

VIDEO ON DEMAND LICENSE AGREEMENT

**Parties to the License Agreement
(hereinafter “the Agreement”)**

**TONO and NCB (Central Business Register No. 971 435 038)
Møllergata 4, 0179 Oslo**

hereinafter “Licensor”

of the one part

and

XXXXXXXXXX

(Central Business Register No.)

hereinafter “Licensee”

of the other part.

**Licensor and Licensee is hereinafter individually referred to as “Party” and
collectively referred to as “Parties”.**

Preamble

What is the intention and the aim of the Video On Demand Service Provider?

Pursuant to the foregoing Preamble which is an integral part of the present agreement (herein-after "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 film works on the Internet and the mobile Internet (i.e. digitally via PC and/or mobile) within a framework that is respectful of 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 or streaming tied to one device, how many active devices per user)? Unlimited re-download or streaming? What happens to the downloads or streaming upon termination of a subscription (can the user continue use, does/can the user gain ownership etc.)?

The license 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 any intention to make to 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 Film 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 of this Agreement.
"Music Author"	shall mean a composer, lyric writer, arranger or music publisher or the holder of the copyright of an above-mentioned author.
"Music Work"	shall mean a composition, or an arrangement of a composition, lyrics connected to a composition or a translation of said lyrics created by a Music Author respectively represented directly or by other arrangements by Licensor at any given time in respect of the rights related to Licensed Use.
"Streaming"	shall mean action allowing an end user to temporarily receive a data file for the purpose of viewing a Film Work.

“Trailers”	shall mean, within the meaning of the present Agreement, any and all action allowing an end user to view, by streaming, to an extract from a Film Work on its own, without the possibility of downloading, lasting up to maximum 3 minutes, 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 or she 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.
“Service”	shall mean the online Downloading and/or Streaming service of music works Licensee offers on the Internet site(s) owned and controlled by Licensee.
“Territory”	shall mean the territory of Norway.
“Producer”	shall mean the company who has legally produced the film and put it on the market.
“Film Works”	shall mean an audiovisual dramatic work which has been shown in cinemas, which has been produced for the video market or which has been produced by or for a TV-station provided that the dramatic work tells a story and the music is not the primary focus.

1. Grant of rights

- 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 license to the following use of the Repertoire in the Service during the term of this Agreement:
- (i) right to reproduce Music Works within Film Works on servers controlled by Licensee for the purpose of transmitting the Film Work to end users by means of the Service;
 - (ii) right to communicate Music Works within Film Works to the users within the Territory only in the Service in accordance with this Agreement;
 - (iii) right to reproduce and communicate music in trailers, in immediate and direct connection with the offering of download/streaming of Film Works in accordance with this agreement. Only Music Works contained in the original Film Work to which the trailer is related is covered by this Agreement.

2. Reserved rights

- 2.1 The license covered by this standard contract shall be granted only on condition that the video masters used for the duplication of the Film Works have been legally produced, and Licensee has acquired the right from the Producer or the Licensor to duplicate and/or distribute the Film Works for private use.
Legally produced video masters shall mean that the Producer or Licensee has obtained a synchronization license.
The synchronization license – and the fixing of a price and terms for such exploitation – is not covered by the provisions of this standard contract but must be applied for separately through the copyright holders.
- 2.2 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) 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;
 - (iv) public performance at the physical location where the end user is located;
 - (v) rights of record producers or performing artists or other holders of neighbouring rights (i.e. rights related to copyright);
 - (vi) private copying as defined by national laws;
 - (vii) any other rights not explicitly granted in this Agreement.
- 2.3 Licensor reserves the right to withdraw specific Music Works where all required additional licenses for use of such Music Works, as set out in clause 2.1, have not been obtained or in the event that Licensee at Licensor's request fails to produce evidence proving that said licenses have been obtained.

3. Service terms and technical measures

- 3.1 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.

3.2 Licensee shall take all necessary technical measures to prevent unauthorized and illegal use of the Service.

4. Reporting

Reporting of content on server:

4.1 Prior to introducing the Film Work into the market Licensee undertakes to supply Licensor with the following information:

- a) the original title/local title of the Film Work
- b) the total playing time of the Film Work (Optional)
- c) for each Musical Work used in the Film Work: The title of the work and playing time as well as the names of the composer, lyricist, arranger, music publisher and artist
- d) the video label and catalogue number under which the Film Work is distributed
- e) International Standard Audiovisual Number (ISAN)
- f) International Standard Recording Code (ISRC) (Optional)

4.2 Licensee may meet the conditions set out in clause 4.1 b) by submitting the music cue sheet of the Film Work in question.

Reporting of downloads and streaming:

4.3 Licensee acknowledges that Licensor needs an accurate report with accurate data information for Licensor to be able to license and invoice the repertoire. All Parties acknowledge that they will work together in good faith.

4.4 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 this section. The report will not be regarded as provided to Licensor before it complies with all the requirements set out in this section. The first report shall include use from launch in the Territory and shall be divided by year.

4.5 The report shall include a general statement with all relevant information on the total number of downloads, streams, subscribers/subscriptions, revenues etc. per service level, and a usage report as outlined in the following.

