

Norwegian online licensing DPD Licence Agreement

Parties to the Licence Agreement (hereinafter “the Agreement”)

**TONO og NCB (Central Business Register No. 971 435 038)
Kongens gate 12,
0153 Oslo**

hereinafter “Licensor”

of the one part

and

(Central Business Register No.)

hereinafter “Licensee”

of the other part.

Licensor and Licensee hereinafter “Party” individually and “Parties” together.

Preamble

What is the intention and the aim of the Music Service Provider?

Pursuant to the foregoing Preamble – which is an integral part of this agreement (hereinafter “Agreement”) – the Parties have decided and agreed as follows:

Description of service

Description of the general elements of the service to be provided – e.g. to offer musical works on the Internet and the mobile Internet (i.e. digitally via personal computer and/or mobile) within a framework that is respectful to authors’ rights, for the purposes of commercial exploitation.

How will the service be made available? Payment structure (e.g. a music subscription service)?

What can the consumers do?

Limitation to use (e.g. downloads tied to one device, how many active devices per user)? Unlimited re-download? What happens to the downloads upon termination of a subscription (can the user continue use, does/can the user gain ownership etc.)?

The licence is a non-exclusive authorization for such exploitation of musical works.

Licensee warrants that the above is a true and accurate description of the Service and further that Licensee has declared to the Licensor no intention to make changes to the Service.

Definitions

The following definitions shall have the following respective meanings:

“Downloading” shall mean action allowing an end-user to receive a data file for the purpose of reproducing a copy of a music work in a storage unit or units.

“Licensed Use” shall mean the rights granted to Licensee to exploit the Repertoire in accordance with section 1 and subject to the restrictions and limitations stated in section 2 and 3 of this Agreement.

“Music Author” shall mean a composer, lyricist, arranger or music publisher or the holder of the copyright of an author mentioned above.

“Music Work” shall mean a composition, or an arrangement of a composition, lyrics connected to a composition or a translation of said lyrics respectively created by a Music Author represented directly or by other arrangements by Licensor at any given time in respect of the rights related to Licensed Use.

- “Pre-listening” shall mean, within the interpretation of the present Agreement, any and all action allowing an end-user to listen, by streaming, to an extract from a Musical Work on its own, without the possibility of downloading, lasting 30 seconds, with no breaks, in such a manner that said end-user is able to have access to it from the place and at the time he chooses.
- “Repertoire” shall mean all Music Works managed and controlled by Licensor at any given time in respect of the rights related to Licensed Use during the term of this Agreement excluding a) any and all Music Work which a member of a Licensor collecting society, or another collecting society or a member of another collecting society, or a manager of rights has withdrawn or withheld from Licensor’s management in respect of the rights related to Licensed Use and b) Music Works which have otherwise been excluded from the Repertoire during the term of this Agreement in accordance with this Agreement.
- “Service” shall mean the Norwegian online Downloading service of music works which Licensee offers on the Internet site(s) owned and controlled by Licensee. For clarity, this license does not cover multinational online services.
- “Territory” Shall mean the territory of Norway.

1 Scope of the licence

- 1.1 Subject to the terms and conditions of this Agreement, and particularly subject to the exclusions and restrictions set out in this Agreement, Licensor grants Licensee a non-exclusive licence to the following use of the Repertoire in the Service during the term of this Agreement:
- (i) right to reproduce Music Works on servers controlled by Licensee for the purpose of transmitting the same Music Works to end-users by means of the Service
 - (ii) right to communicate Music Works to the users within the Territory only in the Service in accordance with this Agreement.
- 1.2 For the sake of clarity this Agreement and the grant of rights shall apply only to Repertoire mandated to Licensor at any given time through contracts or similar arrangements in respect of rights related to Licensed Use.
- 1.3 Furthermore, the Parties acknowledge and understand that the range of Music Works belonging to the Repertoire may change during the term of this Agreement and that Music Works may be excluded from the Repertoire in accordance with clause 1.4 and section 3 of this Agreement.
- 1.4 If a Music Author prohibits the use of a particular Music Work included in this Agreement Licensor may, with immediate effect to Licensee, exclude such Music Work from the license granted by giving a written notice to Licensee.

