



BR3 LICENSING SCHEME USE OF PRODUCTION MUSIC IN RADIO COMMERCIALS

NAME OF LICENSEE	(“the Licensee”)
REGISTERED ADDRESS OF LICENSEE	
COMMENCEMENT AGREEMENT	OF 1st October 2007 (“the Commencement Date”)

The terms of this Agreement are contained overleaf.

Signed on behalf of the Licensee:

_____ Date: _____

Signed on behalf of the Mechanical-Copyright Protection Society Limited (“MCPS”), contracting for and on behalf of itself and for and on behalf of and as agent of its various members and associated societies:

_____ Date: _____

STANDARD TERMS AND CONDITIONS

1. Definitions

<p>“Authorised Producer”</p>	<p>shall mean any one of the producers which have been notified by the Licensee at the commencement of the Term or as amended by the Licensee in accordance with clause 7.1 thereafter (in each case using the Notification of Authorised Producer Form as set out in Appendix One) as being the party authorised to produce Commercials containing Production Music on behalf of the Licensee. Such Authorised Producer must be either:</p> <ul style="list-style-type: none"> a) the in-house production facilities and staff of any particular Licensed Station hereunder; or b) a Radio Group central creative department nominated by the Licensee; or c) a third party production company nominated by the Licensee. <p>For the avoidance of doubt, the Licensee may nominate a maximum of four Authorised Producers in respect of any one Licensed Station at any one time.</p>
<p>“Broadcast” or “Broadcasting”</p>	<p>shall have the meaning ascribed thereto in section 6 of the Copyright Designs and Patents act 1988, and shall for the purpose of this Agreement include a Simulcast Service.</p>
<p>“Business Day”</p>	<p>shall mean any day which is not a Saturday, Sunday or Public Holiday.</p>
<p>“Commercial”</p>	<p>shall mean an advertisement of whatsoever nature or any item of publicity, other than a Sponsorship Message, containing Production Music, Broadcast on a Licensed Station in return for direct or indirect payment or other valuable consideration to or for the Licensee or as nominated by the Licensee, except that any advertisement that does not adhere to the Advertising and Sponsorship Code issued by OFCOM shall be excluded. Governmental broadcasts or party political broadcasts or other similar public service announcements shall not be considered as Commercials for the purposes of this agreement.</p>
<p>“Commercial Sharing”</p>	<p>shall mean the sharing of Commercials as set out in clauses 2.2 and 2.3.</p>

“Commercial Sharing Uplift”	The additional fee of 10% of the Fee (adjusted for RPI annually as set out in clause 5.5) to be paid by the Licensee in respect of any Producing Station which participates in Commercial Sharing.
“Contract Year”	shall mean a period of twelve months during the Term commencing on 1 st October in any calendar year.
“Digital Station”	shall mean any station which has a National or Local Digital Sound Programme Service licence and which is broadcast other than on an analogue AM/FM frequency, and shall include, but not be limited to DAB, satellite, free view, internet and cable.
“Fee”	shall mean the annual fee (adjusted by RPI annually as set out in clause 5.5) payable by the Licensee, as set out in clause 5.2.
“Licensed Station”	shall mean any of the Licensee’s radio stations which have been notified by the Licensee at the commencement of the Term or as amended by the Licensee in accordance with clause 7.3 thereafter holding either a National or Local Analogue licence, a National or Local Digital Sound Programme Service licence or a Radio Licensable Content Service licence from OFCOM. The Licensed Stations as at the Commencement Date are listed in Schedule One.
“MCPS Production Music Rate Card”	shall mean the rate card for the use of Production Music, published by MCPS.
“Musical Work”	means any work consisting of music and any lyrics or words written to be used with the music (if applicable). It includes any part of such a work.
“Notification of Authorised Producer Form”	shall be the form as set out in Appendix One.
“OFCOM”	shall mean the Office of Communications established under Section 1 of the 2003 Act or any body replacing the same pursuant to an amendment to the 2003 Act or any statute replacing the 2003 Act.

