

INSTITUTIONAL LICENCE AGREEMENT

LICENCE AGREEMENT dated January 1, 2021 (the "**Effective Date**")

BETWEEN:

- (1) NKODA LIMITED, a company incorporated in England (company number 09889486) whose registered office is at T C Group, Level 1, Devonshire House, One Mayfair Place, London W1J 8AJ ("**nkoda**");
- (2) BUREAU DE COOPERATION INTERUNIVERSITAIRE of 500, Rue Sherbrooke Ouest, Bureau 200, Montreal, QC H3A 3C6 ("**BCI**");
- (3) COUNCIL OF PRAIRIE AND PACIFIC UNIVERSITY LIBRARIES of 301-3301 Douglas St, Victoria, BC V8Z 3L2 ("**COPPUL**"); and
- (4) COUNCIL OF ATLANTIC UNIVERSITY LIBRARIES / Conseil des bibliothèques universitaires de l'Atlantique, of 120 Western Parkway, Bedford, NS CANADA B4B 0V2 ("**CAUL-CBUA**") (BCI, COPPUL and CAUL-CBUA together, being the "**Licensees**" and each a "**Licensee**"),

(also collectively referred to herein as the "**Parties**" or each individually as a "**Party**").

BACKGROUND:

- (A) nkoda operates an online digital library of sheet music and other cultural/education material that is made available to licensees through an application for mobile, tablet and other computing devices.
- (B) The Licensees wish to obtain, on behalf of their authorised personnel and students, licences to access that online digital library, subject to and in accordance with the terms and conditions of this Agreement.
- (C) The Consortia named above as the "Licensees" are authorized to act for, and to sign this Agreement on behalf of, member libraries hereinafter known as the "**Member Institutions**". The rights and responsibilities referenced in this Agreement, in regard to each "Licensee", shall apply to all of the Member Institutions covered under this Agreement; however, each Licensee is responsible only for fulfilment of its individual responsibilities under this Agreement. None of the Licensees, nor any Member Institution, shall be liable for any breach or default of any of the other Licensees or any other Member Institution. The Member Institutions are listed below.

LICENCE KEY TERMS:

Member Institutions (consortia)	<i>Member Institution</i>	<i>Contact</i>	<i>Email</i>
	Université du Québec à Montréal (BCI)	Carole Brouillette	brouillette.carole.2@uqam.ca
	Université Laval (BCI)	Jean- François Ruest	Jean- Francois.Ruest@bibl.ulaval.ca
	University of Saskatchewan (COPPUL)	Usask Eresources	usask.eresources@usask.ca
	Mount Allison University (CAUL-CBUA)	Anne LePage	alepage@mta.ca

Fees	<i>Member Institution</i>	<i>Users & Band & Authentication</i>	<i>Fee (USD)</i>	
	Université du Québec à Montréal (BCI)	10SU, Shibboleth, 10-30K	\$5,065.83 (10 months pro-rated)	
	Université Laval (BCI)	10SU, Email registration, over 30K	\$5,974.83 (11 month pro-rated)	
	University of Saskatchewan (COPPUL)	Unlimited, Shibboleth, 10-30K	\$9,186.63	
	Mount Allison University (CAUL-CBUA)	10SU, Email registration, 1-5000K	\$4,678.67 (11 months pro-rated)	
	FTE Bands	10 Simultaneous Users	Effectively Unlimited	
	1,000 – 5,000	\$5,104	\$9,186.63	
	5,000 – 10,000	\$5,640	\$9,186.63	
	10,000 – 30,000	\$6,079	\$9,186.63	
	30,000+	\$6,518	\$9,186.63	
	<p>These fees are for the Initial Term, payable in accordance with clause 5 of the Standard Terms and Conditions set out below. The Parties shall, no later than 60 days prior to the end of the Initial Term (or each Renewal Term, as applicable), hold discussions in good faith to negotiate the Fees for the upcoming Renewal Term.</p>			
	Licence Period	<p>January 1 to December 31, 2021 (both dates inclusive). This is the term of the Licence being (subject to earlier termination in accordance with clause 11 of the Standard Terms and Conditions overleaf) a fixed period of 12 months from the Effective Date (the Initial Term) which shall automatically terminate at the end of the Initial Term unless all parties agree, at least 30 days' prior to the end of the Initial Term, to renew for a further 12 month period (a Renewal Term) in which case the term of the Licence shall automatically terminate at the end of the Renewal Term (unless a further Renewal Term is agreed by the parties as set out above).</p>		
	User Limits	<p>An unlimited number of Users can be authorised by the Member Institutions, although no more than 10 Simultaneous Users (in the case of Université du Québec à Montréal) or 150 Simultaneous Users (in the case of University of Saskatchewan) will be permitted to access Content at any time.</p>		
nkoda contact	<p>Mike Newman - mike.newman@nkoda.com</p>			
Consortia contacts	<p>BCI: Arnald Desrochers, achats.en.commun@bci-gc.ca COPPUL: Carol Stephenson, carol@coppul.ca CAUL-CBUA: Cynthia Holt, execdir@caul-cbua.ca</p>			

Terms defined in the Licence Key Terms above will apply when used in the Standard Terms and Conditions which are set out overleaf and terms defined in those Standard Terms and Conditions have the same meaning when used in the Licence Key Terms. The Licence incorporates (and is subject to) the Standard Terms and Conditions which are set out overleaf.

