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## **PPL LINEAR WEBCAST 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 Licensee has fully paid all licence fees as itemised within the invoice issued by PPL.

### **INTRODUCTION:**

- (A)** PPL provides services to rights owners and users for the collective licensing of rights in sound recordings, and distributes licence fee revenue to record companies and to performers. PPL wishes to grant the Licensee a licence for the use of the Repertoire in the Licensee's Webcasting service, all subject to the terms below.
- (B)** The Licensee operates a Webcasting service in the UK and wishes to obtain the right to use the Repertoire in this service, all subject to the terms below.
- (C)** This Licence is for non-interactive, linear online Webcasting services that fall into one of the following bands:
  - Band 1: applies to services targeted at the UK only, with fewer than 150,000 performances per channel per calendar year;
  - Band 2: applies to services targeted at the UK only, with between 150,001 and 270,000 Performances per channel per calendar year; or
  - Band 3: applies to services with more than 270,000 Performances per channel per calendar year and/or services which target both UK and ex-UK territories and/or generates more than £5,000 in revenue per calendar year.

## 1. Definitions and Interpretation

### 1.1 The following definitions apply in the Licence:

“*the 1988 Act*” means the Copyright, Designs and Patents Act 1988.

“*Band*” shall mean the relevant band in which the Licensee falls based on the following criteria:

*Band 1*: applies to services targeted at the UK only with fewer than 150,000 Performances per channel per annum;

*Band 2*: applies to services targeted at the UK only with between 150,001 and 270,000 Performances per channel per annum; or

*Band 3*: applies to services with more than 270,000 Performances per channel per annum and/or services which target both UK and ex-UK territories and/or generates more than £5,000 in revenue per annum;

and Band 1, 2 or 3 Licensee shall be interpreted accordingly.

“*Central Database*” means copies of one or more Sound Recordings in digital form which are stored solely on either a central processing unit (the details and location of which are as specified by the Licensee on applying for this Licence) or in the Cloud (the details of such storage are as specified by the Licensee on applying for this Licence).

“*Cloud*” means the electronic storage system known as “the cloud” by which data is stored on one or more servers to which the user does not have physical access and is accessible by means of the user’s Internet (including Wi-Fi) connection with those servers.

“*Commencement Date*” means 1 January 2022 or as otherwise communicated to the Licensee by PPL.

“*Commercial Revenue*” means the total valuable consideration (before any deduction of agency commissions or any other deductions) whether in money or money's worth of income derived and received by the Licensee (or any person, firm, company or entity which is a holding company of the Licensee, a subsidiary company of such holding company, a subsidiary of the Licensee or an agent, member or associate of the Licensee) from or otherwise in respect of the provision of the Service pursuant to the Licence including without limitation and by way of example only advertising, sponsorship, telephony, and product placement (including without limitation and by way of example targeted delivery of specific sound recordings to users of the Service).

“*Continuous Programme*” means a predetermined programme that is continuously performed in the same order and that is accessed at a point in the programme that is beyond the control of the transmission recipient.

“*Dub*” means re-record, reproduce and/or copy or otherwise duplicate sound recordings (and the words “*Dubbing*” and “*Dubbed*” shall be interpreted accordingly).

“*Dubbing Report*” means a full and proper report setting out all Sound Recordings copied in relation to a given period, onto the Central Database during such period and including the following information for each such Sound Recording:

- (1) the duration of such Sound Recordings used (in seconds);

- (2) the ISRC of such Sound Recording;
- (3) the title of such Sound Recording including, where available, the title of the version or mix;
- (4) the record label and catalogue number of such Sound Recording; and
- (5) the name of the band or artist under whose name the relevant Sound Recording has been released (and, in the case of classical and orchestral music, the name of the composer whose work is performed on the Sound Recording).

“*Eligible Service*” shall mean a Webcasting Service based in the UK operating one or more non-interactive online linear stream(s) (i.e. a “**Channel**”) under the appropriate Band.

“*Excluded Sound Recording*” means a Sound Recording notified by PPL to the Licensee in accordance with Clause 5.1.

“*Extended Territory*” means all those territories listed on PPL’s website and for which PPL is able to license the Webcasting of Sound Recordings.

