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PPL AND PRS FOR MUSIC BACKGROUND MUSIC ON WEBSITES LICENCES TERMS AND CONDITIONS

The issuing of these Terms and Conditions does not in itself grant any rights. Permission to use the repertoire of PPL and *PRS for Music* (on the terms set out in the Licences) 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:

Website Address:

Licence Start Date:

Application Date:

Licence End Date:

INTRODUCTION:

- (1) PPL and *PRS for Music* provide services to rights owners and users for the collective licensing of rights in sound recordings and musical works respectively. PPL distributes licence fee revenue to record companies and to performers. *PRS for Music* distributes licence fee revenue to songwriters, composers and publishers.
- (2) The Licensee operates a Website in the UK and wishes to obtain the right to use the repertoire of PPL and *PRS for Music* as background music for this Website, all subject to the terms below.
- (3) Each of PPL and *PRS for Music* wish to grant the Licensee a licence for the use of their respective repertoire as background music on the Licensee's Website and, where the Central Database is hosted on a server in the UK, for the copying of their respective repertoire onto the server solely for the foregoing purpose all subject to the terms below.

- (4) PPL and *PRS for Music* each license their repertoire for use as background music on websites separately, but each licence is administered together through PPL's online licensing portal. For this purpose PPL acts as the agent of *PRS for Music*. Each licence also has common operating conditions. Part 1 of these terms sets out the licence granted by PPL. Part 2 sets out the licences granted by PPL on behalf of *PRS for Music*, and Part 3 sets out the common operating conditions.
- (5) The issuing of these Terms does not in itself grant any rights. Permission to use PPL's repertoire (on the terms set out in the PPL Licence) and *PRS for Music's* repertoire (on the terms set out in the MCPS Licence and PRS Licence respectively) 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.
- (6) To be eligible for the Licences, the Licensee must be a small business, with four or fewer full time equivalent employees and have a turnover of £200,000 a year or less. The Website must be specifically and primarily targeted at the UK, not carry any third party advertising and not be for an online music service. Only one jointly administered PPL and *PRS for Music* licence may be held per Website. The Licences permit up to 90,000 Performances of Licensed Sound Recordings via the Website in the annual period.

PART 1: PPL Grant

1. Subject to the terms and conditions of the PPL Licence PPL grants to the Licensee a non-exclusive licence during the Licence Period, within the Territory to Stream PPL Sound Recordings as part of a Programme to Visitor's Players for the duration of the Visitor viewing the Website.
2. Subject to the terms and conditions of the PPL Licence and for the sole purpose of exercising the grant of licence set out in Clause 1 of this PPL Grant, PPL grants to the Licensee a non-exclusive licence during the Licence Period and within the Territory to copy any PPL Sound Recordings onto the Central Database and to retain the copies of those PPL Sound Recordings on the Central Database provided that the PPL Sound Recordings on the Central Database at any time shall comprise only the Permitted Central Database Content.
3. The Common Operating Conditions apply to the grant of the licence contained in this PPL Grant and the Licensee hereby undertakes that it shall comply with all provisions and restrictions set out in the Common Operating Conditions.
4. The licences granted under Clause 1 and Clause 2 of the PPL Grant only relate to the copyright in the Sound Recordings and do not include, refer to or cover any other consents or authorisation of whatsoever nature which may be required for the Streaming of Sound Recordings from the Website.
5. All rights in the PPL Sound Recordings which are owned or controlled by PPL and not expressly licensed to the Licensee under Clause 1 and Clause 2 of the PPL Grant are expressly reserved.
6. PPL hereby warrants and represents to the Licensee on behalf of itself that it has the right, power and authority to enter into and to grant the PPL Licence on the terms set out in the PPL Licence.

PART 2: *PRS for Music* Grant

1. Subject to the terms and conditions of the MCPS Licence and for the sole purpose of exercising the grant of licence set out in Clause 2 of *PRS for Music* Grant, PPL, on behalf of MCPS, grants to the Licensee a non-exclusive licence during the Licence Period and within the Territory to copy any *PRS for Music* Repertoire Work onto the Central Database and to retain the copies of those *PRS for Music* Repertoire Works

on the Central Database provided that the *PRS for Music* Repertoire Works on the Central Database at any time shall comprise only the Permitted Central Database Content.

