

IMRO

Application for Registration Under Section 175 of Copyright and Related Rights Act 2000

**S175(7)(e) & (f) Licensing Schemes Managed by
Irish Music Rights Organisation:**

3. **Commercial and Community Based Television**
 - (i) **National Commercial Services – TV3**
 - (ii) **Independent commercial Television - Other Television
Services, including Community Based Television, Satellite
Television and Cable or MMDS Television, where the
Broadcast Originates in the Republic of Ireland – UPDATED**

THIS AGREEMENT Is made the _____ day of _____ One Thousand nine hundred and ninety-eight **BETWEEN IRISH MUSIC RIGHTS ORGANISATION LIMITED**, whose registered office is situated at Copyright House, Pembroke Row, Lr. Baggot Street, Dublin 2 (hereinafter called "IMRO") of the one part and **TV3 TELEVISION NETWORK LIMITED** whose offices are situated at Westgate Business Park, Ballymount, Dublin 24 (hereinafter called "TV3") of the other part.

WHEREBY IT IS AGREED as follows:-

1. In this Agreement unless the context otherwise requires:
 - (a) "ballet" means a choreographic work to be accompanied by music, having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences;
 - (b) "broadcast" means broadcast by any means now known for sound or television and "broadcasting" shall be construed accordingly;
 - (c) "copyright owner" means in respect of any act in relation to a musical work the person in whom for the time being is vested the right to do and authorise other persons to do that act;
 - (d) "dramatico-musical work" means an opera, operetta, musical play revue, or pantomime insofar as it consists of words and music written expressly therefore;
 - (e) "the licensed territory" means the Republic of Ireland;
 - (f) "IMRO's repertoire" means all and any of the musical works (including any words associated therewith) the public performance and broadcasting rights in which are at the time of broadcasting and/or public performance during the term of this Agreement controlled by IMRO or any of the societies in other countries with which IMRO is at the relevant time affiliated;
 - (g) "Licence year" shall mean a period of 12 months beginning 1st January and any subsequent anniversary.
2. Subject to the exemptions, limitations and conditions hereinafter set out IMRO hereby grants licence and authority for TV3;
 - (a) to broadcast, or cause or allow to be broadcast, IMRO's repertoire from any of TV3's transmitters within the licensed territory; and

- (b) to perform, or cause or allow to be performed, in public, IMRO's repertoire within the licensed territory.
- 3.
- (a) Nothing herein contained shall operate as a licence from IMRO, or from any agent or representative of IMRO in any part of the world, authorising:
 - (i) anyone other than TV3 to give such public performances of IMRO's repertoire as may be given by the direct or indirect public reception or the direct or indirect public audition in any part of the world, by any means and in any manner whatsoever, of TV3's broadcast transmissions:
 - (ii) TV3 to transmit IMRO's repertoire to a satellite for:-
 - (aa) the purpose of broadcasting by another broadcasting organisation in any territory where IMRO's repertoire is not administered for that purpose by IMRO nor any of its affiliated societies or
 - (bb) the purpose of distribution by cable outside the licensed territory, or
 - (cc) intended direct reception outside the licensed territory.

Provided that TV3 shall in no way be liable hereunder nor have any obligations to make any further payments to IMRO by way of royalties or otherwise in respect of any unauthorised retransmission of TV3's broadcast signal and provided further that having regard to the exigencies of terrestrial television broadcasting in the Territory, TV3 shall be free without further payment to simultaneously distribute, broadcast, transmit and simultaneous re-broadcast and relay TV3's signal on cable and/or MMDS systems in the manner in which free television is customarily transmitted and/or relayed in the Territory without further payment and IMRO hereby acknowledges that TV3's broadcast transmission may be capable of reception outside the Territory and particularly in Northern Ireland and that any such reception shall not cause TV3 to be in breach of any of the provisions hereof nor obliged to make any further payments hereunder.

- (b) This licence shall not extend to nor authorise the broadcast and/or public performance of IMRO's repertoire in the circumstances set out in Schedule II hereto which Schedule shall be amended from time to time pursuant to any change in the directions of the Board of IMRO, or its Articles or Rules. IMRO shall inform TV3 in advance if possible if not as soon as possible thereafter of any changes so made and shall supply to TV3 a revised version of Schedule II.

4. IMRO will promptly give TV3, on request, all such information as IMRO reasonably can give respecting works claimed or represented as being comprised within IMRO's repertoire.
5. The term of this Agreement shall be deemed to have commenced on 21st September 1998 and shall terminate on 31st December 2003, whereupon it will continue from year to year, subject to 6 months' written notice of termination by either party, to expire on 31st December in the appropriate year.
6. In consideration of the licence and authority hereby granted TV3 shall make payments to IMRO in accordance with the provisions set out in Schedule I hereto. In the event that TV3 shall not make any payment hereunder by the due date or within 14 working days thereafter then, provided that IMRO shall have issued a default notice in the event payment has not been made within 7 working days of receipt of such notice, interest shall be paid to IMRO by TV3 in respect of the period from the due date until the date on which payment is received by IMRO calculated on a daily basis at the rate of two per cent per annum (2%) above the Irish Banks Standing Committee AAA Overdraft Rate for the time being in force provided that TV3 shall have received from IMRO an invoice for the amount due not less than 15 days before the due date.
 - (a) TV3 shall send to IMRO at Copyright House, Pembroke Row, Lr. Baggot Street, Dublin 2, Republic of Ireland unless otherwise agreed in writing lists of all material broadcast in each week during the term of this Agreement from TV3 transmitters as aforesaid (or if mutually agreed in writing and signed on behalf of both parties hereto TV3 shall supply the same information in some other form) specifying the name of the service or programme.
 - (b) In the case of all musical works broadcast the said lists (or other agreed form of information) shall also indicate save as otherwise agreed in writing from time to time:
 - (i) the title of each individual work;
 - (ii) the name or names of the composers, authors, arrangers and publishers;
 - (iii) where a commercial recording or a film is used, the name of the manufacturer and identification number of each recording and the title of the film and name of the producing company as the case may be;
 - (iv) the number of minutes and seconds occupied in broadcasting each work.
 - (c) TV3 shall take all reasonable care to ensure the correctness of all the information required by sub-paragraphs (a) and (b) of this Clause and to notify IMRO in

