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PPL AND PRS FOR MUSIC JOINT COMMUNITY RADIO LICENCE: [LICENSEE NAME]

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. *PRS for Music* also licenses production music (also known as library music) sound recordings. PPL distributes licence fee revenue to record companies and to performers. *PRS for Music* distributes licence fee revenue to songwriters, composers and publishers. *PRS for Music* is the trading name of two separate societies: PRS, which administers the performing right in its members' musical works (including the right to broadcast the works) and MCPS, which administers the mechanical right in its members' musical works (including the right to copy the works) and the performing right in its members' production music sound recordings. In this Agreement, *PRS for Music* refers to both PRS and MCPS.
- (2) The Licensee operates an OFCOM-licensed community radio station pursuant to an OFCOM Licence in the UK and wishes to obtain the right to use the repertoire of PPL and *PRS for Music* in the OFCOM-licensed community radio service and certain closely related simulcasts and ancillary uses, 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 part of the OFCOM-licensed community radio service and certain closely related simulcasts and ancillary uses and, where the Licensee uses a central database that 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 described above separately, but these licences are administered together by PPL. For this purpose PPL acts as the agent of *PRS for Music*. Each licence also has common operating conditions.
- (5) The issue of this Agreement to a prospective licensee does not in itself grant any rights. Subject to the ongoing eligibility criteria set out in Clause 1.1 of Part 4, this Agreement only comes into force (and permission to use PPL's repertoire and *PRS for Music*'s repertoire on the terms below will only be effective);
 - a) Once the application for the Licences has been completed, the Licensee has fully paid all licence fees for the current licence period and a receipted invoice has been issued by PPL; and
 - b) In relation to applicants who were operating the Originating Service applied for prior to the Licence Start Date, provided that at the time of application, the Licensee held valid licences from both PPL and *PRS for Music* in relation to the operation of all elements of the Service for the period immediately prior to the Licence Start Date. Should the Licensee hold a valid licence from one, but not both of PPL and *PRS for Music* for the period immediately prior to the Licence Start Date, then this Agreement shall not come into force, but the Licensee may be eligible for a separate PPL or *PRS for Music* Licence upon substantially similar terms, to be agreed with the Licensor whose predecessor licence is in place.

(6) To be eligible for the licences set out in this Agreement, the Licensee must hold a valid, current OFCOM Licence for its Originating Service.

(7) The Licences granted by PPL, PRS and MCPS can each be terminated pursuant to Clause 11 of the Common Operating Conditions individually by either;

- a) the relevant Licensor (for example, PPL in the case of the PPL Licence); or
- b) the Licensee.

For the avoidance of doubt, termination of one Licence does not by itself cause the termination of any other Licence still in force at that time. This Agreement shall terminate upon expiry and/or termination of all Licences.

(8) This Agreement is structured as follows:

(a) This Agreement consists of this document comprising this Introduction and Parts 1 to 5 below.

(b) Details of the Licensee and of the Service are set out in **Part 1 – Licence Particulars**.

(c) Subject to the terms and conditions set out in this Agreement, the Licensee is to be granted three licences – the PPL Licence, the PRS Licence and the MCPS Licence – for the Service.

- i. Details of the rights granted by PPL (on its own behalf) are set out in **Part 2 – PPL Grant**.
- ii. Details of the rights granted by PPL (on behalf of *PRS of Music*) in the PRS Licence and the MCPS Licence are set out in **Part 3 – PRS for Music Grant**.
- iii. Details of the terms and conditions that apply to the Licences are set out in **Part 4 – Common Operating Conditions**.

(d) The meanings of various defined terms used in this Agreement are set out in **Part 5 – Glossary/Definitions**.

PART 1: LICENCE PARTICULARS

Licensee Name:

OFCOM Licence No:

Registered Company No:

Licensee Registered Address:

Station Name:

Website Address (if any):

Application Date:

Licence Start Date:

Internet Simulcast Service: [Yes / No]

Simulcast service provider:

Number of Concurrent Streams:

Number of Small Scale DAB Multiplexes the Station is carried on:

Central Database: [Yes / No]

Location and Computer Model or Cloud service used for hosting the Central Database:

PART 2: PPL Grant

1. Subject to and conditional upon the terms and conditions of the PPL Licence PPL hereby grants to the Licensee a non-exclusive licence during the Licence Period, within the Territory, to:
 - a) Broadcast PPL Sound Recordings as part of the Originating Service;
 - b) Broadcast PPL Sound Recordings as part of the Internet Simulcast Service;
 - c) Broadcast PPL Sound Recordings as part of the SSDAB Simulcast Service; and
 - d) play PPL Sound Recordings in public but only by way of playing the Service and only within the Transmitting Premises;provided that the grant of rights relating to the Internet Simulcast Service and the SSDAB Simulcast Service shall be conditional upon details of the same being provided to PPL as part of the licence application process or subsequently being notified to PPL in writing pursuant to this Agreement.
2. Subject to and conditional upon the terms and conditions of the PPL Licence PPL grants to the Licensee a non-exclusive licence during the Licence Period and within the Territory, solely for the purpose of exercising the rights granted in the Broadcast Licences to:
 - a) reproduce and authorise the reproduction of PPL Sound Recordings in the form of Programme Material;
 - b) make copies of PPL Sound Recordings as incorporated as part of Programme Material onto the Central Database;
 - c) copy any PPL Sound Recordings in their entirety onto the Central Database; and
 - d) retain the copies of those PPL Sound Recordings made pursuant to Clause 2(b) and (c) of the PPL Grant on the Central Database.
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 the PPL Grant relate only to the sound recording copyright in the PPL Sound Recordings and do not include, refer to or cover any other consents or authorisation of whatsoever nature which may be required for the operation of the Service or any part of it.
5. 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 3: *PRS for Music* Grant

