensee has paid the licence fee for the Additional Authorised Exploitation in the applicable territory as set out in Annex D, and the Programme has had its first Terrestrial Broadcast or the item of Made for Online Material has been made available on demand on a Licensed GEOL Service, as applicable, in each case pursuant to the Authorised Exploitation.
	2. Subject to the terms and conditions of this Agreement, where the Licensee has paid MCPS the fees payable under this Agreement in respect of the Additional Authorised Exploitation of Programmes or Made for Online Material, then, in addition to the synchronisation licence granted under clause 2.1(c), above, MCPS further grants the Licensee the right to reproduce (and to authorise third parties to reproduce) Production Music in Programmes or Made for Online Material in the course of the exploitation of such Programmes or Made for Online Material pursuant to the Additional Authorised Exploitation in the relevant territories (i.e. in the United Kingdom, worldwide, or the rest of the world aside from the United Kingdom, in accordance with the fees paid pursuant to Annex D), save that:
1. the rights granted under this Agreement only extend outside the UK to the extent MCPS controls the copyright in the Production Music in question in the relevant territory;
2. no rights are granted in respect of any radio, public location or theatric exploitation of any content; and
3. no licences are granted in respect of any rights that are subject to Applicable Blanket Licences.

For the purposes of (c), above, “Applicable Blanket Licence” shall mean a licence that is available in the relevant territory in which audio-visual material is offered to members of the public (including by way of example by means of broadcast, download or streaming) pursuant to which licence copyright restricted acts undertaken as part of the applicable exploitation can be cleared in the relevant territory in relation to a large number of copyright works or sound recordings (as applicable). Typical examples of Applicable Blanket Licences include national blanket licences offered by collective rights management organisations to broadcasters operating in their territory. The availability of these licences will depend in large part on local custom and practice, local legal requirements and local copyright law. It is recognised for example that in the United States of America there are currently no mechanical blanket licences available in relation to the sale of downloads and accordingly no Applicable Blanket Licences would be deemed to be currently available in relation to such exploitation in the United States of America.

* 1. For the avoidance of doubt, the rights granted in respect of the Additional Authorised Exploitation only apply in respect of Production Music in Programmes and Made for Online Material. For the further avoidance of doubt, no rights are granted under this Agreement in relation to the right to communicate to the public Programmes or Made for Online Material.
	2. Subject to the terms and conditions set out in this Agreement, MCPS hereby grants to the Licensee a non-exclusive licence during the Term to copy and supply to third parties (in addition to the Television Channels), or retain for itself, Qualifying Programmes containing Repertoire Works to
	or for:

(a) all forms of communication to the public by such third parties (including for the avoidance of doubt broadcast and making available on demand) in the Territory (subject to clause 2.7 below) including but not restricted to terrestrial, satellite, cable, internet and mobile transmissions; and

(b) viewing at non-fee paying television programme festival in the Territory; and

(c) viewing by prospective purchasers of a Qualifying Programme, including for the avoidance of doubt, via the internet; and

(d) educational establishments in the Territory for viewing by students as part of their studies, provided that no fee is charged to view such Qualifying Programme.

For the avoidance of doubt, the licence granted under this clause 2.6 does not grant the right to communicate to the public the Qualifying Programmes containing Repertoire Works.

* 1. In circumstances where the Licensee wishes to record into a Qualifying Programme (prior to supplying it as set out in clause 2.6 above) alternative music to that originally recorded in the Qualifying Programme, then, subject to the terms and conditions of this Agreement, MCPS hereby grants the Licensee, for the foregoing sole purpose, the non-exclusive right to reproduce in the United Kingdom Production Music into Qualifying Programmes during the Term.
	2. For the avoidance of doubt, the authorisation granted under clause 2.6 above only applies in relation to Repertoire Works. It does not apply to PPL Sound Recordings or any other rights in Qualifying Programmes.
	3. The licences granted under clause 2.6 only apply in respect of copying of Qualifying Programmes taking place within the United Kingdom and only for the purposes of exploiting the rights set out in clause 2.7 above. Clause 2.7 does not grant any rights whatsoever in respect or on behalf of any party owning, controlling or administering the copyright outside of the United Kingdom in any Repertoire Work, including the right to control importation into and distribution within such country.
	4. The licences granted under clause 2.6 do not affect any requirement for a third party to obtain relevant licences in respect of restricted acts undertaken or authorised by that third party (including any licences for the reproduction or communication to the public of Repertoire Works) in the course of the secondary exploitation of the Qualifying Programme.
	5. The licence granted in clause 2.6(a) above shall not apply to the supply of a Qualifying Programme until such time as the Qualifying Programme has had its first Terrestrial Broadcast within the United Kingdom.
	6. The licence granted in clause 2.6 shall not apply to Qualifying Programmes to the extent the Licensee has paid or is due to pay MCPS for such exploitation pursuant to the Additional Authorised Exploitation and in accordance with clause 2.4.
	7. If the Licensee wishes to supply Qualifying Programmes containing Repertoire Works for retail sale in the form of non-music VHS videos or non-music DVDs (falling within the scope of the MCPS AVP licensing scheme (“AVP”) then the Licensee must apply for an AVP agreement (or equivalent other agreement if AVP is replaced).
	8. If the Licensee wishes to supply Qualifying Programmes containing Repertoire Works for retail sale in the form of music DVDs (falling within the scope of the MCPS DVD1version 2 licensing scheme (“DVD1v2”)) or then the Licensee must apply for a DVD1v2 agreement (or equivalent other agreement if DVD1v2 is replaced).
	9. For the avoidance of doubt, where the Licensee already has a valid licence outside of this Agreement in respect of either Repertoire Works or PPL Sound Recordings, as applicable, the Licensee must nevertheless obtain a licence under this Agreement in respect of the relevant rights in Repertoire Works or PPL Sound Recordings, as applicable, which are not licensed under such separate licence.
1. **Extent of the Licence**

