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## **PPL SHORT TERM RESTRICTED SERVICE LICENCE** **TERMS AND CONDITIONS**

The issuing of these Terms and Conditions does not in itself grant any rights. Permission to use PPL's repertoire (on the terms set out in the Licence) will only be effective once the online application has been completed, the Licensee has fully paid all licence fees and a receipted invoice has been issued by PPL.

### **LICENCE PARTICULARS:**

**Licensee Name:**

**Licensee Address:**

**Station Name:**

**Website Address:**

**Start Date:**

**End Date:**

**Duration (in days):**

**Application Date:**

### **1. DEFINITIONS**

1.1 The following definitions apply in the Licence:

**"The Act"** shall mean the Copyright, Designs and Patents Act 1988 (as amended).

**"Broadcast"** shall mean a broadcast as defined in the Act 1988 but excluding (a) all internet transmissions and (b) all transmissions made on or via mobile telephony networks (and "Broadcasting" and use of the verb "to Broadcast" shall be construed accordingly).

**"End Date"** shall mean the end date of the Short Term Restricted Service as set out in the Licence Particulars.

**"Interactive Service"** means a service or part of a service that enables a member of the public to receive either:

- (i) a transmission of a programme or a sequence of Sound Recordings containing Repertoire specially created for the recipient, or
- (ii) on-demand, a transmission of a particular sound recording (whether or not as part of a programme) which is selected by or on behalf of the recipient;

**“Internet Simulcast Service”** shall mean a service which is a simultaneous unaltered (save for adverts) transmission in real time of the Short Term Restricted Service via the internet only on the Licensee’s Website.

**“ISRC”** shall mean the International Standard Recording Code (ISO 3901).

**“Licence”** shall mean the licence agreement between PPL and the Licensee, the terms of such licence agreement being set out in these Terms and Conditions and the Licence Particulars.

**“Licence Period”** shall mean the period beginning on the Start Date and continuing until the End Date.

**“Licence Particulars”** shall mean the details provided by the Licensee via the online application on PPL’s website which are pertinent to the Service.

**“Licensee”** shall mean the company, person or other legal entity as specified in the Licence Particulars who is responsible for the Short Term Restricted Service (and any Internet Simulcast Service) and requires the benefit of the Licence.

**“Licensee’s Website”** shall mean the Website Address specified in the Licence Particulars and under the control of the Licensee.

**“Member”** shall mean a record company, person or entity who is a member of PPL. PPL’s Members vary from time to time and a list of Members is available from PPL upon request.

**“PPL”** shall mean Phonographic Performance Limited.

**“Repertoire”** shall mean any Sound Recording(s) the copyright in which is owned or controlled by PPL during the Licence Period.

**“Service”** shall mean the Short Term Restricted Service and the Internet Simulcast Service or either thereof.

**“Short Term Restricted Service”** shall mean a service Broadcasting content in accordance with and under the terms of a single Ofcom Short Term Restricted Service Licence:

- (i) for a limited period of time, such period being the Licence Period (and in any event the service shall not operate for longer than the period specified in the service’s Ofcom Short Term Restricted Service Licence); and
- (ii) within a restricted and defined location in the Territory as specified in the service’s Ofcom Short Term Restricted Service Licence.

**“Signature Music”** shall mean the use of a Sound Recording in association with the opening or closing credits or other distinctive segment of series of three (3) or more radio programmes whether transmitted consecutively or not or for promotional spots for events or products which do not form part of a service licensed by PPL.

**“Start Date”** shall mean the start date of the Short Term Restricted Service as set out in the Licence Particulars.

**“Station”** shall mean the name of the Short Term Restricted Service as set out in the Licence Particulars.

**“Sound Recording”** shall mean a recording of sounds in which copyright still subsists, from which the sounds may be reproduced, or a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

“**Territory**” shall mean the United Kingdom, the Channel Islands and the Isle of Man.

“**VAT**” shall mean Value Added Tax.