1. Subject to and conditional upon the terms and conditions of the PRS Licence, PPL, on behalf of PRS, hereby grants to the Licensee a non-exclusive licence during the Licence Period, within the Territory to:
 - a) Broadcast *PRS for Music* Repertoire Works as part of the Originating Service;
 - b) Broadcast *PRS for Music* Repertoire Works as part of the Internet Simulcast Service;
 - c) Broadcast *PRS for Music* Repertoire Works as part of the SSDAB Simulcast Service; and
 - d) play *PRS for Music* Repertoire Works in public but only by way of playing the Service and only within the Transmitting Premises;provided that the grant of rights relating to the Internet Simulcast Service and the - SSDAB Simulcast Service shall be conditional upon details of the same being provided to PPL as part of the licence application process or subsequently being notified to PPL in writing pursuant to this Agreement.
2. Subject to and conditional upon the terms and conditions of the MCPS Licence, PPL, on behalf of MCPS, hereby grants to the Licensee a non-exclusive licence during the Licence Period and within the Territory, solely for the purposes of Broadcasting the Service, to:
 - a) Broadcast the PMSRs as part of the Originating Service;
 - b) Broadcast the PMSRs as part of the Internet Simulcast Service;
 - c) Broadcast PMSRs as part of the SSDAB Simulcast Service;
 - d) play the PMSRs in public but only by way of playing the Service and only within the Transmitting Premises; and
 - e) solely for the purpose of exercising the rights granted in the Broadcast Licences:
 - (i) reproduce and authorise the reproduction of *PRS for Music* Repertoire Works and PMSRs in the form of Programme Material;
 - (ii) make copies of *PRS for Music* Repertoire Works and PMSRs as incorporated as part of Programme Material onto the Central Database;
 - (iii) copy any *PRS for Music* Repertoire Work and PMSRs in their entirety onto the Central Database.
 - (iv) retain the copies of those *PRS for Music* Repertoire Works and PMSRs made pursuant to Clause 2(e)(ii) and (iii) of the *PRS for Music* Grant on the Central Database.provided that the grant of rights relating to the Internet Simulcast Service and the SSDAB Simulcast Service shall be conditional upon details of the same being provided to PPL as part of the licence application process or subsequently being notified to PPL in writing pursuant to this Agreement.
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 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 operation of the Service or any part of it, including, by way of example only, any underlying dramatic or literary work which forms part of a Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.
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 4: Common Operating Conditions

1. Eligibility

- 1.1. The PPL Grant and the *PRS for Music* Grant are each conditional on the Licensee holding (and continuing to hold) an OFCOM Licence in respect of the Originating Service.
- 1.2 In relation to applicants who were operating the Originating Service applied for prior to the Licence Start Date, [this Agreement shall not come into force (and permission to use PPL's repertoire and *PRS for Music*'s repertoire on the terms of this Agreement shall not be effective) if at the time of application the Licensee did not hold valid licences from both PPL and *PRS for Music* in relation to the operation of all elements of the Service for the period immediately prior to the Licence Start Date.]

2. Exclusions

- 2.1 All rights in any Controlled Items owned or controlled by any of the Licensors not specifically granted in the PPL Grant and the *PRS for Music* Grant are expressly reserved and no implied licences shall be construed. For the avoidance of doubt and without prejudice to the generality of the foregoing:
 - (1) 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. However, the Streaming of the Internet Simulcast Service 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.
 - (2) The Reproduction Licences shall not extend to the supply (whether or not in exchange for money or any other consideration) by the Licensee of copies of Programme Material to any third party for subsequent commercial exploitation either in the Territory or outside the Territory.
 - (3) The MCPS Licence does not extend to the reproduction of any *PRS for Music* Commercial Work:
 - a) in the form of a parody, pastiche or burlesque of any *PRS for Music* Commercial Work or of any composer or writer of any *PRS for Music* Commercial Work or any band or other group of artists which includes any composer or writer of any *PRS for Music* Commercial Work; or
 - b) where there is a derogatory, facetious, obscene or demeaning reference to the *PRS for Music* Commercial Work or its composer(s) and author(s) or the performing artist; or
 - c) without prejudice to paragraphs (a) and (b) above, in any manner which is likely to or causes the public to believe that the *PRS for Music* Commercial Work (or the composer(s) thereof) is endorsing or promoting any product or service, or the views expressed in the Programme Material.

Whether a use of a *PRS for Music* Commercial Work falls within the exclusion set out herein shall be decided by MCPS in its reasonable discretion.

- (4) The Licences pertain only to the Broadcasting of Controlled Items in audio form only and therefore, by way of example only, the Licences do not extend to:
 - a) the synchronisation of any Controlled Item with any audio-visual material;
 - b) the communication to the public of any Controlled Item as synchronised with any audio-visual material; or
 - c) making any Controlled Sound Recordings available for download, regardless of whether such downloads are permanent or temporary and regardless of whether such downloads are of standalone Controlled

Sound Recordings, of Controlled Sound Recordings incorporated in any audio or audio-visual programme or otherwise.

- (5) All grants of rights relating to the use of Cloud based services are limited to use of such services by the Licensee only and for the purpose of the Licensee exercising the rights granted in the Broadcast Licences. No rights are granted to distribute or provide access to Controlled Items to users via any Cloud based platform.
- 2.2 No rights are granted in respect of the provision of a Subscription Service or any acts in respect of the same.

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 and that it shall inform PPL of any changes to the same as soon as reasonably practicable;
 - (2) as of the Licence Start Date and throughout the Licence Period the Originating Service is and shall remain eligible for the Licences in accordance with the criteria set out in Clause 1.1;
 - (3) The Licensee will notify the Licensors of any change to the Licensee's OFCOM licence in respect of the Licensed Station if the Licensed Station is changing from a music based station to a speech radio based station.
- 3.2 Copies of Controlled Sound Recordings left on the Central Database after expiry or termination of this Agreement (or, if earlier, of the PPL Licence and/or, as the case may be, the MCPS Licence) shall be deemed to be infringing copies (of both the Controlled Sound Recording and/or, as the case may be, the *PRS for Music* Repertoire Work on that recording), save where the retention of those Controlled Sound Recordings is properly and expressly licensed by the lawful owner(s) of all relevant rights in those Controlled Sound Recordings.
- 3.3 All grants of rights under the Licences shall not extend to the use of Controlled Items for the purposes listed below and the Licensee warrants and agrees that it shall not use or authorise the use of Controlled Items for such purposes without the express written consent of the Members that hold the relevant rights, or PPL explicitly on those Members' behalf:

Unauthorised or illegal recordings

- (1) Transmission of (a) unauthorised recordings (including bootlegs); or (b) without the permission of the rights owner(s), of Controlled Sound Recordings that have not yet been made available for Broadcast purposes in the Territory;
- (2) Reproduction or Broadcast of any *PRS for Music* Repertoire Work by means of a recording if the making of such recording infringed the copyright in such *PRS for Music* Repertoire Work;

Adaptation

- (3) to electronically mix, re-mix, edit, change, or otherwise manipulate the copy protection or track identification devices of any Controlled Sound Recording, or the sounds of any Controlled Sound Recording so that the transmitted sounds are noticeably different from those on the original Controlled Sound Recording. It is acknowledged that the manipulation of short excerpts from a Controlled Sound Recording during programmes solely for the purposes of a competition or quiz shall not be prohibited by this or any other clause in this Licence;

- (4) inclusion of any adaptation of any *PRS for Music* Repertoire Work in any Programme Material unless the relevant MCPS and/or PRS Member has expressly consented thereto for the purposes of the Licences. By way of example only, this applies to:
- a) making any arrangement of the music; or
 - b) making any alteration to the lyrics, save for any minor change which does not alter the meaning thereof; or
 - c) any sampling (as that expression is commonly used in the music industry) of the music and/or lyrics or reproduction in the form of a sample of the music and/or lyrics; or
 - d) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
 - e) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

