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EdReNe

**Agreement templates between
repositories and content owners/providers**

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eContentplus

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¹ OJ L 79, 24.3.2005, p. 1.

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1. Introduction

Much focus has recently been on the terms of use connected to major online services. Concerns and disputes about what could be done to content deposited to many major online services (Facebook, Flickr, YouTube, Google Docs...) are in many ways related to the challenges faced by educational repositories.

Many repositories – especially those hosting Open Educational Resources – have the additional complexity that an important part of their mission is to actively support the reuse – or more precisely reuse, revision, remixing and redistribution² of the content included. Although issues differ slightly based on e.g. national legislation, many basic agreement issues are the same in each national environment, and repository owners may benefit from sharing and re-using templates and examples that colleagues have designed.

This report includes examples of relevant terms of use and deposit licenses from a range of repositories and other online services, which EdReNe members have provided.

Furthermore, the report contains (references to) a number of guideline examples targeting various groups of repository stakeholders.

EdReNe aims to produce materials that the network, and therefore also other repository owners and content users and producers, need, and not to duplicate existing information.

2. Example agreements and guidelines

Relations between different repository stakeholders need to be regulated by a well defined set of agreements. This is most often done in the form of i) general terms of use, which may include a description of the ii) deposit license(s) that content providers can choose from when depositing content to the repository.

In addition to regulating the relations between repository owners and content providers, it might also be relevant or necessary to set up agreements between repositories included in federations or harvesting metadata.

Providing guidelines for users and depositors of content is another common challenge of repositories. The topics of such guidelines can be quite diverse but many have to do with quality issues and avoiding legal problems.

This section includes examples and highlights important points from terms of use, deposit licenses and guidelines targeting different repository stakeholders.

² D. Wiley, “Open education license draft,” *Iterating Towards Openness*, <http://opencontent.org/blog/archives/355>

2.1 Terms of Use

2.1.1 Important points when targeting educators

Repository owners need to know who registers a given title in the repository. In some cases the title only consists of a description (the metadata) of the materials; in other cases the title also includes the content itself (the data).

The repository owner has the overall responsibility of the information that is in the repository. Therefore he needs to know who owns the registered resource and that it does not violate any rights. In many cases teachers need help to avoid getting into trouble, e.g. they may include text or a picture that they do not have the rights to, or they include a picture of school children without the permission from their parents.

As a further support measure the repository owner may screen the materials from the teacher for any violation of rights, and in some cases he may even clear all rights to a given product (e.g. to make its use free of charge for educational purposes etc.). The terms of use must also address these issues. They should also describe what the repository owner is allowed to do with the registered resource, e.g. is he allowed passing the information (metadata and/or data) to others.

The issue of including only learning resources and assuring their quality should also be dealt with. However it is notoriously difficult to define a learning resource (what is not?). Some successful repositories do little with respect to quality assurance and others have a dedicated team of evaluators that only allow validated content to be registered. So typically, repository owners tackle this issue very differently.

Teachers' agreement must be *simple and easy to understand and operational*. As it is a difficult task to make teachers register materials that they have developed themselves, they must encounter few barriers. It may thus be necessary to provide a "highlights" version in simpler terms.

2.1.2 Important points when targeting professional publishers

Many of the issues described above also apply to repository owners' agreements with professional publishers, and vice versa. However, publishers' agreements should include only parts that publishers use: e.g. quality assurance and measures should be clear; resources should have a 'didactic aim' in order to be allowed for inclusion in educational repositories (however, as previously mentioned it may be very difficult to establish what a didactic aim is).

In the case of a professional publisher he alone must take the responsibility for the data entered into the repository. It is not the job of the repository owner to help the provider not to violate any third party rights. However, in all agreements repository owners are advised to include terms for immediate removal of a title from the repository if somebody accuses it for violating rights.

Some repositories provide, free of charge, links to the publishers' own site, from where the user may view the materials in further detail and eventually purchase the product. In this case the individual publisher decides about his business model, and it may vary from publisher to publisher. If the repository owner charges the publishers for this service or supplementing services, the agreement must clearly specify the conditions.

In case of a commercial repository from where the user may purchase the content directly, the agreement must describe the price and the commercial conditions. It must define the revenue model for the content producers, depending on the business model of the repository (i.e. if the repository sells a time based subscription to the end users, how will he split the revenues with the content providers who provide the content. Shared % for the different content providers depending on the use, or on the quantity of provided content).

The repository owner may also specify which kinds of reports or statistics he will provide to content providers on the end users and the use they do of the content.

The agreement must specify which rights the repository owner has to further exposing and exploiting the metadata and/or data provided by the publisher. Even though any publisher may wish to have his products further advertised and exposed to potential users and buyers, he may not welcome his products in all contexts.

2.1.3 Checklists for developing Terms of Use

Repository owners may extract checklists from the provided examples that match their own context best, in order to do a check of whether their current terms of use cover all relevant aspects or use them as inspiration for ways of presenting such terms to users.

As a check list example the agreement for content providers to the (now discontinued) Curriculum Online service is very elaborate, and definitely covers most/all imaginable situations that may occur (see Annex: *3.4 Curriculum On-Line Terms for Content Providers ("Terms")*):

- ✓ Interpretation
- ✓ Obligations of repository owner
- ✓ Obligations of content provider
- ✓ Intellectual Property Rights
- ✓ Use of Logos
- ✓ Indemnities
- ✓ Warranties
- ✓ Limitations of liability
- ✓ Suspension of Links and Termination of Registration
- ✓ Consequences of termination
- ✓ Pedagogic evaluations and reviews
- ✓ Confidentiality
- ✓ Use of Data
- ✓ Protection of Personal Data and Freedom of Information
- ✓ Independent contractors

- ✓ Assignment
- ✓ Dispute Resolution
- ✓ Amendments to Terms
- ✓ Waiver
- ✓ Severability
- ✓ Rights of Third Parties
- ✓ Entire Agreement
- ✓ Communications
- ✓ Force Majeure
- ✓ Governing Law and jurisdiction

2.2 Deposit licenses

The OER movement has gained considerable strength during recent years. The success of licensing schemes such as Creative Commons and the GNU Free Documentation License (used for e.g. Wikipedia) has led to the availability of well over 100 million resources licensed under some form of “open content license”. This should massively increase the possibilities of reuse and remixing of digital content. But despite the fact that the intention of these licenses has been to clarify the terms of use, the number of licenses alone gives rise to quite substantial problems concerning license incompatibility³ and resulting difficulties in explaining teachers how they can actually legally remix content under different flavours of “open content licenses”. Even when narrowing the scope to repositories based solely on open content it is evident that although CC licenses have spread considerably, there is still no consensus among which deposit license to choose⁴. Whether all content deposited to a repository shares the same license or the depositor has a choice between several licenses also varies considerably. The possible confusion is not less if the ambition is to allow remixing and redistribution of commercially available content with open content resources.

In the case of commercial repositories the *expression of usage rights* is the primary concern – something of course equally important for open content repositories.

³ Even among Creative Commons licenses this has e.g. called for development of “compatibility wizards” as exemplified by <http://creativecommons.org.tw/licwiz/english.html>.

⁴ For examples of the variety of licensing schemes of repositories consult for example the OER Handbook for Educators where Open Content repositories are listed by deposit license type (http://www.wikieducator.org/OER_Handbook/educator/Get).

2.3 Agreement samples

The following table shows a few representative examples of deposit licenses and general terms of use for both educational repositories and a few other major online services. Notable things from the individual examples are commented upon.

As can be seen from the variety of approaches exemplified it is indeed a complex area. One clear piece of advice is to revise your terms of use regularly in order to provide the best possible value for end users.

Repository / Service	Deposit license/Terms of Use	Comments / Notable considerations
JORUM – http://www.jorum.ac.uk/		
Jorum accepts learning and teaching resources across all subject areas for both Higher and Further education in the UK. The key focus of Jorum is to build a 'community for sharing' whereby resources available to the community through Jorum have also been created by the community		
	Queries, alerts, complaints: “Notice and Takedown procedure”	Establishes a clear procedure on how to deal with possible and confirmed infringements
	Deposit License Agreement	Currently a very elaborate (20 pages) document to be agreed by depositing teachers. JORUM is currently moving toward the use of open content licensing
Teacher’s Resource Exchange - http://tre.ngfl.gov.uk/		
The Teacher Resource Exchange (TRE) is a moderated database of resources and activities created by teachers. All resources on the TRE are checked by subject specialists to ensure they are of the highest possible quality.		
	Copyright (deposit license)	Simple one page description – not related to international open content licenses. Presented during registration process and available from portal.
	Legal (defamatory material, risk assessment and data protection)	Simple one page description
Curriculum Online		
The Curriculum Online website and catalogue that gave teaching professionals access to digital learning resources that could be bought using eLCs – e-learning credits is now closed. The catalogue is no longer maintained because ring-fenced funding via eLCs ceased at the end of August 2008 and therefore it is no longer possible to use eLCs to purchase digital resources.		
	Terms for Content Providers (See annex, section 3.4)	Elaborate and targeting professional developers of digital content.