- 1.2 Clause headings in the Licence are for ease of reference only, and do not form part of this Licence.
- 1.3 Where expressions are used in the Licence which are expressions used in the Act they shall have the same meaning herein as in the Act, unless specified otherwise herein.
- 1.4 In the Licence, unless the context requires otherwise:
  - 1.4.1 words importing the singular include the plural and vice versa;
  - 1.4.2 references to days are to calendar days;
  - 1.4.3 references to a person include reference to an individual, a partnership, a company, a corporation and any other legal entity; and
  - 1.4.4 references to the word "including" do not imply any limitation.

## **2. GRANT OF RIGHTS**

- 2.1 Subject to the provisions of the Licence, PPL grants to the Licensee a non-exclusive licence in respect of the Station to, within the Territory and during the Licence Period:
  - 2.1.1 Broadcast as part of a Short Term Restricted Service; and/or
  - 2.1.2 include in an Internet Simulcast Service, the Repertoire or any part thereof.

## **3. RIGHTS NOT GRANTED**

- 3.1 The grant of rights under Clause 2.1 only relates to sound recording copyrights controlled by PPL. PPL shall not be liable for any claims arising out of the use of Sound Recordings by the Licensee which may be made by the owners of the copyright in any literary, dramatic or musical works embodied in Sound Recordings.
- 3.2 The Licensee hereby acknowledges that the Licence does not convey or imply the grant of any performers' consents of any kind from any person having performers' rights in relation to a performance as the same are or may be required under the Act when such performance is relevant to the Sound Recordings used pursuant to the Licence.
- 3.3 No rights are granted in respect of the use of Sound Recordings for the purposes listed below and the Licensee shall not use PPL's Sound Recordings for such purposes without the express written consent of the relevant Member, or PPL on that Member's behalf:
  - 3.3.1 as an introduction to or during advertising unless advertising the Sound Recording used;
  - 3.3.2 as a service identity signal;
  - 3.3.3 as Signature Music or for promotional spots not connected to the transmission of the service(s);

- 3.3.4 as a trade mark or brand; or
  - 3.3.5 as part of any Interactive Service, service transmitted over the internet (save as provided in Clause 2.1.2), or on or over mobile phone networks (save that a user merely accessing the Internet Simulcast Service on their mobile phone or other handheld device, whether Internet access is provided via the mobile phone network or otherwise, is included within the scope of the Licence).
- 3.4 No rights are granted in respect of:
- 3.4.1 the public performance of Sound Recordings; or
  - 3.4.2 the copying of Sound Recordings (and/or the retention of those copies), whether by the Licensee or third parties.
- 3.5 All rights in the Repertoire which are owned or controlled by PPL and not expressly licensed to the Licensee under Clause 2 are expressly reserved.

#### **4. CONDITIONS**

- 4.1 The Licensee shall not:
- 4.1.1 make or permit any other person to copy or make any recording of any Sound Recording included in the Short Term Restricted Service or Internet Simulcast Service (except as to the extent permitted by law or otherwise agreed in writing by PPL);
  - 4.1.2 authorise or permit any other person to include any Sound Recording in the Short Term Restricted Service;
  - 4.1.3 Broadcast or transmit any Sound Recording (whether such Sound Recording is in digital file format or otherwise) that has not been validly obtained for such Broadcast or transmission from legitimate authorised sources;
  - 4.1.4 without the written consent of PPL or the member of PPL which owns or controls the right of reproduction therein mix, remix, edit, change or otherwise manipulate the copy protection or track identification devices of any Sound Recording, nor the sounds of any Sound Recording so that the sounds that are transmitted are different from those on the original Sound Recording;
  - 4.1.5 use any Sound Recording in such a way as may be taken to imply that any goods, products or services other than the Sound Recording are endorsed, advertised or associated with the Sound Recording or any artist whose performance is contained on the Sound Recording or any other party who owns rights in connection with the Sound Recording;
  - 4.1.6 publish programme schedules indicating the actual or likely time at which specific Sound Recordings may be included in the Service;
  - 4.1.7 give advance notice of the fact that more than fifteen (15) continuous minutes of identified Sound Recordings are to be transmitted (whether by Broadcast or otherwise) without any intervention by the disc-jockey PROVIDED THAT this prohibition shall not apply to any one Sound Recording of a literary, dramatic or musical work which itself lasts longer than fifteen (15) minutes (and the same restrictions shall apply to the Internet Simulcast Service with the same proviso);