2. Subject to the terms and conditions of the PRS Licence, PPL, on behalf of PRS, grants to the Licensee a non-exclusive licence during the Licence Period, within the Territory to Stream *PRS for Music* Repertoire Works as part of a Programme to Visitor's Players for the duration of the Visitor viewing the Website.
3. The Common Operating Conditions apply to the grant of the licences contained in this *PRS for Music* Grant and the Licensee hereby undertakes that it shall comply with all provisions and restrictions set out in the Common Operating Conditions.
4. The licences granted under Clause 1 and Clause 2 of the *PRS for Music* Grant only relate to the copyright in the *PRS for Music* Repertoire Works and do not include, refer to or cover any other consents or authorisation of whatsoever nature which may be required for the Streaming of Musical Works which are not *PRS for Music* Repertoire Works from the Website.
5. MCPS and PRS hereby severally warrant and represent to the Licensee that each has the right, power and authority to enter into and to grant the MCPS Licence and the PRS Licence respectively on the terms set out in the MCPS Licence and the PRS Licence.

PART 3: Common Operating Conditions

1. Definitions and Interpretation

1.1. The following definitions apply in the Licence:

"Affiliate" means a "holding company" or a "subsidiary" of the Licensee or any "subsidiary" of any "holding company" of the Licensee, as the terms are defined in section 1159 of the Companies Act 2006.

"Application Date" means the Application Date set out in the Licence Particulars being the date upon which the Licensee's application for the Licences was submitted.

"the 1988 Act" means the Copyright, Designs and Patents Act 1988.

"Central Database" means copies of one or more Licensed Sound Recordings in digital form which are stored solely on a single central processing unit within the Territory. For the avoidance of doubt, where the central processing unit hosting the content forming the Programme is not located in the Territory then it is not licensed under the Licences and is not subject to any of the provisions of the Licences.

"Common Operating Conditions" means the common conditions of the Licences set out in Part 3 of these Terms.

"Excluded Content" means a PPL Sound Recording or *PRS for Music* Repertoire Work notified by PPL to the Licensee in accordance with Clause 4.

"Full Time Equivalent Employees" means each full time employee engaged by the Licensee and/or its Affiliates, and in the case of part time employees they shall be counted pro rata by dividing the actual average hours worked per week by 35 (thirty five) hours.

"Internet" means any physical network of interconnecting computers over which multi-media content, including, without limitation, text, graphics, software, audio and video identifiable by reference to a unique URI/URL (Universal Resource Indicator/Universal Resource Locator), is made available to and accessed by users of web browsers (for example, the browsers known as "Microsoft Internet Explorer"

and "Netscape") through the use of a common set of software protocols such as TCP/IP protocols.

"Licence End Date" means the Licence End Date set out in the Licence Particulars being the date 12 months from the later of the Licence Start Date and the Application Date.

"Licence Fee" means a fee of £122 for the period from the later of the Application Date and the Licence Start Date up to the Licence End Date (inclusive) plus a fee of £122 per annum pro-rated for the period (if any) from the Licence Start Date to the day before the Application Date (inclusive).

"Licence Particulars" means the information identified as such and contained in the confirmation document provided by PPL reflecting that provided by the Licensee via the online Background Music on Websites licence application on PPL's website.

"Licence Period" shall mean, subject to Clause 8, the period from the Licence Start Date to the Licence End Date (inclusive).

"Licence Start Date" means the Licence Start Date set out in the Licence Particulars being the date upon which the Licensee commenced (or shall commence) use of any PPL Sound Recording and/or *PRS for Music* Repertoire Works in a manner within the scope of the Licences but in no event earlier than 1 January 2014.

"Licences" means the PPL Licence, the MCPS Licence and the PRS Licence together.

"Licensed Sound Recording" means a PPL Sound Recording and/or any Sound Recording that contains all or part of a *PRS for Music* Repertoire Work.

"Listener Hours" means the total aggregate hours of all Streaming to all Players within the Territory.

"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.