STANDARD TERMS AND CONDITIONS:

1. Definitions and interpretation

1.1. The following additional terms shall apply in this Agreement:

Agreement means, together, the Licence Key Terms (which are set out on the first and second pages of this document), these Standard Terms and Conditions and the End User Licence Agreement.

App means the nkoda-branded application (available on mobile, tablet and other computer devices), operated by or on behalf of nkoda, on which the Content is made available to Users.

Content means the library of sheet music and other cultural/educational materials that is made available by nkoda on the App from time to time.

End User Licence Agreement means the terms and conditions that the Member Institutions are required to accept as a condition of Users being able to access the Content via the App, which are attached hereto as Exhibit #1. For the purposes of this Agreement, the Parties have agreed that the End User Licence Agreement is deemed to be amended as set out in clause 2.2(a) of this Agreement.

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, any and all such rights and all similar or equivalent rights or forms of protection which subsist now, or will subsist in the future, in any part of the world.

Licence means the non-exclusive licence for Users to use the Service during the Licence Period, granted by nkoda to the Licensees (who are acting on behalf of the Member Institutions) pursuant to this Agreement, as such licence is more particularly described in clause 4.

Service means the provision of access to the Content to Users via the App (including providing the ability for each User to (a) access all scores, parts, songs, pieces, and educational materials which form part of the Content (b) add annotations to such Content and (c) share the above Content with other Users).

Simultaneous Users means the number of Users accessing the Content at any one time (and, for the purposes of this Agreement, a User is deemed to be accessing Content while they are inside the 'Score Viewer' on the App).

User means a current member of the relevant Member Institution's personnel, or a current student attending the relevant Member Institution, in each case as notified in writing by the relevant Member Institution (and/or by the corresponding Licensee) to nkoda from time to time.

1.2. In this Agreement, unless the context otherwise requires, any reference to:

- (a) **including, include, in particular, for example** or any similar expression is without limitation;
- (b) a **person** or **entity** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's or entity's personal representatives, successors and permitted assigns;
- (c) **personnel** means, in relation to any person, such person's officers, employees, agents, consultants, advisers, representatives or contractors;

- (d) words in the singular include the plural (and *vice versa*); and
- (e) a **clause** means the relevant numbered clause in these Standard Terms and Conditions.

2. Supply of the Service

2.1. nkoda shall provide the Service to the Member Institutions and the Users subject to, and in accordance with, this Agreement.

2.2. On behalf of (and with the authority of) the Member Institutions, the Licensees hereby agree:

(a) to the provisions of the End User Licence Agreement, and shall use reasonable endeavours to procure that the Member Institutions and their respective Users will comply with the terms of the End User Licence Agreement, except that (unless any such User chooses to subscribe for the App on his or her own account and therefore not pursuant to the Licence):

- (i) clause 3 of the End User Licence Agreement will not apply to any of the Member Institutions or to any such User; and
- (ii) the following provision in clause 9 of the End User Licence Agreement will not apply to any of the Member Institutions or to any such User:

"You agree that, by submitting any User Content, you grant us and our affiliates a perpetual, irrevocable, worldwide, non-exclusive, royalty-free and fully sub-licensable right and licence to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content (in whole or part) and/or to incorporate it in other works in any form, media or technology, and you waive any moral rights you may have in, or to be identified as the author, of such User Content."

but will be deemed to have been replaced (in its entirety) by the following new provision:

"You agree that, by submitting any User Content, you grant us and our affiliates a worldwide, non-exclusive, royalty-free right and licence to display and reproduce such User Content (in whole or part) on or via the App until such time as you or we delete such User Content from the App."

- (iii) the reference to £1,000 in clause 12 of the End User Licence Agreement will be deemed to be a reference to the US\$ equivalent of £1,000 as at the relevant date; and
- (iv) the following provision in clause 13 of the End User Licence Agreement will not apply to any of the Member Institutions or to any such User:

"You agree that any dispute between you and us regarding these terms or the App will only be dealt with by the English courts, except that if you live in a country (which, for these purposes, includes Scotland or Northern Ireland) of the European Union other than England, you can choose to bring legal proceedings either in your country or in England, but if we bring legal proceedings, we may only do so in your country."

(b) the number of Simultaneous Users will be strictly limited to the User Limit (although the User Limit can be increased at the relevant Member Institution's request, or at the request of the corresponding Licensee, subject to commercial terms being agreed between the Parties).