3.1 This Agreement does not extend to or permit the inclusion of any adaptation of any Repertoire Work and/or PPL Sound Recording in an episode of the Programme or Qualifying Programme, Programme Related Material or Made for Online Material, unless the relevant MCPS and/or PPL member has expressly consented thereto for the purposes of the Agreement. By way of example only, this
applies to:

(a) making any arrangement of the music; or

(b) making any alteration to the lyrics, save for any minor change which does not alter the meaning thereof; or

(c) any sampling (as that expression is commonly used in the music industry) of the music and/or lyrics or

(d) reproduction in the form of a sample of the music and/or lyrics; or

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

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

3.2 The Agreement does not extend to the reproduction of any Commercial Music:

(a) which, in relation to Qualifying Programmes only, exceeds 7 minutes in duration; or

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

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

(d) without prejudice to clauses 3.3 and 3.4 below, in any manner which is likely to or causes the public to believe that the Commercial Work and/or PPL Sound Recording (or the composer(s) and/or performer(s) thereof) is endorsing or promoting any product or service, or the views expressed in the Programme.

Whether a use of a Commercial Music falls within this clause 3.2 shall be decided by MCPS in its reasonable discretion.

3.3 The Agreement does not extend to the production and reproduction of any:

1. programming relating to a single composer or author, composer and/or author team and/or where all Commercial Works contained within the Programme and/or Qualifying Programme are by the same composer or author, or composer and/or author team; or
2. Music Programmes predominantly relating to a single music artist or band (“Single Artist”) (which includes Music Programmes where the subject matter also relates to other artists/bands with whom the Single Artist has written, recorded and/or performed) or record label and where the Programme and/or Qualifying Programme contains Commercial Music pertaining to the Single Artist or controlled by the same record label, unless such Programme and/or Qualifying Programme has been commissioned by or expressly approved by the relevant record company (and, if necessary, the Single Artist’s management company).

For the avoidance of doubt, this Agreement extends to all Music Programmes other than those described in clause 3.3(a) and 3.3(b) above.

3.4 For the avoidance of doubt, the licences granted under this Agreement do not cover the use of any Repertoire Work and/or PPL Sound Recording with any advertising where:

(a) such Repertoire Work and/or PPL Sound Recording is incorporated into such advertising; or

(b) such Repertoire Work and/or PPL Sound Recording is otherwise presented in such a way that a reasonable person might associate the Repertoire Work and/or PPL Sound Recording with the advertising.

3.5 The licences granted under this Agreement do not cover the use of any Commercial Music with any Sponsorship message where:

(a) such Commercial Music is incorporated into such Sponsorship Message; or

(b) such Commercial Music is otherwise presented in such a way that a reasonable person might associate the Commercial Music with the Sponsorship Message.

3.6 The use of any Commercial Music in title and/or credit sequences is excluded from this Agreement. Commercial Music for use in title and/or credit sequences must be licensed in advance individually with the copyright owner or via MCPS or PPL.

3.7 Where any Repertoire Work forms part of any Dramatico-Musical Work, the licences granted under this Agreement shall not apply to the reproduction of:

(a) the whole Dramatico-Musical Work;

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

(i) the Programme contains only excerpt(s) within the definition of Permitted Excerpts; and

(ii) MCPS has not notified the Licensee in writing that the relevant MCPS or affiliated society member objects to the reproduction of any such Repertoire Work.

3.8 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.

3.9 For the avoidance of doubt, this Agreement only grants rights in respect of the production and exploitation of the content outlined in clause 2.1 (i.e. Programmes, Made for Online Material and Programme Related Material). No rights are granted under this Agreement in respect of any other types of content, including without limitation so called ‘Branded Content’ (such as brand endorsement productions, productions documenting sponsored initiatives, recruitment videos, or product demo videos) or Corporate Content (including audio-visual content for staff conferences and in-house use, content for intranet, client and agency site, or social media use, content for private and direct communication, or content for exhibitions).

3.10 All rights not specifically granted under this Agreement are hereby reserved, and the parties hereby agree that no implied licences are to be construed hereunder.

3.11 The acts of communication to the public, including broadcasting and making available of Repertoire Works and PPL Sound Recordings within Programmes, Programme Related Material, Made for Online Material, and Qualifying Programmes are not licensed hereunder.

3.12 The provisions of this Agreement authorise the making of the Programme for the Authorised Exploitation and/or the Additional Authorised Exploitation and pursuant to clause 2.7 the supply to third parties of Qualifying Programmes only. In the event that a copy of the Programme and/or Qualifying Programme or the soundtrack thereof is made or used in any way for any other purpose (including, without limitation, cinematic performance) whether by any party to this Agreement or any other party then that copy shall not be licensed under this Agreement. MCPS reserves all rights including those of its members and the affiliated societies and the affiliated society members to take action in relation to any such copy.