writing as soon as possible of any errors or omissions in this respect upon becoming aware of such errors or omissions.

- (d) The said lists shall be sent to IMRO with all reasonable despatch, every four weeks, but in no case later than six weeks, from the date of broadcasting.
 - (e) TV3 shall, at IMRO's sole cost and expense, give IMRO any further information as to its programmes or any such musical works as aforesaid as IMRO may from time to time reasonably require and which may be available in the records for the time being normally kept by TV3 for its purposes.
8. Each of the parties hereto shall during the term of this Agreement furnish to the other all such information as may be in its possession calculated to enable such other party hereto to protect its interest.
9. IMRO shall, during the term of this Agreement, keep TV3 harmless and indemnified in respect of all the actions, proceedings, costs, damages, claims and demands which are successfully brought, recovered, or made by any third party upon or against TV3 in respect of the broadcasting or performance by TV3 of any work which IMRO claims or represents is for the time being comprised within IMRO's repertoire for the purposes of this Agreement.
10. In the event of either party being in the breach of any of its obligations under this Agreement the other party shall be entitled to give the party in breach written notice at its address set out above of any such breach and shall require that the same shall be remedied within a reasonable specified period which shall be not less than 30 days.
11. If the party in breach has failed to remedy a breach of its obligations under this Agreement notwithstanding notice given by the other party pursuant to Clause 10 above then that other party may determine this Agreement in writing.
12. (a) In the event that during the term of this Agreement there is a substantial change in IMRO's repertoire as at 21/9/98, either party may by written notice require the other party to enter into discussion in good faith within a period of not less than 21 days from receipt of such notice for a revision of the payments referable to such part of the term as is affected by such change.
- (b) If the parties fail to reach agreement on a revision of payments within 90 days after the date of receipt of a notice specified in (a) above the party serving the notice shall be entitled forthwith to determine this Agreement by written notice of not less than 7 days; such termination shall not affect the rights and obligations of the parties as set out in this Agreement in respect of any act or omission relating to any period preceding the date of such termination taking effect.

13. This Agreement is personal to each party hereto and shall not be assigned in whole or in part nor sub-licensed in whole or in part.

AS WITNESS THE HAND OF _____ for and on behalf of IMRO and

the hand of _____ for and on behalf of TV3 the day and year first
above written.

SCHEDULE I

- A. In respect of the rights granted to TV3 under Clause 2(a) of this Agreement TV3 shall make payments to IMRO for any licence year as follows:

The annual royalty payable by TV3 to IMRO shall be: 1% of net revenue

- B. Net revenue shall mean:

The aggregate of gross advertising commercial airtime cash revenue of TV3 Television Network Limited derived from the regulated spot advertising minutage, less IRTC 3% levy, less combined agency and selling agent commission of 25% and less bad debts. Due to the subjective nature of associated costs, net on air sponsorship cash airtime revenues shall be air cash revenue less 25%, IRTC 3% levy, net of the combined agency and selling agent commission of 25%, less bad debts. All other revenue of the Company shall be excluded from the revenue definition.

- C. In respect of the rights granted to TV3 under Clause 2(a) of this Agreement, TV3 shall pay to IMRO for any musical performances given under its auspices royalties at the rates applicable to such performances under IMRO's relevant tariff in force at the time of the performance ~~PROVIDED THAT IMRO has not otherwise granted permission for such~~ public performance to be given and PROVIDED THAT no royalties shall be charged by IMRO to TV3 for performances in its studios where the whole or any part of the performance is broadcast by TV3 from its studios and the audience is admitted to the entertainment without payment. In this context studios include any studio being used by TV3 as a temporary studio (such as a church hall) and outside locations.

- D. The royalty shall be paid on-account by twelve instalments on the 15th day of each month commencing October 1998.

- E. TV3 shall complete a Banker's Standing Order Mandate to effect payment of the royalties and Value Added Tax due.

- F. The amount payable on-account in any licence year shall be calculated in accordance with the following scheme:-

No later than 1st October before the licence year TV3 shall furnish, and IMRO shall consider, a statement in respect of such licence year which estimates the net revenue of TV3. If, following a written request for such statement, TV3 fails to furnish such a statement IMRO shall itself be entitled to estimate the net revenue by a notional increase of 10% over the previous licence year. Such estimate shall be agreed in writing by the parties not later than 15th November in the licence year and in the absence of agreement IMRO may use its own estimate. TV3 may adjust its estimate of net revenue at the end of the quarters 31st March, 30th June and 30th September. Notification of such adjustments must be received, by IMRO, not later than 1st March, 1st June and 1st September. Such adjusted estimates shall be agreed in writing by the parties no later than 15th April, 15th July or 15th October respectively in the licence year. The music use of TV3 shall be estimated by assuming music use will be the same as the previous licence year. Paragraph 1 shall be applied to the estimates of net revenue and music

use to establish the on-account payments but the amount of each on-account payment shall not be less than one-twelfth of the annual royalty in respect of the preceding year.

