

## EXPLANATORY NOTES FOR APPLICANTS RELATING TO PARAGRAPHS 1 – 14 OF THE AGREEMENT

### References to paragraphs refer to the points in the Notified Details Form.

1. Under Article 7(g) of PRS's Constitution, members have a right to require PRS to transfer to them the right to perform one or more of their respective works live in public ("**live concert rights**"), subject to complying with certain preconditions, which are set out in PRS's Rule 13. By signing the application and submitting details of the works specified in the Notice, you are confirming that you have met the following pre-conditions:
  - a. That you have given PRS not less than 20 working days' notice that you require us to assign to you the live concert rights in the works;
  - b. That you have applied for the assignment in the form prescribed by PRS;
  - c. That you have not breached the terms of any previous licence or assignment issued to you by PRS.

PRS Rule 13 also requires applicants to promise to indemnify PRS claims resulting from their direct licensing activities as a pre-condition of PRS issuing the assignment. With effect from 1 December 2022, PRS has chosen to waive this pre-condition. This means that PRS (a) cannot refuse to issue you with an assignment provided that you have met the other conditions set out in the Rule (and listed at a. to c. above); and (b) cannot claim contractual compensation from you in the event that we receive a claim from any of our members or affiliated societies in respect of royalties wrongly collected or received by you in the course of your direct licensing activities.

#### FAQ:

*Q: I note that PRS has recently waived its requirement for an indemnity under its Article 7(g). Does that mean PRS cannot recover sums from me in the event that I receive sums that are not due to me?*

*A: An indemnity is a form of contractual compensation. PRS's decision to waive the indemnity requirement means that it cannot require you as a matter of contract to compensate it for any relevant loss we may suffer or incur. However, PRS reserves any other rights it may have in law to seek redress from you in the event that we incur expenses or other losses, such as a claim from any of our members or affiliated societies in respect of royalties wrongly collected or received by you in the course of your direct licensing activities.*

*Q: Will the waiver be permanent?*

*A: PRS believes that an indemnity would provide PRS and its members as whole with a cost-effective mechanism for securing redress from a member where the direct licensing activities of that member cause PRS to incur expenses or other losses, such as a claim from any of our members or affiliated societies in respect of royalties wrongly collected or received by you in the course of your direct licensing activities. The Members' Council therefore intends to keep the matter under review and, if it considers other avenues of PRS to be ineffective, reserves the right to reinstate the indemnity requirement.*

2. PRS will assign to you the rights in your works only to the extent of your interest in the works concerned. We

*cannot assign you rights that have been vested in PRS by third parties, including other members of PRS or its affiliates whose works or interests in works will performed by you or otherwise exploited in the concert. By signing this application, you acknowledge this fact and that your obligations under this agreement are reasonable in so far as they are necessary to enable PRS effectively to manage the rights of those third parties.*

3. *Under UK law, an assignment of copyright will only be effective if it has been signed by or on behalf of the owner of the rights concerned. Because PRS is the owner of the rights in your works at the time of your application, we need to assign the relevant rights in your works to you in order to enable you to license them directly. In paragraph 3, PRS commits to using reasonable endeavors to do so within 15 working days of your application and in any event by not later than 20 working days.*

FAQ:

**Q: Why do you need 20 working days' notice in which to issue an assignment to me? [It should not take you that long].**

PRS does not require 20 working days in order to issue the assignment itself. We ask for 20 working days' notice for other reasons. In particular, we use that period to:-

- ascertain whether there are any third-party interests in the works for which you require the assignment. For example, we may contact your publisher to establish whether they are aware of and have consented to your application;
- if you have applied for an assignment for the purposes of directly licensing your rights overseas, to notify our affiliated societies of your application and of the rights of any other members which may be exploited in the concerts;
- If you have applied for an assignment for the purposes of directly licensing your rights in the UK, to:-
  - o inform our UK licensees of your application and that the rights in your works will not form part of our licence for the concert;
  - o to enable us to calculate the royalty (if any) due to PRS in respect of third-party rights at the concerts in accordance with the terms of our published licensing scheme, which is subject to order of the Copyright Tribunal.

PRS considers that the requirement for 20 working days' notice is a reasonable one and necessary to enable PRS to manage effectively the rights of its members and those rights holders whose rights it and/or affiliates represents; and to provide our licensees and affiliated societies with commercial certainty.

**Q. What if I give you less than 20 working days' notice [but more than 15 working days].**

*If you give us less than 20 working days' notice, PRS will not transfer the rights to you as you will not have complied with our pre-conditions for the assignment (see FAQ above and paragraph 1 in the Notified Details Form).*

**Q What if PRS fails to assign the rights to me within 20 working days?**

*We will not bring any action against you or your licensees in respect of the rights to which your application relates or any royalties collected by you in respect of such rights if after the expiry of 20 working days from your application you enter into a direct licence or collect any royalties before we issue the assignment to you (see paragraph 5 of the agreement).*