2 Reserved rights

2.1 For the sake of clarity the following acts, uses and rights are excluded (without limitation) from this Agreement and from the Licensed Use:

- (i) moral rights of Music Authors (Moral rights must be taken into account, e.g. when a work is identified or can be identified to a specific product, program or channel)
- (ii) any kind of adaptation, arrangement, translation, alteration or parody, or master reproduction of Music Works
- (iii) synchronization of Music Work (combining a Music Work with moving visual images)
- (iv) use of Music Work in advertising, political, religious, pornographic, or in association with drugs, alcohol or nicotine products, or in any manner that defames the Music Author, artist, publisher, rights manager or Licensor, or in any other context in which the Music Work or a Music Author is or could be identified to Licensee or the Service
- (v) dramatico-musical work (as the term is understood in the music industry)
- (vi) communicating the Music Works to the public by any other means or by any other transmission systems than those agreed upon in this Agreement or separately by the Parties in writing
- (vii) public performance
- (viii) use of graphical form of lyrics or scores of any Music Work or use of lyrics/text in any other context than musical contexts
- (ix) rights of record producers or performing artists or other holders of neighbouring rights (i.e. rights related to copyright)
- (x) private copying as defined by national laws
- (xi) rights in respect of Music Works that a Party has excluded from the Repertoire in accordance with clause 1.4 and section 3 of this Agreement after such exclusion has taken effect and
- (xii) the first publication and/or public performance of a Music Work
- (xiii) any other rights not explicitly granted in this Agreement.

3 Exclusions of repertoire

3.1 In case a member of a Licensor collecting society, or a member of another collecting society, or a manager of rights during the term of this Agreement withdraws any Music Works from Licensor's management in respect of the rights related to Licensed Use, Licensor may exclude such Music Works or a particular part of the Repertoire from the Repertoire by providing a written notice to Licensee giving the date that such withdrawal shall be effective. Regarding the mechanical rights to the Anglo-American repertoire belonging to Peer Music, CELAS, Warner Chappell Publishing and SONY/ATV etc., it remains to be decided whether Licensor can administer the repertoire without prior approval, in the case that no such prior approval has been given from these rightholders. The parties therefore agrees that Licensor neither has given prior consent to those rights, nor is liable for claims from those rights holders until further notice has been given. In any case, Licensor agrees during the term of the contract to collect and distribute the remuneration to these rights holders on equal terms as other mechanical rights holders.

3.2 During the term of this Agreement Licensee may be required to obtain or offered licenses to certain Music Works or a particular part of the Repertoire from third parties representing the

relevant rights in respect of such Music Works. In the event that Licensee receives such notification from third parties, Licensee shall immediately notify Licensor and the parties will work together in good faith to ensure the smooth continuity of Licensee's access to said Music Works.

- 3.3 All licenses granted to excluded Music Works shall automatically terminate immediately when such exclusion takes effect and Licensor shall thereafter have no liability whatsoever pertaining to claims related to the time after such exclusion came into effect.
- 3.4 Licensor reserves the right to exclude specified works to be advised by Licensor and/or Music Works by particular writers and/or named catalogues of works from the Service.

4 Service terms and technical measures

- 4.1 A prior written approval from Licensor is needed for material changes to the Service. Material changes are for example (without limitation) changes in the revenue model, distribution methods, DRM or form of content.
- 4.2 Licensee shall take all necessary technical measures to prevent unauthorized and illegal use of the Service.

5 Reporting

- 5.1 Licensee acknowledges that Licensor needs an accurate report with accurate data information for Licensor to be able to license and invoice the repertoire. The Parties acknowledge that they will work together in good faith.
- 5.2 Licensee shall no later than ten (10) days following the expiry of each calendar month provide Licensor in writing with a report complying with the requirements set out in clause 5.4. The report will not be regarded as provided to NCB until it complies with all the requirements set out in clause 5.4.
- 5.3 The report shall include information on the revenue and music usage generated through the Service (See the details in clause 5.4).
- 5.4 The report shall include the following details of downloaded music works:
 - (i) Recording title
 - (ii) The names of the authors, composers and arrangers
 - (iii) The ISRC code of the sound recording
 - (iv) The artist of the sound recording
 - (v) Playing time
 - (vi) Quantity, price and numbers of subscribers/subscriptions and downloads
 - (vii) Number of tracks on album
 - (viii) Country of download
 - (ix) Publisher.