- G. Within 60 days after the end of the licence year in question, TV3 shall furnish to IMRO a statement of the net revenue for such licence year in respect of which estimates had been made under paragraph 5. TV3 shall promptly answer all reasonable enquiries of IMRO about such a statement.
- H. Within 90 days after the end of the licence year, IMRO shall, on the basis of such statement, determine the actual amount of royalty payable in respect of that licence year and shall notify such amount to TV3.
- I. Within 120 days after the end of the licence year in question, TV3 shall furnish a statement of net revenue, certified by TV3's auditor. IMRO shall be entitled to contact such auditors and such auditors shall promptly answer all reasonable enquiries about such a statement. IMRO may call for certified accounts in respect of the net revenue.
- J. If at the end of such licence year it shall be found that there has been an overpayment or underpayment arising from the operation of paragraph 5, IMRO shall, in the case of an overpayment, repay the excess and TV3 shall, in the case of an underpayment, repay the shortfall, in both cases as if the excess or shortfall had been due in equal instalments on the days set out in paragraph 4 during the licence year in question with interest at an annual rate of 2%.
- K. Value Added Tax at the appropriate rate will be due on all payments to be made in accordance with this Schedule.

SCHEDULE II

THE licences granted to TV3 in Clause 2 (a) and (a) of this Agreement shall not extend to nor authorise:

A. The broadcast on television of:

- (i) a dramatico-musical work whether staged or otherwise with the exception of
 - (a) a dramatico-musical work or an excerpt or excerpts from a dramatico-musical work by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises.
 - (b) a non-dramatic excerpt or excerpts from a dramatico-musical work
 - (aa) the total duration of which in the course of the same programme does not exceed twenty minutes and
 - (bb) which excerpt or excerpts are not a "potted" version of the work and/or
 - (cc) which excerpt or excerpts are not or do not cover a complete act of the work;
- (ii) the whole or any part of any music and of any words associated therewith composed or used for a ballet if accompanied by a visual representation of such ballet or part thereof; provided that the rights administered by IMRO do nevertheless include the right to broadcast on television any such music and words so composed and used and accompanied by such visual representation when -
 - (a) a ballet or part or parts thereof are performed by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises; or
 - (b) a ballet or part or parts thereof, having been devised for the purpose of a broadcast on television, have a total duration in the course of the same programme not exceeding five minutes; or
 - (c) a part or parts (being less than the whole) of a ballet, not having been so devised, have a total duration in the course of the same programme not exceeding five minutes.
- (iii) words written for the purpose of a commercial advertisement unless such words are sung to music specially written for a commercial advertisement or to non-copyright music and the sung performance has a duration of not less than five seconds.
- (iv)
 - (a) unless authorised in writing by IMRO or the copyright owner any musical work accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner;
 - (b) unless authorised in writing by IMRO or the copyright owner any musical work with or without associated words in any adapted or rearranged form or in such a manner as to produce parodied or burlesqued effects;

- (c) any musical work, with or without associated words, in a dramatic form. A dramatic form shall be deemed to be created only by performance in a programme in which there is a distinct plot depicted by actors and where the story of the musical 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 costumes, scenery and/or dance routine merely to provide an acceptable presentation of the work). For the purpose of this paragraph, the words "actors" shall include actor-singers, mimers and/or puppets;
- (v) any words associated with a musical work or ballet if unaccompanied by the music thereof.

B. The public performance of:

- (i) a dramatico-musical work whether staged or otherwise with the exception of
 - (a) a dramatico-musical work or an excerpt or excerpts from a dramatico-musical work performed by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a radio or television set used for the purpose of giving the public performance of broadcast programmes.
 - (b) a non-dramatic excerpt of excerpts from a dramatico-musical work, however performed;
 - (aa) the total duration of which in the course of the same programme is twenty-five minutes or less and
 - (bb) which excerpt or excerpts are not a "potted version" of the work; and/or
- (ii) the whole or any part of any music and of any words associated therewith composed or used for a ballet if accompanied by a visual representation of such ballet or part thereof with the exception of public performance of such whole or part if performed by means of
 - (a) a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises and/or
 - (b) a television set used for the purpose of giving a public performance of broadcast programmes;
- (iii) any musical work specially written for a son-et-lumière production when performed in or in conjunction with that production;
- (iv) any musical work (being a musical work which is not a dramatico-musical work or part of a dramatico-musical work) specially written for a production of a dramatic work in a theatre when performed in or in conjunction with that dramatic work;
- (v) unless authorised in writing by IMRO or the copyright owner any musical work accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner;

- (vi) unless authorised in writing by IMRO or the copyright owner any musical work with or without associated words in any adapted or rearranged form or in such manner as to produce parodied or burlesqued effects;
- (vii) any musical work, with or without associated words, in a dramatic form. A dramatic form shall be deemed to be created only by performance in a programme in which there is a distinct plot depicted by actors and where the story of the musical works and/or its associated words is woven into and carried forward the plot and its accompanying action (a dramatic form shall not for example be deemed to be created by the use of costumes, scenery and/or dance routine merely to provide an acceptable presentation of the work). For the purpose of this paragraph, the word "actors" shall include actor-singers, mimers and/or puppets.
- (viii) any words associated with a musical work or ballet if unaccompanied by the music thereof.

