

Cover Sheet

PRS for Music

Commercial radio licence

Name of Licensee	[REDACTED]
Company registration number	[REDACTED]
Registered address of Licensee	[REDACTED]
Commencement Date	[REDACTED]

Signed on behalf of the Licensee:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Mechanical-Copyright Protection Society Limited ("MCPS") of 2nd Floor Synergy House, 114 – 118 Southampton Row, London WC1B 5AA, contracting for and on behalf of itself and for and on behalf of and as agent of its various members and its Affiliated Societies:

Name: _____

Position: _____

Date: _____

Signed on behalf of the Performing Right Society Limited ("PRS") of 1st Floor Goldings House, 2 Hays Lane, London SE1 2HB contracting on behalf of itself and for and on behalf of and as agents of its Affiliated Societies:

Name: _____

Position: _____

Date: _____

Appendix 1

Standard Terms and Conditions

1. Definitions and interpretation

"Agreement" means the standard terms and conditions set out in this Appendix 1, the Cover Sheet, appendices and schedules to the terms and conditions and the application form completed by the Licensee (if any) provided that to the extent there is any conflict between the application form and any other part of this Agreement, the other part of this Agreement will prevail.

"Applicable Trailer(s)" means Programme Trailers which contain Commercial Work(s), but which do not contain specific scheduling information about when the Programme Material is scheduled to be Broadcast.

"Associated Society" means each collecting society (or other body representing rights in Musical Works) with which MCPS and/or PRS has, from time to time, an agreement under which MCPS and/or PRS is authorised to grant licences in relation to the other society's (or body's) repertoire for the purpose of this Agreement PROVIDED THAT where such an agreement is only entered into after the commencement of the Term, a collecting society (or other body) shall only be regarded as an "Associated Society" for the purposes of this Agreement with effect from the date of signature of such agreement with MCPS and/or PRS (as applicable).

"Associated Society Member" means any person, firm or company who or which has been notified, from time to time, as being a member of an Associated Society by the relevant Associated Society to MCPS and/or PRS.

"Ballet" shall mean a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap-dancing, nor precision dance sequences.

"Broadcasting" shall have the meaning ascribed thereto in section 6 of the 1988 Act and the term "Broadcasting" shall be construed accordingly.

"Broadcast Licence" shall mean the licence referred to in clause 2.1(d), (e) and (f).

"Commencement Date" means the date specified in the Cover Sheet.

"Commercial Work" means any Repertoire Work other than:

- (a) one where the Member owning or controlling the copyright in such Repertoire Work has authorised MCPS to license it as so-called production or library music; or
- (b) a Commissioned Work.

"Commissioned Work" means a Musical Work specially and expressly commissioned by the Licensee from composer/writer members of PRS and/or MCPS.

"Communicate to the Public" shall have the meaning ascribed thereto in section 20(2) of the 1988 Act and the

term "Communicating to the Public" shall be construed accordingly.

"Concert Trailer" shall mean only any trailer which promotes or is intended to promote a forthcoming live concert by a musical performing artist which satisfies the following conditions:

- (a) no direct payment or other form of consideration is received by the Licensee for producing or Broadcasting the trailer;
- (b) the Repertoire Works recorded into the trailer are performed by the musical performing artist who will be performing at the concert itself;
- (c) the concert is promoted or sponsored by the Licensee on whose Licensed Station the trailer is Broadcast; and
- (d) the concert (or parts of the concert) will be Broadcast on the Licensed Station either live or at a later date.

"Control" means:

- (a) the ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting share capital of the relevant party; or
- (b) the ability to direct the casting of more than fifty per cent (50%) of the votes exercisable at general meetings of the relevant party on all or substantially all matters; or
- (c) the right to appoint or remove directors of the relevant party holding a majority of the voting rights at meetings of the board on all or substantially all matters.

"Cover Sheet" means the cover sheet to this Agreement.

"Digital Commercial Radio Station" means a Licensed Station which Broadcasts via a DAB, cable, satellite or digital terrestrial television and is licensed by Ofcom under a digital sound programme (DSP) licence; digital additional sound service (DAS) licence; or radio licensable content services (RLCS) Licence.

"Dramatic Form" means a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-Musical Work and/or its associated words is woven into and carries forward the plot and its accompanying action (a Dramatic Form shall not, for example, be deemed to be created by the use of costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph the word "actors" shall include actors, singers, mimics and/or puppets.

"Dramatico-Musical Work" means any Ballet, opera, operetta, musical, musicalplay or work of a similar nature.

"Inaccurate Programme Return" shall mean a Programme Return for any period, which on the basis of monitoring carried out by the Licensors, omits details of Repertoire Works Broadcast in excess of 10% of the total number of Repertoire Works identified as having been Broadcast or understates or overstates the aggregate time occupied in Broadcasting the Repertoire Works identified by more than 10%.

"Incomplete Programme Return" shall mean a Programme Return for any period containing a material omission.

"Late Programme Return" shall mean a Programme Return submitted to the Licensors after 35 days from the day on which the Repertoire Works identified in the Programme Return were Broadcast by the Licensee.

"Legitimate Concern" means a reasonable concern raised by one or more Members regarding whether an Applicable Trailer or Applicable Trailers: (a) have been regularly refreshed in accordance with clause 5.1; and/or (b) constitutes a Promotion which falls outside of clause 5.1.

"Licence Year" shall mean the 12 month period commencing 1st October in any given year.

"Licensed Station" means the radio station(s) named in Schedule 1 from time to time, which are commercial radio stations licensed by Ofcom including by way of example (but not limited to), analogue radio services (FM and AM); digital sound programme (DSP) services; digital additional sound service (DAS) services; and radio licensable content services (RLCS). Licensed Station shall not include radio stations that are student, hospital, community radio stations or restricted service licence services.

"Licensee" means the party set out as such in the Cover Sheet, and includes any subsidiary or subsidiary undertaking of that body corporate, any holding company of that body corporate and all other subsidiaries and subsidiary undertakings of any such holding company from time to time, which are under common Control of the Licensee or any such holding company or subsidiary.

"Licensors" means PRS and MCPS.

"Listen Again Service" means a service whereby a member or members of the public may receive Programme Material during a 30 day window after the date of first Broadcast of the Programme Material on the Licensed Station by accessing on-demand (but not in the form of a permanent download) via a Network through audio content which originates from, and is hosted on data servers owned or controlled by, the Licensee and which is accessed via Players and where the Programme material is made available to members of the public for their own private and non-commercial use for no fee or charge whatsoever.

"Member" means:

- (a) in the case of MCPS, each person, firm or company who or which, from time to time, has appointed MCPS as agent in relation to the exploitation licensed hereunder either before or during the Term other than where such person, firm or company has opted not to participate in the licensing scheme pursuant to which this Agreement

has been entered into, PROVIDED THAT a member who has so appointed MCPS after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed MCPS; and

- (b) in the case of PRS, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of PRS has been admitted either before or during the Term as a member of PRS other than where such person, firm or company has reserved to himself the relevant rights pursuant to Article 7(cd) of the Articles of Association of PRS (or other equivalent article), PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date of admission into PRS.

"MCPS Licence" shall mean the licence granted by MCPS in clause 2.

"Musical Work" means any musical work (as defined in the 1988 Act) and any lyrics or words written to be used with such musical work (if applicable). It includes any part of such a work.

"Net Broadcasting Revenue" shall have the meaning set out in Appendix 3.

"Network" means the internet, a mobile network or any other wired or wireless network.

"Outside Broadcast" shall mean a live Broadcast which originates at a location that is neither owned nor operated by the Licensee and whose content clearly identifies and refers to the outside location of the Broadcast.