Promotional use

- (5) copying of any Commercial Item into Programme Material, or any use of any Commercial Item in such a way as may be taken to imply that any goods, products or services other than the PPL Sound Recording or an Artist Concert are endorsed advertised or associated with the Commercial Item or any artist or author associated with the Commercial Item or any other party who owns rights in connection with the Commercial Item, including, without limitation:
- a) use as an introduction to or during advertising unless advertising the Commercial Item used; or
 - b) use as a service identity signal; or
 - c) use as identity signals for any broadcast or cable programme service; or
 - d) use in association as a trademark or brand;

provided further that:

- i) use of a Commercial Item to endorse or advertise an Artist Concert, shall only be permitted where no direct payment or other form of consideration is received by the Licensee for producing the trailer or including the trailer in the Service or any part of the Service;
 - ii) use of a Commercial Item in a Programme Trailer shall not be considered to be a use of a Commercial Item such that the relevant Programme Material is endorsed, advertised or associated with that Commercial Item.
- (6) Streaming of the Internet Simulcast Service from third party websites (i.e. websites that are not Licensee Websites) except in cases where both:
- a) the Internet Simulcast Service is delivered in such a manner that all streams to all Players are recorded by the Licensee and included and accounted for in the highest maximum number of Concurrent Streams set out in the Licence Particulars; and
 - b) the third party website clearly indicates that the Station is the source of the Internet Simulcast Service.

3.4 Where any *PRS for Music* Repertoire Work forms part of any Dramatico-Musical Work, the MCPS Licence and the PRS Licence shall not apply to the reproduction or Broadcast of:

- a) the whole Dramatico-Musical Work;
- b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
 - (i) the Programme Material contains only excerpt(s) within the definition of Permitted Excerpts; and

- (ii) the Licensors have not notified the Licensee in writing that their Member or associated society member objects to the reproduction or Broadcast of any such Repertoire Work

3.5 The Licensee hereby warrants that:

Programming and similar 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 Controlled Sound Recordings or the names of albums incorporating such Controlled Sound Recordings to be transmitted, or the names of the featured recording artists; and
- (2) it shall not give advance notice of the fact that more than fifteen (15) continuous minutes of identified PPL Sound Recordings are to be transmitted or broadcast, without any intervention by the disc-jockey PROVIDED THAT this prohibition shall not apply to any one PPL Sound Recording of a literary, dramatic or musical work which itself lasts longer than fifteen (15) minutes. This restriction also applies to any notice, whether visual or in any other form, on the Licensee Website or any media player used for the Internet Simulcast Service;

Copying and piracy

- (3) the Broadcasting 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;
- (4) 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 Broadcast pursuant to the Licences and which is not lawful or properly authorised;
- (5) it shall not itself, or authorise or permit any other person to, copy any Sound Recording or Musical Work Broadcast pursuant to the Licences (except as to the extent permitted under the Licences or permitted by law);
- (6) 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 Sound Recordings or Musical Works;
- (7) it shall accommodate and not interfere with technical measures that are used by Controlled 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;
- (8) in exercising the licence granted under the Licences no representations shall be made that any rights in Controlled Items are transferred in any way to any third party;
- (9) it shall include on the Website, as applicable, a logo notifying listeners that the use of PPL Sound Recordings on the Website is licensed by PPL and/or the

use of PMSRs and *PRS for Music* Repertoire Works on the Website is licensed by *PRS for Music* in a reasonable form provided by PPL from time to time;

The Central Database

- (10) it shall not copy a Controlled Sound Recording onto the Central Database pursuant to the Licences other than in its entirety;
 - (11) it shall copy Controlled Sound Recordings pursuant to the Licences so that all reproductions of Controlled Sound Recordings used pursuant to the Licences will be of sufficient technical standard so that the quality of the original Controlled Sound Recording is reasonably preserved for any listener;
 - (12) in respect of the Central Database, comply with PPL's guidelines from time to time issued in relation to devices holding copies of Controlled Sound Recordings and in particular as to the security of such copies;
 - (13) 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 4, 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
 - (14) ensure that all copying of Controlled Sound Recordings shall be undertaken by the Licensee.
- 3.6 Nothing in this Agreement or the Licences affects the moral rights of authors of Controlled Items or of performers whose performances are contained in those Controlled Items whether subsisting in the United Kingdom and the Republic of Ireland or any other territory.
- 3.7 Notwithstanding any other terms or conditions of the Licences, in order to qualify as Programme Material to which the Reproduction Licences apply, the Programme Material must be:
- a) made by or commissioned by the Licensee for the sole purpose of the Licensee Broadcasting the same on the Service; and
 - b) in the case only of Programme Material jointly made with another co-producer or broadcaster, the Programme Material must be made for the joint primary purpose of the Licensee Broadcasting the same on the Service and Broadcasting on the co-producer's or other Broadcast service.

For the avoidance of doubt the Reproduction Licences and Broadcasting Licences do not permit the exploitation of Programme Material produced under (b) above by such co-producer or other broadcaster.

4. Deletion

- 4.1. When the Licensee decides or is obliged under the terms of the Licences to delete any Controlled Sound Recording on the Central Database including where the Permitted Central Database Capacity has been exceeded, it shall as soon as reasonably practicable and at its own cost irreversibly remove, delete and/or erase that Controlled Sound Recording, save where the retention of the copy of that Controlled 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.
- 4.2. 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 4.1 has been complied with.

5. PPL Consideration and Royalty

- 5.1. In consideration of the licence granted in Clause 1(a) of the PPL Grant and subject to Clause 5.4 below, to include PPL Repertoire in the Originating Service, and the associated reproduction rights under Clause 2 of the PPL Grant, the Licensee shall make payment of a non-returnable minimum fee of £207.90 for each Quarter.
- 5.2. In consideration of the licence granted in Clause 1(b) of the PPL Grant (if exercised) and subject to Clause 5.4 below, to include PPL Repertoire in the Internet Simulcast Service, and the associated reproduction rights under Clause 2 of the PPL Grant, the Licensee shall make payment of a non-returnable minimum fee for each Quarter as follows:
- 5.2.1 For each Quarter where the highest maximum number of Concurrent Streams at any time in the Quarter is 200 or less, £69.30;
- 5.2.2 For each Quarter where the highest maximum number of Concurrent Streams at any time in the Quarter is more than 200, £368.25.
- 5.3 In consideration of the licence granted in Clause 1(c) (if relevant) of the PPL Grant and subject to Clause 5.4 below, to include PPL Repertoire in the SSDAB Simulcast Service, and the associated reproduction rights under Clause 2 of the PPL Grant, the Licensee shall make payment of a non-returnable minimum fee for each Quarter as follows:
- 5.3.1 Where the SS DAB Simulcast Service is included in one small-scale DAB multiplex, £64.80; plus
- 5.3.2 £37.00 for each additional small-scale DAB multiplex in which the SS DAB Simulcast Service is included.
- 5.4 In further consideration of the licences granted in Clauses 1 and 2 of the PPL Grant, the Licensee shall make the following royalty payments for each Licence Year:
- 5.4.1 if the PPL Repertoire Percentage for the Service for such Licence Year is equal to or greater than 15%:
- (i) 2% of the Station's total Net Broadcasting Revenue where such Net Broadcasting Revenue is below the threshold of £905,436 in such Licence Year; or
- (ii) 3% of the Station's total Net Broadcasting Revenue where such Net Broadcasting Revenue is equal to or greater than the threshold of £905,436 and less than the threshold of £1,837,114 in such Licence Year; or
- (iii) 5% of the Station's total Net Broadcasting Revenue where such Net Broadcasting Revenue is equal to or greater than the threshold of £1,837,114 in such Licence Year; or
- 5.4.2 1% of the Station's total Net Broadcasting Revenue if the Service is a speech-based Licensed Station and the PPL Repertoire Percentage for such Licence Year is under 15%;