- 4.1.8 schedule Sound Recordings in any form of rotation, looping or repetition so as to enable anticipation by the listener/viewer, or other third party of forthcoming Sound Recordings on a Service;
  - 4.1.9 use any Sound Recording in respect of which PPL has given notice to the Licensee that such Sound Recording is or has become unavailable through PPL for inclusion in a Short Term Restricted Service or Internet Simulcast Service unless the use of such Sound Recording has been cleared by the Licensee directly with the relevant rights owner;
  - 4.1.10 use any Sound Recording (or part thereof) except in accordance with the terms and conditions of the Licence unless the prior written consent of PPL has first been obtained; and/or
  - 4.1.11 where the sound file of any Sound Recording has been encrypted by a Member of PPL, attempt to decrypt that sound file without prior written authorisation by that Member.
- 4.2 In relation to Internet Simulcast Services, the Licensee shall use effective technologies (insofar as such technologies can be implemented without imposing unreasonable costs) that aim to prevent a transmission recipient from:
- 4.2.1 automatically scanning the Licensee's transmissions (alone or together with transmissions from other transmitting entities) in order to select a particular sound recording to be transmitted to the transmission recipient; and
  - 4.2.2 making copies, other than transient copies, of such sound recordings.
- 4.3 The Licensee warrants and undertakes:
- 4.3.1 to exercise proper discretion in the choice and use of the Sound Recordings so as not to denigrate the artistic integrity of any Sound Recording or any performance recorded thereon;
  - 4.3.2 to transmit as part of any Sound Recording any coding incorporated on that Sound Recording which is intended to identify the Sound Recording or prevent or discourage its unlawful copying;
  - 4.3.3 to exercise proper discretion in the use of the Repertoire so as to ensure that no Sound Recording in the Repertoire or artist therein is associated with nor gives any deliberate and repeated endorsement to any of the products, services, advertisers or sponsors promoted in the programmes of the Licensee without the express written consent of the Member of PPL in question, provided that the use of a Sound Recording in the Repertoire as title music or a promotional spot for a programme or event which includes the Repertoire is not regarded as being an endorsement;
  - 4.3.4 to inform PPL of any breach of PPL or it's Members' rights in the Repertoire or of any other illegal activities concerning the rights of PPL or it's Members which come to the notice of the Licensee in connection with the use of the Repertoire pursuant to the Licence;
  - 4.3.5 to notify PPL of any change in the name, operating identity, frequency allocation, address within 7 (seven) days of any such change. It is expressly agreed and declared that this obligation shall not be construed as implying any consent on the part of PPL to any change so notified;

- 4.3.6 that the details provided in the Licence Particulars are true and accurate in all respects
- 4.3.7 that the Licensee shall notify PPL in writing of any changes to the Licence Particulars, such changes to be subject to approval by PPL; and
- 4.3.8 to fully indemnify PPL and keep PPL fully indemnified in respect of any claims, damages, losses (including indirect and economic losses) and/or expenses (including reasonable legal costs) suffered as a result of any breach or alleged breach by the Licensee of its obligations, restrictions, and/or warranties under the Licence or any unlicensed use of Sound Recordings by the Licensee.

## **5. CONSIDERATION AND ROYALTY**

- 5.1 In consideration of the rights granted under Clause 2.1, the Licensee shall pay to PPL the non-returnable fees in the invoice issued by PPL to the Licensee following the Licensee's completion of the online application.
- 5.2 The fees payable under the Licence shall be paid before the Start Date.