"Permitted Excerpts" refers only to Dramatico-Musical Works and means excerpts where the use of all such excerpts in any Programme Material complies with all the following limitations:

- (a) the total duration of which in the course of the same programme does not exceed 25 minutes or 25% of the total length of the Dramatico-Musical Work, whichever is the shorter;
- (b) the use is not a "potted version" of the Dramatico-Musical Work;
- (c) the use is not or does not cover a complete act of the Dramatico-Musical Work; and
- (d) each excerpt is not presented in a Dramatic Form.

"Permitted Service" shall mean any commercial radio station:

- (a) which is, under the control and responsibility of the Licensee, introduced into an uninterrupted chain of communication (including, in the case of satellite transmission, the chain leading to the satellite and down towards earth) from within the United Kingdom; and
- (b) which, if not directly controlled by the Licensee, is controlled by an entity in which the Licensee has a

50% or greater beneficial interest (whether in terms of share ownership of such entity or, in the case of a partnership, in the capital of that partnership); and

- (c) which has been granted a commercial radio licence from OFCOM; and
- (d) which is a linear scheduled radio station; and
- (e) which is not an internet only radio station.

"Player" means any electronic media player software capable of playing a transmission of a sound recording as a Simulcast Radio Service or a Listen Again Service.

"PMSR" means any production music sound recording being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in the United Kingdom by MCPS or (an MCPS Member or an Associated Society or Associated Society Member) and where such party has authorised MCPS to license such recordings as so-called production or library music.

"Premium Rate Services" shall have the meaning ascribed to it in section 120 of the 2003 Act.

"Programme Material" means any programme material or any part thereof including any trailers of any kind and which is made for the purposes of Broadcasting as set out in this Agreement EXCEPT it specifically excludes any material which constitutes an advertisement of whatsoever nature.

"Programme Return" shall mean a report in an electronic format approved by the Licensors which lists each Musical Work Broadcast on the Licensed Station or Communicated to the Public as part of the Listen Again Service.

"Programme Trailer" shall mean any trailer which is produced for the purposes of trailing either the Repertoire Works to be Broadcast in upcoming Programme Material or, subject to the trailer including specific scheduling information about when the Programme Material is scheduled to be Broadcast, specific Programme Material.

"Promotion" shall mean any specific segment of Programme Material which is either:

- (a) a station identification of any nature, or;
- (b) a segment of Programme Material the primary purpose of which is the promotion of any Licensed Station, service, product, event or any other Programme Material without limitation.

"PRS for Music" means the PRS for Music Limited trading under the brand name of PRS for Music whose registered office is at 1st Floor Goldings House, 2 Hays Lane, London SE1 2HB.

"PRS Licence" shall mean the licence granted by PRS in clause 3.

"Repertoire Percentage" shall mean the proportion of the Total Broadcast Hours which consists of the Repertoire Works.

"Repertoire Work" means each Musical Work and each PMSR the relevant copyright in which is owned or controlled, from time to time, in the UK by:

- (a) MCPS or a Member or an Associated Society or an Associated Society Member PROVIDED THAT (i) if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the Associated Society or the relevant Member or Associated Society Member, and (ii) it shall exclude any Musical Works that a Member of MCPS or an Associated Society has withdrawn or withheld from this Agreement; and
- (b) PRS or a Member or an Associated Society or an Associated Society Member PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not PRS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by PRS or the Associated Society or the relevant member or Associated Society Member.

For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor, and the applicable split between mechanical and performing rights in the United Kingdom from time to time shall be used to evaluate the licence fee payable.

"Reproduction Licence" shall mean the licence referred to in clauses 2.1(a) and (b).

"Royalty Fee" means the royalties and annual fees payable under this Agreement as set out in Appendix 2.

"Shared Content" shall mean broadcast content (including, but not limited to, Programme Material, Musical Works, advertising and all other audio content) included in an FM or Digital Commercial Radio Station licensed by the Licensors (whether under this Agreement or otherwise) which content is the same as the content included in the Licensed Station.

"Similar Station" shall mean any FM or Digital Commercial Radio Station or stations licensed by the Licensors, in respect of which in any given Licence Year:

- (a) at least 70% of the content included in such other station is Shared Content; and
- (b) at least 50% of such Shared Content is Broadcast (or otherwise transmitted) on such other station at the same time as such Shared Content is Broadcast (or otherwise transmitted) on the Licensed Station

and **"Similar Stations"** shall be construed accordingly.

"Simulcast" means the Broadcast of a Licensed Station via a Network where such Broadcast:

- (a) is simultaneous with the Broadcast of such Licensed Station via a traditional terrestrial, satellite or cable television or radio service (save for adverts and radio station imaging of the Licensed Station, including promos, sweepers and interstitials); and
- (b) is hosted by the Licensee on data servers owned or controlled (directly or indirectly) by the Licensee.

"Speech-based Licensed Station" means a Licensed Station:

- (a) which is licensed by Ofcom as a speech station; and
- (b) where live or recorded speech content is the primary component of the Broadcast; and
- (c) in which the Repertoire Percentage in a given Licence Year is under 30%.

"Sponsor" shall mean any party who or which provides directly or through any agent all or any part of the finance and/or any products or services and/or pays the Licensee or provides any other good consideration for the making of Programme Material in return for exposure for, or any other form of reference therein to, the name or trademark or logo of the third party or any associate thereof or any specific named brands, products or services.

"Sponsorship Message" shall mean an item of Programme Material which includes a specific reference to a Sponsor or any goods or services of a Sponsor.

"Term" means the period from the Commencement Date until this Agreement is terminated (whether in accordance with clause 11 or otherwise).

"Territory" means the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.

"Total Broadcast Hours" shall mean the total time during which the Licensee is Broadcasting on a Licensed Station.

"Total Production Costs" shall mean all sums of whatsoever nature actually incurred by any party in connection with the production of the Programme Material.

"VAT" means value added tax and each like tax imposed in addition to or in substitution therefore.

"1988 Act" shall mean the Copyright Designs and Patents Act 1988 as amended from time to time.

"1990 Act" shall mean the Broadcasting Act 1990 as amended from time to time.

"1996 Act" shall mean the Broadcasting Act 1996 as amended from time to time.

"2003 Act" shall mean the Communications Act 2003 as amended from time to time.

All references to **"including"** in this Agreement shall mean, "including, without limitation" and "includes" shall be construed accordingly.

2. MCPS Licence

2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 5 and 7, MCPS grants the Licensee in respect of each of the Licensed Stations a non-exclusive licence to do the following during the Term solely for the purposes of Broadcast and Simulcast of the Licensed Station or inclusion on a Listen Again Service:

- (a) to reproduce and authorise the reproduction of Repertoire Works in the Territory in the form of Programme Material; and
- (b) to make copies of such Programme Material in the Territory; and
- (c) where the Licensee does not have its own technical facilities to carry out the Broadcast of the Licensed Station, to supply copies of such Programme Material to the party actually carrying out the Broadcast of the Licensed Station on behalf of the Licensee solely for the purpose of the Broadcast of the Licensed Station in the Territory on behalf of the Licensee; and
- (d) to Broadcast or to authorise the party actually carrying out the Broadcast PMSRs from the Territory on the Licensed Station (including to territories outside the UK); and
- (e) to Simulcast PMSRs from the Territory as part of the Licensed Station (including to territories outside the UK); and
- (f) to include within a Digital Commercial Radio, cable, digital, satellite or digital terrestrial television programme service or to authorise the party actually carrying out the inclusion to include within such a programme service PMSRs as part of the Licensed Station; and
- (g) to reproduce Repertoire Works onto a physical hard-drive playout system for the purposes of Communicating to the Public Repertoire Works in accordance with this Agreement; and
- (h) perform in public PMSRs in the United Kingdom for the purposes set out in 3.1(e).

2.2 The licence referred to in clause 2.1(a) includes the incidental copying of Repertoire Works as part of the production process leading to the creation of Programme Material for the purposes permitted under this Agreement.

2.3 For the avoidance of doubt, the Reproduction Licence shall not extend to the supply by the Licensee of copies of Programme Material to any third party for subsequent commercial exploitation either in the Territory or outside the Territory.