“*Force Majeure*” means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented, including without limitation to the extent that these are beyond such control, industrial disputes, nuclear accident or acts of God, pandemic, war or terrorist activity, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction.

“*Identifiable Programme*” means any programme (other than a Continuous Programme) in which sound recordings are played in a predetermined order and which is capable of identification as a distinct programme.

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

- (1) a transmission of a programme or sequence of sound recordings specially created by or for the recipient; or
- (2) on request, 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;

provided that the ability of individuals to request that particular sound recordings be performed for reception by the users of the Service at large, does not make a service interactive, if the programming on the service does not substantially consist of sound recordings that are performed within 1 (one) hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and non-interactive services (either concurrently or at different times), the non-interactive component shall not be treated as part of an interactive service.

“*Internet*” means the electronic communications network that connects computer networks and organisational computer facilities around the world using standardised communication protocols, popularly known as “the internet”, whether accessible via the world wide web, mobile, the internet of things or otherwise, and regardless of the device or medium of access.

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

*“Licence”* means the contract formed of these Terms, Schedule 1 and the Licensee Guide.

*“Licence Period”* shall mean, subject to Clause 14 an initial period of 12 (twelve) months from the Commencement Date and such further period thereafter as shall continue unless and until the Licence is terminated (whether in accordance with Clause 14 or otherwise).

*“Licence Year”* shall mean the 12 (twelve) month period commencing on 1 January in any given year.

*“Licensee Guide”* means the guide attached or provided to the Licensee setting out actions that are prohibited under the Licence.

*“Listener Hours”* means the total aggregate hours of all Webcasting to all Players within the Territory and, where applicable, the Extended Territory.

*“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 Webcasting in the Territory of their Sound Recordings.

*“Performance”* means each instance in which any portion of a Sound Recording in the Service is delivered to a single Player, excluding (a) a performance of a Sound Recording in which no copyright subsists; and (b) a Sound Recording subject to a direct licence from the owner of the Sound Recording(s) in question.

*“Permitted Central Database Capacity”* means 20,000 (twenty thousand) Sound Recordings.

*“Player”* means a player or other apparatus or device capable of playing a transmission of a Sound Recording in the Service.

*“Pre-Announced Transmission”* means a transmission of an Identifiable Programme as part of the Service, where the date and time of that transmission has been publicly announced in advance of that transmission taking place.

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

- (1) the date of the Webcast;
- (2) the time of transmission of such Sound Recording;
- (3) the title of the programme in which such Sound Recording was used;
- (4) the duration of such Sound Recording used (in seconds);
- (5) the ISRC of such Sound Recording;
- (6) the title of such Sound Recording including, where available, the title of the version or mix;
- (7) the record label and catalogue number of such Sound Recording;

- (8) the name of the band or artist under whose name the relevant Sound Recording has been released (and, in the case of classical and orchestral music, the name of the composer whose work is performed on the Sound Recording); and
- (9) the number of Performances of such Sound Recording.

“*Quarter*” means the period of three consecutive months starting on 1 January, 1 April, 1 July and 1 October as the case may be.

“*RPI*” means the official Index of Retail Prices (All Items) published by HM Government.

“*Repertoire*” 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 Members subject always to the provisions of Clause 5.

“*Revenue Report*” means a full and proper report setting out the Commercial Revenue in relation to a given period.

“*Service*” means the provision of one or more audio channel(s) via the Internet to the Players in the Territory and, where applicable, the Extended Territory, but excluding any service that is funded and branded by a sole commercial sponsor (which includes a commercial group with the branding of its various associated companies or products) and also excluding any subscription or other paid-for service.

“*Sound Recording*” means a sequence of sounds comprising the whole or part of a sound recording in the Repertoire 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.

“*Tariff of Destination*” means the applicable Webcasting tariff for a territory in the Extended Territory in force from time to time.

“*these Terms*” means these PPL Standard Terms and Conditions for the Linear Webcast Licence.

“*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.

“*Territory Report*” means, in relation to a given period, a report setting out the territories within the Extended Territory that have received the Service during that period together with information on the relative number of Performances in each of those territories.

“*VAT*” means value added tax.

“*Webcasting*” means any Streaming, the primary purpose of which is not to sell, advertise or promote particular products or services other than Sound Recordings, live concerts or other music-related events (and the noun and verb “*Webcast*” shall be interpreted accordingly).