in each case less the non-returnable fees paid by the Licensee in respect of the Station for such Licence Year under Clause 5.1, Clause 5.2 and Clause 5.3.

6. PRS for Music Consideration and Royalty

- 6.1 In consideration of the licences granted in the *PRS for Music* Grant and subject to Clause 6.2 below, the Licensee shall make payment of a non-returnable minimum fee of £309.00 for each Quarter.
- 6.2 In further consideration of the licences granted in the *PRS for Music* Grant, the Licensee shall make the following royalty payments for each Licence Year:

6.2.1 if the PRSfM Repertoire Percentage for the Service for such Licence Year is equal to or greater than 15%:

- (i) 3% of the Station's total Net Broadcasting Revenue where such Net Broadcasting Revenue is below the threshold of £905,436 in such Licence Year; or
- (ii) 4% of the Station's total Net Broadcasting Revenue where such Net Broadcasting Revenue is equal to or greater than the threshold of £905,436 and less than the threshold of £1,837,114 in such Licence Year; or
- (iii) 5.25% of the Station's total Net Broadcasting Revenue where such Net Broadcasting Revenue is equal to or greater than the threshold of £1,837,114 in such Licence Year; or

6.2.2 1% of the Station's total Net Broadcasting Revenue if the Service is a speech-based Licensed Station and the PRSfM Repertoire Percentage for such Licence Year is under 30%;

in each case less the non-returnable fees paid by the Licensee in respect of the Station for such Licence Year under Clause 6.1.

7. Common terms relating to consideration and payment

7.1. Notwithstanding the provisions of Clauses 5 and 6, the Licensors confirm and warrant that PPL is authorised to receive all payments under the Licences as agent on behalf of the Licensors, each of the Members and the associated societies.

7.2. Where the Licence Start Date is after the date of commencement of any Quarter, the minimum fees due under Clauses 5.1, 5.2 and 5.3 and Clause 6.1 for that Quarter shall be adjusted using the ratio between the number of days in that Quarter from the Licence Start Date onwards and the total number of days in that Quarter.

7.3. The thresholds set out in Clauses 5.4 and 6.2 shall be adjustable on 1 January in any given Licence Year so as to reflect any movement in the RPI by multiplying the amount by the RPI published in the October preceding the start of such Licence Year and by dividing the result by the RPI published in the October prior to that, the first adjustment to be made on 1 January 2018.

7.4. The minimum fees set out in Clauses 5.1, 5.2 and 5.3 and Clause 6.1 are applicable in the Licence Year in which the Licence Start Date falls and shall be adjusted with effect from 1 January of each Licence Year so as to reflect any increase in the RPI by multiplying the amount by the RPI published in the October preceding the start of such Licence Year and by dividing the result by the RPI published in the October prior to that.

7.5. In the case of airtime or advertising spot(s) ceded to a third party in return for any programme broadcast by the Licensee (e.g. Independent Radio News - Newslink) and in the case of Contra Deals and/or Barter, the Normal Commercial Value of such ceded airtime shall be included by the Licensee in its statement of Net Broadcasting Revenue hereunder.

7.6. The gross valuable consideration to be included under Net Broadcasting Revenue for Service Airtime is the higher of: 1) the actual consideration received by the Licensee, or 2) 20% of the Normal Commercial Value of the advertising airtime ceded in return for goods and services or programme material.

7.7. The Licensee shall make payment to PPL of the minimum fees due under Clauses 5.1, 5.2 and 5.3 as follows:

7.7.1 The minimum fees due under Clause 5.1 shall be paid within twenty-eight (28) days of the beginning of each Quarter.

- 7.7.2 The Licensee shall make a payment within twenty-eight (28) days of the beginning of each Quarter according to the scales of fees set out in Clause 5.2 and Clause 5.3 on the assumption that the operation (or not) of the Internet Simulcast Service and/or the SSDAB Simulcast Service (as applicable) and the highest maximum number of Concurrent Streams (in the case of the Internet Simulcast Service) and/or small-scale multiplexes (in the case of the SSDAB Simulcast Service) in that Quarter is as set out in the Licence Particulars (as amended from time to time pursuant to Clause 3.1(1)) at the date of the commencement of the Licence Year in which the Quarter falls.
- 7.8 The Licensee shall make payment to PPL of the minimum fees due under Clause 6.1 within twenty-eight (28) days of the beginning of each Quarter.
- 7.9 The Licensee shall within twenty-eight (28) days of the end of each Licence Year supply PPL with full and accurate details of:
- 7.9.1 the Net Broadcasting Revenue for the preceding Licence Year;
 - 7.9.2 whether an Internet Simulcast Service was operated in each Quarter of the preceding Licence Year and if so the highest maximum number of Concurrent Streams in each Quarter; and
 - 7.9.3 whether a SSDAB Simulcast Service was operated in each Quarter of the preceding Licence Year and if so the number of small-scale multiplexes carrying the SSDAB Simulcast Service in each Quarter;
- certified by the directors of the Licensee.
- 7.10 In the event that:
- 7.10.1 the amount due under Clauses 5 and 6 exceeds the amount actually paid by the Licensee under Clause 7.7 and 7.8 for the preceding Licence Year the Licensee shall pay PPL's invoice for any additional fees within fifty-six (56) days of the end of that Licence Year.
 - 7.10.2 the details provided by the Licensee demonstrate that the Licensee has paid higher fees for the Licence Year than were actually due under Clause 5, the over-payment shall at PPL's discretion either be re-paid to the Licensee or credited to the Licensee against payments outstanding or subsequently falling due to PPL.
- 7.11 Where Net Broadcasting Revenue includes revenue in a form other than money the Licensee shall provide an adequate and proper description thereof and shall report and identify its reasonable market value.
- 7.12 Where external costs relating to sponsored Outside Broadcast events are deducted from the related Sponsorship revenue pursuant to the definition of Net Broadcasting Revenue in the Glossary/Definitions the Licensee shall provide an adequate description of each category of external cost and shall report and identify its actual value. The Licensee shall provide this information for each event as well as identifying the actual Sponsorship Revenue received for each event by the Licensee.
- 7.13 If any payment due to PPL or the Licensee hereunder is not received on the due date(s), interest at the rate of three per cent (3%) above the Bank of England base rate in force from time to time shall be payable by the party in default on the sum due calculated at an annual rate from the due date(s) until the date(s) of actual payment.