3. PRS Licence

3.1 Subject to and conditional upon compliance with the terms and conditions herein and in particular

subject to the exclusions and restrictions set out in clauses 6 and 7, PRS grants the Licensee in respect of each of the Licensed Stations a non-exclusive licence, during the Term, to

- (a) Broadcast and to authorise the Broadcast of Repertoire Works from the Territory on the Licensed Station (including to territories outside the UK); and
- (b) to Simulcast Repertoire Works from the Territory as part of the Licensed Station (including to territories outside the UK); and
- (c) to include within a Digital Commercial Radio, cable, digital, satellite or digital terrestrial television programme service or to authorise the party actually carrying out the inclusion to be included within such a programme service Repertoire Works as part of the Licensed Station in the Territory; and
- (d) to make available on-demand in the Territory Repertoire Works as part of a Listen Again Service;
- (e) perform in public Repertoire Works from the Territory solely in the form of a Broadcast of the Licensed Station:
 - (i) in premises from which the Broadcast of the Licensed Station is carried out which are owned or leased by or on behalf of the Licensee; and
 - (ii) in premises from which the Broadcast of the Licensed Station is carried out on a telephone switchboard (or equivalent system) so as to be audible to members of the public who telephone the Licensee (so-called music-on-hold) on any telephone service operated by the Licensee other than any which the Licensee might operate on behalf of a third party.
 - (iii) in premises from which the management, sales and /or support services relating to the Licensed station are carried out.

3.2 Subject to clause 3.1(e), in respect of any public performance of Repertoire Works given under the control of the Licensee (either in the Licensee's premises or in other premises which are not covered by a licence granted by PRS to the proprietor, lessee or manager of the premises) the Licensee shall pay to PRS royalties calculated at the rate applicable, having regard to the nature of the entertainment and to the class of premises in which it is given, under PRS' relevant tariff for the time being in force PROVIDED ALWAYS that PRS shall make no charge to the Licensee in respect of any public performance as above described where the whole or any part of such performance is Broadcast or is preparatory to such Broadcast by way of a "dummy run", and where the audience (if any) is admitted to the entertainment without payment.

4. Programme Material covered by the Reproduction Licence

4.1 Notwithstanding any other terms or conditions of this Agreement, in order to qualify as Programme Material to which the Reproduction Licence applies, all the criteria referred to in clauses 4.2 to 4.4 must be fulfilled.

4.2 The Programme Material must be:

- (a) made by or commissioned by the Licensee for the sole purpose of the Licensee Communicating to the Public the same on one or more of the Licensed Station; and
- (b) in the case only of Programme Material jointly made with another co-producer or broadcaster, the Programme Material must be made for the joint primary purpose of the Licensee Communicating to the Public the same on one or more of the Licensed Station and Communicating to the Public on the co-producer's or other Broadcaster's analogue commercial radio station (FM or AM), Digital Commercial Radio, cable, digital, satellite or digital terrestrial television.

For the avoidance of doubt the Reproduction Licence and Broadcasting Licence do not permit the exploitation of Programme Material produced under (b) above by such co-producer or other broadcaster.

4.3 The Licensee must contribute not less than one third of the Total Production Costs of the Programme Material, and this value must be the highest or equal highest to that contributed by any other party involved in making the material, PROVIDED THAT the Licensee shall be entitled to treat as counting towards its proportion of the Total Production Costs any finance which it contributes thereto and which has been loaned to it by a financial institution.

4.4 The Licensee must retain editorial control over all Programme Material.

5. MCPS Licence Exceptions and Limitations

5.1 The Reproduction Licence only applies to the use of any Commercial Work in relation to any Promotion where such Promotion is either:

- (a) a Programme Trailer, or;
- (b) a Concert Trailer.

Commercial Works reproduced in Programme Trailers must be refreshed by the Licensee on a regular basis so as to prevent the use of the relevant Commercial Work from being excluded from the MCPS licence pursuant to clause 5.5.

5.2 Where the Programme Material includes a specific reference to any Sponsor then the Reproduction Licence shall not apply to the use of any Commercial Work in that Programme Material where the positioning and use of such Commercial Work in relation to the Sponsorship Message may

lead a reasonable person to associate such Commercial Work with the Sponsor.

5.3 The MCPS Licence does not license or permit the reproduction (or the authorisation of such act) of any Repertoire Work by means of a recording if the making of such recording infringed the copyright in such Repertoire Work.

5.4 The Reproduction Licence shall not permit the use of Repertoire Work(s) with any advertising of whatsoever nature where:

- (a) such Repertoire Work(s) are incorporated into such advertising; or
- (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising.

5.5 The MCPS Licence shall not apply to the use of any Repertoire Work(s) for the purpose of (whether in whole or in part):

- (a) directly or indirectly encouraging the purchase or obtaining of goods or services of whatsoever nature; or
- (b) promoting the branding of the Licensee, any affiliate of the Licensee or any third party;

in such a manner that:

- (i) one or more particular Repertoire Works, composers or writers are associated with such promotion; or
- (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion.

5.6 The MCPS Licence does not extend to the reproduction of any Commercial Work:

- (a) in the form of a parody, pastiche or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or
- (b) where there is a derogatory, facetious, obscene or demeaning reference to the Commercial Work, its composer(s) and author(s) or the performing artist; or
- (c) without prejudice to clauses 5.1 and 5.2 above, in any manner which is likely to or causes the public to believe that the Commercial Work (or the composer(s) thereof) is endorsing or promoting any product or service, or the views expressed in the Programme Material.

Whether a use of a Commercial Work breaches this clause 5.6 shall be decided by MCPS in its reasonable discretion.

5.7 The Reproduction Licence will not apply to Programme Material where detailed scheduling information (including the running order) as to Commercial Works that will be included in such Programme Material is provided in advance of Communication to the Public on the Licensed Station.

5.8 Where a Legitimate Concern is raised by one or more of the Licensors' Members, the Licensors and a senior representative of the Licensee with responsibility for programming shall proceed as follows:

- (a) having raised a Legitimate Concern, the Member(s) must use their reasonable endeavours to seek to identify any reasonable changes in the relevant Licensed Station's practices which will cure the Legitimate Concern; and
- (b) if the Legitimate Concern cannot be cured within 3 business days, the Licensors can require a Licensee (upon 24 hours' prior written notice which is not to be served until the expiration of the 3 business days' period) to cease Broadcasting the Applicable Trailer(s) on the relevant Licensed Station and the Licensee shall so cease Broadcasting such Applicable Trailer(s).

5.9 The Licensee's right to use Commercial Work(s) in Applicable Trailers shall be subject to a review by the Licensors at any time after 1 January 2014 if repeated Legitimate Concerns are raised in respect of the Licensee by one or more of the Licensors' Members (a "**Review**"). Such a Review shall proceed as follows:

- (a) The Licensors shall notify the Licensee in writing that a Review has been initiated (a "**Review Notice**");
- (b) The Licensors and the Licensee must use their reasonable endeavours to seek to agree any reasonable changes in the relevant Licensed Station's practices which will cure the Licensors' Members concerns regarding the use by the Licensee of Commercial Work(s) in Applicable Trailers;
- (c) if such concerns cannot be cured within 3 months from the date of the Review Notice (the "**Review Period**") and a Licensee has previously been required to cease Broadcasting an Applicable Trailer(s) in accordance with clause 5.8(b) above, the Licensors can withdraw the right granted in clause 5.1(a) to use Commercial Works in Applicable Trailers from the Licensee under this Agreement; and
- (d) Any such withdrawal in accordance with sub-clause (c) above is subject to the provision by the Licensors to the Licensee of 1 months' prior written notice which is not to be served prior to the expiration of the Review Period.