3.13 This Agreement only covers Repertoire Works and PPL Sound Recordings. It does not extend to other rights or interests, including (by way of example only) films, dramatic works, performers’ rights, moral rights or rights in performances. MCPS, for and on behalf of its members, warrants that all the necessary performers’ waivers and consents have been obtained from the relevant performers insofar as their performances are embodied on PMSRs.

3.14It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work (or part thereof) which is not a Repertoire Work, and any Sound Recording (or part thereof) which is not a PPL Sound Recording and nothing in this Agreement applies in relation to any such Musical Work or Sound Recording or film producing any such Musical Work or Sound Recording.

3.15Nothing in this Agreement affects the moral rights of authors or performers of Repertoire Works and PPL Sound Recordings whether subsisting in the United Kingdom or any other territory.

**4. Excluded Works**

4.1 The licences granted under clause 2.1 do not permit the reproduction of an Excluded Work unless (i) the relevant MCPS member has expressly consented to its reproduction, (ii) the Licensee has entered into an agreement with the relevant MCPS member to this effect and (iii) evidence of such agreement has been provided to MCPS.

4.2 Where the Licensee has obtained the prior written consent of the relevant MCPS member for the reproduction of an Excluded Work in a Programme or Programme Related Material then the Excluded Work shall, in respect of the specific Programme or Programme Related Material for which the consent has been granted, be deemed a Repertoire Work and shall be licensed under this Agreement. The terms and conditions governing the reproduction of the Excluded Work set out in this Agreement will be subject to any specific terms and conditions agreed between the Licensee and the relevant MCPS member. Where a conflict arises between the terms and conditions agreed between the Licensee and the relevant MCPS member and the terms and conditions set out in this Agreement, then the former shall prevail over the latter in respect of the Excluded Work.

4.3 It is the responsibility of the Licensee to contact the relevant MCPS member directly for consent to reproduce Excluded Works.

4.4 MCPS will notify the Licensee of those Musical Works that are Excluded Works on or before the date of signature of this Agreement and the restriction on the reproduction of such Excluded Works pursuant to clause 4.1 shall apply to all Programmes and Programme Related Material with a Delivery Date following the relevant date of notification by MCPS. Thereafter, MCPS will notify the Licensee by email on or around the first working day of each month of any up-date to the list of Excluded Works. Any new Musical Works added to the list of Excluded Works will be Excluded Works in respect of all Programmes and Programme Related Material with a Delivery Date on or after the first working day of the second calendar month after the month in which MCPS provided notification of the new Excluded Works. By way of example, Excluded Works notified to the Licensee on the 1 July 2016 will apply to all Programmes and Programme Related Material with a Delivery Date on or after 1 September 2016.

**5. Primary Exploitation Licence Fees**

5.1 In respect of the use of Commercial Music, the Licensee shall pay to MCPS the licence fees set out in Annex C to this Agreement.

5.2 In respect of the use of Production Music, the Licensee shall pay to MCPS the licence fees set out in Annex D to this Agreement.

* 1. At the start of each subsequent calendar year, the licence fees set out in Annex C and Annex D shall increase by the percentage change in RPI over the 12-month period up to October in the previous year, unless MCPS confirms otherwise in writing. For example, effective from 1 January 2022 the licence fees in Annex C and Annex D shall increase by the percentage change in RPI over the 12-month period up to October 2021.
	2. MCPS shall be entitled to review the licence fees payable under this Agreement from time to time. Where MCPS has a mandate to vary the terms of this Agreement, MCPS shall notify the Licensee of any changes in accordance with clause 12.5.
	3. During the Term, in the event that the context of any Television Channel materially changes, MCPS will enter into good faith discussions with the representative trade body on the applicable rates in Annex C and Annex D. If no agreement is reached after a period of 3 months from the date of the material change, MCPS reserves the right to implement changes to the applicable rates in Annex C and Annex D.

**6. Secondary Exploitation Licence Fees**

6.1 Where the Licensee exercises the grant of rights under clause 2.7 above, the Licensee shall pay
to MCPS:

(a) a non-returnable advance against royalties for the relevant Contract Year (the “Advance”) to be agreed between the parties but subject to a minimum of £533 per Contract Year in relation to the exploitation of Repertoire Works; and

(b) the licence fees, as set out in clause 6.3 below.

The Licensee must notify MCPS in writing if it wishes to exercise the rights granted under clause 2.7 during a given Contract Year during the Term. Prior to exercising such rights, the Licensee must agree the Advance with MCPS in accordance with clause 6.1(a) above.

6.2 The Advance is recoupable against the licence fees due during the relevant Contract Year, but is non-returnable. For the avoidance of doubt, in the event that, the total licence fees payable during the relevant Contract Year by the Licensee to MCPS is less than the total Advance paid, no part of the Advance shall be repayable to the Licensee by MCPS.

6.3 In respect of each Qualifying Programme supplied pursuant to clause 2.7, the licence fees shall be the percentage of the Gross Sale Price for that Qualifying Programme calculated as follows:

 Total duration of Repertoire Works

 in the Qualifying Programme

 ---------------------------------------------- x 100 x 8.5% = MCPS % claim in Programme.

 Total Duration of the Qualifying

 Programme

6.4 For the avoidance of doubt, the licence fees due under clause 6.1(b) shall be the aggregate of all licence fees calculated pursuant to clause 6.3 above in respect of the supply of Qualifying Programmes, licensed under clause 2.7, during the relevant Contract Year.