2.3. nkoda shall use its reasonable endeavours, during the Licence Period, to provide:

- (a) the Service in a professional and efficient manner, with reasonable skill, care and diligence;
- (b) support with any special projects for which Users would like to use the Content (for example, use of the Content in connection with a performance or as part of regular rehearsals) or any assistance the relevant Member Institution requires for the purpose of familiarising its Users with the Service (at such cost, if any, as may be mutually agreed by the Parties in writing in advance); and
- (c) up-to-date details of an account manager, who will deal with any day-to-day queries relating to the Service and provide support for any projects of the type referred to at clause 2.3(b) above.

3. nkoda's warranties

3.1. nkoda warrants and undertakes to the Institution that:

- (a) it has the right to enter into this Agreement, and to license the rights to the Licensees, on behalf of the Member Institutions (and the Users), to access and make use of the Content, as contemplated by this Agreement; and
- (b) it shall use reasonable endeavours to protect against the inclusion of viruses or malicious software in the Content and on the App.

3.2. nkoda does not warrant or undertake that any Member Institution's use and/or any User's use of, or access to, the Service will be uninterrupted or error-free.

3.3. The Licensees, on behalf of the Member Institutions, accept responsibility for the selection of the Service to achieve its intended results and acknowledge that the Service has not been developed to meet the individual requirements of the Member Institutions or any of the Users.

3.4. The Licensees acknowledge, on behalf of the Member Institutions, that the Service is provided "as is" and is expressly subject to the disclaimer in clause 3.5 below.

3.5. Save as expressly stated in this Agreement, all other conditions, warranties or other terms or provisions which might have effect between the Parties, or be implied or incorporated into this Agreement, the End User Licence Agreement or any related licence or contract, whether by statute, common law or otherwise, are hereby expressly excluded to the fullest extent permissible under applicable laws, including any implied conditions, warranties or other terms or provisions as to the satisfactory quality or fitness for purpose of the Service or the use of reasonable skill and care in connection with the provision of the Service by nkoda.

4. The Licence

4.1. nkoda hereby grants to the Licensees, acting on behalf of the Member Institutions, a non-exclusive licence for the Licence Period:

to receive, make use of and promote the Service to the personnel and students of the Member Institutions; and

- (a) subject to clause 4.2 below, to grant the Member Institutions, and the authorised Users of the Member Institutions, sub-licences to use the Service.

4.2. In relation to permitted access to the Content and the scope of use of the Content:

- (a) the Licensees shall use reasonable endeavours to procure that the Member Institutions comply with, and communicate to their respective Users the provisions of, the End User Licence Agreement (as amended pursuant to clause 2.2(a) above) while accessing any Content;

- (b) the Licensees agree that the Service is provided for educational and practice purposes only and to procure that the Member Institutions, and their respective Users, only use the Service for such purposes; and
- (c) the Licensees and the Member Institutions shall have no right (and no right to sub-licence any User or other party) to copy, adapt, reverse-engineer, decompile, disassemble or modify the App and/or the Content in whole or in part.

5. The Fees

- 5.1. Save only where expressly agreed otherwise by the Parties in writing, the Licensees shall each pay the Fee due from them within 60 days following the Effective Date (or following the start of any Renewal Term, as applicable).
- 5.2. Unless otherwise notified by nkoda in writing, the Licensees shall each pay the Fee due from them (and any further sums due under this Agreement) by way of bank/wire transfer using the following details:
 - (a) Bank details (GBP): nkoda limited
 - (b) Sort code: 30-99-83
 - (c) Account no.: 84818263
 - (d) IBAN: GB96 LOYD 309983 84818263
 - (e) BIC: LOYDGB21114
- 5.3. If nkoda has not received payment of the Fee due from a Licensee in full, by the time that it falls due under clause 5.1 above, then interest shall accrue on a daily basis (and shall be compounded quarterly) on such unpaid amount, at an annual rate equal to 4% over the base rate of the Bank of England from time to time, commencing on the due date for the payment of the Fee and continuing until the Fee is fully paid, whether before or after judgment.
- 5.4. All sums payable under this Agreement shall be payable in United States dollars via wire transfer.

6. Confidentiality and publicity

- 6.1. Each Party agrees to keep confidential, during the Licence Period and for 5 years thereafter, and not to use for its own purposes (other than for the implementation of this Agreement), nor without the prior written consent of the other Parties to disclose to any third party (except its professional advisers or to the extent required by any law or any court or regulatory body of competent authority), the terms of this Agreement and any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such Party through disclosure by any of the other Parties and which relates in any way to any of the other Parties, unless such information:
 - (a) is public knowledge or already within the lawful possession of the receiving Party at the time of disclosure (but, for the avoidance of doubt, any collection, compilation or analysis of any information that is in the public domain, where such collection, compilation or analysis is presented or otherwise disclosed by any Party to the other in a form that is not in the public domain, will be treated as confidential information for the purposes of this Agreement); or
 - (b) subsequently becomes public knowledge other than by any breach of this Agreement, any third-party agreement or any law; or
 - (c) subsequently comes lawfully into the possession of the receiving Party from a third party without any restriction on the disclosure thereof by the receiving Party; or
 - (d) is independently developed by the receiving Party, where such independent development can be shown by written evidence provided to the disclosing Party (promptly at its request).