6. PRS Licence Exceptions and Limitations

6.1 The PRS Licence does not license or permit:

- (a) the public performance given by means of the direct or indirect reception of the Licensed Station, except as licensed under clauses 2.1(h) and 3.1(e);
- (b) the Communication to the Public (or the authorisation of such act) of any Repertoire Work by means of a recording if the making of such recording infringed the copyright in such Repertoire Work; or
- (c) the Communication to the Public (or the authorisation of such act) of any Repertoire Work where the MCPS Licence requires prior approval for the reproduction of such Repertoire Work and such approval has not been obtained from MCPS or the copyright owner, as required; or
- (d) the Communication to the Public of words written for the purpose of an advertisement unless such words are sung to music specially written for an advertisement or to non-copyright music.

6.2 The licence granted in Clause 3.1(e) of this Agreement shall not extend to nor authorise the public performance of:

- (a) a Dramatico-Musical Work whether staged or otherwise; provided that the rights administered by PRS and granted to the Licensee under clause 3.1(e) do nevertheless include the right to perform in public:
 - (i) a Dramatico-Musical Work or an excerpt or excerpts from a Dramatico-Musical Work performed by means of a cinematograph film or by means of a radio or television set used for the purpose of giving a public performance of broadcast programmes;
 - (ii) a non-dramatic excerpt or excerpts from a Dramatico-Musical Work (however performed) the total duration of which in the course of the same programme is 25 minutes or less and which excerpt or excerpts are not a "potted" version of the work or are not or do not cover a complete act of the work;
- (b) the whole or any part of any music and any words associated therewith composed or used for a ballet if accompanied by a visual representation of such ballet or part thereof; provided that the rights administered by PRS and granted to the Licensee under clause 3.1(e) do nevertheless include the right to perform in public any such music and words so composed or used and accompanied by such visual representation when performed by means of:
 - (i) a cinematograph film, and/or
 - (ii) a television set used for the purpose of giving a public performance of broadcast programmes;

- (c) any Musical Work specially written for a son-et-lumiere production when performed in or in conjunction with that production;
- (d) any Musical Work (being a Musical Work which is not a Dramatico-Musical Work or part of a Dramatico-Musical Work) specially written for a production of a dramatic work in a theatre when performed in or in conjunction with that dramatic work; and
- (e) any Musical Work, with or without associated words, in a Dramatic Form.

7. Joint MCPS and PRS Permissions, Exclusions and Limitations

7.1 The MCPS Licence and the PRS Licence apply only in relation to use on the Licensed Station and as part of the Listen Again Service and only to the extent that the Licensed Station is, and remains throughout the Term, a Permitted Service.

7.2 The MCPS Licence and the PRS Licence only apply to the reception of Listen Again Services in the Territory. Further licences may be needed if the Licensee wishes Listen Again Services to be available to listeners outside of the Territory.

7.3 Where any Repertoire Work forms part of any Dramatico-Musical Work, the MCPS Licence and the PRS Licence shall not apply to the reproduction or Communication to the Public of:

- (a) the whole Dramatico-Musical Work;
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
 - (i) the Programme Material contains only excerpt(s) within the definition of Permitted Excerpts; and
 - (ii) the Licensors have not notified the Licensee in writing that their Member or Associated Society Member objects to the reproduction or Communication to the Public of any such Repertoire Work

EXCEPT in the case of reproduction or Communication to the Public of the whole Dramatico-Musical Work or any excerpt(s) from such Repertoire Work where such reproduction or communication is of the whole or part of a film made primarily for the purpose of public exhibition in cinemas or similar premises.

7.4. In any event, any licence hereunder only applies to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.

7.5 The MCPS Licence and the PRS Licence do not extend to or permit the inclusion of any adaptation of any Repertoire Work in any Programme Material unless the relevant Member has expressly consented thereto for the purposes

of the Agreement. By way of example only, this applies to:

- (a) making any arrangement of the music; or
- (b) making any alteration to the lyrics, save for any minor change which does not alter the meaning thereof; or
- (c) any sampling (as that expression is commonly used in the music industry) of the music and/or lyrics or reproduction in the form of a sample of the music and/or lyrics; or
- (d) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
- (e) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

7.6 The Licensed Station and any Programme Material Communicated to the Public on the same shall not fall within the MCPS Licence and/or the PRS Licence to the extent that any Communication to the Public expressly or impliedly encourages home reproduction of Repertoire Works other than for the sole purpose of time-shifting a programme contained on a Licensed Station (so long as this remains an exception to copyright under English law).

7.7 All rights not specifically granted under this Agreement are hereby reserved, and the parties hereby agree that no implied licences are to be construed hereunder.

7.8 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings other than PMSRs, films, dramatic works, performers' rights, moral rights or rights in performances. Nothing in this Agreement shall entitle any party to exercise the licences or authorisations contained in this Agreement in relation to any Programme Material where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling rights in relation to sound recordings containing one or more Repertoire Works or performers of Repertoire Works incorporated into the Programme Material. For the purposes of this Agreement (but only insofar as the reproduction and Communication to the Public of PMSRs in accordance with this Agreement is concerned), MCPS, for and on behalf of its Members, warrants that all the necessary performers' waivers and consents have been obtained from the relevant performers insofar as their performances are embodied on PMSRs.

7.9. Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the United Kingdom and the Republic of Ireland or any other territory.

8. Royalty Fee

8.1 Notwithstanding the provisions of this clause 8, the Licensors confirm and warrant that PRS for Music is

authorised to receive all payments under this Agreement as agent on behalf of the Licensors, each of the Members and the Associated Societies.

8.2 In consideration of the licences granted under this Agreement, the Licensee shall pay the Royalty Fee to the Licensors.

8.3 The Licensee shall pay the Royalty Fee for a given Licence Year in accordance with a reasonable estimate of the Licensee's Net Broadcasting Revenue for that Licence Year. Such estimate shall not be less than 90% of the Licensee's Net Broadcasting Revenue for the previous Licence Year unless the Licensors consent to a lower estimate. The estimate shall be provided in good faith by the Licensee to the Licensors not less than 21 days before the first day of the Licence Year in question in the format set out in Schedule 2. In the absence of receipt of such an estimate the Licensors shall be entitled to make such an estimate by an increase over the previous Licence Year of 10%.

8.4 The Licensee shall make on account monthly payments to the Licensors in twelve equal instalments. Each monthly payment shall be made on the twentieth day of each month of each Licence Year where the Licensee pays by direct debit and on the first day of each month of each Licence Year in all other circumstances.

8.5 Subject to clause 9.5 below, if the on account monthly payments due under clause 8.3 are paid by standing order or direct debit the amounts due will be subject to a discount of 2.5%.

8.6 Within 45 days after the end of the Licence Year in question, the Licensee shall send to the Licensors a statement of the Licensee's unaudited Net Broadcasting Revenue for such a Licence Year in respect of which an estimate had been made under clause 8.3 in the format set out in Schedule 2.

8.7 Within a further 21 days the Licensee shall supply a certified statement in the form set out in Schedule 3 by the Licensee's accountant or auditor confirming the actual audited Net Broadcasting Revenue to enable the Licensors to determine the actual Royalty Fee payable in respect of that Licence Year.

8.8 If the actual Royalty Fee is greater than that estimated under clause 8.3, the Licensee will pay the balance due to the Licensors within 21 days from the date of receipt of the Licensors' invoice for such balance. If the actual Royalty Fee is less than that estimated under clause 8.3, the Licensors will refund the balance within 21 days.

8.9 Value Added Tax at the appropriate rate shall be added to all payments made in accordance with this clause 8.

8.10 Where Net Broadcasting Revenue shall include revenue in a form other than money the Licensee shall provide an adequate description thereof and shall report and identify its fair value.

8.11 Where external costs relating to sponsored Outside Broadcast events are deducted in

accordance with paragraph 2 of Appendix 3 the Licensee shall provide an adequate description of each category of external cost and shall report and identify its actual value in the format set out in Schedule 4.