Repository / Service	Deposit license/Terms of Use	Comments / Notable considerations
Britannica Online - http://www.britannica.com/		
Britannica Online Schools Edition is a reference site for students and educators synthesizing editorially reviewed websites and the Encyclopædia Britannica. Britannica also offers a suite of web sites for schools, libraries, and institutions.		
	Terms of Use (Usage Agreement and Legal Notices)	Example of giving specific user groups additional usage rights (“If you are a teacher, scholar or student...”)
Materialeplatformen – http://materialeplatform.emu.dk		
A Danish National repository of learning resources which aims to:		
<ul style="list-style-type: none"> - simplify search and retrieval of learning resources - increase visibility of, and ensure updated information about, learning materials - support knowledge sharing and knowledge transfer among teachers – including increased visibility of teacher-produced learning resources 		
	Terms of use – teachers (see annex, section 3.2)	One page description – presented before first deposit. Includes description of screening/quality assurance measures
	Terms of use – professional publishers (See annex, section 3.3)	Presented before first deposit – restricts repository owners possibilities of redistribution of metadata
MERLOT – http://merlot.org/		
MERLOT is a leading edge, user-centred, searchable collection of peer reviewed and selected higher education, online learning materials, catalogued by registered members and a set of faculty development support services. MERLOT's vision is to be a premiere online community where faculty, staff, and students from around the world share their learning materials and pedagogy.		
	Acceptable use policy	Clearly distinguishes different parts of the website with specific licenses applying to metadata, different types of content depending on contributor etc.
Google – http://google.com		
The references made below are to the general terms of service, which (as stated) can differ between different Google services		
	Terms of Service Highlights from Terms of Service	Example of providing both the full legal text and “highlights” for the average user
FaceBook – http://facebook.com/		
The terms contain information regarding legal rights, remedies and obligations, including various limitations and exclusions, and a dispute resolution clause that governs how disputes will be resolved.		

Repository / Service	Deposit license/Terms of Use	Comments / Notable considerations
	Terms of Use	Elaborate, and making explicit a number of special issues ranging from use on mobile devices to special terms connected to integration with the service by other applications/websites
Flickr – http://flickr.com/		
Flickr in general references the general Yahoo! Terms and policies.		
	Terms of Use	With explicit differences to the deposit license terms for photos, graphics, audio or video as compared to other content.
	Copyright and Intellectual Property Policy	Primarily procedure for handling infringements on Yahoo! Services. Flickr in addition provides easy methods for the use of CC licenses i)as default deposit license for all your photos, ii)changing license of already uploaded photos (individually or in batch)
	Report abuse	A wizard-type guide for reporting different types of abuse/infringements
Video on demand service – template contract		
	Template contract (See annex, section 3.5)	The contract for the provision of video on demand services in the digital environment is an agreement between any provider of video based materials and any service that markets or promotes the product. It also includes a number of additional optional services, e.g. decryption, that do not apply to educational repositories. Nevertheless, it provides a supplementary checklist, and commercial repository owners may learn from studying the complete sample
YouTube – http://www.youtube.com/		
	Terms of Use	Distinction between comments and uploaded videos.
	Abuse & Safety Copyright Infringements	A “wizard-type” tool for helping users report on abuse/safety, including a procedure for reporting notifications (and counter-notifications)

2.4 Guidelines

Besides the actual terms of use, deposit licenses and other regulating agreements there is a need for producing guidelines of good practice concerning a number of issues relating to digital content in education.

These issues include – but are not limited to:

- Production of digital content
- Advice on legal reuse, revision, remixing and redistribution
- Repository owners may make life easier for themselves by providing ready-to-sign templates for students and parents to sign, for example:
 - Intellectual property right of works: Students – or parents to pupils – must give their consent to publication of works, which students and pupils have produced as part of their courses at school, e.g. drawings and project essays.
 - Photos: Students – or parents to pupils – must give their consent to publication of portrait photos, e.g. class group photos or pictures of individual pupils.

The following table lists a few descriptive examples of existing guidelines targeting both repository owners, content producers (educators and publishers) and end users of digital content. In many countries a set of general guidelines for teachers concerning rights issues on the internet have also been developed. The presentation and format of these vary to a large extent (from booklets, to comics, ask-an-expert services etc.) and best practice within this field will be further explored within EdReNe.

Guideline /Source	Comments / Notable considerations
WikiEducator: OER Handbook – http://www.wikieducator.org/OER_Handbook	The purpose of this handbook is to provide a guide for those who are just getting started in the creation of open educational resources (OER)
Code of practice for eContent creation of good eLearning objects/modules - (See annex, section 3)	The Austrian Ministry of Education has published guidelines for assessing the quality of learning resources (econtent). As many repository owners evaluate and certify materials to be accepted in their repository, these guidelines may serve as inspiration.

Guideline /Source	Comments / Notable considerations
<p>Learning Resource Exchange for Schools - Info and Advice</p>	<p>A section of the LRE for Schools which holds guidance for teachers:</p> <ul style="list-style-type: none"> - Teacher stories - video clips of teachers' use of the LRE - FAQ: Learning resources in the LRE - A pedagogical context for the LRE: the 8LEM taxonomy - Copyright and you: how Creative Commons works - Learning objects that travel well - Finding and evaluating useful resources - Writing lesson plans for LRE resources
<p>Guidelines for repository owners [Internal draft]</p>	<p>This report, commissioned by Becta and undertaken by a team from Europe and Australia, surveys issues raised by current work on repositories for learning materials and makes recommendations for guidelines across eight areas: Standards and specifications, sharing mechanisms, marketing to users, user interface, E-safety, Accessibility, Quality, IPRs and copyright⁵.</p>
<p>ProAccess guidelines - http://proaccess.euain.org/ [Internal to members of the EdReNe and ProAccess networks]</p>	<p>The ProAccess project, which is collaboration between the Italian Publishers Association (Milan, Italy), the Federation of European Publishers (Brussels, Belgium) and DEDICON (Netherlands), has published guidelines for the drafting of licences which enable the producer to provide accessible material in compliance with copyright and related rights.</p> <p>These Guidelines aim to provide operational instructions to publishers, producers or other content providers of works in accessible format to the purpose of acquiring creative and artistic works, rendering them in accessible format and making them available to disadvantaged people, also through libraries and similar institutions, in compliance with legal and contractual rules on intellectual property rights on the contents⁵.</p>

⁵ EdReNe members have access to (drafts of) these guidelines through the EdReNe Members zone.

3. Annex

This annex holds examples of agreements and guidelines that are not otherwise available online in an English version.

3.1 *Quality Management for eContent Creation*⁶

Quality and acceptance criteria for eContent creation are listed by every content pool operator, education server or publishing house and authors are required to fully comply with them, especially those who receive compensation for their work. The creation of samples that comply with all requirements is very useful. In every case interactivity, animation, complexity and innovation of the eContent material are used for its evaluation. A way to assess the quality of the eContent is proposed in many cases.

The following ten rules are a code of practice for eContent creation of good eLearning objects/modules. It is clear that diverse pedagogical applications (lessons, topic, target group and more) need different interpretations and emphasis.

The following principles should be taken into account during econtent creation:

1. Correct: The contents of the learning materials and modules are technically correct and correspond to the latest scientific findings. The knowledge obtained is illuminated by varying points of view and encourages critical argumentation. Distinction between facts and valuation is assured. The social relevance of the instructional contents is pointed out.

2. Structured: The structure of those learning materials is clear and modular and obvious for the pupil/student. The materials are oriented at training aims, which are communicated to the pupil/student.

The learning person has responsibility for the setting of emphasis and/or for the path through the teaching materials (“self steered learning”).

3. Emotional: The pupil/student is addressed and motivated to begin and continue the work with the module. Accompanying measures regarding content (actuality, previous knowledge, relevance for the learning person, etc.) or form (target group, specific design, guidance figure and/or guidance motive, humorous elements, etc.) will ensure this function.

4. Adaptive: It is intended that pupils/students with different previous knowledge, interests and abilities can approach the learning materials. This is achieved by offering additional materials and the ability to select individual pathways through the learning materials. Thus, a larger audience can be addressed.

5. Interactive: Interactive possibilities of the new media are used. The pupil/student is motivated to bring his/her own input and ideas to the learning progress. Interactivity is used both as a guide through the learning material and for examination.

6. Communicative: eLearning does not always mean learning individually. The learning materials have to motivate communication and cooperation between the pupils/students. The

⁶ Extracts from “Electronic Content for Austrian Schools: Creation, Distribution and Maintenance (2003)”, Erlass I (Zl. 16.700/164II/8/2003).

possibility of feedback and suggestions of improvement to the author provide a basis for the enhancement of future versions.

7. Reflexive: The learning materials contain exercises and quiz possibilities intended to show the pupils/students their weak points and knowledge gaps. Learning success is continuously checked and documented. Variable quiz possibilities are adapted to the contents and inspire analytic thinking.

8. Explorative: Explorative/detecting learning is preferred to specified factual knowledge. The pupils/students are motivated to form questions and find out answers by themselves. Additional materials which suggest the work with external sources and appropriate methodical guidance are part of the learning materials.

9. Standardized: The learning materials correspond to the IMS standard and can be integrated in learning platforms with full functionality. Current standards of user guidance, design and adaptation for persons with handicaps are considered. Categorization and metadata correspond with the standards of the bm:bwk.

10. Legal requirements: The learning materials contain all necessary formal elements (author, imprint, etc.). Integrated text, pictures, sound files or videos meet the standards of copyrights or other regulations. Means to meet these standards are the agreement of the author, correct quoting and referring to the data origin. The learning materials are up to the standard of Austrian laws and regulations especially in the field of education and curriculum.

....

3. Copyright

Generally the use of learning and teaching material and the duplication of it in any form for the use in class is covered by special rules. Schools and universities are allowed to use and duplicate material for their use in class. This is not valid for works that are designed for the use in education as in schoolbook and university scripts. A commercial use is not allowed.

