

SESAC Digital License Agreement

Parties:

- (1) **SESAC Digital Licensing AG** whose registered office is located at Essanestrasse 116, 9493 Eschen, Principality of Liechtenstein ("**SESAC Digital**"),
- (2) **MINT Digital Services AG** whose registered office is located at Bellariastrasse 82, 8038 Zurich, Switzerland ("**MINT**" or "**Administrator**"), and
- (3) **[Licensee]** whose registered office is located at [Address] ("**Licensee**").

Altogether referred to hereinafter as the "**Parties**".

Recitals:

(A) Licensee has consulted Licensor to obtain a non-exclusive authorization for the exploitation of the Repertoire on the Licensed Service.

(B) Licensor owns or is otherwise entitled to license rights in musical compositions for the purposes set forth herein.

(C) Licensor agrees to grant a license to Licensee for the purposes of the Licensed Services, subject to the terms and conditions set forth herein.

1. Definitions

“Effective Date” means [Date].

“Force Majeure Event” means any event arising which is beyond the reasonable control of the affected Party, including without limitation any fire, flood, acts of God or public enemy, Internet failures, earthquakes, governmental order, national emergency, strikes or labor disputes, civil riots, or wars.

“Licensed Service” has the meaning given in Schedule 1.

“Musical Works” means any musical work (as defined by copyright law in any country in the Licensed Territory) and any lyrics or words written to be used with such musical work (if applicable). It includes any part of such a work.

“Repertoire / Repertoire Works” means a Musical Work as far as it is part of the Licensed Repertoire according to Schedule 2.

“Territory” has the meaning given in Schedule 3.

“User” means a natural person in the Territory who uses the Licensed Service for its own private and non-commercial use.

2. Grant of License

2.1 Grant of Rights. By means and limits of this Agreement, Licensee is granted the following non-exclusive, non-transferable, non-assignable, non-sublicensable, royalty-bearing rights to use Musical Works from the Repertoire for the forms of exploitation listed in Schedule 1 (hereinafter referred to as “forms of exploitation”):

- a. The right to technically process musical works for use within the scope of the form(s) of exploitation;
- b. The right to reproduce musical works including as many copies as are required, on databases, documentation systems or similar types of memory (e.g. server computers);
- c. The right electronically or in a similar fashion to make publicly accessible and to transmit full-length musical works that have been imported into databases,

documentation systems or similar types of memory (e.g., server computers) to end-Users on their demand; and

- d. The right to reproduce musical works on the end-User's storage media for private use.

2.2 Restrictions. All rights granted under this Agreement are for the use of private Users only. For the avoidance of doubt, the following rights are not part of the rights granted:

- a. the right to synchronize the Repertoire Works with any visual images for the purpose of creating and producing audio-visual material, including but not limited to games and interactive applications;
- b. the right to arrange, adapt, modify or otherwise alter the Repertoire Works;
- c. the right to graphically reproduce the Repertoire Works in any form whatsoever, including, but not limited to, electronic and/or digital reproduction of the score and/or lyrics;
- d. the right to use the Repertoire Works for the purposes of product endorsement;
- e. linear radio and television broadcasting services irrespective of their means of delivery, be it analogue or digital, wireless or by wire, which are in a form and are broadcast at a time determined by the provider of the service and which require no action on the part of an individual User, including for the avoidance of doubt, where such a service is being simultaneously transmitted online;
- f. the right to use Repertoire Works in dramatic works;
- g. moral rights;
- h. the right to permit any third party to do any of the above.

2.3 Scope. This Agreement only covers the Repertoire and the granted rights. It does not extend to other rights or interests, including (by way of example only), rights in sound recordings, films, performers rights or rights in performances (no pass-through license). This Agreement further does not cover private copying of the Repertoire Works permitted by the relevant copyright laws of the territories covered by this Agreement. Consequently, no fees concerning private copying are stipulated or included in this Agreement.