4. *This paragraph makes it clear that PRS is responsible for licensing and management of third-party rights at your concert and that we will not require you to obtain a licence or procure that any person with whom you deal obtains a licence in respect of those rights.*
5. *In this paragraph and paragraph 6, PRS confirms that provided you have satisfied the Pre-conditions and are not found to have been in breach of any of the representations or contractual promises at paragraph 8, PRS will not bring any action against you, your licensees or any other third party with whom you deal in respect of your assigned rights or seek any additional money from you or them in relation to those rights. However, we and our affiliated societies may ask those parties for sums in relation to any other rights in our repertoire that they exploit if we are entitled to do so under the terms of our licences with them and/or believed they may have infringed our copyright.*
6. *Please see Explanatory Note 5.*
7. *We may only assign to you rights that you have vested in PRS under your membership agreement. In paragraph 7, you promise not to license or otherwise exploit any live concert rights in works in which you do not have an interest or (if you are a co-writer) in so far as you have no interest in them.*
8. *In this paragraph you are making two types of legally enforceable statement: a representation and a warranty. A representation is a statement that induces the person to whom it is made (in this case, PRS) to rely on it for a particular purpose (to assign rights to you). A warranty is a contractual promise about one or more matters of fact, breach of which may give rise to a claim by the person to whom the promise is made.*

In paragraph 8 in the Notified Details Form, you represent and warrant that:

1. *You are the only or joint writer of the works to which your application relates.*
2. *If you have a publisher, that you have asked your publisher for consent to exercise the rights at the concerts concerned. This is because after we have assigned the rights in your works to you, PRS will no longer be entitled to grant a licence or collect royalties in respect of your live performance of the works concerned (or if you are not the only writer, your share of the rights in them). We therefore expect and recommend that you at least ask your publisher for consent directly to license works in their catalogue. We do not require you to have obtained the publisher's consent in order to require PRS to assign rights to you, but if you have not obtained that consent or are otherwise satisfied that under the terms of your publishing agreement you would be free to license the live concert rights in your works following PRS's assignment to you, the rights may in fact revert automatically to your publisher and, if they are a member of PRS or one of our affiliates, remain vested in PRS at the time of the concerts.*

3. When the rights are assigned to you, you will be entitled to exercise the rights to the extent of your interest in them. PRS will assign the rights to you on the basis of your authorship of the works. The effect of the assignment is that PRS will cease to control the live concert rights in the works concerned and ownership will be vested in you. However, if you have entered into a contract with a third party under which the withdrawal of rights from PRS will cause those rights to vest in that party, you may not be entitled to exercise them. If that third party is a PRS member who has not applied for the assignment, that member is entitled to expect that PRS will exercise the rights concerned. The most common example of such an arrangement is a publishing contract, in which composers assign to a publisher the performing rights in their works, including any interests arising in the event of PRS ceasing to control those rights (sometimes referred to as “reversionary” rights or interests). We therefore recommend that you discuss any proposed direct licensing activity with your publisher (please also see NOTE 8.2 above).

PRS will not consider you to have misrepresented the position or to have breached a warranty under sub-paragraph 8.(3) where the required assignment relates to a territory outside of the UK whose local copyright law requires live concert rights to be licensed on a collective basis, i.e. by another CMO, or otherwise imposes on individual copyright owners additional notice or other opt out requirements as pre-condition of directly licensing the rights in their works. PRS does not and cannot guarantee that by assigning rights to you for a particular territory you will be free to license those rights as you see commercially fit. We always recommend that you take independent professional legal advice on your position in the territory concerned before applying for an assignment for that territory.

4. In this paragraph, you are representing and promising that, to the best of your knowledge and belief, there are no third-party interests in the works apart from those you have disclosed in your Notice.
5. Your authority to sign this application and Notice. You are representing to PRS that you have satisfied the Pre-conditions and that PRS may treat your application as valid notice of your requirement for a assignment.
9. If you are in breach any of the warranties or representations referred to in the NOTE to paragraph 8 above, PRS may bring an action against you to recover any sums that may be due to us and to set them off against future distributions to you (“set-off right”). However, we may only exercise our set-off right if you have first admitted your liability to us and/or a court has determined that you were in breach.
10. On entering into your membership agreement (or Deed of Assignment) with PRS, you made warranties and representations as to your title to assign the performing right in your works to PRS and that those works do not infringe the copyright in any other musical work; and promise to indemnify PRS against any claims in respect of those rights and works. Paragraph 10 confirms that such warranties, indemnities and indemnification remain in force notwithstanding any assignment to you of the rights in your works in this agreement.
11. The terms on which PRS will assign the rights in your works is set out in the Form of Assignment. You can see a sample of the Form of Assignment at the end of your notified details form. The assignment will last until the end of the concert for which you required it or, if you required the assignment for a tour, until the end of the final concert in that tour. Immediately following that event, the live rights will, if you are a member,

*revert to PRS. You will not be able to rely on the assignment for any concerts not listed in your notice.*

- 12. Paragraph 12 provides that you and PRS may each continue to rely on and enforce certain provisions of the agreement after the assignment itself has terminated (see para 11):*
- 13. In this paragraph, you and PRS each agree to execute documents necessary to give effect to this agreement (e.g., by PRS issuing an assignment).*
- 14. This paragraph records that the agreement is governed by English law and is enforceable only in English courts.*