8. Reporting Obligations

- 8.1. The Licensee hereby undertakes, if requested by PPL to do so:
- 8.1.1 to make Programme Returns within twenty-eight (28) days of the end of each Quarter during the Licence Period, for every day of that Quarter.

- 8.1.2 to supply the Programme Returns in an electronic format, supplied by PPL, and according to a schedule agreed between PPL and the Licensee or which is reasonable and suitable for PPL's purposes.
- 8.1.3 to give to PPL any further information it has available which PPL may reasonably require to clarify the information previously submitted in the Programme Returns.
- 8.2 The Licensee acknowledges that Programme Returns received from licensees are critical to PPL and *PRS for Music* as they form the basis on which PPL and *PRS for Music* distribute revenues to Members and performers. PPL and/or *PRS for Music*, or experts appointed by them may from time to time monitor the Licensee's use of Controlled Sound Recordings and/or *PRS for Music* Repertoire Works under the provisions of this Licence and if such monitoring establishes that the Programme Returns submitted by the Licensee were materially inaccurate then the Licensee will make immediate payment to PPL and/or *PRS for Music* of its reasonable costs of such monitoring.
- 8.3 PPL warrants that it will use its reasonable endeavours to answer a specific enquiry regarding the copyright protection of an individual Controlled Item within seventy-two (72) hours of the said enquiry.
- 9. Audit**
- 9.1 PPL and *PRS for Music* shall each have the right, exercisable separately or in combination, to audit any or all of the information provided by the Licensee pursuant to Clause 7.9 (including for the avoidance of doubt gross broadcasting revenue and individual elements of Net Broadcasting Revenue as defined hereunder) once in every twelve (12) months.
- 9.2 The time for the carrying out of the audit shall be agreed reasonably between the parties following a request by PPL and/or *PRS for Music* (the "**Auditing Party**") to conduct an audit, but in any event the Licensee shall make a reasonable time period available for the carrying out of the audit within the fourteen (14) day period following the Auditing Party providing an additional notice to set the time for the audit.
- 9.3 The right of audit shall be by prior appointment during business hours and the right is to allow independent auditors to inspect and take copies of all books and records howsoever stored (including all information stored electronically) which is in the independent auditor's opinion reasonably necessary for the purpose of verifying the accuracy of the information provided by the Licensee provided that such an inspection shall not be in respect of:
- 9.3.1 a period greater than six (6) years previous;
- 9.3.2 a period previously audited on behalf of the Auditing Party except where statutory accounts for that period have been subsequently restated by the Licensee;
- 9.4 In addition the Licensee shall provide full and accurate answers to all reasonable questions posed by the Auditing Party and/or its auditors in connection with the audit.
- 9.5 All information to which those conducting the audit are given access pursuant to the right of audit will remain confidential and shall not be used for any purposes other than verifying the information supplied to the Auditing Party, obtaining legal advice thereon or for any subsequent legal proceedings which may arise directly therefrom. The auditors shall be able to share with the Auditing Party all documents and information that are, in their reasonable professional opinion, necessary for and relevant to the above purposes without the Licensee's prior written consent. The auditors shall provide to the Licensee a copy of all information reported to the Auditing Party. On final

settlement of all issues arising from the audit the independent auditors will return to the Licensee all copy documents taken pursuant to Clause 9.3 above.

- 9.6 The costs of any such inspection and/or audit shall be borne by the Auditing Party. However, If any audit and verification process discloses an under-payment of more than seven and a half per cent (7.5%) of the correct Royalty Fee during the period under audit then, without prejudice to the Auditing Party's other rights under the relevant Licence, the Licensee shall pay, in addition to the payment referred to in clause 9.7, the Auditing Party's reasonable costs of such audit and verification within twenty-eight (28) days of receipt of the Auditing Party's VAT invoice therefore.
- 9.7 The Auditing Party shall give notice in writing to the Licensee of the net amount payable by the Licensee in respect of any Net Broadcasting Revenue or other information inaccurately declared. The sums payable shall carry interest at the rate of three per cent (3%) above the base rate of the Bank of England from the date or dates when the said net amount ought to have been paid. All sums due together with interest thereon must be received by PPL within twenty-one (21) days of the date of the notice.
- 9.8 In the event that the audit discloses a net overpayment by the Licensee, the amount of the net overpayment shall carry interest at the rate of three per cent (3%) above the base rate of the Bank of England from fourteen (14) days of receipt by PPL of the audit report or within twenty-eight (28) days of completion of the audit, whichever is the earlier and shall be repaid forthwith to the Licensee together with any accrued interest.
- 9.9 The rights of inspection, examination and taking copies and the obligations specified in Clause 9 continue beyond the cessation of the services and/or the termination of any Licence and shall not come to an end until a date falling five (5) years after the date of termination of the relevant Licence.
- 9.10 The Licensee shall keep such records of its Net Broadcasting Revenue for a period of not less than six (6) years after the date of termination of any Licence as shall enable PPL, its authorised representatives and/or its auditors, to determine an adequate audit trail by which to verify the consideration due to PPL under the relevant Licence.

10. Named Premises

- 10.1 The Licensee shall permit PPL on reasonable notice at reasonable times to enter any premises to which it has access at that time and where any part of the equipment used in the provision of the Service is held and in particular to inspect the Central Database and to ascertain whether the terms and conditions of any Licence have been complied with.
- 10.2 The Licensee shall provide PPL with all assistance of whatever nature that PPL may reasonably require in connection with Clause 10.1 and shall obtain for PPL (at the Licensees' cost) any consents or permissions necessary.
- 10.3 References to PPL in Clauses 10.1 and 10.2 above shall include all others authorised by PPL including without limitation agents, professional advisers, and experts relevant to the inspection, examination and/or demonstration.
- 10.4 The Licensee shall not remove, authorise, permit or allow any other person to remove for any reason any Central Database at a Named Premises.
- 10.5 In the event that it wishes to change the location of the Named Premises the Licensee shall obtain the prior written permission of PPL (such permission not to be unreasonably withheld). The Licensee's notification to PPL shall include the date from which any Central Database is proposed to be held at the new premises.
- 10.6 The Licensee shall at all times keep all copies of Controlled Sound Recordings and, where applicable, the Central Database in safe custody at the Named Premises.