Date:

IRISH MUSIC RIGHTS
ORGANISATION LIMITED

and

TV3 Television Network Limited

LICENCE
AGREEMENT

ETS/hl/tv3.wpd

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THIS AGREEMENT is made the day of 2021
BETWEEN **IRISH MUSIC RIGHTS ORGANISATION CLG**, whose registered office is situated at Copyright House, Pembroke Row, Lr. Baggot Street, Dublin 2 (hereinafter called “IMRO”) of the one part and **[name of Licensee]** whose registered office is situated at **[insert details]** (hereinafter called “Licensee”) of the other part.

WHEREBY IT IS AGREED as follows:-

1. Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

“Annual Revenue Estimate”

means the estimate of:

- (a) Gross commercial revenue
- (b) permitted discounts (identified in Net commercial revenue) and
- (c) Gross Internet revenue

to be furnished by Licensee to IMRO in accordance with Schedule 1 of this Agreement;

“Broadcast”

means a transmission by wireless means, including by terrestrial or satellite means, for direct public reception or for presentation to members of the public of sounds, images or data or any communication of sounds, images or data, or the representations thereof, but does not include MMDS service and the term “Broadcasting” shall be interpreted accordingly;

“Cable programme service”

shall have the meaning given to it in the Copyright and Related Rights Act 2000 (for the avoidance of doubt Cable programme service as therein defined includes MMDS);

“Gross commercial revenue”

means all revenue received directly or indirectly by Licensee in connection with the Television Programme Service licensed hereunder, including without limitation; donations, advertising, sponsorship and subscriber revenues, revenues received from any operators of transmission platforms (such as cable, MMDS or satellite) and any other revenues in any way related to transmission of Licensee programmes on such transmission platforms, but not including Gross Internet revenue;

“Gross Internet revenue”

means all revenues received directly or indirectly by Licensee in connection with its Simulcasting or Streaming activities in the

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Territory, including without limitation donations, advertising, sponsorship and subscriber revenues;

“Licence year” means a calendar year commencing 1st January;

“Licensed Repertoire” means all or any musical works in which, at the time of their use by Licensee in accordance with and during the term of this Agreement, the right to licence the Performing Right is vested in IMRO;

“Making available” means making available to the public of copies of a musical work, by wire or wireless means in such a way that members of the public may access the work from a place and at a time chosen by them (including the making available of copies of works through the Internet);

“Net commercial revenue” means Gross commercial revenue less the following:

- (i) combined agency and selling agent costs, up to a maximum deduction of 25% and
- (ii) bad debts

incurred in relation to Gross commercial revenue, in each case where the debt or cost is incurred in the same Licence year as the Gross commercial revenue from which it is being deducted;

“Performing Right” means, in relation to a musical work, the rights set out in section 40(1)(a)-(d) of the Copyright and Related Rights Act 2000 namely the rights of:

- (i) Making available a copy of the work
- (ii) performing, showing or playing a copy of the work in public
- (iii) Broadcasting a copy of the work;
- (iv) including a copy of the work in a Cable programme service;

“Simulcasting” means the transmission of a musical work over the Internet simultaneously with a Broadcast of that musical work by Licensee, where the work simulcast may not be permanently downloaded to the users computer.

“Streaming” means the Making available of a musical work over the Internet where the work may not be permanently downloaded to the users computer;

“Television Programme Service” means a service which comprises a compilation of audio-visual programme material of any description and is transmitted or relayed by means of wireless telegraphy directly or indirectly for reception by the general public;

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“Territory” means the Republic of Ireland;

- 1.2 The provisions of the Schedules to this Agreement shall form an integral part of this Agreement and shall have as full effect as if they were incorporated in the body of this Agreement and the expressions “*this Agreement*” and “*the Agreement*” shall be deemed to include the Schedules to this Agreement.
- 1.3 The singular includes the plural and vice versa.
- 1.4 Unless the context otherwise indicates, references to clauses, sub-clauses, recitals and to schedules, are to clauses, sub-clauses of, and recitals and schedules to, this Agreement.
- 1.5 Headings to clauses in this Agreement are included for the purpose of ease of reference only and shall not have any effect on the construction or the interpretation of this Agreement.

2. Licence

- 2.1 Subject to the exemptions, limitations and conditions hereinafter set out IMRO hereby grants Licensee a non-exclusive licence of the Performing Right in the Territory to carry out the following acts in relation to the Licensed Repertoire;
 - (a) Broadcasting (to the extent only however that the Territory is the place where the signals carrying the Television Programme Service, containing Licensed Repertoire, are introduced into an uninterrupted chain of communication resulting in the Broadcast, which chain of communication can include, in the case of satellite transmission, the chain leading to the satellite and down towards the earth);
 - (b) inclusion in a Cable programme service;
 - (c) performance in public;
 - (d) Simulcasting;
 - (e) Streamingsolely as part of its Television Programme Service and associated Simulcasts and Streaming, and only in so far as such Simulcasts and Streaming are carried out from a website owned and controlled solely by the Licensee.
- 2.2 Nothing herein contained shall operate as a licence from IMRO, or from any agent or representative of IMRO in any part of the world, authorising:
 - (i) anyone other than Licensee to give such public performances of Licensed Repertoire as may be given by the direct or indirect public reception or the direct or indirect public audition in any part of the