"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 and the Republic of Ireland by MCPS or any member (or any affiliated society or affiliated society member) and where such party has authorised MCPS to license such recordings as so-called production or library music.
"Producing Station"	shall mean any radio station (including a Licensed Station) which supplies a Commercial produced by it to a third party radio station for Broadcast on the third party radio station.
"Production Music"	means Production Music Works and PMSRs.
"Production Music Work"	means any Musical Work: <ul style="list-style-type: none"> (a) embodied on a PMSR; and (b) the copyright in which is owned or controlled in the United Kingdom by MCPS (or an MCPS member or an affiliated society or an affiliated society member).
"Quarter"	means each of the periods from 1 st January to 31 st March, 1 st April to 30 th June, 1 st July to 30 th September and 1 st October to 31 st December throughout the Term.
"Radio Group"	shall mean a Licensed Station and any radio station which is a direct or indirect subsidiary or direct or indirect holding company of the Licensed Station.
"Receiving Station"	shall mean any radio station (including a Licensed Station) which Broadcasts a Commercial produced by and supplied to it by a third party radio station.
"RPI"	shall mean the All Item Retail Price Index that is available from/published every month by the Office for National Statistics (or any successor organisation or governmental department). If such index is no longer published, the parties will use their best endeavours to agree an equivalent.
"Simulcast Service"	shall mean the simultaneous unaltered transmission of a Licensed Station on an

	additional platform and the terms "Simulcast" and "Simulcasting" shall be construed accordingly.
"Split Frequency Service"	shall mean any radio service incorporating AM and FM Licensed Stations.
"Split Frequency Service Uplift"	shall mean the additional fee of 25% of the Fee (adjusted for RPI annually as set out in clause 5.5) to be paid by the Licensee in respect of any Split Frequency Service operated by the Licensee.
"Sponsor"	shall mean 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 any other good consideration for the making of radio programmes and/or pays the Licensee or provides some other good consideration in return for exposure for, or any other form of reference (during and/or closely before and/or after any radio programme) to, the name or trade mark or logo of the third party or any associate thereof or any specific named brands, products or services.
"TSA"	shall mean the Total Survey Area figure, as defined and certified by RAJAR.
"Term"	means the period starting on the Commencement Date and ending on the earlier of: (a) any termination in accordance with Clause 8; and (b) the signature of any further agreement between the parties which is expressed to replace this Agreement.
"2003 Act"	shall mean the Communications Act 2003 as may be amended from time to time

2. Rights Licensed

2.1 Subject to the terms and conditions set out in this Agreement, MCPS hereby grants to the Licensee a non-exclusive licence during the Term to reproduce Production Music in the United Kingdom into Commercials solely for the following purposes:

- (a) the Broadcast in the United Kingdom of the Commercials on a Licensed Station; and
- (b) a Simulcast Service of such Broadcast; and

- (c) the Broadcast on another licensed radio station for the purposes of Commercial Sharing only.
- 2.2 MCPS grants to the Licensee the non-exclusive right during the Term to share Commercials (“Commercial Sharing”) containing Production Music with other licensed radio stations acting in each case as either the Producing Station or as the Receiving Station.
- 2.3 Commercial Sharing as defined above shall be permitted under this Agreement only in the following circumstances:
- (a) both the Producing Station and the Receiving Station holds a valid licence from MCPS under this BR3 licensing scheme; and
 - (b) the Producing Station has paid the Commercial Sharing Uplift. For the avoidance of doubt, where both the Producing Station and the Receiving Station are part of the same Radio Group, the Producing Station shall not be required to pay the Commercial Sharing Uplift; and
 - (c) both the Producing Station and the Receiving Station declare the Commercial as one to which Commercial Sharing applies on the BR3 Format for Electronic Returns as defined in clause 4.2 hereof.
- 2.4 This Agreement covers the reproduction of Production Music into Commercials solely for the purposes set out in clauses 2.1 and 2.2 above. Any other use of Production Music, or the Commercial, is not licensed under this Agreement.