A decision of the High Court on 17. December 2002 (Gz.4Ob248/02b) helps to clarify the use of copyright law in connection with electronic media: If there is no chance to mistake the origin of information of a deep link, the deep link is admissible.

In case a link is making a work visible in the meaning of § 1 of Urheberrechtsgesetz (UrhG), the person setting this link is responsible for making the website accessible for users. If this is connected with a temporary copying process (the saving of the information in the computer cache of the user) or a supporting copying process (the saving of the information in proxy server during data transmission on the Internet) of the work, this is a free work use according to § 41a UrhG.

For the creation of website, the following rules and guidelines should be taken into account:

- if the author of a website can be identified, quoting website is ok.
- Small parts of a website / work (an image, a sketch, a paragraph of a text) can be used for teaching in school or for education servers, when quoting the author of the text.
- If website are not covered by copyright law (due to their structure of graphical design), it is admissible to make parts of third party websites visible through links.

- Commercial use of websites is a copyright infringement leading to market distortion and can be punished.
- Important for the use in schools is the correct quoting and referencing to the source of the content (name, location, website, ...) and the consent of the author if longer texts and more comprehensive works are used on the school server for downloads. The contribution has to give the name of the author (including photos and graphics).

In case of images it has to be distinguished between the right of the creator and the right of the person portrait. It is absolutely necessary to get the consent of the person portrait (parent or the legal guardian). Personal rights are also covered under copyright law. It is not allowed to use photos of persons if the interest of the person can be harmed in any way (see § 78 UrhG).

Therefore it is not recommended to use material from other creators. Usually the material in form of text, photos and graphics is more meaningful than already existing material.

If educators take this thumb rules into account (a more detailed discussion of issues is found in a separate edict), educators and students are granted the legal protection of the `bm:ukk` for their econtent materials.

3.2 **Materialeplatformen: Terms of Use – Teachers⁷**

Before you register your content you must pay attention to and accept the terms below.

Your *contribution* consists of the *description (metadata)* and the *content* you may upload or link to.

Rights to your contribution

You keep all rights to your contribution.

You may at any time remove your contribution from the repository without any claim from the repository owner.

As long as your contributions are registered in the repository, the repository owner has the rights to use the *descriptions* according the objectives of repository without asking for your permission.

This means that the repository owner

- may publish your *descriptions* at the repository site
- may extract your *descriptions* for use at other collections and websites

Please notice that you are not entitled to any fee from using your *descriptions*.

Requests to you and your contribution

Your contribution must be relevant for education within the scope of the repository.

All requested elements of the description of the content (the metadata set) must be filled carefully with relevant data.

Your contribution must obey the law, e.g. laws of legal rights and copyright, and laws on handling person data, and public guidelines to these laws.

You must pay special attention to the cases, which involve pictures of and texts by children. The persons who have the custody of the child may play a role.

If your content includes elements (e.g. text, graphics, pictures, music, photos) to which other persons hold the copyright or other rights to, you must make sure that you have acquired the necessary permission before you register and upload the content. This also implies permissions from parents.

[In order to assist you, the repository owner screens your contribution before making it publically available. This procedure implies that the repository owner takes upon the responsibility towards potential rights holders.]

If the repository owner finds that your contribution does not live up to the demands described above, the repository owner has the right to remove your contribution, immediately and with no warning.

⁷ Extract from agreement from the Danish Materialeplatform repository.

3.3 Materialeplatformen: Terms of Use – Professional publishers⁸

Terms of registration of content

Definition

Repository owner: the legal unit that owns and runs the repository

Content provider: the physical or legal person who contributes to the repository

Description: the complete set of information in the applied metadata profile

Published content: the learning resource, which is the object of the description. Published content may be files, websites or printed material, not excluding other types of content

Contribution: the content provider's complete output in the form of descriptions and published content

Extracts: any presentation of (parts of) the records of the repository outside of the repository

Responsibilities and requests of the contribution of the content provider

The content provider alone is responsible for the data entered into the repository, and shall indemnify the owner of the repository from any claim raised against the repository owner because of incorrect descriptions, and the content provider is under (any) obligation to assist the repository owner in the handling of such requests.

The content provider must clear all rights to his contribution.

The content provider is responsible that his contribution does not violate any third party rights or other legislation. The content provider must indemnify the repository owner any claim raised against the repository owner in this connection, and the content provider is under (any) obligation to assist the repository owner in the handling of such requests.

The content provider handles any claim raised by third party, including, but not exclusive, the handling of any trial, no matter whether the claim is raised as a consequence of incorrect descriptions or as a consequence of the contribution violating the rights of third party or other legislation.

The repository owner may at any time take over the handling of such claims by informing the content provider in writing.

The contribution must be relevant for education within the scope of the repository.

All requested elements of the description of the content must be filled carefully with relevant data.

Any contribution must have a clear didactic aim within the education areas of the repository, and it must be of current interest and updated with respect to society, novelty, education policy or pedagogical rationale.

The contribution must be thoroughly prepared and must be without errors pointed out.

⁸ Extract from agreement from the Danish Materialeplatform repository

Rights

Copyrights

The content provider has all rights to his own contribution.

The repository owner

- has the [exclusive/non exclusive] right to publish the descriptions on the repository without paying any fee to the content provider
- [may make the descriptions available to other websites
 - by RSS-feeds,
 - by allowing other websites to integrate the search box of the repository in their sites,
 - by making extracts of the descriptions available to other educational sites, local intranets and VLE's of educational institutions and on the content provider's own websites]

The repository owner must provide these services free of charge.

[The search box and the extract scripts must be provided upon agreement with the individual recipient.

Besides the rights mentioned above,] the repository owner does not have the right to exploit the descriptions for other purposes, unless agreed with the relevant providers.

The content provider does not attain any database rights to the repository, no matter the number of contributions from the provider.

The content provider is not entitled to any fee for the repository owner exercising his rights according to this agreement.

Rights to remove contributions

The content provider can at any time remove his contribution from the repository without any claim from the repository owner.

The repository owner may at any time, unconditionally and free from responsibility, remove a contribution if the repository owner or other parties find that the contribution does not live up to the demands on contributions to the repository, and/or the contribution violates any law.

The repository owner removes the contribution in question until the case is solved. The repository owner immediately informs the content provider.

3.4 Curriculum On-Line Terms for Content Providers (“Terms”)

Curriculum On-Line Terms for Content Providers (“Terms”)

These Terms set out the terms and conditions which will apply to You when Your application for Registration as a Content Provider is accepted by DfES.

1 Interpretation

1.1 In these Terms:

- 1.1.1 “CAB” means DfES’s content advisory board in relation to Curriculum Online established to advise on the development of online digital learning resources, including researching the ongoing impact of e-Learning Credits on market development; Guidelines: Content Advisory Board Version 1.02; at <http://register.curriculumonline.gov.uk/page.php?id=49>
- 1.1.2 “Certified Products” means Products which have been self-certified by or on behalf of You in accordance with the Guidelines: “Certification of Content Version 1.03”; at <http://register.curriculumonline.gov.uk/page.php?id=45>
- 1.1.3 “Confidential Information” means, in relation to DfES’s confidentiality obligations, all commercially sensitive information You provide to DfES in applying for Registration or thereafter in relation to the same matters and all commercially sensitive information provided by you to CAB or its agents pursuant to Clause 12 and, in relation to Your confidentiality obligations, (1) all passwords and user details provided to You in relation to Curriculum Online and (2) all other information provided to and/or obtained by You under these Terms relating to the design, implementation and operation of the Curriculum Online Portal websites and related issues.
- 1.1.4 “Content Provider” means
- 1.1.4.1 any person, institution or commercial entity (other than a school, teacher, home tutor, learning support assistant or classroom assistant) that wishes to self-certify for Curriculum Online purposes its Products; or
- 1.1.4.2 a maintained school or teacher, home tutor, learning support assistant or classroom assistant that wishes to self-certify for Curriculum Online purposes its Products that do involve a charge to the end user and which in either case is subject to successful Registration;
- 1.1.5 “CP Website” means any website(s) operated by or on behalf of You (other than to the extent that it forms Certified Products) which is related to Curriculum Online and/or Your Products in their form as Certified Products;
- 1.1.6 “Curriculum” means the curriculum in use for teaching Foundation Stage to KS 4 in maintained schools and funded nursery education settings in England and includes but is not limited to the National Curriculum;
- 1.1.7 “Curriculum Online” means the Curriculum Online service of DfES;
- 1.1.8 “Curriculum Online Logos” means the DfES logos, trade marks, trade names or other signs (including without limitation any trade mark applications or registrations) in relation to Curriculum Online from time to time and which are intended by DfES from time to time for use by Content Providers, as notified by DfES to Content Providers from time to time;
- 1.1.9 “Curriculum Online Portal” means the website(s) set up to operate Curriculum Online from time to time;
- 1.1.10 “Curriculum Online Visitor” means any person accessing the CP Website via the Links;
- 1.1.11 “Default” means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of these Terms and in respect of which such party is liable to the other.