"MCPS" means Mechanical-Copyright Protection Society Limited whose registered office is at 2 Pancras Square, London, N1C 4AG, contracting for and on behalf of itself and for and on behalf of and as agents of its various members and affiliated societies.

"MCPS Licence" means the contract formed of the Licence Particulars, clauses 1, 3, 4 and 5 of the *PRS for Music* Grant and the Common Operating Conditions.

"Performance" means each instance in which any portion of a Licensed Sound Recording is delivered from the Website to a single Player, excluding a Licensed Sound Recording subject to a direct licence from the owner of the copyright in the Sound Recording(s) and the owner of the copyright in the Musical Works in question.

"Permitted Central Database Content" means the Licensed Sound Recordings that form part of the then current Programme as the same is amended from time to time.

"Player" means a player or other apparatus or device capable of playing a Stream of a Sound Recording from the Website.

"PPL Grant" means the grant of a licence from PPL as set out in Part 1 of these Terms.

“*PPL Licence*” means the contract formed of the Licence Particulars, the PPL Grant and the Common Operating Conditions.

“*PPL Members*” means those persons, firms, companies or entities who are from time to time members of PPL and who have appointed PPL as their non-exclusive agent to license the Streaming in the Territory of their Sound Recordings.

“*PPL Sound Recordings*” means all those Sound Recordings the ownership, control or right to grant licences of the relevant copyright in which are vested in PPL from time to time by the PPL Members subject always to the provisions of Clause 4.

“*Programme*” means a programme of at least 3 (three) Sound Recordings to be played in sequence until completion of all Sound Recordings before restarting at the first Sound Recording.

“*Programme Report*” means, in relation to a given period, a full and proper report setting out a list of all Licensed Sound Recordings that have been included in the Programme during the relevant period and including the following information for each such Licensed Sound Recording:

- (1) the ISRC number of such Licensed Sound Recording where available;
- (2) the title of such Licensed Sound Recording including, where available, the title of the version or mix;
- (3) the record label and catalogue number of such Licensed Sound Recording;
- (4) (where identifiable) the identity of the performers whose performances are contained in such Licensed Sound Recording;
- (5) the composer(s) of the Musical Work(s) that form all or part of such Licensed Sound Recording; and
- (6) the publisher(s) of the Musical Work(s) that form all or part of such Licensed Sound Recording

“*PRS for Music*” means MCPS and PRS.

“*PRS for Music Grant*” means the grant of a licence from MCPS and PRS as set out in Part 2.

“*PRS Licence*” means the contract formed of the Licence Particulars, clauses 2, 3, 4 and 5 of *PRS for Music Grant* and the Common Operating Conditions.

“*PRS for Music Member*” means:

- (1) 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 online exploitation either before or during the Licence Period, 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 Licence Period 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
- (2) 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 Licence Period 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 Licence Period shall only be regarded as a Member for the purposes of this Agreement with effect from the date of admission into PRS.

“*PRS for Music Repertoire Works*” means each Musical Work the relevant copyright in which is owned or controlled, from time to time, in the UK by:

- (1) in the case of the MCPS Licence, 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 *PRS for Music Repertoire Work* is not MCPS or a member or an associated society or associated society member, the expression “*PRS for Music 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
- (2) in the case of the PRS Licence, 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;

“*PRS*” means Performing Right Society Limited whose registered office is at 2 Pancras Square, London, N1C 4AG, contracting for and on behalf of itself and for and on behalf of and as agents of its various affiliated societies.

“*Sound Recording*” means a sequence of sounds comprising the whole or part of a sound recording which is identified by a number or other device indicated by or on any descriptive text accompanying the sound recording or by information embodied in or on the electronic or other product on which the sound recording is stored or identified by a single ISRC number.

“*Streaming*” means the continuous delivery via the Internet of an audio or audio visual transmission(s) that enables the contemporaneous performance of the transmitted Sound Recording(s) by a Player.

“*these Terms*” means this document comprising the PPL Grant, the *PRS for Music* Grant and the Common Operating Conditions.

“*Territory*” means the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man and all additional territories to which the 1988 Act shall extend.

“*VAT*” means value added tax.

“*Visitor*” means a member of the public that views the Website via an Internet browser for their own private and non-commercial use.