**7. Gross Sale Price**

7.1 “Gross Sale Price” shall mean all amounts (in money or money’s worth) received or receivable by the Licensee (or any associate, agent, representative or other affiliate of the Licensee) in consideration for the supply of a Qualifying Programme to a third party for the purposes set out in clause 2.7 of this Agreement subject only to the following deductions:

(a) VAT;

(b) any withholding tax not recoverable by the Licensee; and

(c) a genuine refund paid by the Licensee as a result of the party to whom a Qualifying Programme was supplied not being able to broadcast or otherwise use that Qualifying Programme as a result of the failure to clear other third party rights or as a result of censorship requirements.

7.2 For the purposes of clause 7.1 above, the consideration paid to the Licensee may take any form, including (without limitation) cash funds, services, goods, agreements to purchase advertising or sponsorship, or other barter or contra deals.

7.3 Where a supply of a Qualifying Programme by the Licensee to another party is not on a true arms-length basis (for example, if supply is to an affiliated company of the Licensee), then the consideration for the purposes of clause 7.1 shall be deemed to be the fair market value of the Qualifying Programme.

7.4 If a package of programmes is sold including one or a number of Qualifying Programmes for an inclusive fee, the Licensee shall, for the purposes of clause 7.1 above, ascribe a proportion of the total revenue to the individual Qualifying Programmes in the package on a genuine market-value basis. MCPS is entitled to challenge the allocation of prices as between programmes included in the package, following which the Licensee agrees to re-consider in good faith such valuation.

**8.** **Payment and Reconciliation**

8.1 All payments and sums referred to in this Agreement are subject to VAT.

8.2 All invoices are due for payment in full within 28 days of the date of issue (“the Due Date”).

8.3 Without imposing any obligation on MCPS to accept late payment and without prejudice to any rights and remedies MCPS may have by virtue of any failure of the Licensee to pay the licence fees specified in this Agreement by the Due Date, MCPS will be entitled to charge interest on the licence fees from the Due Date(s) at 3% above the National Westminster Bank base rate. MCPS shall also be entitled to charge the higher of: (i) interest at 3% above the National Westminster Bank base rate; and (ii) £100 (on hundred pounds) in respect of each episode of a Programme or item of Made for Online Material within which a Use is identified, where payment is later than it would otherwise be as a result of the Licensee failing to deliver full and accurate reporting information in accordance with the timescales set out in clause 9 below.

8.4 Where the Licensee exercises the grant of rights under clause 2.7 during the Term, the Licensee shall pay to MCPS the Advance in instalments, the invoices for which will be issued by MCPS on a quarterly basis.

8.5 Following the end of each Contract Year during the Term and following submission by the Licensee of the Sales Information for that Contract Year, MCPS will calculate the licence fees due for exploitation pursuant to clause 2.7 during that Contract Year in accordance with clause 6.3 above.

8.6 Where the licence fees for the Contract Year exceeds the Advance paid, MCPS will invoice the Licensee for the difference between the two.

8.7 The supply of a Qualifying Programme by the Licensee shall be regarded as one falling within a given Contract Year if the payment to the Licensee for that Qualifying Programme (or the *first* payment, if payment is to be in instalments) is made (or is due to be made) within that Contract Year.

**9. Reporting**

9.1 In respect of the licences granted under clauses 2.1(a), (b) and (c), and 2.2(a) and (b) for the purpose of the Authorised Exploitation, the Licensee shall supply to MCPS within 14 days of the Delivery Date (i) full and accurate details of all Repertoire Works and PPL Sound Recordings copied into each episode of a Programme and each item of Made for Online Material; and (ii) the name of the television channel on which the Programme is to be (or has been) first broadcast and the details of the Licensed GEOL Service on which the item of Made for Online Material is to be (or has been) first made available on demand.

The Licensee’s reports must be in the format attached at Schedule 1 or such alternative format which the Licensee uses to report to broadcasters, provided that:

(a) such format complies with MCPS’ reasonable requirements; and

(b) it contains all the information that MCPS requires (as set out in Schedule 1).

9.2 In respect of the licence granted under clause 2.1(d) and 2.2(c) above, the Licensee shall supply to MCPS full and accurate details of all Repertoire Works and all PPL Sound Recordings copied into each piece of Programme Related Material 14 days from the date that such material is made available to the public for the first time. The Licensee’s reports must be in the format attached at Schedule 1.

9.3 In respect of the licence granted under clause 2.1(c) above, the Licensee shall inform MCPS of the Additional Authorised Exploitations the Licensee wishes to license, at any time prior to the supply by the Licensee of the relevant Programme or Made for Online Material to a third party (or the retention of the same by the Licensee) for the form of Additional Authorised Exploitation so licensed.

9.4 In respect of the licence granted under clause 2.1 (where the Licensee wishes to record alternative music to that originally recorded in the Programme or Made for Online Material for any of the Additional Authorised Exploitations), the Licensee shall supply to MCPS full and accurate details of all Production Music copied into each Programme or item of Made for Online Material, at any time prior to the supply by the Licensee of the relevant Programme or Made for Online Material to a third party (or the retention of the same by the Licensee) for the form of Additional Authorised Exploitation so licensed. The Licensee’s reports must be in the format attached at Schedule 1.