“*Webcasting Report*” means, in relation to a given period, a full and proper report setting out for the Service the following information in respect of that period:

- (1) the average number of Sound Recordings streamed by the Service per Webcasting hour; and
- (2) the total Listener Hours.

“*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 Licence:

- (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 these Terms unless stated otherwise.
- (4) Where expressions used in the Licence are expressions used in the 1988 Act, they shall have the same meaning in the Licence as in the 1988 Act unless the context otherwise requires.
- (5) In the Licence, unless the context requires otherwise, references to the word “including” do not imply any limitation.

## **2. Grant: Webcasting**

2.1 Subject to the terms and conditions of the Licence PPL grants to the Licensee a non-exclusive licence during the Licence Period, within the Territory (and, where applicable, the Extended Territory) and for the sole purpose of providing the Service to Webcast Sound Recordings in the Service.

2.2 The grant in Clause 2.1 is conditional on the Licensee being an Eligible Service.

2.3 For the avoidance of doubt, the rights granted under the Licence do not cover the streaming of the Service from third party websites (i.e. websites that are not under the editorial control of the Licensee and designated for the Licensee and/or one or more of the Licensee’s radio services) except in cases where both:

- (1) the Service is delivered in such a manner that all Performances are recorded by the Licensee and accounted for under this Licence; and
- (2) the third party website clearly indicates that the Licensee is the source of the Service;

PROVIDED THAT such third party website shall not enable:

- (i) any functionality other than the start/stop of the Service (including without limitation any functionality that enables skipping back or forward, copying of the Service (or any part thereof), and/or searching for individual Sound Recordings; and/or
- (ii) any third party to generate revenue;

save that the operation of this clause shall not prevent the Service being provided via the UK Radioplayer, subject to there being no material change in the functionality in the UK Radioplayer from the functionality as at November 2018.

2.4 For the avoidance of doubt:

- (1) no rights in respect of any Interactive Service are granted under the Licence;
- (2) save as provided in Clause 3.1, no rights in respect of the copying of Sound Recordings, whether by the Licensee or third parties, are granted under the Licence;
- (3) no rights in respect of the public performance of Sound Recordings (whether in the Territory or elsewhere) are granted under the Licence;
- (4) 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 Licence;
- (5) the Service shall only be offered to the recipients and/or customers of the Service for private and domestic use and not for resale or other commercial use including Streaming to commercial premises; and
- (6) no rights are granted in respect of the Streaming of Sound Recordings as part of the Service are granted outside of the Territory and Extended Territory. The Licensee should ensure that it is not possible for users based outside the Territory and Extended Territory to access the Service, unless the appropriate licences have been obtained for territories not covered by this Licence.

### **3. Grant: Central Database**

3.1 Subject to the terms and conditions of the Licence and for the sole purpose of providing the Service PPL hereby grants to the Licensee a non-exclusive licence during the Licence Period and within the Territory to copy any Sound Recordings onto the Central Database and to retain the copies of those Sound Recordings on the Central Database provided that the total number of different Sound Recordings on the Central Database at any time does not exceed the Permitted Central Database Capacity.

3.2 The grant in Clause 3.1 is conditional on the Licensee being an Eligible Service.

### **4. Restrictions and Warranties**

4.1 Without prejudice to Clause 4.5, the Licensee hereby undertakes that it shall comply with all provisions and restrictions set out in the Licensee Guide.

4.2 The Licensee hereby warrants that:

- (1) subject to Clause 9.1, the details of the Service set out by the Licensee when applying for this Licence are true, accurate and complete in all respects; and
- (2) as of the Commencement Date, the Licensee is an Eligible Service.

4.3 Copies of 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 is properly and expressly licensed by the lawful owner of the relevant rights in those Sound Recordings.

- 4.4 The licences granted under Clause 2 and Clause 3 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 Service.
- 4.5 All rights in the Repertoire which are owned or controlled by PPL and not expressly licensed to the Licensee under Clause 2 and Clause 3 are expressly reserved.
- 4.6 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 Licence on the terms set out in the Licence.