- 6.2. Each Party shall use all reasonable endeavours to prevent the unauthorised disclosure of any such confidential information, including any of the terms of this Agreement, by any of such Party's personnel.
- 6.3. In the event of a public performance using the Service, the Licensees will procure that the Member Institutions acknowledge the use of the Service in the performance's programme notes.
- 6.4. During the Licence Period, nkoda can refer to its relationship with the Licensees and/or the Member Institutions (or any of them) on the '*Institutional Partnerships*' page of the nkoda website (at <https://nkoda.com/institution>).

7. Intellectual Property Rights

- 7.1. As between the Parties, all Intellectual Property Rights in the Service, the App and the Content belong, and shall at all times belong, to nkoda and/or to its licensors. The Licensees acknowledge and agree that neither they nor the Member Institutions shall, and nor shall any User, by virtue of this Agreement or the End User License Agreement, or the receipt and use of the Service, obtain or claim (or otherwise derive) any right, title or interest in the Service, the App or the Content. All rights not expressly granted herein are hereby expressly reserved on behalf of nkoda and/or its licensors.
- 7.2. The use of the Service by the Licensees, the Member Institutions and the Users (including all goodwill derived from the same) shall at all times inure for the benefit of nkoda. In the event that any goodwill accrues through any Licensee's or any Member Institution's (or any User's) use of the Service, the relevant Licensee hereby assigns to nkoda all right, title and interest in and to such goodwill (or, as applicable, undertakes to procure that the relevant Member Institution or User executes such an assignment to nkoda).
- 7.3. nkoda undertakes at its own expense to defend (or, at nkoda's sole option, to settle) any claim or action brought against any Licensee or Member Institution alleging that its receipt or use of the Service (or any part thereof), in accordance with the terms of this Agreement and the End User License Agreement, infringes the Intellectual Property Rights of any third party (a **Claim**) and nkoda shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses properly incurred by, or awarded against, such Licensee or Member Institution as a result of or in connection with any such Claim. However, for the avoidance of doubt, this clause 7.3 shall not apply where the Claim in question is attributable to:
 - (a) any receipt or use of the Service (or any part thereof) by any Licensee or Member Institution other than in accordance with the terms of this Agreement and the End User License Agreement;
 - (b) any use of the Service in combination with any hardware or software either not recommended by nkoda or the use of which nkoda has advised against, if the infringement would have been avoided by the use of the Service in a way that did not involve any such combination;
 - (c) any use of a non-current release of the App; or
 - (d) any use of the Service, or any part thereof, by any User other than in accordance with the provisions of the End User Licence Agreement (as amended pursuant to clause 2.2(a) above).
- 7.4. This Agreement governs the receipt and use of the Service for practice and education purposes only (and, for the avoidance of doubt, the Licensees, the Member Institutions and/or any User(s), as applicable, will need to enter into separate arrangements for parts rental and/or performance, synchronisation, mechanical, broadcast or other Intellectual Property Rights).

8. Data Protection

- 8.1. The following additional terms shall apply in this clause 8:

Data Protection Legislation means, unless and until the General Data Protection Regulation ((EU) 2016/679) (the **GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR and any national implementing laws, regulations and secondary legislation; and

Personal Data has the meaning set out in Article 4(1) of the GDPR.

- 8.2. The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 8.3. nkoda shall use any Personal Data provided to it by any Licensee or Member Institution (if any), in connection with the provision of the Service, in accordance with the relevant written instructions given to it by the relevant Licensee or Member Institution and nkoda's Data Protection Policy, which is available from nkoda upon request.

9. **Limitation of Liability**

- 9.1 Nothing in this Agreement shall limit or exclude any Party's liability:
- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for any other act, omission, or liability which may not be limited or excluded by law.
- 9.2 Subject to clause 9.1, no Party shall have any liability to any other Party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, or for any indirect or consequential loss, arising under or in connection with this Agreement.
- 9.3 Subject to clause 9.1 (and save in respect of the Licensees obligation to pay the Fees to nkoda), a Party's total aggregate liability to the other Parties in any 12-month rolling period, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement, shall be limited to the amount paid by the relevant Licensee to nkoda for the Service during the relevant 12-month period.

10. **Termination**

- 10.1 Without affecting any other right or remedy available to it, any Party may terminate this Agreement with immediate effect by giving written notice to the other Parties if:
- (a) any other Licensee fails to pay any amount due under this Agreement on the due date for payment and remains in default for more than 14 days after being notified in writing to make such payment;
 - (b) any other Party commits a material breach of any other provision of this Agreement which breach is irremediable or (if such breach is remediable) such Party fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) any other Party is, or appears likely to be, unable to pay its debts as they fall due or becomes insolvent.
- 10.2 Without limiting the scope or generality of clause 10.1(b) above, nkoda may terminate this Agreement with immediate effect, by giving written notice to the Licensees, if (i) a User does not adhere to the provisions of the End User Licence Agreement and (ii) the relevant Licensee and Member Institution fail to remedy that non-adherence, or to terminate the relevant User's access to the Service, within a period of 30 days after being notified in writing to do so by nkoda.