9.5 In respect of the Licence granted under clause 2.7, the Licensee shall in respect of each Qualifying Programme supply to MCPS a Cue Sheet by the end of the Quarter in which the Qualifying Programme is first supplied pursuant to this Agreement (or within 14 days of the end of the relevant Quarter, where the Qualifying Programme is first supplied within the last 14 days of a given Quarter). Such Cue Sheet may be supplied in Excel format, either on disk or via email.

9.6 In respect of the Licence granted under clause 2.7, the Licensee shall supply to MCPS the Sales Information, in the format set out in Schedule 2, on a quarterly basis and within one month of the end of the Quarter in which the Qualifying Programme was supplied to a third party pursuant to clause 2.7 of this Agreement.

9.7 Unless notified otherwise, the Licensee will send (a) the Sales Information for the attention of the Television Licensing Manager, MCPS Broadcast Licensing at MCPS’s registered address or by email to welshtvprogrammes@prsformusic.com

9.8 For the avoidance of doubt, where the Licensee records Production Music into Qualifying Programmes pursuant to clause 2.8, then it must provide to MCPS a Cue Sheet which incorporates details of such dubbed Production Music (and not the *original* cue sheet).

9.9 The Licensee shall also supply MCPS with any further information or documentation in its possession, power, custody or control (and will supply MCPS with reasonable assistance to obtain any further information or documentation not in its possession, power, custody or control) reasonably requested by MCPS at any time, in order to enable MCPS to verify the Musical Works and/or Sound Recordings which are contained with a Programme (and/or Qualifying Programme) or to verify that the Licensee is abiding by the terms and conditions of this Agreement.

9.10 MCPS reserves the right to charge additional royalty fees in respect of those Uses of Repertoire Works and/or PPL Sound Recordings which are reported inaccurately to MCPS. Furthermore, MCPS shall be entitled to charge royalty fees on any Uses of Repertoire Works and/or PPL Sound Recordings that are not initially reported by the Licensee (when reporting is delivered for a Programme) but are subsequently identified, as well as those Uses that cannot be identified as Repertoire Works and/or PPL Sound Recordings at the time that reporting is initially processed by MCPS but are subsequently found to be Repertoire Works and/or PPL Sound Recordings. The royalty fee charged per additional Use identified will be based on the Use fees referred to in Annexes C and D. MCPS shall in addition have the right to charge interest at 3% above the National Westminster Bank base rate.

9.11 In order to facilitate the preparation of reporting, MCPS will (upon request) grant the Licensee access to its online works database(s), subject to the Licensee’s acceptance of MCPS’ standard terms and conditions of access. For the avoidance of doubt, should MCPS withdraw access to such a database or should a database become unavailable (whether temporarily or permanently) for any reason, this shall in no way affect the obligations of the Licensee to deliver full, accurate and timely reporting as set out in this clause 9.

9.12 The Licensee shall supply to MCPS throughout the Term a fully completed notification form for each new Programme or item of Made for Online Material within 14 days of being commissioned to produce the Programme or Made for Online Material (or within 14 days of the Licensee commencing production, if the Programme or Made for Online Material has not been commissioned)and shall notify MCPS in writing immediately should any information contained on the notification form change at any time subsequently, including but not limited to the Programme title / or Made for Online Material title, and scheduled Delivery Date.

9.13 Upon request, the Licensee shall supply to MCPS a copy of any Programme (or episode of a Programme), Programme Related Material or item of Made for Online Material produced by it under this Agreement within 7 days of such a request following the Delivery Date, in order that MCPS may confirm that the Licensee is complying with the terms and conditions of this Agreement.

**10. Auditing**

10.1 The Licensee shall keep and make 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/or Sound Recordings in Programmes and/or Qualifying Programmes and/or Made for Online Material, together with any supporting documentation relating thereto; and (b) the supply of reporting to Television Channels in accordance with clause 9.2 above (c) any income or other consideration received (or receivable) by or on behalf of the Licensee in relation to the supply of Qualifying Programmes, together with any supporting documentation relating thereto. Where any agreement between the Licensee and MCPS and/or PPL replaces this Agreement or licenses substantially the same activities (the "Replacement Agreement"), the twelve month time-limit referred to above shall begin following termination or expiry of the Replacement Agreement.

10.2 For the purposes of this clause 10, the Licensee shall allow upon reasonable notice access to its premises to inspect accounting and reporting records, but not more than once per annum. The duly authorised representatives of MCPS shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement.

10.3 If tests under any audit and verification process indicate under-payment of the correct licence fees during the period for which monitoring has been carried out by or on behalf of MCPS, then, without prejudice to MCPS’ 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 MCPS to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of National Westminster Bank Plc).

10.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct licence fees during the period for which monitoring has been carried out by or on behalf of MCPS and/or (b) failures to report correctly amounting to at least 7.5% of the music usage during the period monitored by or on behalf of MCPS, then, without prejudice to MCPS’ other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 10.3, MCPS’ reasonable costs of such audit and verification within 28 days of receipt of MCPS’ VAT invoice therefor.

10.5 For the avoidance of doubt, books, records and accounting records as referred to in clauses 10.1 and 10.2 above shall be deemed to include data, information and records held on computers.

**11. Confidentiality**

Neither party shall disclose to any third party any confidential information of the other party (so long as it remains confidential) received pursuant to this Agreement, save that MCPS may disclose confidential information of the Licensee to PPL, PRS, PRS for Music Limited, to members of PRS and MCPS and PPL members, to societies affiliated to MCPS or PRS or PPL, and to MCPS’s and PPL’s professional advisors (where such advisors are under a duty of confidentiality in relation to information so received) for purposes connected with the administration of rights in Musical Works and/or PPL Sound Recordings.