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world, by any means and in any manner whatsoever, of Licensee's Broadcast transmissions:

- (ii) Licensee to transmit Licensed Repertoire:-
 - (aa) for the purpose of distribution by cable or cable re-transmission outside the Territory, or
 - (bb) for intended direct reception outside the Territory

Provided that Licensee shall in no way be liable hereunder nor have any obligations to make any further payments to IMRO by way of royalties or otherwise in respect of any unauthorised retransmission of Licensee's Broadcast signal and provided further that having regard to the exigencies of terrestrial television broadcasting in the Territory, Licensee shall be free without further payment to simultaneously distribute, Broadcast, transmit and simultaneously re-broadcast and relay Licensee's signal on cable and/or MMDS systems in the manner in which free television is customarily transmitted and/or relayed in the Territory without further payment apart from that set out in this Agreement.

2.3 For the avoidance of any doubt, this licence is of the Performing Right in the Licensed Repertoire in the Territory only, and does not cover:

- (i) the reproduction or copying of any Licensed Repertoire, either by Licensee or any user of Licensee services;
- (ii) any sound recording rights;
- (iii) any musical works which are not in the Licensed Repertoire;
- (iv) any moral rights of the creators of Licensed Repertoire works;
- (v) any use of any Licensed Repertoire work, where all other necessary licences or waivers in respect of that use or in respect of the technical platforms and methods of such use have not been obtained; or
- (vi) any licence of the Performing Right outside the Territory. In particular this means that this licence only relates to Simulcasts or Streaming of Licensed Repertoire within the Territory and does not cover any Making available of Licensed Repertoire outside the Territory. It is the Licensee's responsibility to obtain any licences or permissions required to Make available the Licensed Repertoire outside the Territory.

2.4 This licence shall not extend to nor authorise the exercise of the Performing Right (or any part of it) in Licensed Repertoire in the circumstances set out in Schedule II hereto which Schedule shall be amended from time to time pursuant to any change in the directions of the Board of IMRO, or its Articles or Rules. IMRO shall inform Licensee in advance if possible if not as soon as possible thereafter of any changes so made and shall supply to Licensee a revised version of Schedule II.

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3. Commencement

The term of this Agreement shall be deemed to have commenced on [date].

4. Term

This Agreement shall continue in force until terminated in accordance with the provisions of this Agreement.

5. Payments

5.1 In consideration of the licence and authority hereby granted Licensee shall make payments to IMRO in accordance with the provisions set out in Schedule I hereto.

5.2 In the event that Licensee shall not make any payment hereunder by the due date or within 14 working days thereafter then, provided that IMRO shall have issued a default notice, in the event payment has not been made within 7 working days of receipt of such notice, interest shall be paid to IMRO by Licensee in respect of the period from the due date until the date on which payment is received by IMRO calculated on a daily basis at the rate of two per cent per annum (2%) above the Prime Overdraft Rate, current from time to time, of the Bank of Ireland, payable from the date on which payment should originally have been made to the date on which payment was made, provided that the Finance Manager in Licensee shall have received from IMRO an invoice for the amount due not less than 15 days before the due date.

6. Information

6.1 IMRO will promptly give Licensee, on request, all such information as IMRO reasonably can give respecting works claimed or represented as being comprised within Licensed Repertoire.

6.2 (a) Licensee shall send to IMRO at Copyright House, Pembroke Row, Lr. Baggot Street, Dublin 2, Republic of Ireland unless otherwise agreed in writing lists of all material Broadcast, included in a Cable programme service, Simulcast or Streamed in each week during the term of this Agreement from Licensee transmitters as aforesaid specifying the name of the service or programme. The said lists shall be delivered in an electronic form to be reasonably specified by IMRO or other agreed form of information to be agreed between the parties.

(b) In the case of all musical works the said lists shall also indicate save as otherwise agreed in writing from time to time:

(i) the title of each individual work;

(ii) the name or names of the composers, authors, arrangers and publishers;

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- (iii) where a commercial recording or a film is used, the name of the manufacturer and identification number of each recording and the title of the film and name of the producing company as the case may be;
 - (iv) the number of minutes and seconds occupied in broadcasting each work.
 - (c) Licensee shall take all reasonable care to ensure the correctness of all the information required by sub-paragraphs (a) and (b) of this Clause and to notify IMRO in writing as soon as possible of any errors or omissions in this respect upon becoming aware of such errors or omissions.
 - (d) The said lists shall be sent to IMRO with all reasonable despatch, but in no case later than 28 days, from the last day of the month during which the relevant use took place.
 - (e) Licensee shall, at IMRO's sole cost and expense, give IMRO any further information as to its programmes or any such musical works as aforesaid as IMRO may from time to time reasonably require and which may be available in the records for the time being normally kept by Licensee for its purposes.
- 6.3 Each of the parties hereto shall during the term of this Agreement furnish to the other all such information as may be in its possession calculated to enable such other party hereto to protect its interest.

7. Confidentiality

Subject to the permitted uses and disclosures of its confidential information provided for in this clause IMRO shall keep confidential all confidential information provided to IMRO by the Licensee pursuant to this Agreement. The Licensee though acknowledges that IMRO may disclose the said confidential information to any of its directors, officers, employees, members or sister organisations to the extent that disclosure is reasonably necessary for the purposes of this Agreement and for the purposes of administering the Licensed Repertoire and accounting to members and sister organisations for the administration of the Licensed Repertoire.