2.4 Takedowns. It is Licensor's intent that the Agreement shall cover all Repertoire Works. For bona fide contractual or legal reasons and for writer relations, Licensor may demand removal of Repertoire Works. Licensor will send any such request to Licensee. Licensee shall remove the respective Musical Works from the Licensed Service within three (3) working days.

3. Fee

3.1 In payment for the rights to be granted as per Clause 2.1 above and for the Licensed Service, Licensee shall pay [amount] to Licensors (the “**Fee**”).

3.2 The Fee covers Licensee’s uses and revenues up to the following levels: [to be inserted].

4. Reporting

Licensee shall provide MINT on behalf of Licensors with an overview of the daily and monthly average active users on the Licensed Service and its revenues in the Territory on quarterly basis within thirty (30) calendar days following the end of a calendar quarter of the Term.

5. Term and Termination

5.1 This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Clause 5, shall continue in full force and effect until [Date] (the “**Term**”).

5.2 In addition to all available remedies and rights under this Agreement or otherwise, each Party is entitled to terminate this Agreement, with immediate effect, and without any further formality, in the event that the other Party has not cured a breach of its obligations within sixty (60) calendar days following first presentation of a written notice.

6. Warranty

6.1 Each Party represents and warrants that (i) it has the legal capacity to enter into this Agreement and (ii) it is duly organized and validly existing under the laws of the jurisdiction of its organization, and has all requisite power and authority to execute, deliver, and perform this Agreement.

6.2 Licensors further represents and warrants that (i) Licensors has the authority to grant the rights to the Repertoire Works in accordance with Clause 2 of the Agreement for the Licensed Service, and (ii) Licensors will make all necessary royalty payments due to any rightsholder or otherwise entitled person to the Repertoire Works.

7. Indemnification

- 7.1** Licensor shall indemnify and hold harmless Licensee against any claims, demands, lawsuits, judgments, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) with regard to claims from music copyright holders or their representatives in relation to Licensee's licensed use of Repertoire Works during the Term of this Agreement.
- 7.2** Clause 6 and this clause shall not limit or restrict the Licensor's liability in respect of intentional or grossly negligent acts, fraudulent concealment of defects and for bodily injury or death.
- 7.3** Other than as set out above, in case of ordinary negligence the Licensor shall only be liable for the breach of an obligation, whose fulfilment is of particular significance to attain the contractual purpose, limited in extent to the damage which was typical and foreseeable with regard to the agreed license. This applies mutatis mutandis for any claim under the law of torts.
- 7.4** The above limitations and provisions shall also apply for the benefit of the officers, employees, and vicarious agents of Licensor.

8. Confidentiality

- 8.1** Subject to Clause 8.2 and 8.3, each Party (each a "Receiving Party") agrees that it shall, hold in confidence and not communicate, transmit, publish, disseminate or otherwise disclose any of the terms and conditions of this Agreement or any fact, matter, event or surrounding circumstance leading to or relating to the negotiation hereof to which such party was privy or of which it was otherwise made aware by any means, or any other information regarding the other Party's (the "Disclosing Party") business learned in the course of dealing or performance hereunder (collectively, "Confidential Information").
- 8.2** Clause 8.1 shall not restrict Licensor from disclosing Confidential Information to:
- a. its respective employees, officers, attorneys, accountants, and other professional advisors as may be reasonably necessary in the operation of its business;
 - b. SESAC Group Companies, its respective employees, officers, attorneys, accountants, and other professional advisors as may be reasonably necessary in the operation of its business; or

- c. any rightsholder or collective management organization who has granted its rights to Licensor or SESAC Group Companies.

8.3 Notwithstanding anything to the contrary herein, Confidential Information shall not include information which:

- at or prior to the time of disclosure by the Disclosing Party was known to or independently developed by the Receiving Party such information, except to the extent unlawfully appropriated by the Receiving Party;
- at or after the time of disclosure by the Disclosing Party becomes generally available to the public through no wrongful or negligent act or omission on the Receiving Party's part; or
- the Receiving Party receives from a third party free to make such disclosure without breach of any legal obligation.