5.5 Licensor requests but does not currently require the following information:

- Catalogue number
- (xi) Original title
- (xii) ISWC code.

5.6 Licensee shall report in a format approved by Licensor such as DDEX format.

5.7 In case Licensee fails to deliver an acceptable report complying with the requirements set out in this clause 5.4 in time Licensee shall be obliged to pay interest on the final invoiced amounts at a rate of 7% above the official discount rate of "Norges Bank" (Norway's Central Bank) as liquidated damages for each full week of delay when the complete report is delayed.

6 Payment terms and invoicing

6.1 Licensee's obligation to pay remuneration is initiated the moment when the Repertoire is uploaded with the intention of being made available to the end-user.

Licensee shall pay to Licensor the following license fee:

12 % of the turnover – less VAT and before deduction of discounts and similar. A minimum of NOK 0,80 per downloaded musical work with duration up to five minutes is to be paid. For musical works with duration of more than five minutes an additional minimum payment of NOK 0,16 per every starting downloaded music minute is to be paid.

6.3 Licensor shall invoice Licensee based on Licensee's reports set out in section 5. Payment term shall be fifteen (15) days net from the date of the invoice. If payment is not done by due payment day Licensee shall be obliged to pay an interest for late payment (7% over the official discount rate of "Norges Bank" (Norway's Central Bank)).

6.4 In case there is a disagreement regarding the amount of licence fee, Licensee shall be obliged to pay the undisputed part.

6.5 Licensee agrees that for the purposes of this Agreement the payments shall be split 70% to reproduction rights (so called 'mechanical rights') and 30% to communication to the public (so called 'performing rights'). Furthermore, in the event that Licensee acquires either mechanical or performing rights from a third party in isolation, Licensee shall only be offered a reduction in licence fee in accordance with the splits set out in this section.

7 Audit

7.1 Licensee shall keep full and accurate books and records of accounts of all downloading activities as well as records of all amounts invoiced by and/or payable to Licensor during the term of this Agreement. Such records shall always be accessible for Licensor's audit purposes five years back in time counted from the date when the downloading activities were reported to Licensor.

If Licensor announces an audit, Licensee shall ensure that the required records on the above activities are available five years back in time counted from the date the audit was announced irrespective of the fact that the actual audit may be performed at a later time.

- 7.2 During the term of this Agreement and for one (1) year thereafter Licensor may inspect or appoint an independent certified auditor, at Licensor's sole cost and expense, to inspect Licensee's relevant books and records of accounts at the place where such books and records are normally maintained.
- 7.3 In the event that any such audit reveals an underpayment of payments defined in this Agreement, Licensee shall make up the underpayment with the interest set out in clause 6.3. If the underpayment is five per cent (5%) or more of the payments defined in this Agreement or NOK 4000,- for the period subject to audit, whichever is lower, Licensee shall furthermore, pay all reasonable costs and expenses incurred by Licensor in connection with such audit.

8 Infringement of copyright

- 8.1 Licensor warrants to be authorized to grant the non-exclusive licence for licensed use of Repertoire in the Territory in accordance with section 1 and subject to the restrictions and limitations set out in section 2.

This warranty shall not concern Music Works that have been excluded from the Repertoire during the term of this Agreement in accordance with clause 1.4 and section 3 after such exclusion took effect.

- 8.2 Licensor shall indemnify and hold Licensee harmless from and against all damages arising (including but not limited to attorney's fees and similar costs) from any claims that the Licensed Use of Music Work in the Territory infringes copyright of a third party provided that Licensee promptly notifies Licensor in writing of such claims without any delay and permits Licensor to defend or settle the claims provided this is possible under applicable law and permitted by the relevant authority or court of law, and in such case gives Licensor all necessary information and assistance reasonable and the necessary authorizations.

9 Indemnification

- 9.1 Licensee shall indemnify Licensor and hold Licensor harmless from any and all claims, damages and liabilities (including but not limited to attorney's fees and similar costs) arising from any use of Music Works by Licensee in violation of sections 1 and/or 2 and/or 3 of this Agreement.