## **5. Notification of Excluded Material**

- 5.1 PPL may at any time during the Licence Period notify the Licensee in writing that one or more specified Sound Recordings from the Repertoire or the whole of a particular Sound Recording or particular Sound Recordings are excluded from the 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).
- 5.2 Following a notification from PPL pursuant to Clause 5.1 in respect of any Excluded Sound Recording and as soon as reasonably practicable the Licensee shall not Webcast that Excluded Sound Recording in the Service (unless such Webcast is expressly and properly licensed by the relevant rightsholder). Following a notification from PPL pursuant to Clause 5.1 in respect of any Excluded Sound Recording the Licensee shall be responsible for obtaining any licence(s) necessary from the owner of the copyright in the Sound Recording of the Excluded Sound Recording(s).
- 5.3 Following a notification from PPL pursuant to Clause 5.1 in respect of any Excluded Sound Recording the Licensee shall not copy that Excluded Sound Recording or, if that Sound Recording has already been copied, shall as soon as reasonably practicable delete such Excluded Sound Recording(s) from the Central Database.
- 5.4 The Licensee's obligation(s) under Clause 5.2 and Clause 5.3 shall be at the Licensee's cost.

## **6. Deletion**

- 6.1 When the Licensee decides or is obliged under the terms of the Licence to delete any Sound Recording on the Central Database including prior to copying any Sound Recording onto the Central Database where the Permitted Central Database Capacity is reached or where the Permitted Central Database Capacity exceeded, it shall as soon as reasonably practicable and at its own cost irreversibly remove, delete and/or erase that Sound Recording, save where the retention of the copy of that Sound Recording is properly and expressly licensed by the lawful owner of the relevant rights in the associated Sound Recording.
- 6.2 If requested by notice in writing from PPL, the Licensee shall provide PPL, within 14 (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 6.1 has been complied with.

## **7. Consideration**

- 7.1 In consideration of the rights granted under Clauses 2 and 3, the Licensee shall pay to PPL:
- (1) Where the Licensee is a Band 1 Licensee, a non-returnable fee of £157 (one hundred and fifty-seven pounds) per Channel per Licence Year;



- (2) Where the Licensee is a Band 2 Licensee, a non-returnable fee of £262 (two hundred and sixty-two pounds) per Channel per Licence Year;
- (3) Where the Licensee is a Band 3 Licensee, a non-returnable advance of £525 (five hundred and twenty-five pounds) per Channel per Licence Year in respect of the royalties payable under clause 7.2;

such sums to be subject to indexation calculated in accordance with Clause 12.

7.2 In consideration of the rights granted under Clause 2, Band 3 Licensees shall account and pay to PPL:

- (1) In each month of the Licence Year the aggregate of 0.1 pence (£0.001049) per Performance in the Territory in that month, this fee being subject to indexation pursuant to Clause 12;
- (2) in each month of the Licence Year the applicable licence fees according to the Tariff of Destination for any Performances in the Extended Territory.

7.3 The advance payable by Band 3 Licensees under Clause 7.1 shall be recouped against any consideration payable to PPL under Clause 7.2. No payment shall be due pursuant to Clause 7.2 to the extent that any part of the advance paid by Band 3 Licensees under Clause 7.1 is unrecouped.

7.4 Band 3 Licensees shall pay to PPL an annual fee in respect of the administration of the rights to Webcast within the Extended Territory of £68 (sixty-eight pounds), save for Band 3 Licensees which operate more than 5 (five) Channels or which generate over 5,000,000 (five million Performances per Licence Year, which will be advised separately of their administration fee payable under this Clause 7.4 once calculated by PPL.

## **8 Payment**

8.1 In the initial Licence Year, the Licensee shall pay the fees set out in Clause 7 within 20 (twenty) Working Days of receipt of an invoice for those fees from PPL. In all subsequent Licence Years, the fees due under Clause 7 shall be paid within 20 (twenty) Working Days after the start of each Licence Year.

8.2 Where the Commencement Date is after 1 January in the initial Licence Year, the fees payable under Clause 7.1 shall be adjusted to the start of the Quarter in which the Commencement Date falls.

## **9. Information and Reporting**

9.1 The Licensee shall provide advance written notice to PPL of any material changes to the information regarding the Service. PPL shall review such changes promptly and negotiate in good faith with the Licensee any material variation to the Licence which is necessary to accommodate the notified changes. 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.