- 8.12 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date (or the date on which such fees should ordinarily have been paid in circumstances where the Licensors have been unable to submit an invoice) due to default of the Licensee, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 2% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment should have been made to the date on which the payment was made.
- 8.13 The address for delivery of the information required in accordance with this clause 8 is Radio Licensing Team, 1st Floor Goldings House, 2 Hays Lane, London SE1 2HB.
- 8.14 The Licensee shall for a period of up to six years keep such records of its Net Broadcasting Revenue as shall enable the Licensors' auditors to find an adequate audit trail by which to verify the Royalty Fee.

9. Supply of Information

- 9.1 The Licensee will supply to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) full and accurate Programme Returns in accordance with this clause 9.
- 9.2 Each Programme Return shall, in respect of each Musical Work, provide the song title, composer name(s), publisher name(s), performing artist(s) and duration. Musical Works within advertisements and idents (for example but without limitation, beds, jingles, FX, promos) must also be reported in the Programme Return.
- 9.3 If the Royalty Fee estimated by the Licensee in respect of the Licence Year in question is less than or equal to £50,000, the Licensee shall provide sample Programme Returns up to a maximum of 21 days per half year, such days to be specified in writing to the Licensee by the Licensors, not later than 14 days before the first of such dates. If the Royalty Fee estimated by the Licensee in respect of the licence Year in question is greater than £50,000, then the Licensee shall provide within 35 days of the end of each month during the Licence Year, Programme Returns for each day of that month.
- 9.4 The thresholds referred to in clause 9.3 above shall be adjusted for each Licence Year so as to reflect any movement in the RPI in the 12 month period ending on 31 July of that Licence Year.
- 9.5 Without prejudice to any other right or remedy of the Licensors, if the Licensee submits a Late Programme Return or an Inaccurate Programme Return or an Incomplete Programme Return the

Licensors may, at their discretion, withdraw the discount set out in clause 8.5 above for the half of the Licence Year to which such Programme Return relates so that the Licensee shall not be entitled to deduct the relevant discount under clause 8.5 for such half of such Licence Year.

- 9.6 The Licensee must also supply the Licensors with any further information or documentation in its possession, power, custody or control (and use its reasonable endeavours to supply the Licensors with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensors at any time, in order to enable the Licensors to verify the Repertoire Work(s) which have been Communicated to the Public via the Licensed Station or Listen Again Service.
- 9.7 The Licensee acknowledges that the Licensors have a responsibility to maximise the efficiency of their reporting to their Members and the Associated Societies. Therefore, if the Licensors wish to make any reasonable upgrade or alteration of whatsoever nature to the data specification referred to in the Programme Return, the Licensee agrees to use its reasonable endeavours to implement the changes required as soon as is reasonably practicable, PROVIDED THAT the Licensors shall not request that the Licensee implements the change in less than six months from the making of the request, and in each case of a change the following procedures shall apply:

- (a) the Licensors shall give full details thereof in writing to the Licensee;
- (b) the Licensee will respond in writing within 4 weeks of receipt of the request, stating the date by which it commits to comply with the change (or explain why such a change is not reasonable, or outline the reasonable endeavours it has made). The Licensors shall provide full assistance to the Licensee in order to assist the Licensee in complying with the change; and

the parties will then finalise the details and undertake tests to ensure that the change operates satisfactorily within the terms of this Agreement, satisfactory operation of which will be deemed acceptance of the change and the Programme Return will be amended or replaced accordingly.

- 9.8 The Licensee shall notify the Licensors of any change to the Licensee's OFCOM licence in respect of each Licensed Station if the Licensed Station is changing from a music based station to a speech radio based station or vice versa.
- 9.9 The Licensee shall declare any Licensed Stations which are Similar Stations as at the Commencement Date by listing such Licensed Stations in Schedule 1 of this Agreement. If, at any time after the Commencement Date, a Licensed Station becomes a Similar Station, then the Licensee shall promptly notify the Licensors in writing identifying each Licensed Station which has become a Similar Station and the date at which it became a Similar Station.

10. Auditing

- 10.1 The Licensee shall keep and make available for inspection upon reasonable notice, both during and for twelve months after termination or expiry of this Agreement, proper, detailed books and records relating to any income or other consideration received by or on behalf of the Licensee in relation to the Licensed Station, Listen Again Service and any Outgoing Licensed Stations (up to the date that such Outgoing Licensed Station was still covered by the licences granted under this Agreement), together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit. Where any agreement between the Licensee and the Licensors replaces this Agreement or licenses substantially the same activities (the "**Replacement Agreement**"), the twelve month time-limit referred to above shall begin following termination or expiry of the Replacement Agreement.
- 10.2 For the purposes of this clause 10, the Licensee shall allow upon reasonable notice access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives (who shall be external qualified accountants or auditors unless otherwise agreed between the parties) of the Licensors shall have such access to the Licensee's premises and shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement.
- 10.3 If tests under any audit and verification process indicate under-payment of the correct Royalty Fee during the period under audit, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to the Licensors to the date when it was actually paid (at the rate set out in clause 8.12).
- 10.4 If any audit and verification process discloses an under-payment of more than 7.5% of the correct Royalty Fee during the period under audit then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 10.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefore.
- 10.5 The Licensee shall not be re-audited during the subsequent two years following an audit taking place in accordance with this clause 10 unless the inspection reveals that the Licensee has under-declared Net Broadcasting Revenue in any Licence Year by more than 7.5%.
- 10.6 If tests under any audit and verification process indicate over-payment of the correct Royalty Fee during the period under audit, then the Licensors shall, as soon as is reasonably practical, pay the amount of the overpayment back to the Licensee (but, for the avoidance of doubt, no interest shall be payable unless the overpayment is a result of an

act or omission of the Licensors (in which case interest shall be payable at the rate set out in clause 8.12)).

- 10.7 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee's written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 10, save that such confidential information may be disclosed to the Licensors' directors, board sub-committee members, officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.
- 10.8 For the avoidance of doubt, books, records and accounting records as referred to in clauses 10.1 and 10.2 above shall include data, information and records held on computers.

11. Termination and Expiry

- 11.1 The term of the licences granted under this Agreement shall be 5 years from 1 October 2012. Thereafter, the term of the licences shall renew on a Licence Year by Licence Year basis unless and until terminated in accordance with this clause 11.
- 11.2 The Licensors or the Licensee shall have the right to terminate this Agreement by giving to the other party not less than 6 months prior written notice, such termination to take effect at the end of the Licence Year in which such notice has been served. For the avoidance of doubt, this Agreement shall only terminate on 30 September 2017 if either party has served six months prior written notice of such termination.
- 11.3 Notwithstanding clause 11.1 above, the Licensee shall be entitled to terminate this Agreement in respect of a Licensed Station upon written notice in circumstances where the Licensee or Licensed Station is ceasing to engage in activities covered by this Agreement.
- 11.4 Notwithstanding clause 11.1 above, the Licensors or the Licensee shall have the right to terminate this Agreement in respect of the particular Licensed Station concerned by notice forthwith where the other party:
- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 28 clear days after receipt of notice of such breach; or
 - (b) commits a material breach of this Agreement which is not capable of remedy;

and, for the avoidance of doubt, any breach which consists of a failure by either party to perform an obligation under this Agreement within any period required or by any date specified under this Agreement shall be deemed to be capable of remedy if such obligation is performed by such party within the 28 day cure period specified in (a) above.

11.5 The Licensors or the Licensee shall have the right to terminate this Agreement by notice forthwith if either of the Licensors (in the case of termination by the Licensee), or the Licensee (in the case of termination by the Licensors):

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts (as that term is defined in section 123 of the Insolvency Act 1986) or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
- (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).

11.6 For the avoidance of doubt, this Agreement shall also terminate the licences in respect of a Licensed Station where any of the steps in 11.1 to 11.5

above are taken by the Licensee's authorised representative, who has been authorised by the Licensee to carry out such steps on its behalf.