3. Extent of the Licence

- 3.1 Although the making and supply of Commercials is authorised hereunder for the purpose of Broadcasting, this is a reproduction licence only and the act of Broadcasting (whether by wire or wireless means) of Production Music within the Commercial is not licensed hereunder.
- 3.2 This Agreement does not cover the reproduction of Production Music into Commercials for the purposes of Broadcast (or any other communication to the public) on a pay-per-view service, video-on-demand service or by means of the Internet (other than as part of a Simulcast Service as defined herein).
- 3.3 This Agreement does not extend to or permit the inclusion of any adaptation of any Production Music unless the relevant MCPS member has expressly consented thereto for the purposes of the Agreement. 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
- (d) reproduction in the form of a sample of the music and/or lyrics; or
- (e) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
- (f) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

3.4 In the event that any of the conditions for Commercial Sharing as set out in clause 2.3 are not fulfilled, the licences contained in this Agreement shall not apply to the use by the Producing Station and the Receiving Station of the Commercial, EXCEPT THAT if a Licensed Station wishes to broadcast a Commercial produced by and supplied to it by a third party radio station MCPS shall be deemed to have given consent on its standard terms and conditions under the MCPS Production Music Rate Card if the Licensee notifies MCPS prior to the broadcast of the Commercial and if the Licensee pays the fees due under the MCPS Production Music Rate Card at the time such fees are due.

3.5 All rights not specifically granted under this Agreement are hereby reserved, and the parties hereby agree that no implied licences are to be construed hereunder.

3.6 The provisions of this Agreement authorise the making of any Commercial for the sole purposes set out above during the Term and by an Authorised Producer only. In the event that a copy of the Commercial or the soundtrack thereof is made or used in any way for any other purpose (including, without limitation, retail sale, rental and/or lending, cinematic performance) whether by the Licensee to this Agreement or any other party then that copy shall not be licensed under this Agreement. MCPS reserves all rights including those of its members and the affiliated societies and the affiliated society members to take action in relation to any such copy.

3.7 This Agreement only covers Production Music. It does not extend to other rights or interests, including (by way of example only), Musical Works other than Production Music Works, sound recordings other than PMSRs, films, dramatic works, performers' rights, moral rights or rights in performances. MCPS, for and on behalf of its members, warrants that all the necessary performers' waivers and consents have been obtained from the relevant performers insofar as their performances are embodied on PMSRs.

3.8 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work (or part thereof) which is not a Production Music Work, and nothing in this Agreement applies in relation to any

such Musical Work or sound recording or film reproducing any such Musical Work.

3.9 Nothing in this Agreement affects the moral rights of authors of Production Music Works whether subsisting in the United Kingdom and the Republic of Ireland or any other territory.

4. Music Usage Reporting

4.1 There is no restriction to the amount of Production Music that may be reproduced into a Commercial under this Agreement.

4.2 The Licensee must submit a full set of returns accurately completed for all Commercials produced under this Agreement including full and accurate details of all Production Music copied into each Commercial separately in respect of each quarter of the Term in the format set out in Schedule Two of this Agreement ("BR3 Format for Electronic Returns"). All the fields in the BR3 Format for Electronic Returns are mandatory and must be completed.

4.3 The Licensee shall submit each quarterly return to MCPS no later than 28 days after the end of the relevant Quarter.

4.4 MCPS shall have the right to reject any quarterly return and the Licensee shall be required to re-submit the return whenever this is requested by MCPS, if in MCPS's reasonable opinion any information contained therein appears to be in any way incomplete. For the purposes of determining the date on which returns have been correctly submitted for the operation of clause 4.7 below, any quarterly return which has been rejected by MCPS shall be deemed not to have been so supplied, PROVIDED THAT MCPS informed the Licensee of the rejection not later than 14 days following receipt of the defective quarterly return by MCPS.

4.5 This Clause shall apply separately upon each and every occasion where a required quarterly return has not been submitted to MCPS within two calendar months of the due date under clause 4.3 above. Without prejudice to the right of MCPS to terminate the agreement under clause 9, the Licensee shall be required to cover the additional administrative cost incurred by MCPS in relation to pursuing delivery of the late return from the Licensee. For this purpose the additional administrative cost to MCPS is deemed to be a flat fee of £50 plus VAT per calendar month in respect of each late quarterly return. MCPS shall invoice the Licensee for this amount immediately following the date that any particular quarterly return has become more than two months late, and the Licensee shall be required to pay the invoice within twenty-eight days of receipt. Interest shall be payable on such invoices in accordance with clause 6.3 of this Agreement.