- 1.1.12 “DfES” means the Secretary of State for Education and Skills, Sanctuary Buildings, Great Smith Street, London SW1P 3BT;
- 1.1.13 “Guidelines” means the guidelines produced by DfES in relation to Curriculum Online and referred to in these Terms, as amended from time to time in accordance with Clause 19;
- 1.1.14 “Indexing Data” means the data and information relating to the Certified Products and provided by You to DfES to put on the Curriculum Online Portal, including the Links;
- 1.1.15 “Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, know-how, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including without limitation the United Kingdom);
- 1.1.16 “Links” means the hypertext links to the CP Website and/or Certified Products which You provide to DfES in relation to Certified Products;
- 1.1.17 “Products” means educational digital products and services (“digital” having the meaning given to it in the Guidelines: “Eligibility Rules for Curriculum Online Content Version 1.06” at <http://register.curriculumonline.gov.uk/page.php?id=42>) intended for use to teach the Curriculum in England and to be made available by You;
- 1.1.18 “Registration” means registration by or on behalf of DfES of a potential Content Provider as eligible to self-certify eligible Products as Certified Products; Guidelines: Content Provider and Retailer Registration Process at <http://register.curriculumonline.gov.uk/page.php?id=43>
- 1.1.19 “Terms” means these terms;
- 1.1.20 “Transaction” has the meaning given to it in Clause 3.6;
- 1.1.21 “Visitor” means any visitor to the CP Website and/or a person obtaining Products from You;
- 1.1.22 “You” means the organisation which has successfully applied for Registration, and related terms shall be construed accordingly; and
- 1.1.23 “Your Material” means any material provided by You to DfES as part of Your Registration application and/or under these Terms in connection with Curriculum Online (including Indexing Data and pedagogic evaluations submitted by or on behalf of You and any responses submitted by or on behalf of You in relation to third party reviews and comments of Your Certified Products), but, for the avoidance of doubt, excludes Products.
- 1.2 In the event and to the extent of any conflict or inconsistency between the provisions of these Terms and the provisions of the Guidelines, the provisions of the Terms shall prevail.

2 DfES Obligations

- 2.1 DfES shall:
 - 2.1.1 use reasonable endeavours to ensure that the Curriculum Online Portal is available 24 hours a day, seven days a week and that help support will be available during normal DfES office hours; Guidelines: Curriculum Online Services to Content Providers and Retailers at <http://register.curriculumonline.gov.uk/page.php?id=52>
 - 2.1.2 use reasonable endeavours to ensure that the Links will be available on the Curriculum Online Portal when the Curriculum Online Portal itself is available;
 - 2.1.3 use reasonable skill and care in making available the Indexing Data on the Curriculum Online Portal and in operating the Curriculum Online Portal;
 - 2.1.4 use reasonable endeavours to ensure that it does not delete the Indexing Data (other than in accordance with these Terms);
 - 2.1.5 use reasonable endeavours to ensure that (unless the DfES has suspended the Indexing Data in accordance with these Terms) it shall restore Indexing Data deleted from the Curriculum Online Portal promptly on receipt of a request from You to do so or otherwise becoming aware of the deletion (and that it shall notify you of restoration);
 - 2.1.6 include on the Curriculum Online Portal disclaimers and notices making clear the parties’ respective responsibilities in relation to Transactions and Certified Products.

2.2 DfES excludes to the fullest extent permitted by law any liability for any advice given by third parties in connection with the Curriculum Online Portal (including but not limited advice relating to metatagging) including but not limited to liability for any errors or omissions in the advice or for any loss or damage of any kind incurred as a result of any such advice given.

3 Your Obligations

3.1 You shall:

3.1.1 provide the Indexing Data and any other elements of Your Material to DfES in the format and medium specified in the Guidelines: “Tagging Content Version 1.04 ” at <http://register.curriculumonline.gov.uk/page.php?id=44> to enable DfES to incorporate the Indexing Data and other elements of Your Material within the Curriculum Online Portal;

3.1.2 without limitation to Clause 3.1.1, provide all reasonable assistance to test the correct functioning of the Links and other Indexing Data;

3.1.3 comply with the Guidelines: “Certification of Content” and “Tagging Content”, and in particular not self-certify Products which do not comply with the Guidelines: “Certification of Content Version 1.03” at <http://register.curriculumonline.gov.uk/page.php?id=45>

3.1.4 keep all Certified Products and Your Material up to date and accurate in accordance with, and generally comply with, the Guidelines: “Eligibility Rules for Curriculum Online Content Version 1.06” at <http://register.curriculumonline.gov.uk/page.php?id=42>;

3.1.5 facilitate and participate in the compliance reviews carried out by DfES from time to time in accordance with the Guidelines: “Product Compliance Management Version 1.03” at <http://register.curriculumonline.gov.uk/page.php?id=46> and otherwise comply with those Guidelines;

3.1.6 operate and maintain the CP Website to the highest operational standards and use reasonable endeavours to ensure that the CP Website is available to Curriculum Online Visitors with minimum disruption;

3.1.7 to the extent reasonably possible, maintain at Your own cost insurance policies to cover possible liabilities arising from any Default by You under these Terms and upon DfES’s request provide a copy of the relevant insurance policy (or other appropriate evidence that the policy is in force) and evidence that the necessary premiums have been paid to maintain the insurance while You are registered under Curriculum Online;

3.1.8 not take any steps to procure or encourage visitors to the Curriculum Online Portal (whether Your employees and agents or third parties) to post any material on the Curriculum Online Portal which in any way criticises other suppliers, distributors or producers of material or the material supplied, distributed or produced by them.

3.2 You shall ensure that the advertising of third party products and services or sponsorship on the CP Website shall not take more than one quarter of the screen, that any advertising of any products and services (whether Yours or third parties’) on webpages to which Links lead directly and/or which are dedicated to given Certified Products shall relate solely to products and services which are of direct educational relevance to the Certified Product to which the Link relates, and that the CP Website shall not promote unhealthy, unsafe or unlawful activities.

3.3 If You provide any of Your Material or in any way access the Curriculum Online Portal, You will ensure (to the extent possible using best practice virus and similar protection software available from time to time and suitably configured and installed firewall arrangements and using good security practice current from time to time) that You do not (and Your Material does not) introduce any viruses to the Curriculum Online Portal, corrupt any data on the Curriculum Online Portal or related websites and databases or in any way have any adverse effect on the Curriculum Online Portal, related websites and databases, their content and/or the equipment on which they are contained and operated.

3.4 You will notify DfES as soon as reasonably practicable on becoming aware of any breach of Clause 3.3 or of any other corruption of or similar event which (notwithstanding your compliance with Clause 3.3) may occur in relation to Your Material or the Curriculum Online Portal.

3.5 You shall comply with the Guidelines: “Marketing and Promotion Version 1.03” at <http://register.curriculumonline.gov.uk/page.php?id=47>.

- 3.6 You acknowledge that (other than as set out in these Terms) DfES shall have no responsibility with respect to the content or the operation of the CP Website and has no involvement in the sale of any Certified Products or any other Products available on the CP Website or otherwise and that You are responsible for these matters. You will use Your best efforts to ensure that every Visitor is made aware that any transaction in respect of any Products between You and a Visitor following that Visitor's use of the Links or otherwise (such retail transaction being referred to as the "Transaction") is between the Visitor and You and that DfES is not a party to the Transaction. Without limitation to the foregoing, you shall in particular make no representation that DfES is a party to the Transaction.
- 3.7 If any of Your representatives becomes a registered user of the Curriculum Online Portal, You shall ensure that he or she shall comply with the applicable user terms.

4 Intellectual Property Rights

- 4.1 All Intellectual Property Rights in the Curriculum Online Portal shall vest in DfES or its licensors.
- 4.2 All Intellectual Property Rights in Your Material (other than any which may arise after provision to DfES as a result of dealing by or on behalf of DfES or users of Curriculum Online), the Products and the CP Website shall vest in You or Your licensors.
- 4.3 Subject to Clause 14, You hereby grant DfES a worldwide, non exclusive and royalty free licence to use, reproduce, provide access to, transmit, publicly display and otherwise deal with (including sub-licensing others) the Indexing Data and other elements of Your Material for the purposes of:
- 4.3.1 advertising, marketing and promoting the Certified Products (such licence to terminate within one month after Registration, save in relation to pre-printed materials); DfES shall not, in using Your Material for such advertising, marketing and promoting, intentionally unjustifiably discriminate against You or Your Certified Products; and
- 4.3.2 making available the Indexing Data and other elements of Your Material to users of the Curriculum Online Portal and other websites which link to it and otherwise dealing with Your Material in connection with Curriculum Online and UK public sector projects (such licence to survive termination of Your Registration).

5 Curriculum Online Logos

- 5.1 DfES shall give You one (1) month's notice of any changes to the Curriculum Online Logos.
- 5.2 Title to all Intellectual Property Rights in the Curriculum Online Logos vests in DfES and its licensors. DfES hereby grants You a world-wide, royalty-free licence to use, reproduce, transmit, and publicly display the Curriculum Online Logos solely in connection with the Certified Products and subject to the provisions of these Terms.
- 5.3 You shall use the Curriculum Online Logos in the form notified to You by DfES from time to time and shall strictly adhere to the Guidelines: "Marketing and Promotion Version 1.03" at <http://register.curriculumonline.gov.uk/page.php?id=47>, save that, in relation to pre-printed material, changes to logos need only be made in print runs occurring after notification of the change to You.
- 5.4 You shall not use the Curriculum Online Logos in any way which would allow them to become generic, lose their distinctiveness, become liable to mislead the public in particular as to their quality, nature or geographic origin, or to be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of DfES.
- 5.5 You shall not apply in Your own name in any part of the world to register the Curriculum Online Logos nor any mark so nearly resembling it as to be likely to be deceived or cause confusion and nothing in these Terms shall be deemed to give You any such right.
- 5.6 Except as set out in these Terms, nothing in these Terms shall entitle You to use the Curriculum Online Logos as part of Your business or trading name or style.