10 Limitation of liability

- 10.1 Licensor shall only be liable for adverse claims in respect of rights licensed in Norway under this Agreement

- 10.2 Licensors' maximum liability for any direct damages arising from or related to this Agreement shall be limited to the total licence fees paid by Licensee under this Agreement for said work. Licensors' maximum liability for any indirect damages arising from or related to this Agreement shall be limited to the total licence fees paid by Licensee under this Agreement during a period of one (1) month preceding the claim.

11 Term and termination

- 11.1 The Agreement shall become legally binding when both Parties have signed it. The agreement is hereafter prolonged one year at the time unless terminated in writing at latest 60 days before the agreement expires.

- 11.2 Either Party has the right to terminate this Agreement without liability with immediate effect by giving the other Party a written notice of the termination, if:

- (i) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven (7) days after being notified to make such payment; or
- (ii) the other Party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so. Licensee's failure to forward a report complying with the specifications in Section 5 may be considered such a material breach; or
- (iii) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
- (iv) the other Party becomes insolvent or make or seek to make an arrangement with or assignment for the benefit of creditors, or is a party in proceedings in voluntary or involuntary bankruptcy or liquidation.

Licensors shall have the right to terminate this Agreement without liability with immediate effect by giving a written notice of the termination, if Licensee suspends or ceases or threatens to suspend or cease, to carry on all or a substantial part of the Service.

- 11.3 For the sake of clarity it is stated that upon termination or expiry of this Agreement for any reason all licences granted under this Agreement shall automatically terminate with immediate effect. Sections 5, 6 and 7 shall survive termination or expiry of this Agreement and remain in force until Licensee completes all of its reporting and payment obligations based on this Agreement.

13 Mandatory information

- 13.1 Licensee hereby undertakes, on the pages of the Internet website on which the Musical Works are made available to Users, to include the following:

- (i) on the one hand, a warning clearly visible to the public in a form similar as set out hereafter: “Tjenesten er lisensiert av TONO/NCB. Uautorisert lenking, videreføring eller kopiering er ulovlig.”
- (ii) on the other hand, where practicable, the corresponding logo and URL address of Licensor as reproduced hereafter: www.tono.no.

Furthermore, any and all communication of the Musical Works concerned by the present Agreement should include a reference to the names and first names of the authors, composers, arrangers and, if applicable, the music publishers and the title of the work concerned. Licensee shall make its best efforts according to the information in its possession, being reminded that Authors’ moral right are expressly reserved.

14 Notices

14.1 All notices to the other Party shall be made in writing and delivered to the addresses of the contact persons as defined below. Changes to the contact information must be communicated to each other without any delay.

14.2 Contact persons of Licensor are as follows:

In matters relating to reporting: sts@tono.no
In other matters: herman.foss@tono.no

14.3 Contact persons of Licensee are as follows:

In matters relating to reporting:
In other matters:

15 Jurisdiction and applicable law

15.1 This agreement shall be governed by Norwegian rules of law. Any disputes relating to this Agreement shall be handled exclusively by the courts of Oslo.

16 Miscellaneous

16.2 **Assignment and subcontracting:** Licensee is not entitled to assign, subcontract or delegate this Agreement and/or the rights and or obligations under this Agreement without prior written approval from Licensor.

16.3 **Bank Guarantee:** As a financial security for due payment of royalties for the Licensee’s exploitation of Licensor’s repertoire and for the compliance by the Licensee with the provisions of this Agreement in other respects the Licensee shall provide a guarantee.

The amount of the guarantee shall equal royalties payable for three months based on an average of Licensor's royalty invoices to the Licensee during the preceding two accounting periods.

The form and wording of the guarantee shall be according to directions given by Licensor.

As for new licensees the amount of the guarantee shall be estimated and fixed by Licensor on the basis of information supplied by the Licensee in question as to its planned budget and if relevant with a view to its former activities as Licensee accounting royalties to Licensor on a title-by-title cash basis.

The minimum amount of the guarantee shall be NOK 10.000,-.

The amount of the guarantee shall be reviewed every 12 months (as at January).
Adjustments shall be made only for changes exceeding plus/minus 20 pct.

17 Signatures

17. In witness hereof, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date in two original copies, one for each Party.

For TONO/NCB:
Dato:

For:
Dato:

Kristin Haugan Heggenes
Head of Media Licensing