9.2 The Licensee shall provide the reporting required by PPL in accordance with their relevant Band as set out in Schedule 1 (the "**Reports**"). All such reporting must comply with PPL's requirements as notified to the Licensee from time to time

9.3 The Licensee shall provide PPL with such further information as PPL may reasonably require to clarify the information submitted in any Reports supplied pursuant to this Clause 9.

9.4 PPL shall notify the Licensee at least 20 (twenty) Working Days in advance of the specified period of any reporting that may be required under this Clause 9. 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 (twenty) Working Days of the end of the specified period.

**10. VAT**

10.1 All payments referred to in the Licence 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.

**11. Interest**

11.1 If any payment to PPL under the Licence is not received on the due date interest at the rate of 4% (four per cent) above the Bank of England base rate in force from time to time shall be payable by the Licensee on the sum due calculated from the due date until the date of actual payment whether before or after judgment.

**12. Indexation**

12.1 The Licence subsists during the Licence Period only and terminates at the expiry of the Licence Period.

12.2 The sums set out in Clauses 7.1, 7.2 and 7.3 are applicable in the Licence Year in which the Commencement Date falls and, save as provided in Clause 12.3, shall be adjusted with effect from 1 January of each subsequent year so as to reflect any increase in the RPI by multiplying the relative amounts by the RPI published in the October of the previous year and dividing the result by the RPI published in the October of the year before that.

12.3 In the event that the RPI is reset at any time, the calculations in Clause 12.2 shall be adjusted to take account of that change.

**13. Eligibility, etc.**

13.1 If, at any time during the Licence Period, either of the following events occurs:

- (1) the Licensee is not (or ceases to be) an Eligible Service; or
- (2) the Licensee exceeds the Permitted Central Database Capacity;

the Licensee shall notify PPL of the same immediately in writing and, with immediate effect from the date of such event, the Licence shall terminate automatically. The Licensee agrees to engage with PPL regarding obtaining the correct licence in the event that they do not meet the requirements for a Linear Webcast Licence.

13.2 If, at any time during the Licence Period, the Licensee does not meet the requirements for their current Band but does meet the requirement for a higher or lower Band, they will automatically be moved to the higher or lower Band and be charged in accordance with that Band, pro-rated to 1 January of the Licence Year in which they qualified for the different Band. The Licensee undertakes that they if they qualify for a different Band, they will pay the relevant charges and provide the required reporting for that Band in accordance with Clauses 7 and 9 respectively.

**14. Termination**

14.1 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 in any of the following events:

- (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 Licence 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 Licence (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.
- (4) an event of Force Majeure which prevents the Licensee from performing its obligations hereunder for a period of 20 (twenty) Working Days or more (provided that PPL may only give notice of termination under this Clause 14.1(4) at a time when such event is continuing), such notice to take effect 7 (seven) Working Days after the date on which it is deemed given pursuant to Clause 27;

14.2 Either party may terminate the Licence by giving not less than 30 (thirty) days' written notice to the other, such notice not to be given before the expiry of 12 (twelve) months from the Commencement Date and for the avoidance of doubt no refund or discount shall apply in respect of any fees due or paid under Clause 7 due to the Licence being terminated by the Licensee part way through a Licence Year.

14.3 Termination of the Licence howsoever occasioned shall not affect the accrued rights of PPL pursuant to the provisions of Clauses 4 to 13 inclusive.

## **15. Applicable Law**

15.1 The Licence 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.

## **16. Costs**

16.1 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 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.

## **17. Waiver**

17.1 No waiver by PPL or the Licensee of any breach of any provision of the 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 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.

**18. Variation**

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

**19. Negation of Partnership/Joint Venture**

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

**20. Severance**

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

**21. Clause Headings**

21.1 The clause headings in the Licence (including the Licensee Guide) are for information only and do not form part of the Licence.

**22. Contracts (Rights of Third Parties) Act 1999**

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

**23. Entire Agreement**

23.1 The Licence constitutes the entire agreement between the parties hereto in respect of its subject matter superseding any previous agreement in respect of the same subject matter.

**24. Negation of Extension of Rights**

24.1 Nothing in the Licence shall be construed as permitting the Licensee to do any act save as expressly provided herein in relation to rights in Sound Recordings from the Repertoire. Without prejudice to the generality of the foregoing nothing in the Licence shall be taken or construed as conferring any form of Licence or permission in respect of the copyright in any musical literary or other work embodied in any such Sound Recording.