11. Termination

- 11.1 The Licensee shall have the right to terminate all, or any one or combination of the Licences at any time by giving three (3) months' prior written notice to the respective Licensor, via PPL.
- 11.2 Each of the Licensors shall have the right to terminate their respective Licence at any time by giving three (3) months' prior written notice to the Licensee, via PPL.
- 11.3 In addition to the right to terminate on three (3) months' prior written notice under Clause 11.1, each of the Licensors shall have the right at any time during the Licence Period to terminate their respective Licence forthwith by providing written notice to the Licensee, via PPL in any of the following events:
- 11.3.1 any Mutual Termination Event applies to the Licensee;
- 11.3.2 if the Licensee's licence to operate the Originating Service either;
- (i) expires and is not extended or renewed by OFCOM or another body of competent authority or jurisdiction; or
 - (ii) is terminated by OFCOM or another body of competent authority or jurisdiction; or
- 11.3.3 if the Licensee persistently and repeatedly fails to pay any fees due under the Licence by their due date.
- 11.4 In addition to the right to terminate on three (3) months' prior written notice under Clause 10.1, the Licensee shall have the right at any time during the Licence Period to terminate all, or any one or combination of the Licences forthwith by providing written notice to PPL if any Mutual Termination Event applies to the relevant Licensor.
- 11.5 If any of the Licensors terminates their respective Licence in accordance with the terms of that Licence all permissions granted under that Licence to the Licensee shall cease forthwith without prejudice to the continuing obligations of the Licensee under the Licence relating to matters prior to such termination and without prejudice to the Licensor's rights in relation thereto.
- 11.6 Without prejudice to the rights of the Licensors under Clause 11.5, this Agreement shall continue in force until the expiry or, as the case may be, termination of all of the Licences.

12. Notification of Excluded Material

- 12.1 The Licensee acknowledges and accepts that PPL may (having used all reasonable endeavours to secure and retain the right to include in the PPL Licence all PPL Sound Recordings in their repertoire) in exceptional circumstances by notice to all PPL's radio broadcasting licensees prohibit or limit the broadcast of any PPL Sound Recording as required under the agreement with any composers, artists, producers of that PPL Sound Recording or an interested third party by way of contract.

13. Legal Costs

- 13.1 In the event that either party is in default of any of its obligations under this Agreement and the other party incurs legal costs in order to obtain compliance therewith such legal costs shall be recoverable by that other party from the defaulting party as a debt to the extent that such legal costs have been reasonably incurred.

14. Taxes

- 14.1 All royalties and fees referred to in each of the Licences are exclusive of Value Added Tax and the Licensee shall pay such Value Added Tax or any tax where the same is applicable at the prevailing rate or rates from time to time.

15. Notices

- 15.1 Any notice or demand to be given or made pursuant to this Agreement shall be given or made in writing and sent by pre-paid first class mail or by delivery or (except in the case of notice under Clause 10) by email addressed and sent to the recipient at the address stated in the Licence Particulars 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 forty-eight (48) hours from such despatch or if by email shall be deemed to have been received at the time of despatch.

16. No Assignment

- 16.1 Subject as hereinbefore stated this Agreement and each Licence shall be personal to the parties which shall not be entitled to assign any of their rights or obligations hereunder without the prior written consent of the other to be given or withheld at its absolute discretion.

17. Waiver

- 17.1 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any right or remedy and no single or partial exercise thereof shall preclude any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purposes given.

18. Entire Agreement

- 18.1 This Agreement supersedes all prior agreements and arrangements and embodies the entire understanding and all the terms agreed between the parties relating to each Licence granted to the Licensee under this Agreement and no oral representation warranties or promises shall be implied as terms of any Licence.
- 18.2 This Agreement (and hence each Licence) shall only be effective when executed on behalf of the parties hereto and may only be changed in writing executed in similar manner and the terms "Licence" or "Licences" shall include any attachment specifications and supplements or future written amendments made in accordance with this clause.

19. Governing of Law and Jurisdiction

- 19.1 This Agreement and each of the Licences shall be governed by and construed in accordance with the laws of England and Wales the courts of which shall have sole and exclusive jurisdiction.

20. Variation

- 20.1 No variation or amendment of this Agreement or of any Licence shall bind either party unless agreed to in writing by their respective duly authorised representatives.

21. Severance

- 21.1 If any provisions of this Agreement or of any Licence shall be determined by any court or other tribunal of competent jurisdiction to be illegal void or unenforceable all other provisions of this Agreement and/or the Licence shall nevertheless continue in full force and effect.

22. Negation of partnership/joint venture

- 22.1 The terms and conditions of this Agreement and each Licence shall not constitute any form of partnership or joint venture between the parties.

23. Third Parties

- 23.1 Without prejudice to the status of PRS and MCPS as parties to this Agreement, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "**CRTP Act**") to enforce any term of this Agreement. but this does not affect the right or remedy of a third party that exists or is available apart from the CRTP Act.

24. Clause Headings

- 24.1 The clause headings in this Agreement are for information only and do not form part of this Agreement.

PART 5: Glossary / Definitions

1. Definitions and Interpretation

1.1 The following definitions apply in this Agreement:

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

“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.

“AM/FM Service” means the single-channel, non-profit, analogue broadcast service operating pursuant to the guidelines set out in the Community Radio Licence granted to the Licensee by OFCOM (the *“OFCOM Licence”*).

“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.

“Artist Concert” means a forthcoming live concert by a musical performing artist which satisfies the following conditions:

- a) the Controlled Items recorded into the trailer are performed by the musical performing artist who will be performing at the concert itself;
- b) the concert is promoted or sponsored by the Licensee on whose Licensed Station the trailer is Broadcast; and
- c) the concert (or parts of the concert) will be Broadcast on the Service either live or at a later date.

“Barter” means the provision of programme material in any form whatsoever in return for advertising airtime or any other form of on-air promotion.

“Broadcast” shall have the meaning ascribed thereto in section 6 of the 1988 Act and the *“Broadcasting”* shall be construed accordingly.

“Broadcast Licences” means the licences set out in Clauses 1(a), (b) and (c) of the PPL Grant and Clauses 1(a), (b) and (c) and Clauses 2(a), (b) and (c) of the *PRS for Music* Grant.

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

“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.

“Commercial Item” means any *PRS for Music* Commercial Work or PPL Sound Recording.

“Common Operating Conditions” means the common conditions of the Licences set out in Part 4 of this Agreement.

“Concurrent Streams” means, in relation to an Internet Simulcast Service, the number of Players to which the Internet Simulcast Service can be delivered at the same time.