IMRO may disclose the confidential information referred to in this clause if and to the extent that:

- (a) this is required by the law of any relevant jurisdiction or pursuant to a request or order of a regulator or court of a competent jurisdiction;
- (b) this is required by any securities, exchange or regulatory or governmental body to which IMRO is subject;
- (c) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of IMRO;
- (d) the information has come into the public domain through no fault of IMRO;

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- (e) the information was in the possession of IMRO before disclosure by the Licensee;
- (f) it is required to enable IMRO to enforce its rights under this Agreement.

8. Indemnity

8.1 IMRO shall at all times (notwithstanding the termination of this Agreement) be liable for, indemnify and hold harmless Licensee (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Licensee arising from any infringement or alleged infringement by Licensee of any third party intellectual property rights in consequence of the authorized use of Licensed Repertoire provided that :

- (a) If Licensee becomes aware of any complaint, claim, demand, threatened proceedings or proceedings arising out of its use of Licensed Repertoire, Licensee shall forthwith and without delay notify IMRO in writing giving full particulars of the circumstances.
- (b) Licensee shall make no comment or admission to any third party in respect of such circumstances without the prior consent of IMRO.
- (c) IMRO shall in its sole discretion be entitled to decide what action (including litigation, arbitration or compromise) if any to take in respect of any claim or counterclaim brought or threatened in respect of the use of its repertoire.
- (d) IMRO shall not be obliged to bring or defend any proceedings whether for copyright infringement or otherwise in relation to its repertoire if it decides in its sole discretion not to do so and Licensee shall not be entitled to bring any action or proceedings in relation to Licensed Repertoire regardless of any such decisions.
- (e) IMRO shall have the conduct of all proceedings relating to its repertoire.
- (f) Licensee will co-operate with IMRO in taking such further action at the reasonable request of IMRO as it may from time to time deem appropriate to protect its repertoire and IMRO shall meet all expenses incurred by Licensee to third parties in giving such assistance. In particular, Licensee will, at the reasonable request of IMRO, give full co-operation to IMRO (including the provision of documentation and making relevant people available) in any action, claim or proceedings brought or threatened in respect of IMRO's repertoire.
- (g) IMRO shall be entitled to retain any payment including any damages or costs award from any third party arising out of any dispute relating to the use of its repertoire under this Agreement.

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- (h) In any proceedings which are brought or defended by IMRO, IMRO shall be entitled to claim in respect of any loss suffered or likely to be suffered by Licensee but IMRO shall be entitled to retain any damages awarded in respect of such claim and the provisions of any applicable law, insofar as the same may apply to the contrary, are hereby, to such extent only, expressly excluded.
 - (i) If at any time an allegation of infringement of third party rights is made in respect of Licensed Repertoire or, if in Licensee's reasonable opinion such an allegation is likely to be made, IMRO may at its own expense take such action as it deems appropriate, including modifying its repertoire, so as to avoid the infringement,
- 8.2 Licensee understands and agrees that the use of Licensed Repertoire and any other material provided to it under this Agreement is subject to all applicable laws, enactments, regulations and other similar instruments (including, without limitation, all applicable local laws relating to advertising, broadcasting, health and safety and telecommunications), and that Licensee shall at all times be solely liable and responsible for such due observance and performance. IMRO shall not be liable to indemnify to Licensee for any payment or costs arising as a result of its failure to comply with all applicable laws.
- 8.3 Licensee shall at all times (notwithstanding the termination of this Agreement) be liable for, indemnify and hold harmless IMRO (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by IMRO arising out of the breach or non-performance by Licensee of this Agreement.
- 9. **Termination**
 - 9.1
 - (a) In the event of either party being in the breach of any of its obligations under this Agreement the other party shall be entitled to give the party in breach written notice at its address set out above of any such breach and shall require that the same shall be remedied within a reasonable specified period which shall be not less than 30 days.
 - (b) If the party in breach has failed to remedy a breach of its obligations under this Agreement notwithstanding notice given by the other party pursuant to Clause 9.1(a) above then that other party may terminate this Agreement in writing.
 - 9.2 If a receiver, examiner or administrator is appointed of the whole or any part of either party's assets or a party is struck off the register of companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up a party (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation) of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Agreement), the other party may terminate this Agreement forthwith by notice in writing,
 - 9.3 Either party may terminate this Agreement by giving the other party a minimum of six months notice in writing, such notice to expire no earlier than 1st January of the following year.

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- 9.4 Termination by either party in accordance with this Agreement is without prejudice to any right of action accrued prior to the date of termination.

10. Substantial change in Licensed Repertoire

- (a) In the event that during the term of this Agreement there is a substantial change in Licensed Repertoire as at 1st January 2021, either party may by written notice require the other party to enter into discussion in good faith within a period of not less than 21 days from receipt of such notice for a revision of the payments referable to such part of the term as is affected by such change.
- (b) If the parties fail to reach agreement on a revision of payments within 90 days after the date of receipt of a notice specified in (a) above the party serving the notice shall be entitled forthwith to terminate this Agreement by written notice of not less than 7 days; such termination shall not affect the rights and obligations of the parties as set out in this Agreement in respect of any act or omission relating to any period preceding the date of such termination taking effect.