**25. Representations**

25.1 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 the Licence and to the extent that any such representations have been made they have not been relied on.

25.2 Nothing in Clause 25.1 shall operate to limit or exclude any liability for fraud.

**26. No Assignment or Sub Licensing**

26.1 The Licensee shall not assign, transfer, charge or sub-license or purport to assign, transfer, charge or sub-license, the benefit of the Licence 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.

26.2 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.

**27. Notices**

27.1 Any notice or other communication given to a party under this Agreement shall be in writing and shall be served by:

- (1) hand delivering it or sending it by prepaid first-class recorded delivery (including special delivery) or first class registered post or, in the case of an address for service outside the United Kingdom, prepaid international recorded airmail, in either case to the address and for the attention of the relevant party set out as follows:

Licensee: the address provided by the Licensee on application for this Licence;

For PPL: FAO: Chief Licensing Officer, PPL, 1 Upper James Street, London, W1F 9DE;

- (2) sending the notice either by email or as an attachment to an email (the total size of such emails including any attachments not to be more than 10MB) to the following addresses:

Licensee: the email address customarily used by the Licensee to communicate with PPL;

For PPL: [linearwebcast@ppluk.com](mailto:linearwebcast@ppluk.com);

(or as otherwise notified by that party under this Clause 27).

27.2 Any notice or communication shall be deemed to have been received:

- (1) if delivered by hand or sent by prepaid first-class recorded or registered post or prepaid international recorded airmail, at the time of delivery.
- (2) if by first class post (other than by prepaid recorded or registered post), 2 (two) Working Days from the date of posting;
- (3) if sent by airmail (other than by prepaid international recorded airmail), 5 (five) Working Days from the date of posting; and
- (4) if sent by email, on the day of transmission, save that in the event that the sending party receives either a notification that an email has not been successfully delivered or an 'out of office' return email, such notice or communication shall be deemed not to have been received by the receiving party and the sending party shall use another means of giving such notice or communication in accordance with this clause 27,

provided that if deemed receipt occurs before 9 a.m. on a Working Day the notice shall be deemed to have been received at 9 a.m. on that day, and if deemed receipt occurs after 5 p.m. on a Working Day, or on any day which is not a Working Day, the notice shall be deemed to have been received at 9 a.m. on the next Working Day.

27.3 This Clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**Schedule 1  
Reporting Requirements**

1. The Licensee shall provide the following information as required by their respective Band in accordance with Clause 9 of the Terms.

<b>Band</b>	<b>Webcasting Report</b>	<b>Territory Report</b>	<b>Music Usage Report</b>	<b>Revenue Report</b>	<b>Dubbing Report</b>
<b>1</b>	Required twice per Licence Year (by 28 January and by 28 July)	Not required	On request	On request	On request
<b>2</b>	Required twice per Licence Year (by 28 January and by 28 July)	Not required	On request	On request	On request
<b>3</b>	Required Quarterly	Required Quarterly	Recouped licensees, or those using a digital playout system: Quarterly  Others: on request.	On request	On request

2. All Reports must comply with PPL's requirements as notified to the Licensee from time to time.
3. The Licensee acknowledges that the purpose of the Webcasting Report is to provide an approximation of the number of Performances of Sound Recordings delivered via the Service and agrees to not take any actions designed to distort such approximation or deliver a false impression of the number of Performances of Sound Recordings delivered via the Service including but not limited to Webcasting silence or content not intended to be listened to during hours where the number of listeners is low.

**End of Schedule 1**

## Licensee Guide

The Licensee hereby undertakes that:

### *Sound Recording 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 Sound Recordings or the names of albums incorporating such Sound Recordings to be transmitted, or, other than for illustrative purposes, the names of the featured recording artists (save that this clause does not disqualify a prior announcement that a particular artist will be featured within an unspecified future time period);
- (2) it shall not Webcast (or authorise the Webcast) in any 3 (three)-hour period:
  - (1) more than 3 (three) Sound Recordings from a particular album, including no more than 2 (two) consecutively, or
  - (2) more than 4 (four) Sound Recordings by a particular artist or from any compilation of Sound Recordings, including no more than 3 (three) consecutively; or
  - (3) the same Sound Recording repeated during any 1 (one)-hour period
- (3) it shall not knowingly (a) transmit unauthorised recordings (including bootlegs) or (b) without the permission of the rights owner(s), transmit via the Service sound recordings that have not yet been made available for Webcasting purposes in the Territory and Extended Territory;
- (4) it shall not re-mix, edit or otherwise change sound recordings so that what is transmitted would be different from the original sound recording, provided that to segue Sound Recordings to form a Continuous Programme shall not constitute a breach of this paragraph;