“*Website*” means the website identified in the Licence Particulars, including all sub-pages thereof.

“*Working Day*” means any day of the week (Monday to Friday inclusive) which is not a public holiday in England and Wales.

1.2. For the purpose of interpretation of the Licences:

- (1) Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.
- (2) Words importing the singular number include the plural (and vice versa), words importing any gender include every gender and words importing persons include bodies corporate and unincorporated.
- (3) References to clauses are references to clauses of the Common Operating Conditions unless stated otherwise.
- (4) Where expressions used in the Licences are expressions used in the 1988 Act, they shall have the same meaning in the Licences as in the 1988 Act unless the context otherwise requires.
- (5) In the Licences, unless the context requires otherwise, references to the word "including" do not imply any limitation.

2. Eligibility

2.1 The PPL Grant and the *PRS for Music* Grant are each conditional on;

- (1) the Licensee, together with all Affiliates, having an annual turnover, according to the most recent complete financial figures available as at the date of the Licence Start Date, (or, where no financial figures are available for a period ending in the twelve months prior to the Licence Start Date, as reasonably determined by PPL) of less than £200,000; and
- (2) the Licensee employing 4 (four) or fewer Full Time Equivalent Employees as at the Licence Start Date; and
- (3) the Website as at the Licence Start Date, and throughout the Licence Period:
 - a. not promoting, offering or operating any service for the Streaming, downloading or otherwise communicating to the public any Sound Recordings or *PRS for Music* Repertoire Works via the Internet;
 - b. not carrying any advertising, whether audio, visual, or audio-visual, for any products or services not produced, sold or provided by the Licensee or its Affiliates including advertising placed or sold by any third party advertising agency;
 - c. not containing any content or any link to any content with any association to gambling, drugs (including alcohol and tobacco), politics, sex, violence, copyright infringement or any other illegal activity, racism, hatred or fraud; and
 - d. being specifically and primarily targeted at the public in the Territory and
- (4) the bona fide anticipated and actual aggregate number of Performances of Licensed Sound Recordings via the Website within the Licence Period not exceeding 90,000.

2.2 For the avoidance of doubt, the rights granted under the Licences do not cover Streaming from any website that is not:

- (1) under the editorial control of the Licensee or an Affiliate;
- (2) designated for the Licensee or an Affiliate and/or one or more of the Licensee's (or an Affiliate's) products or services; and
- (3) identified as being operated by the Licensee (or an Affiliate)

2.3 For the avoidance of doubt:

- (1) save as provided in Clause 2 of the PPL Grant and clause 1 of the *PRS form Music* Grant, no rights in respect of the copying of Sound Recordings or *PRS for Music* Repertoire Works, whether by the Licensee or third parties, are granted under the Licence:

- (2) no rights in respect of the public performance of Sound Recordings or *PRS for Music* Repertoire Works (whether in the Territory or elsewhere) are granted under the Licence; and
- (3) transmissions (a) within closed proprietary systems, (b) within closed private networks and/or (c) within or to mobile phone networks are excluded from the scope of the Licences. For the avoidance of doubt the Streaming of Licensed Sound Recordings from the Website to Players may incorporate Streaming to mobile devices provided that such Streaming is via the Internet only and originates from the Website.

3. Restrictions and Warranties

3.1 The Licensee hereby warrants that:

- (1) the details set out in the Licence Particulars are true, accurate and complete in all respects;
- (2) as of the Licence Start Date, the Licensee and the Website are eligible for the Licences in accordance with the criteria set out in Clauses 2.1(1), 2.1(2) and 2.1(4); and
- (3) as of the Licence Start Date and throughout the Licence Period the Website is and shall remain eligible for the Licences in accordance with the criteria set out in Clause 2.1(3)

3.2 Copies of Licensed Sound Recordings left on the Central Database after expiry or termination shall be deemed to be infringing copies save where the retention of those Sound Recordings and the *PRS for Music* Repertoire Works incorporated therein are properly and expressly licensed by the lawful owner of the relevant rights in those Sound Recordings and *PRS for Music* Repertoire Works.