6 Indemnities

- 6.1 Subject to Clause 8.2, You shall indemnify and hold DfES harmless against all and any losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by DfES (including but not limited to legal costs and disbursements on a solicitor and client basis), arising out of or connected with:
- 6.1.1 any claim, action or demand by any Visitor or third party against DfES arising from any Transactions or any inaccurate information or inaccurate advertisements issued by You;

- 6.1.2 any claim, action or demand against DfES by any Visitor or other third party on the grounds that Products are (or are alleged to be) faulty, not of satisfactory quality or inconsistent with their description in the Indexing Data, on the CP Website or elsewhere;
- 6.1.3 any claim, action or demand against DfES arising from any infringement or alleged infringement of any Intellectual Property Rights by the use or possession of or other dealing with Your Material by or on behalf of DfES or any other entity (including claims, actions or demands made against DfES by third parties against whom such claims, actions or demands have been made); or
- 6.1.4 any claim, action or demand against DfES by any Visitor or other third party arising out of any other Default by You (save to the extent arising out of DfES Default).
- 6.2 You shall promptly notify DfES if any claim or demand is made or action brought against You for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of or other dealing with Your Material as permitted under these Terms or the use of the CP Website or Certified Products by Curriculum Online Visitors.
- 6.3 DfES shall promptly notify You if any claim or demand is made or action brought against the DFES to which Clause 6.1 may apply.
- 6.4 In relation:
 - 6.4.1 to any claim, action or demand other than one in relation to which DfES elects under Clause 6.4.2 to conduct litigation and negotiations, You shall at Your own expense conduct any litigation arising therefrom and all negotiations in connection therewith, in which case DfES will (a) grant to You exclusive control of any such litigation and such negotiations, (b) at Your request and expense afford to You all reasonable assistance for the purpose of contesting the claim, action or demand and (c) not make any admissions which may be prejudicial to the defence or settlement of the claim, demand or action; or
 - 6.4.2 to any claim, action or demand covered by Clauses 6.1.1, 6.1.2 or 6.1.4, DfES shall, where it considers it appropriate to do so, at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith, in which case You will (a) grant to DfES exclusive control of any such litigation and such negotiations (b) at DfES's request and expense afford to DfES all reasonable assistance for the purpose of contesting the claim, action or demand and (c) not make any admissions which may be prejudicial to the defence or settlement of the claim, demand or action.
- 6.5 Where Clause 6.4.2 applies, DfES shall consult with and pay due regard to Your interests and views in the conduct of any such litigation and/or negotiations, and shall, where it is reasonable to do so, comply with such views. DfES shall not agree to any settlement of any one claim, action or demand where the sum to be paid to a third party exceeds five thousand pounds of any connected claims, actions or demands made by third parties that in aggregate amount to five thousand pounds or more unless it has first received either:
 - 6.5.1 Your prior written consent; or
 - 6.5.2 an opinion in writing from a Queen's Counsel or King's Counsel (as appropriate) or, in the event of abolition of Queen's Counsel and King's Counsel, any practising barrister of at least ten (10) years' call expressing the view that the settlement proposed is in all of the circumstances reasonable;

failing which You shall not be liable to cover the amount of the settlement greater than that sum which would have been reasonable for DfES to pay.

7 Warranties

- 7.1 You warrant that:
 - 7.1.1 You have full capacity and authority and all necessary consents including the right to grant the licences in Clause 4 to enter into and perform the obligations under these Terms;
 - 7.1.2 the incorporation of Your Material in the Curriculum Online Portal, their accessibility to and use by persons visiting the Curriculum Online Portal and their use and other dealing for any purpose under Clause 4.3 shall not infringe any Intellectual Property Rights of any third party;
 - 7.1.3 the Links, CP Website, Certified Products and any of Your Material provided to DfES to place on the Curriculum Online Portal shall not contain, provide access to, or in any way be connected or linked to any material which is defamatory, libellous, obscene, materially inaccurate (in the case of the CP

Website and Certified Products), inaccurate (in the case of the Links and other Your Material), misleading or which infringes the statutory or common law rights of any third party;

- 7.1.4 the CP Website and Certified Products shall comply and be provided in accordance with all applicable laws, enactments, orders, regulations and other similar instruments including where relevant applicable advertising standards and legislation relating to Consumer Credit, Distance Selling and Data Protection;
- 7.1.5 Your Certified Products are intended and appropriate for use with the current Curriculum Foundation Stage – KS 4 for use within England as determined in the Guidelines: “Eligibility Rules for Curriculum Online Content Version 1.06” at <http://register.curriculumonline.gov.uk/page.php?id=42>;
- 7.1.6 Your Certified Products will be tagged according to the Guidelines: “Tagging Content Version 1.04” at <http://register.curriculumonline.gov.uk/page.php?id=44>; and
- 7.1.7 the content on the CP Website and the Certified Products is appropriate to the age of the audience for which it is intended.
- 7.2 Except as expressly stated in these Terms, all warranties and conditions, whether express or implied by statute, common-law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law).

8 Limitations of liability

- 8.1 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 8.2 Subject always to Clause 8.1, the aggregate liability of either party for all Defaults and under indemnities under these Terms arising in each successive year that Your Registration remains in force (or, in relation to obligations surviving termination of Your Registration, each successive year thereafter) shall in no event exceed:
 - 8.2.1 in relation to Your liability for damage caused to Curriculum Online and any data on it or any damage caused by a breach of Clause 3.3, £250,000;
 - 8.2.2 in relation to Your liability under Clauses 6.1.3 and 7.1.2, £2,000,000;
 - 8.2.3 in relation to all other liability of You, £1,000,000; and
 - 8.2.4 in relation to all liability of DfES, £250,000.
- 8.3 Subject always to Clause 6 and Clause 8.1, in no event shall either party be liable to the other for:
 - 8.3.1 indirect or consequential loss or damage; and/or
 - 8.3.2 loss of profits, business revenue, goodwill or anticipated savings

whether or not in the contemplation of the parties at the time of entering into these Terms.

- 8.4 The provisions of Clause 8.3 shall not be taken as limited the right of either party to claim from the other for:
 - 8.4.1 additional operational and administrative costs and expenses; and/or
 - 8.4.2 any costs or expenses rendered nugatory,
 resulting directly from the Default of the other party.

9 Suspension of Links and Termination of Registration

- 9.1 Whether or not entitled to terminate Your Registration, DfES may suspend the Links, other elements of the Indexing Data and other elements of Your Material:
 - 9.1.1 as they relate to any Certified Products which DfES reasonably considers fail to comply with these Terms (including applicable Guidelines referred to herein); or
 - 9.1.2 if DfES considers that any Certified Products or the CP Website have in the reasonable opinion of DfES adversely affected or may adversely affect the reputation of DfES or any of the services it provides; in the case of a Certified Product, DfES shall only suspend the Links, other elements of Indexing Data and other elements of Your Material as they relate to the Certified Product in question; or

- 9.1.3 if DfES reasonably considers that You are in material Default of any other obligation under these Terms; or
- 9.1.4 where DfES is obliged to do so to comply with legislation or an order, an instruction of any regulatory authority or other competent authority subject to DfES giving You as much notice as is reasonably possible; or
- 9.1.5 for the purpose of scheduled or emergency repair, scheduled improvement, scheduled upgrading or scheduled maintenance of the Curriculum Online Portal or any other facilities which are necessary to provide the Curriculum Online Portal, subject to DfES giving You as much notice as is practicable in the circumstances and using reasonable endeavours to restore access to the Indexing Data and other elements of Your Material as soon as is practicable.
- 9.2 If DfES wishes to suspend the Links, other elements of the Indexing Data and other elements of Your Material in accordance with Clause 9.1 (except for the reasons set out in Clause 9.1.4 or Clause 9.1.5), it shall provide You with written notice of the intended suspension and the reasons for it. You will then have a period of 28 days to resolve the problem.
- 9.3 During any suspension (other than for the reasons set out in Clause 9.1.4 or Clause 9.1.5), DfES may remove the applicable Links and the Indexing Data (and any other connected elements of Your Material) from the Curriculum Online Portal and suspend in whole or in part any applicable licences of Curriculum Online Logos in relation to all or some of the applicable Certified Products and during that period You will not seek to re-self-certify such Certified Products and shall ensure that (other than in relation to printed material (save where the suspension occurs because of actual or suspected illegality, obscenity or other similar concerns)) such Certified Products are not sold, made available, badged, advertised or otherwise indicated as being currently Certified Products.
- 9.4 If the problem referred to in Clause 9.2 is not resolved within the 28 day period referred to in Clause 9.2 (and provided that, in the case of a suspension pursuant to Clause 9.1.1, there has been an actual failure to comply with these Terms and, in the case of suspension pursuant to Clause 9.1.3, there has been an actual material Default), DfES may permanently suspend certification of given Certified Products, in which case the suspension under Clause 9.3 shall become permanent and You will not self-certify the applicable Certified Products or any part of them again without the prior written consent of DfES.
- 9.5 DfES may terminate Your Registration by notice to You:
 - 9.5.1 if one of the following has occurred and is not capable of remedy or is capable of remedy and not remedied within 28 days of notice requiring You to remedy it:
 - 9.5.1.1 the Certified Products fail to comply with these Terms (including applicable Guidelines referred to herein)); or
 - 9.5.1.2 the Certified Products or the CP Website have in the reasonable opinion of DfES adversely affected or may adversely affect the reputation of DfES or any of the services it provides; or
 - 9.5.1.3 You are in material Default of any other obligation under these Terms; or
 - 9.5.1.4 Your liability under any of Clauses 8.2.1, 8.2.2 or 8.2.3 has met or exceeded the applicable limit in that year (this event being considered a Default not capable of remedy); or
 - 9.5.2 where DfES is obliged to do so to comply with legislation or an order or instruction of any regulatory authority or other competent authority subject to DfES giving You as much notice as is reasonably possible; or
 - 9.5.3 where DfES decides to close the Curriculum Online Portal, on three months' written notice; or
 - 9.5.4 DfES is unable to obtain or has had revoked or suspended any licence, permission or regulatory consent or approval required to operate the Curriculum Online Portal; or
 - 9.5.5 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in You and this leads to control passing to a body whom DfES reasonably considers to be inappropriate (1) given the age and nature of users of the CP Website and the Certified Products or (2) in connection with an educational project, provided that DfES shall only be permitted to exercise its rights pursuant to this Clause 9.5.5 for six (6) months after each such change of control and shall not be permitted to exercise such rights where DfES has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or