11.7 Notwithstanding anything contained in this clause 11, this Agreement shall terminate in respect of the Licensee upon the mutual consent of the Licensors and the Licensee in respect of a Licensed Station.

11.8 Termination of this Agreement for whatever reason shall be without prejudice to any rights which have already accrued to the parties under this Agreement.

12. Effect of Termination

12.1 Upon termination of this Agreement in respect of a Licensed Station the licences granted to that Licensed Station under this Agreement shall terminate and the Licensed Station shall immediately cease to be licensed by the Licensors for the reproduction or communication to the public of Repertoire Works via the Licensed Station and the Listen Again Service. For the avoidance of doubt, termination of this Agreement in respect of one Licensed Station shall not affect the validity or existence of the licences granted to all other Licensed Stations under this Agreement.

12.2 Clauses 8, 9, 10, 14 and 15 shall survive the termination of this Agreement, but only in relation to the Licensee's (or Licensed Stations', as applicable) activities during the Term.

13. Incoming and Outgoing Licensed Stations

13.1 Where, after the date of this Agreement, the Licensee:

- (a) acquires a commercial radio station which has an existing licence granted by Ofcom; or
- (b) launches a commercial radio station which has been granted a new licence by Ofcom,

(each an "**Incoming Licensed Station**"), and the Licensee requires that such Incoming Licensed Station shall be granted a licence pursuant to this Agreement, the parties shall take the steps set out in clauses 13.2 and 13.3.

13.2 The Licensee shall give notice to the Licensors that the Incoming Licensed Station needs to be added to the list of Licensed Stations under this Agreement. Such notice shall be served in accordance with clause 15 and shall set out the relevant contact details for the Incoming Licensed Station, including the address of its registered office, telephone number and email (the "**Incoming Notice**").

13.3 Within 14 days of the date of service of the Incoming Notice by the Licensee, the Licensors shall confirm in writing (in accordance with the provisions in clause 15) that such station has been added to the list of Licensed Stations under this Agreement (the "**Incoming Confirmation**").

13.4 The Incoming Licensed Station will constitute a Licensed Station for the purposes of this Agreement from the date of the Incoming Notice.

13.5 Where, after the date of this Agreement:

- (a) the Licensee disposes of a Licensed Station; or
- (b) a Licensed Station is closed by the Licensee,

(each an "**Outgoing Licensed Station**"), and the Licensee requires that such Outgoing Licensed Station shall be removed from the list of Licensed Stations under this Agreement, the steps set out in clauses 13.6 and 13.8 shall be taken by the parties.

13.6 The Licensee shall give notice to the Licensors that the Outgoing Licensed Station needs to be removed from the list of Licensed Stations under this Agreement. Such notice shall be served in accordance with clause 15 (an "**Outgoing Notice**").

13.7 The Licensee shall provide to the Licensors, at the same time as the Outgoing Notice is served, the actual audited Net Broadcasting Revenue in respect of the Outgoing Licensed Station and shall pay the balance of any Royalty Fees due in respect of the Licensed Station up to the date that the Outgoing Licensed Station becomes an Outgoing Licensed Station.

13.8 Subject to payment of the balance of any Royalty Fees due to the Licensors, within 14 days of the date of service of the Outgoing Notice by the Licensee, the Licensors shall confirm in writing (in accordance with the provisions in clause 15) that the Outgoing Licensed Station no longer constitutes a Licensed Station under this Agreement (the "**Outgoing Confirmation**").

13.9 Subject to payment of any Royalty Fees due to the Licensors, the Outgoing Licensed Station will cease to constitute a Licensed Station for the purposes of this Agreement from the date of the Outgoing Notice.

14. No Assignment

The licences granted under this Agreement are personal to the Licensee and the Licensee may not assign, sub-license or otherwise transfer any or all of its rights or obligations under this Agreement without the written agreement of both MCPS and PRS.

15. Notices

15.1 Except where expressly stated otherwise, any notice or other written communication given under or in connection with this Agreement shall only be effective if it is in writing. Faxes and e-mails are permitted. In the absence of any legitimate electronic signature system, either party shall be permitted to require the confirmation in writing (signed by an authorised signatory) of any notice originally sent by email.

15.2 The address for service of any party shall be its registered office marked for the attention of the Chief Executive or Managing Director, or, if any

other address or addressee for service has previously been notified to the server, to the address so notified. A single notice served on or sent to PRS for Music and addressed to either Licensors shall be treated as validly served on both Licensors.

15.3 Any such notice or other written communication shall be deemed to have been served:

- (a) if personally delivered, at the time of delivery;
- (b) if posted, at the expiry of two business days or in the case of airmail four business days after it was posted;
- (c) if sent by facsimile message or e-mail, at the time of receipt of transmission (if received during normal business hours that is 09.30 to 17.30 local time) in the place to which it was sent or (if not received during such normal business hours) at the beginning of the next business day at the place to which it was sent.

15.4 In proving service of a notice it shall be sufficient proof that personal delivery was made, or that such notice or other written communication was properly addressed stamped and posted or in the case of a facsimile message or e-mail that an activity or other report from the sender's facsimile machine or computer can be produced in respect of the notice or other written communication, in the case of a fax, showing the recipient's facsimile number and the number of pages transmitted.

16. Miscellaneous

16.1 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.

16.2 This Agreement sets forth the entire agreement of the parties in relation to the subject matter hereof and each of the parties hereto acknowledges that it has not entered into this Agreement in reliance on any representation or term not contained in this Agreement. This Agreement shall not be modified or varied except by a written instrument signed by the parties hereto.

16.3 The headings to the clauses in this Agreement are included for ease of reference only and are not part of this Agreement and are not to be taken into account in its construction.

16.4 The parties shall (and shall procure that any other necessary party within its control shall) execute and do all such documents acts and things as may be reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.

16.5 If this Agreement creates any rights which would in the absence of this provision be enforceable by any person not a party to this Agreement, such rights shall not be enforceable.

16.6 This Agreement shall be construed according to the laws of England and Wales and the parties agree to submit to the jurisdiction of the English Courts.

Appendix 2

Royalty Fees

1. Royalty Fee

In consideration of the licences granted under this Agreement, each Licensed Station shall make the following payments:

- 1.1 An annual fee payable on 1 October in each year of:
 - (a) £55 where a Licensed Station earns Net Broadcasting Revenue below £100,000 (the "first band");
 - (b) £165 where a Licensed Station earns Net Broadcasting Revenue equal or greater than £100,000 but less than £250,000 ("the second band");
 - (c) £410 where a Licensed Station earns Net Broadcasting Revenue equal or greater than £250,000 but less than £647,621 ("the third band");
 - (d) £1,100 where a Licensed Station earns Net Broadcasting Revenue equal or greater than £647,621 but less than £1,295,243 ("the fourth band");
 - (e) £1,650 where a Licensed Station earns Net Broadcasting Revenue equal or greater than £1,295,243 but less than £3,000,000 ("the fifth band"); and
 - (f) £3,850 where a Licensed Station earns Net Broadcasting Revenue equal or greater than £3,000,000 ("the sixth band"), and
- 1.2 Subject to paragraph 1.5 below, a royalty payment of:
 - (a) £836 where a Licensed Station earns Net Broadcasting Revenue below the threshold of £22,950 ("the first threshold") in a given Licence Year;
 - (b) 3% of the Licensed Station's Net Broadcasting Revenue where a Licensed Station earns Net Broadcasting Revenue equal to or greater than the threshold of £22,951 and less than the threshold of £647,621 ("the second threshold") in a given Licence Year;
 - (c) 4% of the Licensed Station's Net Broadcasting Revenue where a Licensed Station earns Net Broadcasting Revenue equal to or greater than the threshold of £647,621 and less than the threshold of £1,295,244 ("the third threshold") in a given Licence Year; and
 - (d) 5.25% of the Licensed Station's Net Broadcasting Revenue where a Licensed Station earns Net Broadcasting Revenue equal to or greater than the threshold of £1,295,244 in a given Licence Year.
- 1.3 The payments due in accordance with 1.1 and 1.2 above are together, in respect of each Licensed Station, the Royalty Fee.
- 1.4 The annual fee due in accordance with paragraph 1.1 on 1 October 2012 shall be paid in arrears within 30 days from the date of this Agreement/on or before 1 April 2013.
- 1.5 In respect of:
 - (a) Speech-based Licensed Stations, or
 - (b) if in a given Licence Year a Licensed Station's Repertoire Percentage is under 15%,