10.3 The Licence Period, and the Licence, shall terminate automatically on the termination or expiry of this Agreement (and, for the avoidance of doubt, all Users will be unable to access any of the Content through the Service after such termination or expiry).

11. Force Majeure

11.1 No Party shall be in breach of this Agreement, nor otherwise liable for, any delay in performing, or any failure to perform, any of its obligations under this Agreement if such delay or failure results from any circumstances beyond its reasonable control. In such circumstances, the affected Party shall be entitled to a reasonable extension of the time permitted for performing such obligations, provided that, if the period of delay or non-performance continues for longer than 30 days, any Party not affected may terminate this Agreement with immediate effect by giving written notice to the other Parties.

12. General

12.1 The Licensees shall not, and shall procure that the Member Institutions shall not, individually or collectively (except to the extent expressly envisaged by the provisions of this Agreement):

- (a) sub-license, assign or novate the benefit or burden of this Agreement in whole or in part;
- (b) deal in any other manner with any or all of its rights or obligations under this Agreement,

without the prior written consent of nkoda, such consent not to be unreasonably withheld, conditioned or delayed.

12.2 nkoda may at any time assign, novate, charge or dispose of, in any other manner, any or all of its rights and obligations under this Agreement, on condition that it gives written notice thereof to the Licensees.

12.3 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

12.4 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor shall it prevent or restrict the further exercise of that (or any other) right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that (or any other) right or remedy.

12.5 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from under that Act. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

12.6 This Agreement (including any related document appended to it or otherwise referred to in it) contains the entire agreement, and supersedes all prior agreements, arrangements and understandings, between the Parties in relation to its subject matter. Each Party acknowledges that, in entering into this Agreement (or any such related document), it is not relying on any statement, representation, assurance or warranty (whether made negligently or innocently) of any person (whether a party to this Agreement or not) other than any such statement, representation, assurance or warranty that is expressly set out in this Agreement (or in any such related document) (a **Representation**). Each Party agrees that the only rights and remedies available to it arising out of, or in connection with, any such Representation shall be for breach of contract. Nothing in this clause 12.6 shall exclude or limit any Party's liability for fraud.

12.7 This Agreement may be executed in any number of counterparts (including by scanned digital copies exchanged



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One Mayfair Place
London W1J 8AJ
www.nkoda.com

by email or fax), each of which when executed and exchanged shall constitute a duplicate original, but all the counterparts shall together constitute one and the same agreement.

- 12.8 Nothing in this Agreement is intended, or shall be deemed, to establish any partnership or joint venture between the Parties, to constitute any Party as the agent of the other Party, or to authorise any Party to make or enter into any commitments for or on behalf of the other Parties.
- 12.9 If the Parties disagree over the interpretation of this Agreement, or whether a Party or a Member Institution is in breach of any part of this Agreement, the Parties and any such Member Institution shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The Parties shall cooperate in good faith in pursuing mediation or other such means of resolving the disagreement.
- 12.10 This Agreement shall be governed by and construed in accordance with the laws of the province of the relevant Licensee and the laws of Canada applicable therein.
- 12.11 The parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to, and within the jurisdiction of, the courts of the province of the relevant Licensee in Canada.

This Agreement has been entered into by each of the Parties on the date stated at the beginning of it.

EXHIBIT #1**[END USER LICENCE AGREEMENT]****Introduction**

These are the terms of licence that apply to this application (and any update/upgrade to it) that we make available for download from any third party application store (**App**).

These terms also apply to any of the services accessible through the App, unless separate or additional terms apply, in which case they will be displayed on-screen or accessible via a link. Use of your personal information submitted to or via the App is governed by our [Privacy Policy](#) and [Cookie Policy](#)

The App is provided by or on behalf of nkoda Limited (**we, us and our**). We are a limited company, registered in England. Our registered company number is 09889486, and our registered office is at Level 1 Devonshire House, One Mayfair Place, London W1J 8AJ, UK. Our VAT registration number is 231 8714 17. You acknowledge that these terms are entered into between you and us, and no third party (such as the operator of any third party application store) is a party to this agreement.

BY DOWNLOADING, ACCESSING AND/OR USING THE APP, YOU CONFIRM THAT YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS AND ACKNOWLEDGE THAT THEY CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN US AND YOU. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU ARE NOT PERMITTED TO ACCESS OR USE THE APP, AND YOU SHOULD NOT CLICK TO ACCEPT THESE TERMS AND YOU SHOULD NOT PROCEED FURTHER.

We reserve the right to change these terms from time to time by notifying you (with the updated terms being displayed on-screen or with a link to the updated terms) when you next start the App. These terms were last updated on Monday 27th June, 2020.