3.3 The Licences pertain only to the Streaming of PPL Sound Recordings and *PRS for Music* Repertoire Works in audio form only and for the avoidance of doubt the Licences do not permit:

- (1) the synchronisation of any PPL Sound Recording or *PRS for Music* Repertoire Works with any audio or audio-visual work;
- (2) the communication to the public of PPL Sound Recordings or *PRS for Music* Repertoire Works as synchronised with any audio-visual material; or
- (3) making any PPL Sound Recordings or *PRS for Music* Repertoire Works available for download, regardless of whether such downloads are permanent or temporary.

3.4 The Licensee hereby undertakes that:

Programming Restrictions

- (1) it shall not publish or cause to be published, by means of an advance program schedule or prior announcement, the titles of the specific Licensed Sound Recordings or the names of albums incorporating such Licensed Sound Recordings to be transmitted, or the names of the featured recording artists;
- (2) it shall not Stream (or authorise the Streaming) of any Programme that:
 - a. contains more than 1 (one) Licensed Sound Recording from a particular album, or by a particular artist or from any compilation of Licensed Sound Recordings;
 - b. contains the same Licensed Sound Recording repeated within the Programme;

- c. contains any speech content or any other content not contained on the original Licensed Sound Recordings; or
 - d. is more than 20 (twenty) minutes in duration
- (3) it shall not change all or any part of the Programme Streamed from the Website more than once in any 30 (thirty) day period.
 - (4) it shall not (a) transmit unauthorised recordings (including bootlegs) or (b) without the permission of the rights owner(s), transmit pursuant to the Licences Sound Recordings that have not yet been made available for Streaming purposes in the Territory;
 - (5) it shall not re-mix, edit or otherwise change Licensed Sound Recordings so that what is transmitted would be different from the original Licensed Sound Recording, provided that to segue one Licensed Sound Recording into another shall not constitute a breach of this paragraph;

Promotional Use

- (6) it shall not transmit a Licensed Sound Recording via the Website, in a manner that is likely to cause confusion, to cause mistake, or to deceive as to any affiliation or association of the copyright holder or featured artist or composer with the Licensee or a particular product or service advertised by the Licensee, or as to the sponsorship, or approval by the copyright holder or featured recording artist or composer of the activities of the Licensee other than the performance of the Licensed Sound Recording itself;
- (7) it shall not use any Licensed Sound Recording in such a way as may be taken to imply that any goods, products or services other than the Licensed Sound Recording are endorsed advertised or associated with the Licensed Sound Recording or any artist whose performance is contained on the Licensed Sound Recording or any author of the Musical Work incorporated in the Licensed Sound Recording or any other party who owns rights in connection with the Licensed Sound Recording;
- (8) it shall not use any Licensed Sound Recording as a trade mark or brand;

Functionality

- (9) it shall ensure that the Streaming of Licensed Sound Recordings under the Licences is initiated from the start of the Programme and only upon a Visitor beginning to view the Website or a discrete part of the Website;
- (10) it shall ensure that the Streaming of Licensed Sound Recordings under the Licences is only transmitted to a Visitor's Player while the Visitor has the Website open on the Visitor's Internet browser, and, without prejudice to the generality of this Clause, the Licensee shall ensure that the Streaming of Licensed Sound Recordings cannot be opened in a dedicated window (whether part of the Website or not) or a separate window from the Website;
- (11) it shall ensure that, subject to the Visitor starting or ceasing to view the Website, the entire Programme is Streamed continuously from start to finish (and then on a loop continuously) to each Visitor and that each Visitor is not able to skip, pause, influence, manipulate or in any other way alter the content, time and order of the Streaming of the Programme.