the royalty payments set out in paragraph 1.2 shall not apply. For such Licensed Stations the royalty payment shall be 1% of Net Broadcasting Revenue. For the avoidance of doubt the annual fee set out in paragraph 1.1 above shall apply.
- 1.6 The above-mentioned bands, thresholds and Royalty Fees shall be adjustable on 1 October in any given Licence Year, so as to reflect any movement in the RPI in the 12 month period ending on 31 July of that Licence Year.
- 1.7 In the event that there is a material reduction in the number of Repertoire Works licensable hereunder which materially affects the Licensee's ability to Broadcast the Musical Works which it would ordinarily Broadcast as a result of such Musical Works no longer being Repertoire Works (for example, where a material number of composers of Musical Works cease to be Members or withdraw the Broadcast right in their Musical Works from the Licensors' licensing mandate) then the Licensee may request that the Royalty Fee, in respect of the particular Licensed Station that is materially affected, be renegotiated by service of written notice on the Licensors. The Licensors and the Licensee shall negotiate in good faith and acting reasonably to agree Royalty Fees to take account of the material change.
- 1.8 For the purpose of assessing which royalty payment threshold applies to an individual Licensed Station in accordance with paragraph 1.2, the Net Broadcasting Revenue shall be:
 - (a) the Net Broadcasting Revenue of the relevant individual Licensed Station; and
 - (b) from April 2013 the Net Broadcasting Revenue of any FM or Digital Commercial Radio Station or stations licensed by the Licensors (whether under this Agreement or otherwise) which, in a given Licence Year, is a Similar Station.

For the avoidance of doubt, the Licensee shall only be required to apply the Royalty Rate so determined to the relevant individual Licensed

Station for that Licence Year and not that of the other aforementioned commercial radio stations.

- 1.9 If a Licensed Station becomes a Similar Station during the course of a Licence Year, the Licensee will report the relevant Licensed Station(s)'s Net Broadcasting Revenue up to the period when such Licensed Station(s) became a Similar Station and the relevant Licensed Station(s)'s Net Broadcasting Revenue from the period when it became a Similar Station to the end of the Licence Year.
- 1.10 The Licensee and each Licensed Station may treat separate AM and FM broadcasting modes as separate revenue streams for the purposes of calculating Net Broadcasting Revenue.
- 1.11 The Licensee and each Licensed Station shall calculate its Net Broadcasting Revenue in accordance with the actual sales of air time on each of its broadcasting modes AM and FM respectively. If it is not possible to calculate the said actual sales in such manner, then the Licensee may calculate its NBR on the basis of 40% AM 60% FM, or as otherwise agreed by the parties.
- 1.12 AM and FM broadcasting modes shall be regarded as separate for the purposes of this Licence where 6 hours of programming a day on one broadcasting mode are different from programming carried on the other broadcasting mode that day. For the avoidance of doubt there shall be no sub-division of Net Broadcasting Revenue for different services broadcast pursuant to this Licence on either one of the AM or FM broadcasting modes
- 1.13 Royalty Fees in respect of test transmissions shall be treated as follows. Where the test transmission takes place prior to the Licensee entering into this Agreement, the Royalty Fee in respect of such test transmission(s) shall be in accordance with the Royalty Fees payable under the Licensors' Short Term RSL Licence in place from time to time. Where the test transmission(s) takes place after the Licensee has entered into this Agreement, any Net Broadcast Revenue generated from such test transmission(s) shall be included as Net Broadcasting Revenue under the Agreement.

Appendix 3

Net Broadcast Revenue

1. Definitions

"Net Broadcast Revenue" means, subject to the provisions of this Appendix 3, 85% of:

- (a) gross valuable consideration (before any deduction of agency commissions or any other deductions) whether in money or money's worth derived and received (or receivable) by the Licensee directly from Broadcasts pursuant to this Agreement including advertising, sponsorship, donations, Barter and Contra Deals, Telephony Revenue from Premium Rate Services and other revenue directly related to the Programme Material Broadcast; and
- (b) all revenue, including by way of sponsorship and commissions, received (or receivable) by the Licensee as a result of the inclusion of third party advertising in-stream as part of the Simulcast or Listen Again Service, being advertising placed immediately at the start or end of (or within) the actual delivery of Programme Material to members of the public which for the avoidance of doubt is limited to advertising placed on the Player or the web page on which the Player sits if the Player is utilised directly within that web page. For the avoidance of doubt, a Player is not directly utilised from a web page if a new web page is launched from which the Player is then utilised, in which case, such revenue is limited to advertising placed on that new page); and
- (c) all revenue, including by way of sponsorship, click-throughs and other commissions, received (or receivable) by the Licensee as a result of the placement of third party advertising, buy or click-through buttons on the Player or the web page on which the Player sits if the Player is utilised directly within that web page. For the avoidance of doubt, a Player is not directly utilised from a web page if a new web page is launched from which the Player is then utilised, in which case, such revenue is limited to advertising placed on that new page);

and in each of the above cases such revenue shall, for the avoidance of doubt, include any such revenue whether received or receivable by the Licensee or any associate, affiliate, agent or representative of such party.

Subject to the remainder of this Appendix 3, there shall be no other deduction or set-off from the above revenues.

Net Broadcasting Revenue must be reported to the Licensors in respect of each Licensed Station and Listen Again Service licensed under this Agreement.

"Barter and Contra Deals" shall mean the provision by a third party to the Licensed Station of goods and services or Programme Material in return for

advertising air time or sponsorship credits in on-air Programme Material.

"Normal Commercial Value" means the figure calculated in relation to the average 30" (thirty second) equivalent gross cost per thousand (measured across the relevant quarter for that same clock hour) for Paid Airtime charged by the Licensee which phrase includes equivalent advertising airtime before any deduction of agency commissions, but does not include income in respect of airtime which:

- (a) in money's worth has been previously specifically assessed at a value and/or is capable of being specifically assessed (including, but not limited to, Barter and Contra Deals and Ceded Airtime);
- (b) includes programme promotions and/or advertisements/promotions on behalf of registered charities or in support of social activities (including without limitation, health, awareness raising campaigns and initiatives, telephone help lines, adult education and school projects) where the airtime has been donated by the Licensee;
- (c) includes programme promotions and/or advertisements/promotions wherein the Licensee only promotes its own forthcoming Broadcasts, promotional goods and free to enter off-air activities;
- (d) is "Service Airtime".

"Paid Airtime" shall mean airtime sold by, or on behalf of, the Licensee in exchange for money.

"Service Airtime" shall mean advertisements/promotions Broadcast by the Licensee at a value equal to or less than 20% of Normal Commercial Value, where the intention is wholly or in part to directly or indirectly raise revenue for the Licensee and/or third parties, including but not limited to parent, subsidiary or associated companies or connected unincorporated entities. For the purposes of calculating the gross valuable consideration to be included under the Net Broadcasting Revenue for Service Airtime, the Licensee shall apply 20% of the Normal Commercial Value.

"Telephony Revenue" shall mean call or SMS charge revenue received by the Licensee (or any intermediary acting on behalf of the Licensee) from Premium Rate Services accessed by listeners of the Licensed Station communicating with the Licensee directly in response to an on-air request to listeners to communicate with the Licensed Station by Premium Rate Services and related to the Broadcast output of the Licensed Station (by way of example, but not limited to, in response to a competition).