### *Programme Restrictions*

- (5) no part of the Service shall contain a Continuous Programme of less than 3 (three) hours duration;
- (6) for any Identifiable Programme of less than 1 (one) hour in duration there shall be no more than 3 (three) Pre-Announced Transmissions of that Identifiable Programme in any 2 (two) week period and that for any Identifiable Programme of 1 (one) hour or more in duration there shall be no more than 4 (four) Pre-Announced Transmissions of that Identifiable Programme in any 2 (two) week period;

### *Promotional Use*

- (7) it shall not knowingly transmit a Sound Recording as part of a service that offers transmissions of visual images, 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 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 of the activities of the Licensee other than the performance of the Sound Recording itself;

- (8) it shall not 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;
- (9) it shall not use any Sound Recording:
  - (1) as an introduction to or during advertising; or
  - (2) as a signature tune for promotional spots for events; or
  - (3) as a trade mark or brand;

#### *Service Functionality*

- (10) it shall not provide an Interactive Service without the explicit consent of the relevant Members;
- (11) it shall not automatically and intentionally cause any device receiving the transmission to switch from one service to another;
- (12) subject to paragraph 16 below,
  - (i) it shall identify in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the album embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the Service; and
  - (ii) the transmission of the sound recording shall be accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright holder of that sound recording, that identifies the title of the sound recording, and the featured recording artist who performs on the sound recording;

#### *Copying and Piracy*

- (13) the Service shall not be designed to assist in the making of any copies of Sound Recordings that would be usable after the cessation of the transmission;
- (14) it shall not commit any act which deliberately encourages or induces taping or recording or re-recording of the Service (or any part of the Service) and which is not lawful or properly authorised;
- (15) it shall not itself, or authorise or permit any other person to, copy any Sound Recording included in the Service (except as to the extent permitted under the Licence or permitted by law);
- (16) it shall use effective technologies, insofar as such technologies are commercially available and can be implemented without imposing unreasonable costs, which aim to prevent:
  - (i) 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 to be transmitted to the transmission recipient; and



- (ii) a transmission recipient from making copies, other than transient copies, of the sound recordings;
- (17) it shall accommodate and not interfere with technical measures that are used by 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;
- (18) in providing the Service no representations shall be made that any rights in Sound Recordings are transferred in any way to any third party;
- (19) it shall include on the website from which the Service is delivered, a logo notifying listeners that the Service is licensed by PPL in a reasonable form provided by PPL from time to time;

#### *The Central Database*

- (20) it shall not copy a Sound Recording onto the Central Database other than in its entirety;
- (21) it shall copy Sound Recordings so that all reproductions of Sound Recordings used in the Service will be of sufficient technical standard so that the quality of the original Sound Recording is reasonably preserved for any person listening to the Service;
- (22) in respect of the Central Database, comply with PPL's guidelines from time to time issued in relation to devices holding copies of Sound Recordings and in particular as to the security of such copies;
- (23) delete all Sound Recordings on the Central Database immediately upon the expiry or termination (however occasioned) of the Licence (whichever is the earlier) in accordance with Clause 7, 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;
- (24) ensure that all copying of Sound Recordings shall be undertaken by the Licensee;

#### *Operation of the Service*

- (25) it shall exercise proper discretion in the choice and use of the Sound Recordings so as not to denigrate the artistic integrity of any copyright works or any performance embodied on any Sound Recording nor to subject any copyright works or performance embodied on any Sound Recording to derogatory treatment and it shall not accompany the Sound Recording with any image that would have any of these effects (or which is illegal or offensive); and
- (26) it shall not include in the Service or use any Sound Recording otherwise than in accordance with the conditions of the Licence, as permitted by law or expressly licensed by the owner of the relevant rights in that Sound Recording.