**12. Termination of Agreement**

12.1 Either party shall have the right to terminate this Agreement immediately by notice to the other
party if:

(a) the other commits a material breach of this Agreement which is not capable of remedy; or

(b) the other commits a material breach of this Agreement which is capable of remedy but which has not been so remedied within 14 days of notice thereof; or

(c) the other is dissolved, becomes insolvent or otherwise unable to pay its debts, ceases to trade, has a trustee, administrator or receiver appointed, has a resolution passed for its winding up or liquidation or makes a general assignment, arrangement or composition with or for the benefit of its creditors.

12.2 Where MCPS terminates this Agreement as a result of the non-payment of licence fees by the Licensee, any episode(s) of a Programme or item(s) of Made for Online Material made during the period in which the licence fees were unpaid (whether in full or in part) or any Qualifying Programme copied pursuant to clause 2.3 of this Agreement during the period in which the licence fees were unpaid (whether in full or in part) shall be deemed to be unlicensed.

12.3 MCPS shall be entitled to terminate this Agreement for the unauthorised use of Repertoire Works in Programmes, Made for Online Material or Programme Related Material outside the scope of this Agreement.

12.4 In circumstances where MCPS terminates the IPC licensing scheme, MCPS shall be entitled to terminate this Agreement with no less than six months’ written notice to the Licensee, such notice to take effect no earlier than 1 January 2021.  In such circumstances, MCPS shall notify the Licensee of alternative licensing arrangements, including any modified IPC licensing scheme to be operated by MCPS.

12.5 Where MCPS has a mandate to implement changes to the rates or other terms of this Agreement, from time to time as part of changes to the IPC licensing scheme, MCPS shall notify the Licensee of the modified terms in writing. The modified terms shall take effect no less than 3 months after such notification from MCPS, save where the Licensee notifies MCPS in writing that it does not agree to the terms, in which case the Licensee may instead terminate this Agreement upon providing MCPS with no less than 30 days’ notice.

12.6 For the avoidance of doubt, any exploitation of Repertoire Works or PPL Sound Recordings by the Licensee following termination of this Agreement will be unlicensed.

12.7 No licence fees already paid (or payable) to MCPS shall be returnable (or credited) to the Licensee upon termination of this Agreement.

12.8 Termination of this Agreement for whatever reason shall be without prejudice to any rights which have already accrued to the parties under this Agreement. For the avoidance of doubt, termination under clause 12.4 or 12.5 shall be without prejudice to the Licensee’s rights under the Authorised Exploitation and the Additional Authorised Exploitation granted under this Agreement in respect of each Programme or item of Made for Online Material with a Delivery Date within the Term.

**13. Other**

13.1 Other than as set out herein, this Agreement is personal and the Licensee shall not assign, sub-contract or otherwise transfer this Agreement or any of its rights or obligations under this Agreement in whole or in part without the prior written consent of MCPS, not to be unreasonably withheld or delayed.

13.2 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.

13.3 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.

13.4 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 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.

13.5 If any provision of the Agreement is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions, which shall continue in full force and effect.

13.6 Neither party to this Agreement shall be liable to the other party for any failure to perform any or all of its obligations hereunder is due to or attributable to acts, events, omissions or accidents beyond the reasonable control of the defaulting party, including a so-called act of God, fire, lockout, strike or other official labour dispute, union problem, riot or civil commotion, terrorism, satellite failure, failure of technical facilities not within the reasonable control of the defaulting party, act of public enemy, enactment, rule or order or act of government, such act or event being deemed an event of force majeure. Each party to this Agreement undertakes to use all reasonable endeavours to notify the other party as soon as practicable of the incidence and termination of any event of force majeure.

13.7 The Licensee acknowledges that this is a ‘blanket’ licence agreement, and that for both parties to take advantage of the administrative simplicity of such a licence, the mechanism for calculating the licence fees must take account of all copying of Repertoire Works and/or PPL Sound Recordings, including where some such copying might fall within one of the exceptions set out in Part I Chapter III of the Copyright Designs and Patents Act 1988 as amended (except such copies will not include copies made which would constitute copies under section 28A of the Copyright Designs and Patents Act 1988 as amended).

13.8 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 of any other rights and remedies.

13.9 No waiver shall be binding or effectual unless expressed in writing and signed by the party giving it and such waiver shall be effective only in the specific instance and for the purpose given.

13.10 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.

13.11 This Agreement shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

***ANNEX C***

***COMMERCIAL MUSIC PRIMARY EXPLOITATION LICENCE FEES***

The licence fees for Commercial Music shall be calculated on a per-Programme basis, as follows:

1. Where a Programme consists of a single episode, once reporting has been received for that Programme in accordance with clause 9.1 or 9.2 (as applicable), it will be analysed by MCPS and the licence fees will be calculated based on the fees per Use listed in the applicable table below. MCPS will then send the Licensee an invoice for the licence fee. Where a Programme consists of a number of episodes, then invoicing shall take place monthly or quarterly or on the basis of a defined number of episodes (at MCPS’ discretion) and there shall be no obligation on MCPS to wait until reporting all episodes have been delivered before it starts to invoice the Licensee.

