

THE
DUAL
MUSIC
LICENCE

General Terms and Conditions Applicable to the Dual Copyright Music Licence Contract and Related IMRO and PPI Tariffs

1 January 2019



1. Introduction

- (a) These General Terms and Conditions Applicable to the Dual Copyright Music Licence Contract and Related IMRO and PPI Tariffs (the “Dual Licence General Terms”) are hereby incorporated into and form an integral part of the Dual Copyright Music Licence Contract between the Licensee, IMRO and PPI (the “Dual Licence Contract”). A breach of any term or condition of these Dual Licence General Terms shall constitute a breach of this Dual Licence Contract.
- (b) The Licensee acknowledges that this Dual Licence Contract, including the main body of this Dual Licence Contract, these Dual Licence General Terms and the IMRO tariffs and PPI tariffs are subject to change from time-to-time. IMRO shall notify the Licensee of any changes to this Dual Licence Contract by sending such notification to the Licensee at either its last known postal or email address or by sending an SMS message to the Licensee’s last known mobile phone number. Notwithstanding the foregoing: (i) PPI (and not IMRO) shall notify the Licensee of any changes to the PPI tariffs; and (ii) neither IMRO nor PPI is required to provide notice of any changes in the IMRO tariffs or PPI tariffs that are due to CPI inflation adjustments as set forth in the relevant tariffs. Such changes shall take effect on the date specified in IMRO’s notice to the Licensee. Subject to the foregoing, the Licensee agrees to be bound by the version of this Dual Licence Contract in force at

any given time. Nothing herein shall restrict the Licensee’s rights under the Copyright and Related Rights Act 2000.

- (c) In the event of any conflict between the constituent parts of this Dual Licence Contract, the descending order of precedence shall be as follows: (i) the main body of this Dual Licence Contract; (ii) the relevant IMRO tariff or PPI tariff; and (iii) these Dual Licence General Terms.
- (d) Any capitalised terms used but not defined herein, shall have the applicable meaning set forth in the main body of this Dual Licence Contract, the relevant IMRO tariff or the relevant PPI tariff.

2. Tariffs

- (a) IMRO and PPI each publish their respective tariffs for general information purposes. The appropriate tariff or rate of Royalty applicable to a music user will be determined by IMRO (acting on its own behalf and also in its capacity as PPI’s agent in the case of the administration of the PPI tariffs which are set by PPI alone) on the basis of all relevant circumstances. The IMRO tariffs are published through the Patents Office and may be obtained at www.imro.ie/music-users/imro-ppi-tariffs/ or upon request from IMRO. The PPI tariffs are published through the Patents Office and may be obtained at www.ppimusic.ie and www.imro.ie/music-users/imro-ppi-tariffs/ or upon request from PPI or IMRO. The IMRO tariffs and the PPI tariffs are hereby incorporated into and form an integral part of this Dual Licence Contract.

(b) An applicant for a licence and all Licensees are required to give such information as may be necessary to enable IMRO to decide which IMRO tariff and/or PPI tariff is applicable and to determine the initial and continuing Royalties payable. The Licensee agrees to provide to IMRO the details of anticipated and actual use of Copyright Music at each location at which the Licensee is making Copyright Music available to the public, in the form required by IMRO from time-to-time during the Term of this Dual Licence Contact. If the information provided is inaccurate and leads to the Licensee being undercharged in respect of IMRO royalties, the IMRO Higher Royalty tariff for all undeclared performances (if applicable) will apply to the undeclared music usage.

3. Playlist Returns

(a) The Licensee shall, within thirty (30) calendar days of a request to do so, supply to IMRO by post, on the forms (electronic or otherwise) obtainable from IMRO, a list of all musical works and sound recordings, whether published or in manuscript, performed vocally, instrumentally, mechanically or digitally at the Premises, with the names of the composer, arranger, publisher and record producer of each such work and recording, and the number of times each has been performed (each, a "Playlist Return"), so as to assist IMRO in calculating the Royalties due under the applicable IMRO tariffs and PPI tariffs, and to allocate such Royalties.

(b) Such Playlist Returns are to be made at such intervals specified by IMRO. If performances by CD/record players, tape machines and/or any other mechanical or digital means are covered by an IMRO licence or PPI licence, it shall be sufficient compliance with this condition to supply to IMRO an initial list of CDs/records, tapes and/or recordings in use, giving the title of each musical work recorded, the name of the composer (where this is shown on the CD/record or tape label) and the CD/record or tape make and number, with supplementary lists from time to time of any additions to or deletions from that list.

(c) No Playlist Return is required of any musical work or sound recording in radio and/or television programmes whose broadcast and/or cable transmission may be covered by a separate IMRO licence and/or PPI licence with the broadcaster and/or cable operator.

4. Additional Royalty Terms and Conditions

(a) Royalties consist of:

- (i) **"Annual Royalties"** meaning Royalties calculated on an annual basis; and
- (ii) **"Unit Royalties"** meaning Royalties that are calculated on a per session (or unit) basis;

in each case as specified in the relevant IMRO tariff or PPI tariff.