4.6 For the avoidance of doubt: -

(a) more than one fee might be payable under clause 4.5 in relation to any one Quarter if (by way of example only) the return is delivered late and is then incomplete; and

(b) the fee is additional to any interest payable under clause 6.3

4.7 The Licensee shall provide the quarterly return electronically to MCPS unless the Licensee has confirmed specifically that it does not have access to any facility to effect this in the manner required by MCPS, and MCPS have consented (such consent not to be unreasonably withheld or delayed) to the quarterly return being provided in a different format.

4.8 These reporting requirements may be varied at any time by mutual agreement between the parties.

5. Fees

5.1 In respect of each Licensed Station hereunder, the Licensee shall pay the following fees to MCPS according to the TSA plus the applicable Commercial Sharing Uplift and/or Split Frequency Service Uplift as set out in clause 5.2 below.

5.2 In respect of Contract Year 1st October 2007 to 30th September 2008, the Fee payable in respect of the relevant TSA bands is as follows:

TSA (adult)	2006 / 2007 Fee	Split Frequency Service Uplift (analogue)	Commercial Sharing Uplift
0 – 100,000 or Digital Station	£2,517	+ £629	+ £252
100,001 – 500,000	£3,992	+ £998	+ £399
500,001 – 1,000,000	£5,748	+ £1,437	+ £575
1,000,001 – 2,000,000	£7,663	+ £1,916	+ £766
2,000,001 – 5,000,000	£8,623	+ £2,156	+ £862
5,000,001 – 10,000,000 +	£9,580	+ £2,395	+ £958

5.3 Fees and all uplifts set out in the table at 5.2 above will be increased in respect of each Contract Year by RPI using the annual change in RPI for the period ending on 30th June prior to the commencement of the relevant Contract Year.

5.4 MCPS will communicate to the Licensee the Fee and any changes to the TSA bands for each Contract Year in September of the previous Contract Year.

5.5 All payments referred to in this Agreement are subject to VAT.

6. Payment

- 6.1 Invoices in respect of the Fees payable under clause 5 above will be issued by MCPS to the Licensee every six months during the Term in respect of the six month periods commencing on 1st October and 1st April in each Contract Year.
- 6.2 Each invoice will be issued 28 days before the start of the period to which it relates. All invoices are due for payment in full within 28 days of the date of issue (the "Due Date").
- 6.3 Without imposing any obligation on MCPS to accept late payment and without prejudice to any rights and remedies MCPS may have by virtue of any failure of the Licensee to pay the licence fees specified in this Agreement by the Due Date, MCPS will be entitled to charge interest on the licence fees from the Due Dates at 3% above the National Westminster Bank base rate. MCPS shall in addition be entitled to charge interest at the same rate where payment is later than it would otherwise be as a result of the Licensee failing to deliver full and accurate reporting information in accordance with the timescales set out in clause 4 above.

7. Notices

- 7.1 The Licensee must inform MCPS in writing if it wishes to notify a new Authorised Producer under this Agreement at least 14 Business Days before it wishes the change to take effect, by forwarding to MCPS the Notification of Authorised Producer Form as set out in Appendix One. Where notification is not given to MCPS in accordance with this clause 7.1, MCPS will in its absolute discretion be entitled to regard the change in Authorised Producer as taking place effective only from 14 Business Days from when such written notice was actually received by MCPS.
- 7.2 If the Licensee ceases ownership of one or more Licensed Stations during the Term, such Licensed Station shall automatically cease to be a Licensed Station under this Agreement. Any refund of the fee payable by the Licensee as a result of such change will be refunded from the date on which ownership of such Licensed Station ceases or the date on which the Licensee notifies MCPS of this fact, whichever is the later.
- 7.3 If the Licensee acquires an existing radio broadcaster or launches a new Licensed Station during the Term, MCPS must receive written notification before the station is acquired or, in the case of a new station, before transmissions commence. Fees will be based on that station's existing Annual Average RAJAR Listening Hours. The addition shall be subject to the written consent of MCPS which shall not be unreasonably withheld but which shall in any event be subject to agreement as to the increase in fees involved.