11. No assignment

This Agreement is personal to each party hereto and shall not be assigned in whole or in part nor sub-licensed in whole or in part.

12. Notices

Any notice served hereunder shall be deemed to be sufficiently served if sent by post or fax to the usual or last known place of business of the addressee and proof of despatch in the case of a letter, and receipt of successful transmission report in the case of a facsimile transmission, shall be conclusive evidence of receipt by the addressee in due course of transmission.

13. No partnership, Agency Etc.

Nothing in this Agreement shall create, or be deemed to create, a partnership, or the relationship of principal and agent, or employer and employee between the parties hereto.

14. Entire Agreement

This Agreement together with the Schedules to this Agreement comprise the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

15. Severability

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In the event that any provision of this Agreement shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction to make a binding decision in that regard, or by virtue of any legislation to which either party is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only and no further and the validity and enforceability of any of the other provisions herein shall not be affected thereby.

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16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties hereto submit to the jurisdiction of the Irish courts for the resolution of disputes hereunder.

IN WITNESS whereof the parties hereto have executed this Agreement on the date first written above.

SIGNED for and on behalf of the
Irish Music Rights Organisation
BY:

SIGNED for and on behalf of Licensee
[]
BY:

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SCHEDULE I

- A. In respect of the rights granted to Licensee under Clause 2.1 (a) and (b) of this Agreement Licensee shall make payments to IMRO for any Licence year as follows:

An annual royalty of 1% of Net commercial revenue, subject to, a minimum index-linked annual royalty. The minimum royalty for 2021 is €1,663.72 plus VAT, and €149.58 plus VAT in the case of non-commercial community based licensees. Both minima shall increase annually in line with increases in the Consumer Price Index of Retail Prices for November 2008 (on the November 1989 base) as published in the Irish Statistical Bulletin, and will be adjusted to each subsequent anniversary of that date in proportion to annual changes in that index and shall be rounded to the nearest euro. These annual sums are to be apportioned pro rata in the event of the service being introduced after the commencement of a Licence year.

- B. In respect of the rights granted to Licensee under Clause 2.1(c) of this Agreement, Licensee shall pay to IMRO for any musical performances given under its auspices royalties at the rates applicable to such performances under IMRO's relevant tariff in force at the time of the performance PROVIDED THAT IMRO has not otherwise granted permission for such public performance to be given and PROVIDED THAT no royalties shall be charged by IMRO to Licensee for performances in studios where the whole or any part of the performance is Broadcast by Licensee from studios and the audience is admitted to the entertainment without payment. In this context studios include any studio being used by Licensee as a temporary studio (such as a church hall) and outside locations.

- C. In respect of the rights granted to Licensee under Clause 2.1(d) and (e), the annual royalty payable by Licensee to IMRO will be calculated as follows:

1% of Gross Internet revenue subject to a minimum index-linked annual royalty. The minimum royalty for 2021 is €1,627.64 plus VAT and shall increase annually in line with increases in the Consumer Price Index of Retail Prices for November 2008 (on the November 1996 base) as published in the Irish Statistical Bulletin, and will be adjusted to each subsequent anniversary of that date in proportion to annual changes in that index and shall be rounded to the nearest euro. This annual sum is to be apportioned pro rata in the event of the service being introduced after the commencement of a Licence year.

- D. The royalties payable by Licensee in accordance with A, B and C above shall be paid on-account by four quarterly instalments within 30 days of receipt of IMRO's quarterly invoice. IMRO shall invoice the Licensee for the quarterly royalty payment in advance of the quarter.
- E. Licensee shall complete a Direct Debit Mandate to effect payment of the royalties and Value Added Tax due.
- F. The amount payable on-account in any Licence year shall be calculated in accordance with the following scheme:-

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- (a) For the first Licence year, no later than [date] and for subsequent Licence years, no later than 1st October before that Licence year Licensee shall furnish, and IMRO shall consider, the Annual Revenue Estimate.
 - (b) If, following a written request for such statement, Licensee fails to furnish such a statement IMRO shall itself be entitled to estimate the Annual Revenue Estimate by means of a notional increase of 10% over the Annual Revenue Estimate in the previous Licence year.
 - (c) In the first year no later than [date], and in subsequent years no later than 15th November in the preceding Licence year such Annual Revenue Estimate shall be agreed in writing by the parties and in the absence of agreement IMRO may use its own estimate.
 - (d) Licensee may adjust its Annual Revenue Estimate at the end of the quarters 31st March, 30th June and 30th September. Notification of such adjustments must be received, by IMRO, not later than 1st March, 1st June and 1st September. Such adjusted estimates shall be agreed in writing by the parties no later than 15th April, 15th July or 15th October respectively in the Licence year.
 - (e) Paragraphs A, B and C shall be applied to the Annual Revenue Estimate to establish the on-account payments but the amount of each on-account payment shall not be less than one-quarter of the annual royalty in respect of the preceding year.
- G. Within 60 days after the end of the Licence year in question, Licensee shall furnish to IMRO a statement of the Gross commercial revenue, associated allowable cost deductions and the Gross Internet revenue for such Licence year in respect of which estimates had been made under paragraph F. Licensee shall promptly answer all reasonable enquiries of IMRO about such a statement.
- H. Within 90 days after the end of the Licence year, IMRO shall, on the basis of such statement, determine the actual amount of royalty payable in respect of that Licence year and shall notify such amount to Licensee. If the actual amount of royalty payable differs from the amount previously paid by Licensee for that Licence year in accordance with the Annual Revenue Estimate, then IMRO shall in the case of an overpayment repay the excess and Licensee shall in the case of an underpayment pay the shortfall, in both cases within thirty days of the determination by IMRO of the actual amount of royalty payable and notification of this amount to Licensee.
- I. Within 120 days after the end of the Licence year in question, Licensee shall furnish a statement of Gross commercial revenue, associated allowable cost deductions and the Gross Internet revenue, certified by Licensee's auditor. IMRO shall be entitled to contact such auditors and such auditors shall promptly answer all reasonable enquiries about such a statement. IMRO may call for certified accounts in respect of the Gross commercial revenue, Gross Internet revenue and associated allowable cost deductions.