## **6. INTEREST**

- 6.1 If any payment to PPL hereunder is not received before the Start Date, interest at the rate of 4% (four percent) above the Bank of England base rate in force from time to time shall be payable by the Licensee calculated from the due date until the date of actual payment.

## **7 WARRANTIES**

- 7.1 PPL hereby warrants, represents and undertakes to the Licensee that it has the right, power and authority to enter into and to grant the Licence on the terms set out here in.

## **8 NOTIFICATION OF EXCLUDED MATERIAL**

- 8.1 PPL may at any time during the Licence Period notify the Licensee in writing that one or more specified Sound Recordings in the Repertoire are excluded from the Licence, either for the whole or part of the Licence Period, which exclusion shall be effective from the date of service of such notification. Where PPL gives such notice the Licensee shall use reasonable efforts to comply with the terms of such notice in full and with immediate effect; and in the event that the Licensee cannot reasonably comply with such notice in full and with immediate effect, the Licensee shall immediately inform PPL of the reason(s) why and the parties shall in good faith co-operate and use reasonable efforts to attempt to resolve the situation as soon as reasonably practicable.

## **9 TERMINATION**

- 9.1 PPL shall have the right at any time during the continuance of the Licence to terminate the Licence forthwith by written notice to the Licensee if the Licensee commits or permits to be committed any breach or breaches of any of the terms (whether or not conditions) of the Licence (including nonpayment) and the Licensee shall not have remedied such breach (insofar as it is capable of remedy) within 7 (seven) days of being notified of the same.
- 9.2 Termination of the Licence howsoever occasioned shall be without prejudice to the rights or remedies of PPL.

## **10 ASSIGNMENT**

- 10.1 This Licence shall be personal to the parties and the Licensee shall not be entitled to assign, sub-contract, sub-licence or otherwise transfer any of its rights or obligations hereunder without the prior written consent of PPL, to be given or withheld at its absolute discretion.

## **11 GENERAL**

- 11.1 All rights and obligations hereunder shall be construed and interpreted in accordance with the laws of England and Wales, the courts of which shall be the sole and exclusive courts of competent jurisdiction and the parties irrevocably submit to the exclusive jurisdiction of the High Court in London, in all matters concerning the Licence.
- 11.2 In the event that either party is in default of any of its obligations under the Licence and the other party incurs legal costs and expenses in order to obtain compliance there with, such costs shall be recoverable by the other party from the defaulting party as a debt to the extent that such costs have been reasonably incurred.
- 11.3 No delay or omission in exercising any right or remedy under this Licence shall operate as a waiver of such right or remedy or of any other rights or remedies. No waiver shall be binding or effective for any purpose unless made in writing, stated to be a waiver and signed by the party giving it. Any such waiver shall in any event only apply to the specific events, and to the express extent, stated in such waiver.
- 11.4 No variation or amendment of the Licence shall bind either party unless agreed to in writing by their respective duly authorised representatives.
- 11.5 If any provision of the Licence shall be determined by any court or other tribunal of competent jurisdiction to be illegal, avoid or unenforceable, all other provisions of the Licence shall nevertheless continue in full force and effect.
- 11.6 The Licence supersedes all prior licences and arrangements and embodies the entire understanding and all the terms agreed between the parties relating to the Licence and no oral or written (save where expressly contained in the Licence) representations warranties or promises shall be implied as terms of the Licence.
- 11.7 Notices or demands to be given or made pursuant to the Licence shall be given or made in writing and sent by pre- paid first class mail or by facsimile (confirmed by pre-paid first class mail sent within 24 (twenty-four) hours of the despatch of such facsimile) or by delivery addressed and sent to the recipient at the address stated above and addressed to the Managing Director/Company Secretary or to such other address as may have been duly notified and if given or made by mail shall be deemed to have been received at the expiry of 48 (forty-eight) hours from such despatch or if facsimile shall be deemed to have been received at the time of despatch.