“Contra Deals” means the provision of goods or services other than programme material in return for advertising airtime or sponsorship credits in on-air programme features but excluding prizes. Where advertising airtime is ceded in return for the provision of prizes such airtime shall be accounted for pursuant to Clause 7.5.

“Controlled Item” means a PPL Sound Recording, a PMSR or a *PRS for Music* Repertoire Work.

“Controlled Sound Recording” means a PPL Sound Recording, a PMSR and/or any Sound Recording that contains all or part of a *PRS for Music* Repertoire Work.

“a Day” means the period of twenty-four (24) hours commencing at 0:00 hours.

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

“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..

“Internet Simulcast Service” means a service which is:

- a) a simultaneous unaltered (save for adverts and radio station imaging of the Licensed Station, including promos, sweepers and interstitials) transmission of the Originating Service via the Internet which is transmitted employing Streaming Software only; and
- b) is hosted by the Licensee on data servers owned or controlled (directly or indirectly) by the Licensee.

“Licence Particulars” means the information identified as such and contained in the confirmation document provided by PPL reflecting that information contained within the Joint Licence for Community Radio application form completed by the Licensee and returned to PPL or supplied via such other means as may time to time be put in place by PPL.

“Licence Period” means the period from the Licence Start Date until the Licence is terminated pursuant to Clause 11.

“Licence Start Date” means the Licence Start Date set out in the Licence Particulars.

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

“Licence” means the PPL Licence, the MCPS Licence or, as the case may be, the PRS Licence.

“Licences” means the PPL Licence, the MCPS Licence and the PRS Licence together.

“Licensee Website” means any website exclusively and prominently branded for the Service or the Licensee and under the control of the Licensee or an Affiliate of the Licensee.

“Licensor” means PPL, MCPS or, as the case may be, PRS.

“Licensors” means PPL, MCPS and PRS.

“MCPS” means Mechanical-Copyright Protection Society Limited whose registered office is as 2nd Floor, Synergy House, 114-118 Southampton Row, London, WC1B 5AA, 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 licence set out in Clause 2 of the *PRS for Music* Grant granted to the service as described in the Licence Particulars and subject to the terms of the PRS for Music Grant generally and the Common Operating Conditions.

"Members" means any, or as the context required, the relevant PPL Members and *PRS for Music* Members.

"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.

"Mutual Termination Event" means any of the following events:

- a) the presentation of a petition for, or notice thereof, or of a resolution for the winding-up of the relevant party (other than for the purposes of amalgamation or reconstruction); or if it shall go into voluntary liquidation as defined in the Insolvency Act 1986;
- b) the appointment of, or notice of the intended appointment of, a receiver or manager or administrator of the relevant party or the decision of the relevant party to make an arrangement with its creditors; or in the event that s.123 of the said Insolvency Act shall apply to the relevant party;
- c) any breach of the terms of the relevant Licence written notice of which has been given to the Licensee (in the case of a breach by the Licensee) and PPL (in the case of a breach by either Licensor) and where:
 - i. in the case of a breach reasonably capable of being remedied within twenty-one (21) days of such notice, the relevant party has failed to remedy such breach within twenty-one (21) days of such notice;
 - ii. in the case of a breach reasonably capable of being remedied but not within twenty-one (21) days of such notice the relevant party has failed to commence to remedy such breach within such twenty-one (21) day period or fail to proceed with reasonable diligence to complete the remedying of such breach thereafter;
- d) should the relevant party cease to trade;
- e) an event of force majeure (as defined in below) lasting twenty-eight (28) days or more, provided that notice must be given during the continuance of such event by the Licensee to PPL (in the case of a force majeure event affecting the Licensee) and PPL to the Licensee (in the case of a force majeure event affecting either or both of the Licensors).

An event of force majeure shall mean any event whereby either party's performance of its obligations are hindered or prevented (directly or indirectly) by reason of any event beyond the reasonable control of either party which may include strike, labour disturbance, government action, riot, armed conflict, accident, unavailability or breakdown of normal means of transport or act of God.

"Named Premises" means the premises where the Central Database is stored and identified in the Licence Particulars or such other premises as may be notified by the Licensee to PPL pursuant to the provisions of Clause 10 from the data specified in such notification (but, for the avoidance of doubt, excluding the location of the Central Database if it is in the Cloud).

"Net Broadcasting Revenue" shall be calculated by taking 85% of the gross income (before any deduction of agency commissions or any other deductions) whether in money or money's worth for airtime, derived and received by the Licensee (or any person, firm, company or entity which is a member, associate, subsidiary or agent of the Licensee) from all or any part of the Service transmitted including without limitation and by way of example only:

- (1) advertising;
- (2) Sponsorship;
- (3) Barter deals;

- (4) Contra Deals;
- (5) telephony income;
- (6) banner adverts on media players (including as part of “apps”) and pop-up windows associated with media players (save to the extent the content on the media player is not the Internet Simulcast Service licensed hereunder);

and then deducting external costs directly and reasonably incurred by the Licensee in producing sponsored Outside Broadcast events PROVIDED THAT if such costs of an Outside Broadcast event exceed the value of the Sponsorship revenue for that event the Sponsorship revenue shall be nil. The amount by which such costs exceed Sponsorship revenue may not be set off against Sponsorship revenue from any other Outside Broadcast event or other non-Sponsorship revenue. For the avoidance of doubt, where any third party derives and receives gross income in respect of advertising or Sponsorship revenue pursuant to these Licences it shall be deemed to be derived and received by the Licensee.

“Normal Commercial Value” means the figure calculated in relation to the 30” (thirty seconds) equivalent cost per thousand for the equivalent airtime sold/valued in the same clock hour for “paid airtime” charged by the Licensee, which phrase includes advertising airtime before any deduction of agency commissions or any other deductions, but does not include Service Airtime.

“Originating Service” means either the AM/FM Service or the SSDAB Service operated by the Licensee, for which the Licensee has applied for a joint licence under this Agreement, and for which the Licensee has been granted an OFCOM Licence.

“Outside Broadcast” means a live Broadcast which originates at a location that is neither owned nor operated by the Licensee and whose content clearly identifies and refers to the outside location of the broadcast.

“Permitted Central Database Content” means a maximum of ten thousand (10,000) Controlled Sound Recordings.

“Permitted Excerpts” refers only to Dramatico-Musical Works and means excerpts where the use of all such excerpts in any Programme Material complies with all the following limitations:

- a) the total duration of which in the course of the same programme does not exceed twenty-five (25) minutes or twenty-five per cent (25%) of the total length of the Dramatico-Musical Work, whichever is the shorter;
- b) the use is not a “potted version” of the Dramatico-Musical Work;
- c) the use is not or does not cover a complete act of the Dramatico-Musical Work; and
- d) each excerpt is not presented in a dramatic form.

“Player” means any electronic media player software capable of playing a transmission of a sound recording in the Internet Simulcast Service.