2. Access to the App

By using the App, you confirm to us that you are 12 years old or older. If you are under the age of 12, you may not access the app. To pay for and download the App and/or make any optional "in-App" purchases, you must be at least 12 years of age.

The App may only be downloaded, accessed and used on a device owned or controlled by you and running the relevant operating system for which the App was designed, so you must make sure you have a compatible device which meets all the necessary technical specifications to enable you to download the App you wish to download and to access and use the downloaded App.

You will be assumed to have obtained permission from the owner of any device that is controlled, but not owned, by you to download the App to that device. You accept responsibility, in accordance with these terms,

for all access to, and use of, the App by you on any device, whether or not it is owned by you.

You acknowledge that the mobile service provider for the device to which you download, or on which you access or use, the App may charge for internet access (including mobile data usage) on that device.

We may, from time to time, restrict access to certain features, functions or content of, or services accessible through, the downloaded App to users who have registered with us. If you do not do so, you will be unable to use the applicable features, functions or content of, or access the applicable services through, the downloaded App. You must ensure that any registration details you provide are accurate.

If you choose, or you are provided with, a log-on ID (such as a username and password or other identifiers) for accessing or using the App, you must treat such information as confidential and must not reveal it to anyone else. You are responsible for all activities that occur under your log-on ID and must notify us immediately of any unauthorised use of which you become aware. We reserve the right to disable any log-on ID, at any time, if in our opinion you have failed to comply with any of the provisions of these terms or if any details you provide for the purposes of registering as a user prove to be false.

We cannot and do not guarantee the continuous, uninterrupted or error-free operability of the App or that the App will respond at a certain speed (since this depends on a number of factors outside our control).

3. In-App purchases and subscriptions

The use of the App involves a subscription. Your subscription (for which you will pay a fee, unless we waive your fee as part of a free trial or other promotional offer, or if your subscription is provided by your institution) gives you access to the App, features, functions and/or content for the period of time selected by you from amongst the available options indicated on relevant third party application store. It is important to note that, at the end of this subscription period, your subscription will automatically renew for an equivalent period (and continue to do so), unless you alter your subscription renewal settings in accordance with the instructions to be found on the relevant third party application store.

Where you pay to download the App or in-App purchase, we warrant that it will substantially comply with the description provided by us at the point of download and that any services we provide through it will be provided with reasonable care and skill.

4. What you are allowed to do

You may only use the App for non-commercial, personal use, and only in accordance with these terms (and in accordance with any applicable terms of any relevant third party service provider for the device to which you download, or on which you access or use, the App) and only for lawful purposes (complying with all applicable laws and regulations), and in a responsible manner.

Subject to the following sections, you may retrieve and display content from the App (**Content**) on a computer

or mobile device and store the App in electronic form incidentally in the normal course of the use of your

device. Additional terms may also apply to certain features, parts or content of the App and, where they apply, will be displayed on-screen or accessible via a link.

The provision of the Content via the App does not grant you any rights of public performance and you should obtain a public performance licence where necessary.

5. What you are not allowed to do

Except to the extent expressly set out in these terms, you are not allowed to:

- republish, redistribute or re-transmit the App;
- copy or store the App other than for your use as permitted by these terms and as may occur incidentally in the normal course of the use of your browser or mobile device;
- store the App on a server or other storage device connected to a network or create a database by systematically downloading and storing any data from the App (other than User Content, as defined in section 9 below);
- remove or change any content of the App (other than User Content, as defined in section 9 below) or attempt to circumvent security or interfere with the proper working of the App or any server on which it is hosted;
- use the App in a way that might damage our name or reputation or that of any of our affiliates;
- use any Content in a manner that:
 - permits the public performance of Content unless you have entered into an agreement with the relevant publisher (or its authorised representative) for the hire of such parts and only during the period of such hire;
 - is not in compliance with applicable law;
 - is criminally obscene, harassing and/or discriminatory;
 - violates or infringes the rights (including intellectual property rights) of a third party, such as the author or publisher of the Content;
 - circumvents any restrictions we impose on accessing any Content from outside a particular territory; or
- otherwise, do anything that it is not expressly permitted by these terms.



All rights granted to you under these terms will terminate immediately in the event that you are in breach of any of them.

To do anything with the App that is not expressly permitted by these terms, you will need a separate licence from us. Please contact us, using the [Contacting us](#) details at the end of these terms.

6. Third party platform providers and application stores

Certain third-party platform providers with whose devices and/or operating systems the App has/have been designed to be compatible oblige us to include certain additional provisions in these terms. These are set out at the end of these terms under [Additional third party terms](#). These provisions come from the relevant third party platform providers, not us.

Third-party application stores are operated by the relevant third-party platform providers and/or their affiliates. You must comply with all applicable terms of service, rules and policies applying to any third party application store from which you download the App. We are not responsible for these stores or (with the exception of the App) for anything provided by them and do not guarantee that they will be continuously available.