Copying and Piracy

- (12) the Streaming of Sound Recordings under the Licences shall not be designed to assist in the making of any copies of Sound Recordings or Musical Works that would be usable after the cessation of the transmission;
- (13) it shall not commit any act which deliberately encourages or induces taping or recording or re-recording of Sound Recordings (or any part thereof) or Musical Works Streamed pursuant to the Licences and which is not lawful or properly authorised;
- (14) it shall not itself, or authorise or permit any other person to, copy any Sound Recording or Musical Work Streamed pursuant to the Licences (except as to the extent permitted under the Licence or permitted by law);
- (15) it shall use effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent:
 - a. a transmission recipient from automatically scanning the Licensee's transmissions alone or together with transmissions by other transmitting entities in order to select a particular Sound Recording or Musical Work to be transmitted to the transmission recipient; and
 - b. a transmission recipient from making copies, other than transient copies, of the Licensed Sound Recordings.
- (16) it shall accommodate and not interfere with technical measures that are used by Licensed Sound Recording copyright holders to identify or protect copyrighted works, and that are technically feasible of being transmitted by the Licensee without imposing substantial costs on him or resulting in perceptible aural or visual degradation of the digital signal.
- (17) in exercising the licence granted under the Licences no representations shall be made that any rights in Licensed Sound Recordings are transferred in any way to any third party;
- (18) it shall include on the Website, a logo notifying listeners that the use of Licensed Sound Recordings on the Website is licensed by PPL and *PRS for Music* in a reasonable form provided by PPL from time to time;
- (19) it shall exercise proper discretion in the choice and use of the Licensed Sound Recordings so as not to denigrate the artistic integrity of any copyright works or any performance embodied on any Licensed Sound Recording nor to subject any copyright works or performance embodied on any Licensed Sound Recording to derogatory treatment and it shall not accompany the Licensed Sound Recording with any image that would have any of these effects (or which is illegal or offensive);

The Central Database

- (20) it shall not copy a Licensed Sound Recording onto the Central Database pursuant to the Licences other than in its entirety;
- (21) it shall copy Licensed Sound Recordings pursuant to the Licences so that all reproductions of Licensed Sound Recordings used pursuant to the Licences will be of sufficient technical standard so that the quality of the original Licensed Sound Recording is reasonably preserved for any Visitor;
- (22) in respect of the Central Database, comply with PPL's guidelines from time to time issued in relation to devices holding copies of Licensed Sound Recordings and in particular as to the security of such copies;

- (23) delete all Sound Recordings copied onto the Central Database pursuant to the Licences immediately upon the expiry or termination (however occasioned) of either or both the Licences (whichever is the earlier) in accordance with Clause 8, save where the retention of those Sound Recordings is properly and expressly licensed by the lawful owner of the relevant rights in those Sound Recordings; and
- (24) ensure that all copying of Licensed Sound Recordings shall be undertaken by the Licensee.

4. Notification of Excluded Material

- 4.1 PPL may at any time during the Licence Period notify the Licensee in writing that one or more specified PPL Sound Recordings or the whole of a particular PPL Sound Recording or particular PPL Sound Recordings are excluded from the PPL Licence either for the whole or part of the Licence Period which exclusion shall be effective from the date of receipt of such notification by the Licensee (or, as the case may be, from any future date that is specified in that notification).
- 4.2 Following a notification from PPL pursuant to Clause 4.1 or in respect of any Excluded Content the Licensee shall:
 - (1) as soon as reasonably practicable but in any case with 48 hours of receipt of such notification, not include that Excluded Content in the Stream licensed pursuant to the Licences (unless such Excluded Content is expressly and properly licensed by the relevant rightholder);
 - (2) the Licensee shall be responsible for obtaining any licence(s) necessary from the owner of the copyright in the Sound Recording of the Excluded Content.
 - (3) not copy that Excluded Content or, if that Sound Recording has already been copied, shall as soon as reasonably practicable delete such Excluded Content from the Central Database.
- 4.3 PPL, on behalf of *PRS for Music*, may at any time during the Licence Period notify the Licensee in writing that one or more specified *PRS for Music* Repertoire Works or the whole of a particular *PRS for Music* Repertoire Work or particular *PRS for Music* Repertoire Works are excluded from the MCPS Licence and/or PRS Licence either for the whole or part of the Licence Period which exclusion shall be effective from the date of receipt of such notification by the Licensee (or, as the case may be, from any future date that is specified in that notification). Following a notification from PPL pursuant to this Clause 4.3 in respect of any Excluded Content the Licensee shall as soon as reasonably practicable, but in any case with 48 hours of receipt of such notification:
 - (1) not include that Excluded Content in the Stream licensed pursuant to the Licences; and
 - (2) not copy that Excluded Content or, if that *PRS for Music* Repertoire Work has already been copied delete such Excluded Content from the Central Database.
- 4.4 The Licensee's obligation(s) under Clause 4.2 and 4.3 shall be at the Licensee's cost.