“PMSR” means any production music sound recording being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in the United Kingdom by MCPS and where MCPS is authorised to license such recordings as so-called production or library music.

“PPL Grant” means the grant of a licence from PPL as set out in Part 2 of this Agreement.

“PPL Licence” means the licence set out in the PPL Grant and the Licence Particulars and subject to the Common Operating Conditions.

“PPL Members” means the persons, firms, record companies or entities who are from time to time member of PPL, a list of which shall be made available electronically by PPL to the Licensee on request.

“PPL Repertoire” means all those Sound Recordings the ownership, control or right to grant licence of the relevant copyright in which are vested in PPL from time to time by the Members subject always to the provisions of Clause 12.

“PPL Repertoire Percentage” means the proportion of the Total Broadcast Hours which consist of PPL Repertoire.

“PPL Sound Recording” means a Sound Recording within the PPL Repertoire.

“Programme Material” means any programme material or any part thereof of any kind and which is made for the purposes of Broadcasting as set out in this Agreement EXCEPT it specifically excludes any material which constitutes an advertisement of whatsoever nature.

“Programme Return” means a full and proper return setting out in chronological order a list of Controlled Items that have been included in the Service in the relevant period including the following information:

- 1) the date on which the Controlled Item was used;
- 2) the time of transmission of the programme in which the Controlled Item was used;
- 3) the duration of such Controlled Item used (in seconds);
- 4) the ISRC number of such Controlled Sound Recordings;
- 5) the ISWC number of such *PRS for Music* Repertoire Work;
- 6) the title of the said Controlled Item include, where available, the title of the version or mix;
- 7) the record label and catalogue number of the physical product including the used Controlled Sound Recordings;
- 8) (where identifiable) the identity of the performers and authors of the Controlled Item.

“Programme Trailer” means any trailer which is produced for the purposes of trailing either the Controlled Items to be Broadcast in upcoming Programme Material or, subject to the trailer including specific scheduling information about when the Programme Material is scheduled to be Broadcast, specific Programme Material.

“PRS” means Performing Right Society Limited whose registered office is at 1st Floor, Goldings House, 2 Hays Lane, London, SE1 2HB contracting for and on behalf of itself and for and on behalf of and as agents of its various affiliated societies.

“PRS Licence” means the licence set out in Clause 1 of the *PRS for Music* Grant granted to the service as described in the Licence Particulars and subject to the terms of the PRS for Music Grant generally and the Common Operating Conditions.

“PRSfM Repertoire Percentage” means the proportion of the Total Broadcast Hours which consists of the *PRS for Music* Repertoire Works.

“PRS for Music” means MCPS and PRS.

“PRS for Music Commercial Work” means any *PRS for Music* Repertoire Work other than:

- a) one where MCPS is authorised to license it as so-called production or library music; or
- b) a Musical Work specially and expressly commissioned by the Licensee from *PRS for Music* Members.

“PRS for Music Grant” means the grant of a licence from MCPS and PRS as set out in Part 3.

“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 the exploitation licensed hereunder 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 the MCPS Licence 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 the MCPS Licence 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 the PRS Licence with effect from the date of admission into PRS.

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

- 1) in the case of the MCPS Licence, MCPS including, without limitation, by virtue of its agreements with 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 a MCPS, the expression *PRS for Music* Repertoire Work shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS; and
 - (ii) it shall exclude any Musical Works that a member of MCPS or an associated society has withdrawn or withheld from the MCPS Licence; and
- 2) in the case of the PRS Licence, PRS including, without limitation, by virtue of its agreements with 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, the expression *“PRS for Music Repertoire Work”* shall only apply to such interest in the *PRS for Music* Repertoire Work as is owned or controlled by PRS.

“Quarter” means the periods of three (3) months ending on 31 March, 30 June, 30 September and 31 December in any year.

“Reproduction Licences” means the licences referred to in Clause 2 of the PPL Grant and Clause 2(e) of the *PRS for Music* Grant.

“Royalty Fee” means the royalties and annual fees payable under these Licences or the relevant Licence as calculated according to Clauses 5, 6 and 7.

“RPI” means the figure for the official General Index of Retail Prices (all items) published by the Central Statistical Office of the Chancellor of the Exchequer (or, in the event that such index shall cease to be published, such alternative official index as most closely represents the same constituent elements).

“Service” means all or any part of the Originating Service, the Internet Simulcast Service and/or the SSDAB Simulcast Service as appropriate.

“Service Airtime” means advertisements/promotions Broadcast by the Licensee where the intention is wholly or in part to directly or indirectly raise revenue for the Licensee and/or Affiliates of the Licensee.

“Sound Recordings” means 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 and in the case of determining individual sound recordings shall mean a sequence of sounds (or data representing such sequence of sounds) which is identified by a number or other device indicated by or on any descriptive text accompanying any physical or electronic product incorporating the sound recording or by information embodied in or on the sound recording or identified by a single ISRC number.

“Sponsor” means any party who or which provides directly or through any agent all or any part of the finance and/or any products or services and/or pays the Licensee or provides any other good consideration for the making of Programme Material in return for exposure for, or any other form of reference therein to, the name or trademark or logo of the third party or any associate thereof or any specific named brands, products or services, and *“Sponsor”* and *“Sponsorship”* shall be construed accordingly.

“Sponsorship Message” means an item of Programme Material which includes a specific reference to a Sponsor or any goods or services of a Sponsor.

“SSDAB Service” means the single-channel, non-profit, digital broadcast service transmitted by way of Small Scale DAB and operating pursuant to the guidelines set out in the OFCOM C-DSPS Licence.

“SSDAB Simulcast Service” means a service which is a simultaneous unaltered (save for adverts and radio station imaging of the Licensed Station, including promos, sweepers and interstitials) transmission of the SSDAB Service via one or more small scale DAB multiplexes and which is licensed for such Broadcast by OFCOM under the OFCOM Licence.

“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.

“Streaming Software” means software which enables the continuous delivery of audio transmissions to users at the user’s request in real time only, without recourse to any intermediate file copy, and without enabling the user to download or otherwise retain a copy of such transmissions.

“Subscription Service” means any service where permission to access or the capability of any person to receive the whole or any part of the service is conditional upon the payment of a fee by or on behalf of that person (other than any fee paid in respect of a telecommunications service to provide access to the Internet generally).

“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.

“Total Broadcast Hours” means the total hours during which the Originating Service is broadcasting during the Licence Year.

“Transmitting Premises” means the Licensee’s premises from which the Broadcast of the Licensed Station is carried out.

“VAT” means value added tax.

“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 this Agreement and the Licences:
- (1) Reference to any statute or statutory position 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 this Agreement are expressions used in the 1988 Act, they shall have the same meaning as in the 1988 Act unless the context otherwise requires.
 - (5) Unless the context requires otherwise, references to the word “including” do not imply any limitation.