- 9.5.6 You, being a company, pass a resolution, or the Court makes an order that You be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of Your business or any part thereof, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding up order, or You are unable to pay Your debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or
- 9.5.7 You, being an individual, or where You are a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction.
- 9.6 Either party may terminate Your Registration if the circumstances in Clause 25.3 arise.
- 9.7 You may at any time terminate Your Registration by three months' written notice to DfES.
- 9.8 If Your Registration has been expressed as subject to further checks and such checks are carried out and would have led to Your application for Registration being unsuccessful had the checks been carried out before Your Registration, DfES may terminate Your Registration by notice in writing.

10 Consequences of termination

- 10.1 The termination of Your Registration shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 10.2 Except as otherwise expressly provided in these Terms, all remedies available to the parties for Default under these Terms are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 10.3 In the event of termination of Your Registration, You shall cease to use the Curriculum Online Logos (other than on pre-printed materials in cases of termination on grounds other than those in Clause 9.5.1) and shall remove or obliterate the Curriculum Online Logos from the CP Website, all Certified Products and from any and all materials used and/or made available by or on behalf of You (or in Your possession, custody or control) (other than on pre-printed materials in cases of termination on grounds other than those in Clause 9.5.1) within one month of the date of termination and if so requested by DfES, execute at Your own expense an assignment in favour of DfES (or such other person as DfES directs) of any and all goodwill in the Curriculum Online Logos as may have accrued to You by reason of use of the Curriculum Online Logos.
- 10.4 In the event of termination of Your Registration, DfES shall cease use of all the Indexing Data on the live Curriculum Online Portal and shall disable the Links within one month of the date of termination.
- 10.5 Clauses 1, 2.2, 3.1.8, 3.7, 4.3, 6, 7.1.2, 8, 10, 11.4, 13, 14, 17, 18, 20 and 26 will survive termination of Your Registration.

11 Pedagogic evaluations and reviews

- 11.1 As and when the Curriculum Online Portal allows for pedagogic evaluations, You will become entitled to arrange for pedagogic evaluations of the Certified Products (other than any which may be temporarily or permanently suspended) to be submitted to the Curriculum Online Portal in accordance with the Guidelines: "Pedagogic Reviews Version 1.02" at <http://register.curriculumonline.gov.uk/page.php?id=50>.
- 11.2 You agree to allow other reviews and comments made by teachers, individuals and other independent bodies to be posted on the Curriculum Online Portal from time to time.
- 11.3 DfES will notify You of such other reviews and comments. You shall have the right to respond to such other reviews and comments and to have Your responses posted on the Curriculum Online Portal but shall not be able to require such other reviews or comments to be removed, unless the review or

comment is proven to be unfair or inaccurate (in which case DfES shall remove it within 28 days of this being proven to be the case).

- 11.4 DfES does not control the content of such other reviews and comments and as such DfES does not guarantee the accuracy, integrity or quality of such reviews and comments. DfES excludes to the fullest extent permitted by law any liability for such other reviews and comments including, but not limited to, liability for any errors or omissions in any reviews or comments, or for any loss or damage of any kind incurred as a result of the use of any reviews or comments posted, emailed, transmitted or otherwise made available via the Curriculum Online Portal. Notwithstanding the foregoing, DfES shall remove and/or edit appropriately such reviews or comments within 28 days of becoming aware that they are defamatory or obscene.

12 CAB

- 12.1 Where CAB (or its agents) requests You to participate in any survey by it or its agents connected with Curriculum Online and the subject matter of Curriculum Online, You will respond honestly and completely within a reasonable time. Guidelines: Content Advisory Board Version 1.02.
<http://register.curriculumonline.gov.uk/page.php?id=49>

13 Confidentiality

- 13.1 Each party warrants that (1) any person employed or engaged by it (in connection with these Terms in the course of such employment or engagement) shall only use Confidential Information for the purposes of performance of the obligations in these Terms and shall not disclose any Confidential Information to any third party without the prior written consent of the other party and (2) it shall take all necessary precautions to ensure that all Confidential Information of the other party is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of these Terms by its employees, servants, agents or sub contractors.
- 13.2 The provisions of Clause 13.1.1 shall not apply to any information which (1) is or becomes public knowledge other than by breach of this Clause 13; (2) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; (3) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; (4) is independently developed without access to the Confidential Information; or (5) is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.
- 13.3 Nothing in this Clause 13 shall prevent DfES from disclosing any Confidential Information obtained from You to any other body, to the extent reasonably necessary in connection with operating Curriculum Online, on substantially similar confidentiality terms to those in these Terms. For the avoidance of doubt, Clause 4.3 will continue to apply to the extent relevant.

14 Use of Data

- 14.1 Notwithstanding any other provision of these Terms, but subject to the Guidelines: "Use of the Database Version 1.02" at <http://register.curriculumonline.gov.uk/page.php?id=51>, there shall be no limitation on the use or other dealing by or on behalf of DfES (or any other body authorised by it) with the Curriculum Online database(s) and/or data arising out of or in connection with the use of Curriculum Online by third parties and/or management information in relation to Curriculum Online usage.

15 Protection of Personal Data and Freedom of Information

- 15.1 Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1998. You shall, in Your dealings with Curriculum Online Visitors, comply with all applicable data protection legislation, put in place best practice data protection arrangements and (in any contracts with Curriculum Online Visitors) agree to appropriate data protection provisions.
- 15.2 You shall assist DfES at no additional charge in meeting any requests for information in relation to these Terms which are made to DfES in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice. DfES may from time to time serve on You an information notice requiring You within such time and in such form as is specified in the information notice, to furnish to DfES such information as DfES may reasonably require relating to such requests for information.
- 15.3 You acknowledge that in responding to requests for information described in Clause 15.2, DfES shall be entitled to provide information relating to these Terms. DfES shall not, in responding to such requests for information, disclose any Confidential Information relating to or comprised in these Terms which in

DfES's reasonable opinion is exempt information as described within any provision of Part II of the Freedom of Information Act 2000.

16 Independent contractors

- 16.1 You and DfES are independent contractors under these Terms and nothing herein shall be deemed to constitute a partnership or joint venture, or create a relationship of principal and agent for any purpose between the parties.

17 Assignment

- 17.1 You shall not assign, novate, sub-contract or otherwise dispose of or deal with Your rights or obligations under these Terms or any part thereof without the prior written consent of DfES.
- 17.2 DfES may:
- 17.2.1 assign, novate or otherwise dispose of its rights and obligations under these Terms or any part thereof to any contracting authority (as defined in Regulation 4(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000); or
- 17.2.2 novate these Terms to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by DfES and/or becomes responsible in whole or in part for operation of Curriculum Online. In the case of a novation to a private sector body, DfES shall (a) give You at least three months' prior written notice and (b) retain an on-going interest and involvement in Curriculum Online.

18 Dispute Resolution

- 18.1 All disputes between the parties arising out of or relating to these Terms shall be referred by DfES to the Curriculum Online Programme Director and to Your senior management for resolution.
- 18.2 Work and activity to be carried out under these Terms shall not cease or be delayed by this dispute resolution procedure.
- 18.3 If any dispute is not resolved within 21 days of referral under Clause 18.1, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate the mediation a party must give notice in writing (the "ADR notice") to the other party requesting a mediation in accordance with this clause. The mediation is to take place as soon as practicable and in any event not later than 28 days after the ADR notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 days of the ADR notice, then CEDR will, at the request of any party, as soon as possible thereafter decide the issue for the parties having consulted with them;
- 18.4 If the dispute is not resolved within seven days of the start of the mediation, the parties may litigate the matter in accordance with Clause 26.

19 Amendments to Terms

- 19.1 These Terms may only be amended by agreement in writing signed on behalf of both parties.
- 19.2 The Guidelines may be amended by DfES in accordance with the Guidelines: "Curriculum Online Guidelines – User Guide Version 1.09" at <http://register.curriculumonline.gov.uk/page.php?id=41>.

20 Waiver

- 20.1 The failure to exercise, or delay in exercising, a right, power or remedy provided by these Terms or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of these Terms this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

21 Severability

- 21.1 If any Clause in these Terms, or any part of a Clause, is found by any court, regulatory or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the Clause (or the part) in question is not of a fundamental nature to the Terms as a whole, the legality, validity and enforceability of the remainder of these Terms (including the remainder of the Clause which contains the relevant provision) shall not be affected. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of these Terms, You and DfES shall use all reasonable endeavours to

agree upon any lawful and reasonable variations to these Terms which may be necessary in order to remedy such invalidity.

