

PRS for Music
SHORT TERM RESTRICTED SERVICE LICENCES

Standard Terms and Conditions

1. Definitions

"Agreement" means the terms and conditions and the Application Form completed by the Licensee provided that to the extent there is any conflict between the Application Form and these terms and conditions, these terms and conditions will prevail.

"Application Form" means the *PRS for Music* Short Term Radio Licence application form.

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

"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.

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

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

"Licensed Station" means the radio station named in the Application Form, which is a short term Restricted Service Station licensed by Ofcom and shall not include any other type of radio station, including student, hospital, community or commercial radio stations.

"Licensors" means PRS and MCPS.

"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.

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

"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 Short Term Restricted Service radio station:

- (a) which is, under the control and responsibility of the Licensee, introduced into an uninterrupted chain of communication from within the United Kingdom; and
- (b) which has been granted a short term restricted service licence from OFCOM; and
- (c) which is a linear scheduled radio station; and
- (d) which is not an internet only radio station.

"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.

"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 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, or any other Programme Material without limitation.

"PRS for Music" means 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 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 payable under this Agreement as set out in clause 8.

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

- (a) is simultaneous with the Broadcast of such Licensed Station, and;
- (b) is hosted by the Licensee on data servers owned or controlled (directly or indirectly) by the Licensee.

"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 during which the Licensed Station Broadcasts (as set out in the Application Form), up to a maximum of 28 days, unless terminated earlier in accordance with these terms and conditions.

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

"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.

"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 the Licensed Station a non-exclusive licence to do the following during the Term solely for the purposes of Broadcast and Simulcast of the Licensed Station:

- (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 within the Territory only; and
- (e) to Simulcast PMSRs from the Territory as part of the Licensed Station within the Territory only; and
- (f) to reproduce Repertoire Works onto a physical hard-drive playout system within the Territory only for the purposes of Communicating to the Public Repertoire Works in accordance with this Agreement.

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 the Licensed Station 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 (within the Territory only); and
- (b) to Simulcast Repertoire Works from the Territory as part of the Licensed Station (within the Territory only).

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 clause 4.2 must be fulfilled.

4.2 The Programme Material must be made solely by or commissioned solely by the Licensee for the sole purpose of the Licensee Communicating to the Public the same on the Licensed Station.

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 a Programme 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.

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;
- (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.

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 only to the extent that the Licensed Station is, and remains throughout the Term, a Permitted Service.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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 Royalty Fee shall be £40 in respect of each day that the Licensed Station is Broadcasting, plus an initial fee of £70. By way of example only, where the Licensed Station Broadcasts for 3 days, the Licensee shall pay the Royalty Fee of £190 (£70 initial fee + £120 for the three days of Broadcasting).

8.4 The Royalty Fee shall be non-refundable and shall be payable by the Licensee upon submission of the completed Application Form.

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

8.6 The Royalty Fee shall be adjusted on 1 January in any given Licence Year to reflect any increase in RPI in the 12 month period ending on 31 October of that Licence Year.

8.7 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 3% 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.

9. Termination and Expiry

9.1 The term of the licences granted under this Agreement shall be limited to the period during which the Licensed Station Broadcasts, as indicated on the Licensee's completed Application Form, unless otherwise terminated earlier in accordance with these terms and conditions.

9.2 Notwithstanding clause 9.1 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 14 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 14 day cure period specified in (a) above.

9.3 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).
- 9.4 For the avoidance of doubt, this Agreement shall also terminate the licences in respect of a Licensed Station where any of the steps in 9.1 to 9.3 above are taken by the Licensee's authorised representative, who has been authorised by the Licensee to carry out such steps on its behalf.

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

10. Effect of Termination

10.1 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.

10.2 Clauses 8, 11 and 12 shall survive the termination of this Agreement, but only in relation to the Licensee's (or Licensed Stations', as applicable) activities during the Term.

11. 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.

12. Notices

12.1 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.

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

12.3 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 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.

12.4 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 e-mail that a report from the sender's

computer can be produced in respect of the notice.

13. Miscellaneous

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 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.
- 13.6 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 Court.