**Table 1: Licence Fees applicable from 1 January 2020 to 31 March 2020**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | **MCPS** | **PPL** |
| **Channel** | **Initial transmissions covered** | **Primary broadcast** | **Prog Related Material** | **Primary broadcast** | **Prog Related Material** |
| S4C Digital | 5 tx +/- 35 day VOD | £55 | £17 | £55 | £17 |
| Red Button  | n/a | £18 | £11 | £18 | £11 |

**Table 2: Licence Fees applicable from 1 April 2020:**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | **MCPS** | **PPL** |
| **Channel** | **Initial transmissions covered** | **Primary broadcast** | **Prog Related Material** | **Made for** **Online** **Material** | **Primary broadcast** | **Prog Related Material** | **Made for** **Online** **Material** |
| S4C Digital | 5 tx +/- 35 day VOD | £56 | £17 | £56 (5 x 35 day VOD) | £56 | £17 | £56 (5 x 35 day VOD) |
| Red Button  | n/a | £18 | £11 | n/a | £18 | £11 | n/a |

2. In respect of the licence granted under clause 2.1(a) and 2.2(a) of this Agreement, the total number of Uses in the Programme shall be calculated and multiplied by the appropriate Use rate. The resulting licence fee covers the supply of the Programme by the Licensee to the Television Channel for an initial number of broadcasts (together with the making available of the Programme on-demand, as detailed in the definition of Authorised Exploitation), as indicated. Where the Television Channel wishes to undertake additional broadcasts over and above this allowance, the Television Channel shall be liable for clearing these rights and paying the additional licence fee in respect of each such broadcast.

3. In respect of the licence granted under clause 2.1(c) and 2.2(b) of this Agreement, the Licensee shall pay a one-off fee to MCPS for each piece of Programme Related Material, based on the number of Uses of Commercial Works and PPL Sound Recordings in the Programme Related Material multiplied by the Use rate set out above. This fee shall become due once the piece of Programme Related Material is made available to the public for the first time. Once the Licensee has reported to MCPS in accordance with clause 9.2 of this Agreement, MCPS will invoice the Licensee for the relevant amount.

4. The Licensee acknowledges that MCPS may not be able to identify all Uses of Commercial Works and/or PPL Sound Recordings at the time that it initially receives reporting for a Programme from the Licensee. MCPS shall be entitled to reprocess reporting at later dates and where Uses of Commercial Works and/or PPL Sound Recordings are identified that have not previously been invoiced, to raise an invoice for the relevant licence fee, which the Licensee shall pay in accordance with clause 8.2 of this Agreement.

***ANNEX D***

***PRODUCTION MUSIC PRIMARY EXPLOITATION LICENCE FEES***

The licence fees for Production Music shall be calculated as follows:

1. MCPS may at its sole discretion agree with the Licensee a single one-off licence fee to cover the use of Production Music under this Agreement in an entire series or to cover the Licensees’ use of Production Music under this Agreement on an annual basis. In such circumstances, the amount of the licence fee and the terms of invoicing shall be subject to agreement between the parties and shall be detailed separately in Annex A.
2. In all other circumstances, the licence fees for the use of Production Music under this Agreement shall be calculated in accordance with the applicable table below:

**Table 1: Licence Fees applicable from 1 January 2020 to 31 March 2020**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Licence Category** | **S4C / All Media\*** | **UK / All Media\*\*** | **Worldwide / All Media\*\*\*** | **Ex-UK / All Media\*\*\*\*** |
| 1 | Single Cue (i.e. Use) | £23 | £38 | £76 | £38 |
| 2 | Single Work (i.e. a single Production Music Work) | £50 | £83 | £164 | £83 |
| 3 | Single Production | £181 | £301 | £601 | £301 |
| 4 | Single Series (subject to a maximum of 8 episodes or Productions) | £595 | £1,000 | £2,000 | £1,000 |
| 5 | Annual Deal - Single IPC (i.e. where the Licensee is a single production company) | *Negotiable* | From £2,500 | From £5,000 | From £2,500 |
| 6 | Annual Deal - Group IPC (i.e. where the Licensee is a group company contracting on behalf of a number of wholly owned subsidiary production companies) | *Negotiable* | *Negotiable* | *Negotiable* | *Negotiable* |

**Table 2: Licence Fees applicable from 1 April 2020:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Licence Category** | **S4C / All Media\*** | **UK / All Media\*\*** | **Worldwide / All Media\*\*\*** | **Ex-UK / All Media\*\*\*\*** |
| 1 | Single Cue (i.e. Use) | £23 | £39 | £78 | £39 |
| 2 | Single Work (i.e. a single Production Music Work) | £51 | £85 | £167 | £85 |
| 3 | Single Production | £185 | £307 | £614 | £307 |
| 4 | Single Series (subject to a maximum of 8 episodes or Productions) | £595 | £1,000 | £2,000 | £1,000 |
| 5 | Annual Deal - Single IPC (i.e. where the Licensee is a single production company) | *Negotiable* | From £2,500 | From £5,000 | From £2,500 |
| 6 | Annual Deal - Group IPC (i.e. where the Licensee is a group company contracting on behalf of a number of wholly owned subsidiary production companies) | *Negotiable* | *Negotiable* | *Negotiable* | *Negotiable* |

\*S4C/All Media covers (i) the uses described in the Authorised Exploitation in respect of the Television Channels and S4C’s website only; and (ii) the uses described in the Additional Authorised Exploitation but only to the extent that such uses take place in the United Kingdom.