7. Intellectual property rights

We license, but do not sell, to you the App you download. We remain the owner of the App at all times.

All intellectual property rights in the App and in any content of the App (including text, graphics, software, photographs and other images, videos, sound, trademarks and logos), other than User Content, are owned by us or our licensors. Except as expressly set out here, nothing in these terms gives you any rights in respect of any intellectual property owned by us or our licensors and you acknowledge that you do not acquire any ownership rights by downloading the App or any content from the App.

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	Microsoft.ApplicationInsights.WindowsApps	
	Microsoft.Bcl.Build	
	Microsoft.NETCore.UniversalWindowsPlatform	
	Microsoft.Toolkit.Uwp.UI	
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	ACR Device Info	
	Acr.UserDialogs	
	Microsoft.AppCenter	
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8. App features and content

You agree that downloading, accessing and use of the App since it is made available for download free of charge, are on an 'as is' and 'as available' basis and at your sole risk.

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Except as set out in these terms, we make or give no representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, quality, fitness for purpose or originality of any content of the App and, to the fullest extent permitted by law, all implied warranties, conditions or other terms of any kind are hereby excluded and we accept no liability for any loss or damage of any kind incurred as a result of you or anyone else relying on the content of the App.

9. User content

The App may, from time to time, allow you to submit user-generated content such as your own sheet music or annotations on existing sheet music (**User Content**) and may also allow you to communicate that content, either to selected recipients or in public or semi-public areas, such as comments pages or discussion forums (collectively, **User Content Areas**). We do not control User Content submitted, nor are User Content Areas actively moderated. You are solely responsible for User Content as submitted by you and acknowledge that all User Content expresses the views of its respective authors and not our views.

If you submit any User Content, you must keep it relevant to the purpose of the User Content Area to which you submit it and the nature of any topic. You also warrant that you have the rights to submit all User Content submitted by you (for example, that you have the rights to upload any sheet music uploaded by you to the nkoda Service).

User Content must not:

- contain, transmit, distribute, link to or otherwise make available, or advertise or promote any content that infringes any intellectual property rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, abusive, harassing, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), liable to cause anxiety, alarm or embarrassment, knowingly false or misleading, or that does not comply with all applicable laws and regulations or is otherwise objectionable ("**Prohibited Content**");
- impersonate any person or entity or otherwise misrepresent your relationship with any person or entity;
- contain, transmit or distribute any unsolicited or unauthorised advertising, marketing or promotional

material or other forms of solicitation (spam); or

- transmit or distribute any virus and/or other code that has contaminating or destructive elements.

You agree that, by submitting any User Content, you grant us and our affiliates a perpetual, irrevocable, worldwide, non-exclusive, royalty-free and fully sub-licensable right and licence to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content (in whole or part) and/or to incorporate it in other works in any form, media or technology, and you waive any moral rights you may have in, or to be identified as the author, of such User Content.

Whilst we do not pre-screen User Content, we reserve the right, in our sole discretion, to delete, edit or modify any User Content submitted by you and/or to close any discussion topic, at any time without notice to you.

Complaints about the content of any User Content must be sent to contact@nkoda.com and must contain details of the specific User Content giving rise to the complaint.

10. Data enhancement

The App may, from time to time, allow you to submit data to us which you think will enhance the data that is already available through the App (a **User Data Submission**). Any such User Data Submission can be made through the relevant part of our website at data.nkoda.com (coming soon). We will validate any such User Data Submission and either approve it or reject it. The approval or rejection of any such User Data Submission is entirely at our discretion.

If we approve your User Data Submission, you may also be rewarded with a credit which can be redeemed in the form of vouchers/gift cards issued by specified third parties (as notified by us to you at the relevant time). The allocation and value of any such credit will be determined by us and is entirely at our discretion.

If you make a User Data Submission, you agree that:

- your User Data Submission will not contain, transmit, distribute, link to or otherwise make available, or advertise or promote, any Prohibited Content (as defined in section 9 above);
- you will not impersonate any person or entity or otherwise misrepresent your relationship with any person or entity;
- your User Data Submission will not contain, transmit or distribute any unsolicited or unauthorised advertising, marketing or promotional material or other forms of solicitation (spam);
- your User Data Submission will not transmit or distribute any virus and/or other code that has contaminating or destructive elements; and
- all data comprised within your User Data Submission will become our property and will be owned



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solely and exclusively by us (whether your User Data Submission is approved or rejected by us).

If you breach any of these terms, at our discretion, your ability to make User Data Submissions may be restricted and/or your right to use the App may be terminated (in which case any credits which have not been redeemed by you will no longer be redeemable by you).

11. External links

The App may, from time to time, include links to external sites, which may include links to third party offers and promotions. We include these to provide you with access to information, products or services that you may find useful or interesting. We are not responsible for the content of these sites or for anything provided by them and do not guarantee that they will be continuously available. The fact that we include links to such external sites does not imply any endorsement of or association with their operators or promoters.