22 Rights of Third Parties

22.1 These Terms shall not create any rights that shall be enforceable by anyone other than You and DfES.

23 Entire Agreement

23.1 The Terms constitute the entire understanding between the parties relating to the subject matter hereof and save as may be expressly referred to or referenced herein supersedes all prior representations, writings, negotiations or understandings with respect hereto, each party agreeing that it has not relied on any representation in entering into these Terms. Nothing in this Clause shall however operate to limit or exclude liability for fraud.

24 Communications

24.1 Any notice or other communication whatsoever which either party hereto is required or authorised by these Terms to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or by e-mail, addressed to the other party in the manner referred to in Your Registration form and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of these Terms to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or, for a facsimile transmission, four hours, or, for e-mail transmissions, when the e-mail is received (unless an "out of office" or similar response is returned to the sender).

24.2 Either party may change its address for service by notice as provided in this Clause 24.

25 Force Majeure

25.1 For the purposes of these Terms, the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

25.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of obligations under these Terms which is due to Force Majeure.

25.3 Either party may terminate Your Registration in accordance with Clause 9.6 by notice in writing to the other where a Force Majeure event has substantially prevented or delayed either party from performing its obligations under these Terms continuously during the immediately preceding three months.

26 Governing Law and jurisdiction

26.1 These Terms shall be considered as a contract made in England and according to English law and shall, subject to Clause 18, be subject to the exclusive jurisdiction of the English courts.

26.2 These Terms are binding on You and DfES, and their respective successors and permitted assignees.

3.5 **Template contract for the provision of services in the digital environment⁹**

THE PRESENT CONTRACT is made by and between:

<RO>, with business address at, C/, with Tax Identity Code (C.I.F.):

<Provider> represented hereat by Mr., in his capacity of(hereinafter the PRODUCER).

WITNESSETH

ONE: Whereas <RO> is a [company] that

TWO: Whereas for the conduct of the activities described in the previous recital the company is equipped with a *digital service platform*, which includes the so-called <service> by means of which the PRODUCER is offered the opportunity of promoting and granting access to his own cultural contents.

THREE: Whereas in his status of holder both of the Exploitation Rights of works and/or audiovisual recordings and of their promotional means (trailers, making of, sound tracks and others) which are listed in ANNEX I hereto (hereinafter referred to as the CONTENTS), the PRODUCER is interested in promoting and granting access thereto via the *digital service platform*.

The aforesaid ANNEX I is entitled “**List of Contents**”, which forms an inseparable part hereof and is updated periodically if the PRODUCER has included new works and/or audiovisual recordings in the platform.

Whereas on account of all the foregoing and mutually acknowledging each other the necessary legal capacity to enter into binding agreements and in particular to make the present contract, they do so, subjecting it to the following,

CLAUSES

ONE.- Purpose of the agreement.

- 1.1 The CONTENTS belonging to the PRODUCER, mentioned in the foregoing recital three and in ANNEX I, shall be added to the *digital service platform* and specifically to the <service>.
- 1.2 The CONTENTS shall be added to the *digital service platform*, in such a way that proper *promotion, marketing and third party access* is provided via public and private digital data networks, in the INTERNET modality, by virtue of the provisions of point 2.1 of clause two.
- 1.3 In its status of provider of the PRODUCER’S digital services <RO> shall be entitled to grant accesses to third parties for a given specific use of the CONTENTS

⁹ The template is has been provided by sDAE and has been used in connection with provision of streaming video.

(hereinafter referred to as ACCESSES), always via public and private digital data networks, in the INTERNET modality and in accordance with the clauses agreed in the body hereof.

- 1.4 By virtue of the provision of the preceding point 1.3, <RO> shall grant ACCESSES to CONTENTS to all those service providers whose intention is to market said CONTENTS (hereinafter referred to as the MARKETER). As ANNEX II hereto and for merely informative and never exclusory purposes, a list of the former is attached under the title “MARKETERS”, in accordance with the branch of business in which they are engaged.
- 1.5 For purposes hereof, ACCESSES and therefore the marketing of the CONTENTS by the MARKETER, in download or streaming mode, are characterized by being a system of video on demand. Therefore, the viewing of the work and/or audiovisual recording, after downloading or in the streaming mode without prior downloading, shall be subject in every case to obtaining the decryption key of the work and/or audiovisual recording, reproduced in an encrypted digital file. The validity of this decryption key shall be subject to a limited period of time, depending on the ACCESS modality chosen by the MARKETER.

TWO.- Conditions for the provision of the Digital Services covered herein.

To permit the provision of the digital services defined by clause three hereof via the *digital service platform*, the PRODUCER grants the latter, on a non-exclusivity basis, authorization for:

- 2.1 Full or partial *reproduction* of the CONTENTS by means of their recording or digitizing in the databases.
Communication to the public, including the right of *making available to the public*, both for promotional and commercial purposes.
- 2.2 The rights covered by this authorization shall be for public and private digital data networks, in the INTERNET modality, which permit the reproduction of the CONTENTS, in digital files, for their communication to the public and access thereto on the part of the MARKETERS, making available to the public the CONTENTS by the latter, subject to the conditions laid down in the body hereof.
- 2.3 The authorization of the rights covered by this clause ***is not on a basis of exclusivity***, so the CONTENTS of which he is the holder shall remain at the PRODUCER’S full disposal.
- 2.4 The authorization of the rights covered by this clause is granted for the *period of FIVE (5) years*, which shall be extendable for *one year periods* by tacit agreement. Nevertheless, at the end of this period or of the extension period currently in force, either of the parties may terminate this contractual relation by means of 90-day notice served in writing by reliable means of communication addressed to the other party.

2.5 The authorization of the rights covered by this clause is granted for *the whole world*, without any restriction or territorial limitation whatsoever. The PRODUCER, however, may establish exceptions with regard to ACCESSES to the CONTENTS in certain types of territories, which shall be specified in ANNEX I hereto, “List of CONTENTS” in the form of additional information.

The exceptions foreseen in the previous paragraph shall be implemented using solutions or existing or reasonable technical guarantees, so <RO> shall not be responsible under any circumstance if ACCESSES to CONTENTS take place in an unauthorized territory.

2.6 The authorization of the rights covered by this clause shall not be *of an onerous nature*, although both parties shall be entitled to receive the revenues and compensation specified in clauses four and five hereof.

2.7 The PRODUCER authorizes <RO> to reproduce and communicate publicly the fragments of the CONTENTS, as well as their promotional materials, for viewing and listening in streaming mode, as long as their exploitation rights remain in force, solely for promotional purposes of their authors, artists, singers or performers.

THREE.- Services.

3.1 CONTENTS Digitizing and Encryption: CONTENTS may be digitized and encrypted “remotely”, at the PRODUCER’S headquarters and with his own resources or “locally” at the headquarters and with the means of <RO> . The choice of one option or the other will depend on the PRODUCER’S characteristics and capabilities and negotiation between the parties.

If the PRODUCER is the one who digitizes and encrypts the CONTENTS, <RO> will be entitled to inspect the quality of this digitizing and to require compliance with minimal technical standards prior to including the CONTENTS in its *digital service platform*.

If <RO> is the one to digitize and encrypt the CONTENTS, the PRODUCER should supply the “best available copy” thereof on an electronic or digital carrier that will permit digitizing, compression and encryption so that the CONTENTS may meet the required technical and quality conditions.

The type of carrier and its delivery time by the PRODUCER shall be defined as additional information in ANNEX I hereto, “List of CONTENTS”.

3.2 CONTENTS Promotion and Marketing: The *digital service platform* includes a series of functionalities and services that enable the PRODUCER to carry on certain CONTENTS promotion and marketing activities by means of technological systems that provide a better and more accessible presentation of them with a view to their subsequent marketing.

3.3 ACCESS to CONTENTS: A technological system that enables the CONTENTS to be transferred simply and efficiently from the servers belonging to <RO> where said CONTENTS are housed to their final marketing destination, once the ACCESS that has to be granted to MARKETERS has been negotiated.

FOUR.- Pricing policy and remuneration for the PRODUCER

- 4.1** Prices shall be laid down by the MARKETER in accordance with the number and type of ACCESSES to each work and/or audiovisual recording by the end user or client, whether in download or streaming mode.
- 4.2** In return for the sale of his CONTENTS, the PRODUCER shall receive from the MARKETER via a remuneration of 30% of the revenues obtained by the former, and the remaining 70% shall fall to the MARKETER, in accordance with the provisions of the preceding paragraph 4.1 and when ACCESS to the CONTENTS involves obtaining the decryption key that permits viewing.

The 30% specified as the basic remuneration for the PRODUCER is laid down as a minimum that may be increased in the PRODUCER'S favour when special circumstances of a certain type are met that make this increase feasible.

- 4.3** The MARKETER may set discounts, gratuities or flat rate services in relation to ACCESSES to CONTENTS that he supplies to his clients or end users.

However, in the above-mentioned cases the amount to be received by the PRODUCER may not be less than [xx cents of a euro] per ACCESS to each one of the CONTENTS, in the download mode, providing that the end price laid down by the MARKETER does not exceed the amount of x € for up to 48 hours' validity of the decryption key. If the price were above x €, the 30% specified in the preceding point 4.2 would be applied.

When the ACCESS mode is streaming, the minimum amount to be received by the PRODUCER may not be less than y cents of a euro per ACCESS to each one of the CONTENTS, providing that the end price laid down by the MARKETER does not exceed the amount of y € for up to 48 hours' validity of the decryption key. If the price were above y €, the 30% specified in the preceding point 4.2 would be applied.