\*\* UK covers the uses described in Authorised Exploitation and Additional Authorised Exploitation but only to the extent that such uses take place in the United Kingdom.

\*\*\* Worldwide covers the uses described in the Additional Authorised Exploitation, worldwide.

\*\*\*\* Ex-UK covers the uses described in Additional Authorised Exploitation but only to the extent that such uses take place outside of the United Kingdom.

***ANNEX E***

***WELSH COMMERCIAL WORKS – LIST OF MEMBERS***

|  |
| --- |
| Acapela Publishing Limited |
| Aran |
| Atebol Cyfyngedig |
| Bubblewrap Publishing |
| Cwmni Cyhoeddi Gwynn Cyfyngedig |
| Cyhoeddiadau Abel |
| Cyhoeddiadau Ankst |
| Cyhoeddiadau Beic |
| Cyhoeddiadau Blinc Publishing |
| Cyhoeddiadau Blw Print Publishing |
| Cyhoeddiadau Bos |
| Cyhoeddiadau Cae Gwyn Publishing  |
| Cyhoeddiadau Clwb Music Publishing  |
| Cyhoeddiadau Coll |
| Cyhoeddiadau Cosh Publications  |
| Cyhoeddiadau Crwn Publishing  |
| Cyhoeddiadau Curiad |
| Cyhoeddiadau Do Re Mi |
| Cyhoeddiadau Dockrad Publishing  |
| Cyhoeddiadau Gwenda |
| Cyhoeddiadau Hambon Publishing  |
| Cyhoeddiadau I Ka Ching Publishing  |
| Cyhoeddiadau Jigcal Publishing |
| Cyhoeddiadau Klep Dim Trep |
| Cyhoeddiadau Libertino Publishing  |
| Cyhoeddiadau Milgi |
| Cyhoeddiadau Mwldan Publications |
| Cyhoeddiadau Pandy Publishing |
| Cyhoeddiadau Pesda Roc |
| Cyhoeddiadau Peski Publishing |
| Cyhoeddiadau Sain |
| Cyhoeddiadau Sbensh |
| Cyhoeddiadau Sbrigyn Ymborth |
| Cyhoeddiadau Sienco Publishing |
| Cyhoeddiadu Tarw Du |
| Cymdeithas Cerdd Dant Cymru |
| Cymdeithas Alawon Gwerin Cymru |
| Cymru Muzic Cyf |
| Gwasg Carreg Gwalch |
| Gwasg Gee |
| Lwcus T |
| Madryn  |
| Rasal Miwsig |
| Rheidol Publishing |
| Rhys Mwyn Publishing |
| Slacyr Cwl Publishing  |
| Strangetown Publishing |
| Undeb yr Annibynwyr Cymraeg |
| Y Lolfa Cyfyngedig |

***ANNEX F***

***WELSH PPL SOUND RECORDINGS – LIST OF MEMBERS***

|  |
| --- |
| Acapela Records |
| Aran Records |
| Bubblewrap Records |
| Eilio |
| Fflach |
| Gwynfryn Cymunedol |
| Label Abel |
| Lwcus T |
| Rasal Miwsig |
| Recordiau Ankst Records |
| Recordiau Beic Records |
| Recordiau Blinc Records |
| Recordiau Blw Print Records |
| Recordiau Bos Records |
| Recordiau Cae Gwyn Records |
| Recordiau Coll Records |
| Recordiau Cosh Records |
| Recordiau Crwn Records |
| Recordiau Do Re Mi Records |
| Recordiau Dockrad Records |
| Recordiau Gwenda |
| Recordiau Hambon Records |
| Recordiau I Ka Ching Records |
| Recordiau JigCal Records |
| Recordiau Klep Dim Trep Records |
| Recordiau Libertino Records |
| Recordiau Madryn Cyfyngedig Records |
| Recordiau Milgi Records |
| Recordiau Pesda Roc Records |
| Recordiau Peski Records |
| Recordiau Rhediol Records |
| Recordiau Rhys Mwyn Records |
| Recordiau Sbensh Records |
| Recordiau Sienco Records |
| Recordiau Slacyr Cwl Records |
| Recordiau Tarw Du Records |
| Sain (Recordiau) Cyf |
| Sbrigyn Ymborth |
| Strangetown Records |

**Schedule 1**

Cue Sheet format



**Schedule 2**

Format for Sales Information

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Programme | Acquiring Party | Territory | Exploitation | Gross Payment | W/H Tax | Gross Sale Price |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

Where:

- ‘Programme’ is the title of the Qualifying Programme

- ‘Acquiring Party’ is the party to whom the Licensee supplied the Qualifying Programme

- ‘Territory’ is the territory (or territories) of broadcast for which the Qualifying Programme is supplied

- ‘Exploitation’ is the form of exploitation for which the Qualifying Programme is supplied (by reference to the categories in clause 2.3. In particular, the Licensee shall state whether the Qualifying programme has been supplied for Terrestrial Broadcast).

- ‘Gross Payment’ is the full consideration of the sale (calculated in accordance with clause 6) *before* withholding tax (if any) is deducted, but after deduction of VAT

- ‘W/H Tax’ is withholding tax on the Gross Payment (if any) but only to the extent not recoverable by the Licensee (or Acquiring Party)

- Gross Sale Price is the Gross Payment less withholding tax (if not recoverable) and is, for the avoidance of doubt, the sum defined in clause 7.