5. Deletion

- 5.1 When the Licensee decides or is obliged under the terms of the Licences to delete any Licensed Sound Recording on the Central Database including where the Permitted Central Database Content changes pursuant to a Programme change, it shall as soon as reasonably practicable and at its own cost irreversibly remove, delete and/or erase that Licensed Sound Recording, save where the retention of the copy of that Licensed Sound Recording is properly and expressly licensed by the lawful owner of the copyright in the associated Sound Recording and the lawful owner of the copyright in any Musical Work incorporated in the Sound Recording.

- 5.2 If requested by notice in writing from PPL, the Licensee shall provide PPL, within fourteen days of such request, with an Affidavit sworn by the Licensee or, where the Licensee is a company, a Director of the Licensee confirming that Clause 5.1 has been complied with.

6 Payment

- 6.1 In advance of the grant of the Licences and as a condition of such grant, the Licence Fee shall be paid by the Licensee to PPL in respect of the rights granted under the PPL Licence and (as agent for *PRS for Music*) the rights granted under the MCPS Licence and the PRS Licence.
- 6.2 All payments referred to in the Licences are exclusive of VAT and the Licensee shall pay together with those payments such VAT or any like tax where the same is applicable at the prevailing rate or rates from time to time.

7. Reporting

- 7.1 The Licensee hereby undertakes, if requested by PPL to do so, to supply the following in respect of a one month period within the Licence Period:
- (1) The total Listener Hours within the relevant period;
 - (2) A Programme Report in respect of each Programme Streamed during the relevant period; and
 - (3) The duration of each Programme Streamed during the relevant period.
- 7.2 PPL shall notify the Licensee at least 20 days in advance of the specified period of any reporting that may be required under Clause 7.1. All reporting must comply with PPL's requirements as notified to the Licensee from time to time and must be submitted to PPL within 20 Working Days of the end of the specified period.
- 7.3 The Licensee further undertakes, if requested by PPL to do so, and at any time up to three years after the expiry of the Licence, to supply to PPL a list of all Sound Recordings used as part of a Programme at any time in the whole period of the Licence.

8. Termination

- 8.1 PPL shall have the right at any time during the continuance of the Licences to terminate the Licences forthwith by written notice to the Licensee upon the occurrence of any of the events set out in Clause 8.2.
- 8.2 The events referred to in Clauses 8.1 are as follows:
- (1) If the Licensee commits or permits to be committed any material breach or breaches of any of the terms (whether or not conditions) of the Licences and such breach is incapable of remedy;
 - (2) If the Licensee commits or permits to be committed any material breach or breaches of any of the terms (whether or not conditions) of the Licences (including non-payment) and such breach is capable of remedy and the Licensee has not remedied such breach within 20 (twenty) Working Days of being notified in writing of the same;
 - (3) If the Licensee (being an individual) suffers a statutory demand to be served upon him and/or becomes bankrupt or enters into an arrangement or composition with or for the benefit of his creditors or suffers an execution to be levied against his goods or property or (being a company) shall be wound up whether compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or suffers an execution to be levied against its goods or property or has a receiver or administrator appointed over its assets or any of them or if notice of any liquidation or other proceedings related to insolvency is served upon it.

8.3 The Licences shall terminate automatically, and without fault should the number of Performances via the Website in the Licence Period exceed 90,000.

8.4 Termination of Licences howsoever occasioned shall not affect the accrued rights of PPL or *PRS for Music* pursuant to the provisions of Clauses 2 to 6 inclusive of the PPL Grant or Clauses 1 to 5 of the *PRS for Music* Grant.

9. Applicable Law

9.1 The Licences 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 in all matters concerning the same.

9.2 If the Licensee Address is outside of the Territory then the Licensee shall, upon PPL's request nominate a person with an address inside the Territory to act as the Licensee's agent for service (the "Nominated Agent"), and any notice sent to the Nominated Agent shall be deemed valid notice on the Licensee.