4.6 The usage report shall include the following details of downloaded/streamed Film Works:

- (i) Catalogue number (Licensees own unique identifier)
- (ii) Original title/local title of the Film Work or Series
- (iii) Episode title (Series only)

- (iv) Season and episode number (Series only)
 - (v) Usage (Download or Streaming)
 - (vi) Quantity (Downloads or Streams)
 - (vii) Price pr. download or stream
 - (viii) Producer
 - (ix) Production country
 - (x) Production year
 - (xi) International Standard Audiovisual Number (ISAN).
- 4.7 Licensee shall report in a format approved by Licensor. The report shall be divided per usage.
- 4.8 In case Licensee fails to deliver an acceptable report complying with the requirements set out in this section in time Licensee is 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.

5. Payment terms and invoicing

- 5.1 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:

TVoD Film Work Streaming on Demand: 3,5% of turnover, min NOK 0,95 per view/rental of one film work for up to 48 hours access.

EST Film Work Download: 3 % of turnover, min NOK 1,63 per downloaded film.

SVoD Subscription Video on Demand: 3% of turnover, min **3% of price ex sales tax** per subscriber per month.

The Agreed Tariffs in relation to the percentage and the minimum fees are based on the assumption that the mechanical rights to US productions have been cleared at source.
Subscription rates are based on the assumption that music share is 30-60%.

- 5.3 The above prices are excl the Norwegian sales tax MVA.
- 5.4 In case there is any disagreement concerning ownership of a musical work in regard to the amount of license fee, Licensee is obliged to pay the undisputed part. Licensee can only withhold a percentage total to the amount of double claims and thereby only withhold the disputed part.

- 5.5 Licensors shall invoice Licensee based on Licensee's reports set forth in section 4. Payment term is fifteen (15) days net from the date of the invoice. If payment is not done by due payment day Licensee is obliged to pay an interest for late payment (7% over the official discount rate of "Norges Bank" (Norway's Central Bank)).

6. Audit

- 6.1 Licensee shall keep full and accurate books and records of accounts of all Downloading and Streaming 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 (5) years back in time counted from the date when the downloading and streaming activities were reported to Licensor.
If Licensor announces an audit, Licensee shall ensure that the required records on the above activities are available five (5) 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.
- 6.2 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, during normal business hours upon not less than five (5) business days prior notice.
- 6.3 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 forth in section 5.4. If the underpayment is five per cent (5%) or more of the payments defined in this Agreement or NOK 10 000,- 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.

7. Infringement of copyright

- 7.1 Licensor warrants to be authorized to grant the non-exclusive license for licensed use of the Repertoire in the Territory in accordance with section 1 and subject to the restrictions and limitations stated in section 2.
- 7.2 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.

8. Indemnification

- 8.1 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 of this Agreement.

9. Limitation of liability

- 9.1 Licensor shall only be liable for adverse claims in respect of rights licensed in Norway under this Agreement
- 9.2 Licensor's maximum liability for any direct and indirect damages arising out of or related to this Agreement shall be limited to the total license fees paid by Licensee under this Agreement for said work.

10. Term and termination

- 10.1 The Agreement becomes legally binding when all 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.
- 10.2 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 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 4 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.

Licensor has 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.

- 10.3 For the sake of clarity it is stated that upon termination or expiry of this Agreement for any reason all licenses granted under this Agreement automatically terminate with immediate effect. Sections 4 and 5 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. Sections 6, 9 and 13 of this Agreement shall survive termination or expiry of this Agreement.

11. Mandatory information

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

on the one hand, an information clearly visible to the public in a form similar as set out hereafter:

“Tjenesten er lisensiert av TONO/NCB. Uautorisert fremføring eller kopiering er ulovlig.”

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 where possible 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.

12. Notices

- 12.1 All notices to the other Party shall be made in writing in English 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.

- 12.2 Contact persons of Licensor are as follows:

In matters relating to usage reports: heidi.Johannessen@tono.no

In matters relating to business reports and invoices: sts@tono.no

In other matters: herman.foss@tono.no

- 12.3 Contact persons of Licensee are as follows:

In matters relating to reporting:

In other matters:

13. Jurisdiction and applicable law

13.1 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.

14. Miscellaneous

14.1 **Assignability.** and subcontracting. Licensee is not entitled to assign this Agreement and/or the rights and or obligations under this Agreement without prior written approval from Licensor. Licensee shall not subcontract or delegate in any manner any of its rights and obligations under this Agreement to any third party without the prior written consent of Licensor.

14.2 **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 (i.e. total of royalties due before advances paid have been set off, including royalties on product imported royalty free, product exported royalty paid, and total pro forma debits as at preceding period).

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 their planned budget and if relevant with a view to their former activities as Licensee accounting royalties to Licensor on a title-by-title cash basis.

The minimum amount of the guarantee shall be NOK 10,000.00.

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.

15. Signatures

15.1 IN WITNESS WHEREOF, 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:
Date:

For:
Date:

Inger Elise Mey
Director Online Media &
International Licensing

Licensee