The above-mentioned amounts may be subject to adjustment, both up and down, when reaches specific agreements with MARKETERS that involve a very substantial number of accesses to the CONTENTS or represent an exceptionally valuable promotion for them.

- 4.4** In the event of the CONTENTS being considered by the PRODUCER to be novelties or hits or they meet a certain type of condition of a special nature, the PRODUCER shall be the one to set the price policy for CONTENTS of this type, with the application of % rates laid down in the preceding point 4.2. This price policy shall be communicated to <RO>, as soon as the afore-mentioned situation arises.

The PRODUCER may set restrictions with regard to ACCESS to the CONTENTS described above, prohibiting for instance their being open to ACCESS via the flat rate, discounts or gratuities, so that they may not therefore be subject to the minimum rates described in the first paragraph of point 4.3.

The conditions specified in the preceding two paragraphs of this point 4.3. may be subject to review by the PRODUCER whenever he so deems fit.

- 4.5** <RO> shall supply the PRODUCER with detailed monthly settlements of the revenues obtained for the marketing of his CONTENTS by the MARKETER, within the 15 days following the termination of each monthly period. The settlements in the PRODUCER'S favour shall be paid in € (euro), although <RO> will accept no responsibility for the currency exchange rate that may be applied by the recipient bank named by the PRODUCER

FIVE.- Compensation to for the provision of the Digital Services covered by this clause.

- 5.1 The amounts to be received by the PRODUCER specified in the previous points 4.2, 4.3 and 4.4 may be subject to review in accordance with the agreement reached by the parties in relation to the jobs and costs relating to the Digitizing and Encryption of CONTENTS, as specified in point 3.1 of the foregoing clause three.
- 5.2 If the PRODUCER should decide that should Digitize and Encrypt the CONTENTS “locally”, at its headquarters and with its own means, will deduct 20% of the amount to be received by the PRODUCER as remuneration for the provision of the CONTENTS digitizing and encrypting services.
- 5.3 The costs relating to the digitizing and encryption of the CONTENTS should be specified beforehand in ANNEX III hereto under the title “CONTENTS Digitizing and Encrypting Costs”. The remuneration stipulated in the foregoing point 5.2 shall be received by until the costs incurred in these CONTENTS Digitizing and Encryption jobs have been recovered. The maximum period for which may be compensated for the above-mentioned costs shall be 2 years. This period shall start to be calculated from the time when the PRODUCER begins to receive revenues stemming from access to his CONTENTS.

SEE ANNEX III

SIX.- Access Module for the PRODUCER.

- 6.1 The PRODUCER may access in real time in secure and authenticated fashion to a module containing all the information associated with his CONTENTS. This information shall be based on:
- Identification of the PRODUCER'S CONTENTS
 - State of the works and/or audiovisual recordings: promotion and marketing (third-party authorized ACCESSES)
 - Information on the actual uses of the CONTENTS.
 - Revenues from the marketing of the PRODUCER'S CONTENTS

SEVEN.- Technological measures for the security and protection of CONTENTS.

- 7.1 The digital service platform has “*effective technological measures*” to preclude and prevent infringement of Intellectual Property Rights, as specified by article 6 of the “Community Directive on the harmonisation of certain aspects of copyright and related rights in the information society”.
- 7.2 The digital service platform includes a thorough and controlled access system (electronic signature – platform user authentication), protection, such as, encoding and copying control procedures (water marks – codes inserted in audio and video files), as well as systems for monitoring use of the CONTENTS.
- 7.3 <RO> shall be discharged of any claim for damages caused to the PRODUCER as a result of possible infringements by third parties to counter the “*effective technological measures*” implemented by <RO> and designed to prevent or restrict these fraudulent acts against the CONTENTS protected by Intellectual Property Rights. <RO> however, shall in this case take the legal measures that may be open to it, making available to the PRODUCER the means of proof necessary to bring the court actions to which he may be entitled.

EIGHT.- Intellectual Property Rights Entitlement.

The PRODUCER states that he is the legitimate owner of the CONTENTS whose rights are authorized by means hereof (reproduction and communication to the public) for the promotion and access to same, guaranteeing their unhindered exercise within the digital service platform. The PRODUCER also states that he has full availability of the CONTENTS and is fully entitled to enter into this agreement. In any case <RO> is relieved of all liability in the event of any possible claim by third parties whose rights have been infringed. If this situation should arise, <RO> would re-direct the claimants to the PRODUCER, stating the latter’s address and particulars, so that he may effect any claim, remedy, clarification or solution that may be in order.

NINE.- Other supplementary authorisations.

The authorisation covered hereby concerns the marketing of the CONTENTS for PUBLIC AND PRIVATE DIGITAL DATA NETWORKS, in the INTERNET modality, so that any other method or means of sale thereof should be subject to authorization by the PRODUCER. For this purpose the parties should enter into a new agreement specifying the conditions to which the new CONTENTS marketing modality shall be subject.

TEN.- Moral right.

The parties shall handle the CONTENTS in the original form in which they were created, so that the character thereof will remain unchanged, both with regard to their original form and the use to which they are to be put, respecting in any case the moral right of the holders of the rights over CONTENTS.

ELEVEN.- Conditions for service provision.

- 11.1 reserves the right to modify its programs, as well as the systematization of the data supplied and the features of their digital service platform access and transmission. Similarly, reserves the right to cut off the service, either partly or wholly, on account

of technical changes or faults. shall have no liability for the consequences that might arise from the malfunctioning of the operating system or communications networks.

11.2 reserves the right to delete or withdraw temporarily, at its discretion and without any limitation whatsoever, certain CONTENTS that manifestly infringe upon the Intellectual property Rights of third parties, without this being considered possible grounds for rescission or termination of the agreement with regard to the other CONTENTS.

TWELVE. – Ownership of Information associated with the CONTENTS.

<RO> is the holder of the Intellectual property Rights stemming from the database generated by virtue of the PRODUCER’S Access Module.

THIRTEEN.- Protection of Personal Data.

Data of a personal nature shall always be protected in all cases and their use restricted to what is stipulated by current [Spanish legislation on the subject of personal data protection, “ACT 15/1999 of 13 December”, as well as International Legislation on Data Protection and Personal Privacy].

FOURTEEN.– Confidentiality.

The parties undertake to maintain the strictest confidentiality and secrecy regarding everything relating to this agreement, as well as not to disclose without express prior permission any information and knowledge that may be obtained as a result of its implementation.

FIFTEEN.- Contractual subrogation.

<RO> may subrogate its contractual position herein to any entity belonging to <RO>, which assumes each and every one of the rights and obligations stemming herefrom, and said subrogation shall take full effect by simply notifying the PRODUCER thereof in a reliable fashion. Said subrogation shall take place without being detrimental in any way whatsoever to the PRODUCER.

SIXTEEN.- Termination of the agreement.

Any infringement of the obligations by the contracting parties shall entitle the other party to terminate the agreement forthwith, without this affecting the non-performing party’s obligation to compensate the other party for the damages caused.

SEVENTEEN.- Jurisdiction.

For the settlement of any disputes that might arise, the parties agree specifically to submit to the Courts and Tribunals of the city of Madrid, expressly waiving any other jurisdiction that might pertain to them.

In witness whereof, all the parties hereto do sign the present document, which is made out in two counterparts, with one copy remaining in the possession of each of the parties, at the place and on the date stated at the beginning.

For <RO> **For the PRODUCER**
Mr/Ms. **Mr/Ms.**

ANNEX I LIST OF CONTENTS

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ANNEX II MARKETERS

E-TAILERS – VERTICAL PORTALS – GENERAL PORTALS

This section covers all those websites that are engaged in the sale and rental of audiovisuals via the Internet or their promotion, giving value added to their visitors, whether this is their main business or, to the contrary, it is just another section in the range of services they offer to users.

E-CASTERS – WEB-CASTERS

Companies that distribute audiovisual and musical CONTENTS, both on TV (ability to get remote access to the videos connected with the CONTENTS of their website) and on the radio (offering one or more thematic channels).

PROVIDERS OF AUDIOVISUAL CONTENTS

Companies supplying CONTENTS to all retailers connected with the audiovisual world. In this aspect, the companies may be singled out that undertake to supply the companies engaged in the sale of entertainment products (music, videos, books, DVD) with information on the products sold.

CIRCUITS WITH IP PATH ACCESS

Companies with the technological capacity to exhibit audiovisual CONTENTS in authorized establishments via public and private digital networks, the INTERNET for instance.

ANNEX III CONTENTS DIGITIZING and ENCRYPTING

COSTS

SINGLE PROVISION.

By virtue of the provisions of clause three – “Services”, shall be the one, by express agreement of the parties, to carry out the tasks of Digitizing and Encryption of the CONTENTS covered hereby.

By special agreement <RO> will assume the costs relating to the tasks of Digitizing and Encryption of the CONTENTS, so clause five will not be applicable – “Compensation for <RO> for the provision of the Digital Services covered by this clause”. <RO> will therefore not deduct the 20% stipulated in the above-mentioned clause by way of remuneration for the provision of the above-mentioned services. This provision shall only be applicable to the costs of digitizing and encrypting the CONTENTS listed in ANNEX I hereto.

In the event of the work of digitizing and encrypting new titles not listed in the aforementioned ANNEX I being carried out and of their going on to form part of the CONTENTS covered hereby, clause five - “Compensation for <RO> for the provision of Digital Services covered by this clause” – will automatically become applicable.