9.3 Any notice given under Clause 9.2 shall be delivered/sent to the Nominated Agent in the same manner as specified under Clause 21, save that where a notice is given by pre-paid, first class post, the notice shall be deemed to have been given on the second Business Day after but not including the date on which it was posted. For the avoidance of doubt, in the event of a dispute, PPL shall not need to seek permission to serve proceedings or other documentation outside of England and Wales, as service on the Nominated Agent shall be valid and binding on the Licensee.

10. Costs

10.1 In the event that either party is in default of any of its obligations under the Licences and the other party incurs legal costs and expenses in order to obtain compliance therewith 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 and have been awarded to the party in question by a court of competent jurisdiction.

11. Waiver

11.1 No waiver by PPL, *PRS for Music* or the Licensee of any breach of any provision of either Licence shall be deemed to be a waiver of any other breach of the same or of any other provision hereof, and no waiver shall be effective unless made in writing and then only to the extent specifically set forth nor shall any single or partial exercise of such right or of any other right power or privilege or remedy preclude any other or further exercise of such or any other right power privilege or remedy available to the party in question under the relevant Licence all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to the party in question at law or in equity.

12. Variation

12.1 No variation or amendment of either Licence shall bind either party unless agreed to in writing by their respective duly authorised representatives.

13. Negation of Partnership/Joint Venture

13.1 The terms and conditions of the Licences shall not constitute any form of partnership or joint venture between the parties.

14. Severance

14.1 If any provisions (or part of a provision) of the Licences shall be determined by any court or other tribunal of competent jurisdiction to be illegal void or unenforceable all other provisions of the Licences (and also, where part of a provision is defective, the remainder of that provision) shall nevertheless continue in full force and effect.

15. Clause Headings

15.1 The clause headings in these Terms are for information only and do not form part of the Licences.

16. Contracts (Rights of Third Parties) Act 1999

16.1 A person who is not a party to the Licences has no rights under the Contracts (Rights of Third Parties) Act 1999 ("the 1999 Act") to enforce any term of the Licences but this does not affect the right or remedy of a third party that exists or is available apart from the 1999 Act.

17. Entire Agreement

17.1 The Licences constitute the entire agreement between the parties hereto in respect of its subject matter superseding any previous agreement in respect of the same subject matter.

18. Negation of Extension of Rights

18.1 Nothing in the Licences shall be construed as permitting the Licensee to do any act save as expressly provided herein in relation to rights in PPL Sound Recordings and rights in PRS *for Music* Repertoire Works.

19. Representations

19.1 Each of the parties acknowledges to the other that save as expressly made herein neither has made any representation to the other which has induced them to enter into either Licence and to the extent that any such representations have been made they have not been relied on.

19.2 Nothing in Clause 19.1 shall operate to limit or exclude any liability for fraud.

20. No Assignment or Sub Licensing

20.1 The Licensee shall not assign, transfer, charge or sub-license or purport to assign, transfer, charge or sub-license, the benefit of the Licences or any part hereof or any interest hereunder, including where the Licensee is a group of individuals, any addition to or change to the licensed individuals, without the prior written consent of PPL to be given or withheld at its absolute discretion.

20.2 The Licensee shall notify PPL in writing (within 10 (ten) Working Days of the relevant event occurring) of the identity of any third party who acquires a total of 50% or more of the shareholding in the Licensee and of any change of name of the Licensee.

21. Notices

21.1 Any notices or demands to be given or made pursuant to the Licences shall be given or made in writing and sent by:

- (1) pre-paid first class mail; or
- (2) facsimile (confirmed by pre-paid first class mail sent within 24 hours of the despatch of such facsimile); or
- (3) personal delivery

addressed and sent to the recipient at the address stated in the Licence Particulars (in the case of the Licensee) or to PPL's registered address (in the case of PPL and/or PRS *for Music*) and addressed to the Company Secretary or to such other address as may have been duly notified.

21.2 Any notice or demand given or made by mail shall be deemed to have been received at the expiry of 48 hours from such despatch and any notice or demand given or made by facsimile shall be deemed to have been received at the time of despatch.

21.3 For the avoidance of doubt an e-mail shall not be capable of providing proper notice under the terms of the Licences.