12. Our liability

Nothing in these terms shall limit or exclude our liability to you:

- for death or personal injury caused by our negligence;
- for fraudulent misrepresentation;
- for breach of any term implied by the Consumer Rights Act 2015 and which, by law, may not be limited or excluded; or
- for any other liability that, by law, may not be limited or excluded.

Subject to this, in no event shall we be liable to you for any business losses and any liability we do have for losses you suffer is strictly limited to losses that were reasonably foreseeable and shall not, in aggregate, exceed the highest of:

- £1,000;
- the total fees paid by you for any subscriptions and in-app purchases in the App in respect of which the liability arises; and
- the minimum amount permitted by applicable law.

We will not be liable or responsible for any failure to perform or delay in the performance of, any of our obligations that are caused by events outside our reasonable control.

13. General

You may not transfer or assign any or all of your rights or obligations under these terms.

All notices given by you to us must be given in writing to the address set out in section 14 of these terms.

If we fail to enforce any of our rights, that does not result in a waiver of that right.

If any provision of these terms is found to be unenforceable, all other provisions shall remain unaffected.

These terms may not be varied except with our express written consent.

These terms and any document expressly referred to in them represent the entire agreement between you and us in relation to their subject matter. We are required by law to advise you that any contract formed on these terms may be concluded in the English language only and that no public filing requirements apply.

You agree that any dispute between you and us regarding these terms or the App will only be dealt with by the English courts, except that if you live in a country (which, for these purposes, includes Scotland or Northern Ireland) of the European Union other than England, you can choose to bring legal proceedings either in your country or in England, but if we bring legal proceedings, we may only do so in your country.

The European Online Dispute Resolution platform (<http://ec.europa.eu/consumers/odr/>) provides information about alternative dispute resolution, which may be of interest.

14. Contacting us

Please submit any questions you have about these terms or any complaint or concern in relation to the App by email to contact@nkoda.com or write to us at:

*nkoda Limited
Level 1 Devonshire House
One Mayfair Place
London W1J 8AJ
UK*

15. Additional terms from third party platform providers

Apple

If the App that you download, access and/or use is downloaded from the App Store operated by Apple Inc. ("Apple"):

- your licence to use the App is limited to a non-transferable licence to use the App on an Apple-branded device owned or controlled by you and as permitted by Apple's usage rules published in its App Store terms of service, except that the App may be accessed, acquired and used by other accounts associated

with you via Family Sharing or volumepurchasing;

- you acknowledge and agree that:
 - Apple has no obligation at all to provide any support or maintenance services in relation to the App. If you have any maintenance or support questions in relation to the App, please contact us, not Apple, using the [Contacting us](#) details in theseterms;
 - we, not Apple, are responsible for responsible for addressing any claims of you or any third party relating to the App or your possession and/or use of the App, including (i) product liability claims, (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement, and (iii) claims arising under consumer protection or similar legislation;
 - in the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App toyou;
 - to the maximum extent permitted by applicable law, Apple will have no other warranty obligations whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs and expenses attributable to any failure to conform to any warranty will be our sole responsibility and we are solely responsible for any product warranties, whether express or implied by law, to the extent not effectivelydisclaimed;
 - in the event of any claim by a third party that your possession or use (in accordance withthese terms) of the App infringes any intellectual property rights, Apple will not be responsible or liable to you in relation to that claim;and
 - although these terms are entered into between you and us (and not Apple), Apple and its subsidiaries are third party beneficiaries of these terms and, upon your acceptance of these terms, Apple Inc. (and will be deemed to have accepted the right) to enforce these terms against you as a third party beneficiarythereof;
- you represent and warrant that:
 - you are not, and will not be, located in any country that is the subject of a United States Government embargo or that has been designated by the United States Government as a "terrorist supporting" country;and
 - you are not listed on any United States Government list of prohibited or restricted parties; and
- you must comply with any applicable third party terms of agreement when using the App, such as your mobile phone provider's data usage agreement.



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You are allowed unlimited reinstalls of the App without any additional fee, provided that if the App is removed from Google Play due to (a) an allegation of infringement, or actual infringement, of any third party Intellectual Property Right; (b) an allegation of, or actual violation of, third party rights; or (c) an allegation or determination that such Product does not comply with applicable law (collectively "**Legal Takedown**") then the App will be removed from all portions of Google Play and you will no longer have a right or ability to reinstall the App.

You may also be able to claim a refund from Google for purchases made in the App if you qualify under the Google Play refund policy at https://support.google.com/googleplay/answer/2479637?p=play_refund.

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Microsoft

If you download the App from a Microsoft-owned or operated platform, however named, through which applications may be offered to or acquired by customers, we are required to permit you to stream and run the App on up to at least ten Windows 10 devices that are associated with your Microsoft account, without payment of any additional fees, with no restriction on (i) how often you can register or de-register such devices or (ii) how often you must access the App from a given device to maintain or refresh your licensed files on that device. You may also download the App to a device that is not registered with your Microsoft account.