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- J. Value Added Tax at the appropriate rate will be due on all payments to be made in accordance with this Schedule.

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In this Schedule, unless the context otherwise requires:

‘ballet’ means a choreographic work to be accompanied by music, having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences;

‘copyright owner’ means in respect of any act in relation to a musical work the person in whom for the time being is vested the right to do and authorise other persons to do that act;

‘dramatico-musical work’ means an opera, operetta, musical play revue, or pantomime insofar as it consists of words and music written expressly therefore;

THE licences granted to Licensee in Clause 2.1 this Agreement shall not extend to nor authorise:

A. The broadcast on television of:

- (i) a dramatico-musical work whether staged or otherwise with the exception of
 - (a) a dramatico-musical work or an excerpt or excerpts from a dramatico-musical work by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises.
 - (b) a non-dramatic excerpt or excerpts from a dramatico-musical work
 - (aa) the total duration of which in the course of the same programme does not exceed twenty minutes and
 - (bb) which excerpt or excerpts are not a potted version of the work and/or
 - (cc) which excerpt or excerpts are not or do not cover a complete act of the work;
- (ii) the whole or any part of any music and of any words associated therewith composed or used for a ballet if accompanied by a visual representation of such ballet or part thereof; provided that the rights administered by IMRO do nevertheless include the right to broadcast on television any such music and words so composed and used and accompanied by such visual representation when -
 - (a) a ballet or part or parts thereof are performed by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises; or

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- (b) a ballet or part or parts thereof, having been devised for the purpose of a broadcast on television, have a total duration in the course of the same programme not exceeding five minutes; or
- (c) a part or parts (being less than the whole) of a ballet, not having been so devised, have a total duration in the course of the same programme not exceeding five minutes.
- (iii) words written for the purpose of a commercial advertisement unless such words are sung to music specially written for a commercial advertisement or to non-copyright music and the sung performance has a duration of not less than five seconds.
- (iv)
 - (a) unless authorised in writing by IMRO or the copyright owner any musical work accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner;
 - (b) unless authorised in writing by IMRO or the copyright owner any musical work with or without associated words in any adapted or rearranged form or in such a manner as to produce parodied or burlesqued effects;
 - (c) any musical work, with or without associated words, in a dramatic form. A dramatic form shall be deemed to be created only by performance in a programme in which there is a distinct plot depicted by actors and where the story of the musical 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 costumes, scenery and/or dance routine merely to provide an acceptable presentation of the work). For the purpose of this paragraph, the words actors shall include actor-singers, mimers and/or puppets;
- (v) any words associated with a musical work or ballet if unaccompanied by the music thereof.

B. The public performance of:

- (i) a dramatico-musical work whether staged or otherwise with the exception of
 - (a) a dramatico-musical work or an excerpt or excerpts from a dramatico-musical work performed by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a radio or television set used for the purpose of giving the public performance of broadcast programmes.
 - (b) a non-dramatic excerpt or excerpts from a dramatico-musical work, however performed;

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- (aa) the total duration of which in the course of the same programme is twenty-five minutes or less and
 - (bb) which excerpt or excerpts are not a potted version of the work; and/or
- (ii) the whole or any part of any music and of any words associated therewith composed or used for a ballet if accompanied by a visual representation of such ballet or part thereof with the exception of public performance of such whole or part if performed by means of
 - (a) a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises and/or
 - (b) a television set used for the purpose of giving a public performance of broadcast programmes;
- (iii) any musical work specially written for a son-et-lumière production when performed in or in conjunction with that production;
- (iv) any musical work (being a musical work which is not a dramatico-musical work or part of a dramatico-musical work) specially written for a production of a dramatic work in a theatre when performed in or in conjunction with that dramatic work;
- (v) unless authorised in writing by IMRO or the copyright owner any musical work accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner;
- (vi) unless authorised in writing by IMRO or the copyright owner any musical work with or without associated words in any adapted or rearranged form or in such manner as to produce parodied or burlesqued effects;
- (vii) any musical work, with or without associated words, in a dramatic form. A dramatic form shall be deemed to be created only by performance in a programme in which there is a distinct plot depicted by actors and where the story of the musical works and/or its associated words is woven into and carried forward the plot and its accompanying action (a dramatic form shall not for example be deemed to be created by the use of costumes, scenery and/or dance routine merely to provide an acceptable presentation of the work). For the purpose of this paragraph, the word actors shall include actor-singers, mimers and/or puppets.
- (viii) any words associated with a musical work or ballet if unaccompanied by the music thereof.

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Date:

**IRISH MUSIC RIGHTS
ORGANISATION LIMITED BY
GUARANTEE**

and

[]

**L I C E N C E
A G R E E M E N T**

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