2. Barter and Contra

2.1 For the purposes of calculating the gross valuable consideration to be included under Net Broadcasting

Revenue for Barter and Contra Deals, the Licensee shall take the fair value (i.e. the value attributed to the Barter or Contra Deal in the Licensed Stations annual statutory accounts) of the advertising airtime provided in return for goods, services and Programme Material save that the gross valuable consideration included shall not be less than 20% of the Normal Commercial Value.

2.2 In cases where airtime or advertising spot(s) are provided and sold to a third party in return for any Programme Material Broadcast by the Licensee (including without limitation Independent Radio News Newslink) the net value to the Licensee of such airtime provided or sold shall be included by the Licensee in its statement of Net Broadcasting Revenue hereunder. The said sum shall be valued at Normal Commercial Value for the equivalent airtime sold/valued in the same clock hour, provided that any particular airtime or advertising spot(s) which are provided but not then sold by the third party will be valued as Service Airtime.

3. Outside Broadcasts

Costs directly and reasonably incurred by the Licensee in producing sponsored Outside Broadcast events shall be allowed to be deducted from Net Broadcast Revenue provided that if such costs exceed the value of sponsorship revenue earned for the event, the value of said sponsorship shall be nil. The amount by which costs exceed sponsorship revenue for the event may not be set off against other revenue. A schedule of sponsored Outside Broadcast events costs and revenues shall be provided by the Licensee annually as part of the declaration of Net Broadcasting Revenue for the purposes of calculating the Royalty Fee.

Schedule 1

Licensee details and list of Licensed Stations

Name of Licensee	
Company registration number	
Registered Address of Licensee	

Licensed Stations			Shared Content with		
Station Name	OFCOM number	Launch date	Station Name	OFCOM number	Effective date

Schedule 2

Format for reporting estimated and unaudited Net Broadcast Revenue

Please complete one form for each Licensed Station as detailed in Schedule 1

Reporting Period	From	To
	1 October 20__	30 September 20__

Name of Licensee	
Name of Station	
OFCOM Licence number	

The **Gross Valuable Consideration** is the full value of these transactions before deduction of agency commissions or any other deductions. Please complete all entries and where the value is 'nil' mark accordingly. Please note where any third party associate, affiliate, agent or representative derives or receives gross valuable consideration in respect of advertising or sponsorship revenue from broadcasts transmitted by the station, then it shall be deemed to be derived and received by the station and should therefore be included in the calculation. Where a radio group receives revenue at the group level such sums should be attributed to stations in the group and the method of apportionment made known to *PRS for Music*.

1. Advertising Revenue

Description	Gross Valuable Consideration
Paid Airtime	
Barter and Contra - calculated at fair value	
Barter and Contra - calculated at Normal Commercial Value	
Barter and Contra - Service Airtime	
Advertising specific to Simulcast and Listen Again Services	
Networked Programming (e.g. Big Top 40 Show)	
Total Advertising Revenue	
85 % of Gross Valuable Consideration	
Total Net Advertising Revenue	

2. Sponsorship Revenue

Description	Gross Valuable Consideration
Paid Airtime	
Barter and Contra - calculated at fair value	
Barter and Contra - calculated at Normal Commercial Value	
Barter and Contra - Service Airtime	
Sponsorship specific to Simulcast and Listen Again Services	
Networked Programming (e.g. Big Top 40 Show)	
Less: Sponsored Outside Broadcast Costs	
Total Sponsorship Revenue	
85 % of Gross Valuable Consideration	
Total Net Sponsorship Revenue	

3. Other Revenue

Description	Gross Valuable Consideration
Telephony Services	
Sale of Airtime	
Donations	
All Other Revenue	
85 % of Gross Valuable Consideration	
Total Net Other Revenue	

Total Net Broadcasting Revenue	
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Declaration

I certify that all the information provided in this form is complete and correct under the terms of the *PRS for Music* Commercial Radio Licence.

Name	
Job Title	
Telephone Number	
Email Address	

Schedule 3

Format for reporting audited Net Broadcast Revenue

Please complete one form for each Licensed Station as detailed in Schedule 1

Reporting Period	From	To
	1 October 20__	30 September 20__

Name of Licensee	
Name of Station	
OFCOM Licence number	

The **Gross Valuable Consideration** is the full value of these transactions before deduction of agency commissions or any other deductions. Please complete all entries and where the value is 'nil' mark accordingly. Please note where any third party associate, affiliate, agent or representative derives or receives gross valuable consideration in respect of advertising or sponsorship revenue from broadcasts transmitted by the station, then it shall be deemed to be derived and received by the station and should therefore be included in the calculation. Where a radio group receives revenue at the group level such sums should be attributed to stations in the group and the method of apportionment made known to *PRS for Music*.

1. Advertising Revenue

Description	Gross Valuable Consideration
Paid Airtime	
Barter and Contra - calculated at fair value	
Barter and Contra - calculated at Normal Commercial Value	
Barter and Contra - Service Airtime	
Advertising specific to Simulcast and Listen Again Services	
Networked Programming (e.g. Big Top 40 Show)	
Total Advertising Revenue	
85 % of Gross Valuable Consideration	
Total Net Advertising Revenue	

2. Sponsorship Revenue

Description	Gross Valuable Consideration
Paid Airtime	
Barter and Contra - calculated at fair value	
Barter and Contra - calculated at Normal Commercial Value	
Barter and Contra - Service Airtime	
Sponsorship specific to Simulcast and Listen Again Services	
Networked Programming (e.g. Big Top 40 Show)	
Less: Sponsored Outside Broadcast Costs	
Total Sponsorship Revenue	
85 % of Gross Valuable Consideration	
Total Net Sponsorship Revenue	

3. Other Revenue

Description	Gross Valuable Consideration
Telephony Services	
Sale of Airtime	
Donations	
All Other Revenue	
85 % of Gross Valuable Consideration	
Total Net Other Revenue	
Total Net Broadcasting Revenue	

Declaration

As auditors to _____ we confirm that we have examined the attached annual statement for the year ending 20__ and certify that it is correct and has been properly prepared in accordance with the Licence Agreement and the Reporting Guidelines for the Calculation of Net Broadcasting Revenue. We have reviewed all revenue sources arising in the year ending 20__ and further certify that all revenue streams excluded from the annual statement by 20__ have been properly excluded in accordance with the Licence Agreement and the Reporting Guidelines for the Calculation of Net Broadcasting Revenue.

Auditor's details:

Name	
Company	
Signature	
Date	

Schedule 4

Format for sponsored Outside Broadcast events costs deductions

Please complete one copy of this sheet for each individual sponsored Outside Broadcast that has taken place during the year. Enter the combined Total Allowable Deductions for all Outside Broadcasts into the NBR declarations in Schedule 2. Please note that no deductions for sponsored Outside Broadcast events costs will be allowable without completion of this schedule.

Summary of Event

Name of Sponsor	
Sponsored Outside Broadcast Title	
Date(s) of Outside Broadcast	
Gross Sponsorship Revenue	
Total Net Sponsorship Revenue for Outside Broadcasts	

Allowable Deductions

These are costs directly and reasonably incurred by the station in producing a sponsored Outside Broadcast. Allowable deductions include costs such as those incurred through the hire of sites, premises, additional broadcasting equipment or vehicles specifically for the event. The costs of staff or freelance staff that are not exclusively engaged for the sponsored Outside Broadcast cannot be deducted. For the avoidance of doubt, any costs incurred through obtaining rights to broadcast a particular event are not deductible.

Description	Gross Valuable Consideration
Total Deductions	
Total Allowable Deductions*	

* The Total Allowable Deductions for a sponsored Outside Broadcast may not exceed the Total Net Sponsorship figure declared above for the event. If the total deductions exceed this figure, then the Total Allowable Deductions that may be made will be the value of Total Net Sponsorship figure.