8.4 Section 5 GeschGehG shall remain unaffected. Furthermore, the obligation to maintain confidentiality shall also not apply to the extent that a Party is obliged to disclose Confidential Information due to a decree or order of a competent court, a competent authority, or a mandatory provision under stock exchange law. In such case, the Party obliged to disclose Confidential Information shall immediately inform the other Party of the obligation to disclose. In addition, the Party obliged to disclose Confidential Information shall, in the course of such disclosure, indicate that, if this is the case, the information is a trade secret, and shall endeavor to ensure that the provisions of §§ 16 et seq. GeschGehG are applied.

8.5 If a Party breaches its obligations under this clause 8, the other Party may demand payment by it of an appropriate contractual penalty which the other Party may determine at its reasonable discretion and which, in the event of a dispute, shall be reviewed by the competent court. Any further claims for damages shall remain unaffected. Any contractual penalty paid shall be offset against any claims for damages, with the contractual penalty representing the minimum damages.

8.6 This Article survives to the expiry or termination of the Term of this Agreement for a period of five (5) years.

9. Miscellaneous

9.1 Notification of Changes. Licensee shall notify Licensor forthwith of any proposed changes to be made to the Licensed Service which would require alteration to the definition of Licensed Service. Any change to the Licensed Service is not licensed under this Agreement unless and until Licensor has expressly agreed.

9.2 Address of Notification. Except where expressly specified otherwise, any notice or other communication to be given or served under or in connection with this Agreement shall be in writing via email and shall be sent to:

[to be inserted]

9.3 Requirement of written form. No variation or waiver of any provision or condition of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties (or, in the case of a waiver, by or on behalf of the Party waiving compliance). Unless expressly agreed, no variation or waiver of any provision or condition of this Agreement shall constitute a general variation or waiver of any provision or condition of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation or waiver, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied or waived. Any consent granted under this Agreement shall be effective only if given in writing and signed by the consenting Party and then only in the instance and for the purpose for which it was given.

9.4 Time of effectiveness. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes: (i) on the delivery date if delivered personally to the Party to whom the same is directed or delivered; (ii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iii) five (5) business days after the mailing date, whether or not actually received, if sent by certified mail, return receipt requested, postage and charges prepaid, to the address of the Party to whom the same is directed.

9.5 Force Majeure Event. Neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to a Force Majeure Event. A Party who

becomes aware of a Force Majeure Event which gives rise to or which is likely to give rise to any failure or delay in performing its obligations under this Agreement shall within three (3) business days notify the other and shall inform the other of the nature of the Force Majeure Event and period for which it is estimated that such failure or delay shall continue. The affected Party shall take reasonable steps to mitigate the effect of the Force Majeure Event. The taking place of a Force Majeure Event shall have the effect of suspending the obligations of the Party which has invoked the provisions of this Clause 9.5 to the extent such obligations are affected by the Force Majeure Event. Contractual dates shall be extended by a period equal to the duration of the Force Majeure Event.

- 9.6** Salvatory Clause. In the event that a judicial or administrative authority finds that a provision of this Agreement is unlawful, invalid or non-enforceable, this invalidity or non-enforceability is without prejudice to the other provisions of this Agreement, which remain in full force and effect.
- 9.7** Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements.
- 9.8** Law and Jurisdiction. This Agreement is governed by and will be interpreted in accordance with German law. All disputes regarding this Agreement will be submitted to the competent courts of Hamburg (Germany).
- 9.9** Execution. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

Schedule 1 Licensed Service

“Licensed Service” means [to be inserted depending on Licensee’s service].

Schedule 2 Licensed Repertoire

“Licensed Repertoire” means [to be inserted depending on the availability of Licensee’s service].

Schedule 3 Territory

“Territory” means [to be inserted depending on the availability of Licensee’s service].