8. Audit

- 8.1 The Licensee shall keep and make available for inspection upon reasonable notice, both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to the use of all Production Music in Commercials, together with any supporting documentation relating thereto.
- 8.2 For the purposes of this clause 8, the Licensee shall allow upon reasonable notice access to its premises to inspect Commercial production and broadcast records, but not more than once per annum. The duly authorised representatives of MCPS shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement.
- 8.3 If tests under any audit and verification process indicate under-payment of the correct Fee during the period for which monitoring has been carried out by or on behalf of MCPS, then, without prejudice to MCPS's other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to the Licensors to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of National Westminster Bank Plc).
- 8.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct fees during the period for which monitoring has been carried out by or on behalf of MCPS and/or (b) failures to report correctly amounting to at least 7.5% of the music usage during the period monitored by or on behalf of MCPS, then, without prejudice to MCPS's other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 8.3, MCPS's reasonable costs of such audit and verification within 28 days of receipt of MCPS's VAT invoice therefore.
- 8.5 For the avoidance of doubt, books, records and accounting records as referred to in clauses 8.1 and 8.2 above shall be deemed to include data, information and records held on computers.

9. Termination of Agreement

- 9.1 This Agreement may be terminated by either party by giving three months written notice to the other party, such notice not to be given on behalf of the Licensee before 1 July 2009, and such notice to be given so that the termination date will be the last Business Day of the relevant Quarter.
- 9.2 Either party shall have the right to terminate this Agreement immediately by notice to the other party if:

- (a) the other commits a material breach of this Agreement which is not capable of remedy; or
- (b) the other commits a material breach of this Agreement which is capable of remedy but which has not been so remedied within 14 days of notice thereof; or
- (c) the other is dissolved, becomes insolvent or otherwise unable to pay its debts, ceases to trade, has a trustee, administrator or receiver appointed, has a resolution passed for its winding up or liquidation or makes a general assignment, arrangement or composition with or for the benefit of its creditors.

9.3 Where MCPS terminates this Agreement as a result of the non-payment of Fees by the Licensee, any Commercials made during the period in which the Fees were unpaid (whether in full or in part) shall be deemed to be unlicensed.

9.4 Should the Licensee wish to reproduce Production Music into Commercials made following the date of termination under clauses 9.1 or 9.3 above, it will need to seek individual licences from MCPS for such exploitation.

10. Miscellaneous

10.1 The licences granted under this Agreement are personal to the Licensee and the Licensee shall not assign, sub-license, charge or deal in any other manner with this Agreement or otherwise transfer any of its rights or obligations under this Agreement (other than to an Authorised Producer and/or for the purposes of Commercial Sharing) in whole or in part without the prior written consent of MCPS.

10.2 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise of any other rights and remedies.

10.3 No waiver shall be binding or effectual unless expressed in writing and signed by the party giving it and such waiver shall be effective only in the specific instance and for the purpose given.

10.4 If this Agreement creates any rights which would in the absence of this provision be enforceable by any person not a party to this Agreement, such rights shall not be enforceable, and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

10.5 This Agreement shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

10.6 This Agreement sets forth the entire agreement of the parties in relation to the subject matter hereof and each of the parties hereto acknowledges that it has not entered into this Agreement in reliance on

any representation or term not contained in this Agreement. This Agreement shall not be modified or varied except by a written instrument signed by the parties hereto.

- 10.7 The headings to the clauses in this Agreement are included for ease of reference only and are not part of this Agreement and are not to be taken into account in its construction or for the purposes of interpretation.
- 10.8 The parties respectively shall and shall procure that any other necessary party within its control shall execute all such documents and do all such acts and things as may reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.
- 10.9 If any provision of the Agreement is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions which shall continue in full force and effect.
- 10.10 Neither party to this Agreement shall be liable to the other party for any failure to perform any or all of its obligations hereunder is due to or attributable to acts, events, omissions or accidents beyond the reasonable control of the defaulting party, including a so-called act of God, fire, lockout, strike or other official labour dispute, union problem, riot or civil commotion, terrorism, satellite failure, failure of technical facilities not within the reasonable control of the defaulting party, act of public enemy, enactment, rule or order or act of government, such act or event being deemed an event of force majeure. Each party to this Agreement undertakes to use all reasonable endeavours to notify the other party as soon as practicable of the incidence and termination of any event of force majeure.

SCHEDULE ONE
LICENSED STATIONS

APPENDIX ONE

NOTIFICATION OF AUTHORISED PRODUCER FORM