(b) The Licensee shall pay Value Added Tax on all Royalties.

- (c) All Royalties are payable on the applicable due date specified in this Dual Licence Contract.
- (d) Where IMRO, on its own behalf and / or as an agent of PPI, issues a licence for an occasional performance or series of performances, the Royalties due under that licence are due and payable against IMRO's invoice, or as otherwise stipulated by IMRO.
- (e) All Royalties are charged at the Royalty rate specified in the relevant tariff in force at the beginning of the Licence Year for which they are due or, in the case of a licence for an occasional performance, on the date of the performance which it covers.
- (f) If pursuant to any applicable provision of this Dual Licence Contract, any Royalty due is changed (eg, through either a change of tariff or a change in the Performance Particulars) on a date other than the Renewal Date: (i) IMRO (or as applicable PPI) shall notify the Licensee of such change pursuant to section 1(b) above; and (ii) the Licensee shall immediately pay IMRO any additional Royalties due. In the event of an overpayment by the Licensee (unless a refund is requested by the Licensee and payable in accordance with this Dual Licence Contract), the amount of the reduction in the Royalties shall be credited against any Royalties due from the Licensee for the next Licence Year.

5. Receipts

- (a) To the extent an IMRO tariff or PPI tariff requires the Licensee to provide Receipts to ensure the correct calculation of Royalties,

and the Licensee has paid an estimated amount of Royalties on account and in advance, the amount of such Royalties shall be adjusted in accordance with the Receipts when provided by the Licensee for the relevant Licence Year. In addition, the Licensee shall pay Royalties on account and in advance for the next Licence Year on the basis of those Receipts. For purposes of this section 5, "Receipts" means box office/admission receipts, z reads, fire capacity certificates or other comparable financial/attendance data.

- (b) If the Licensee fails to inform IMRO of a change in Performance Particulars pursuant to section 8.2 of the main body of this Dual Licence Contract, or fails to provide Receipts pursuant to section 5(a) above, IMRO shall be entitled to estimate the relevant receipts and submit an invoice for Royalties in accordance with that estimate. Any such estimate shall be adjusted to conform to the actual figures if and when the Licensee has furnished the requisite Receipts; provided however, that no adjustment will take place more than thirty (30) days after the end of the Licence Year to which such Receipts pertain

6. Licence Exclusions

No IMRO licence granted under this Dual Licence Contract shall as applicable, extend to or authorise:

- (a) the performance of a dramatico-musical work whether staged or otherwise unless such performance is given by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or

similar premises or by means of a radio or television set used for the purpose of giving a public performance of broadcast programmes. A dramatico-musical work means an opera, operetta, musical play, revue or pantomime insofar as it consists of words and music written expressly therefor;

- (b) the performance of a dramatic excerpt from a dramatico-musical work unless performed by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a radio or television set used for the purpose of giving a public performance of broadcast programmes. An excerpt will be deemed to be dramatic if it is accompanied by any dramatic action whether danced, acted or mimed and thereby (and/or through the use of costume, scenery or other visual effects) gives a visual impression of or otherwise portrays the writer's original concept of the work from which the excerpt is taken;
- (c) the performance of a non-dramatic excerpt or excerpts from a dramatico-musical work however performed:
 - (i) where the total duration of the excerpt or excerpts in the course of the same programme is more than 25 minutes; and/or
 - (ii) where the excerpt or excerpts are a potted version of the work; and/or
 - (iii) where the excerpt or excerpts are or cover a complete act of the work;
- (d) the performance of the whole or any part of any music or any words associated therewith composed or used for a ballet

if accompanied by a visual representation of that ballet or part of it, unless the performance takes place by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a television set used for the purpose of giving a public performance of broadcast programmes;

- (e) the performance of any musical work specially written for a son-et-lumiere production when performed in or in conjunction with that production;
- (f) the performance of any musical work (which is not itself a dramatico-musical work or part of a dramatico-musical work) specially written for a production of a dramatic work in a theatre when performed in, or in conjunction with that dramatic work;
- (g) the performance of any musical work accompanied by words other than those published or otherwise associated with it by the copyright owner;
- (h) the performance of any work in any altered or re-arranged form with such costume or action as to produce parodied or burlesque effects;
- (i) the performance of any work adapted to a dramatic form;
- (j) the broadcasting or other transmission of any performance or causing any performance to be audible beyond the precincts of the premises (unless such acts are specifically included in the performance particulars); or

(k) the performance by means of any disc, cinematograph film, tape or other recording of any musical work, if the making of such recording infringed the copyright in that work.

No PPI licence granted under this Dual Licence Contract shall as applicable, extend to or authorise:

- (l) the making of copies of sound recordings (e.g. the copying of CDs onto music systems). If you use a music supply service, you are responsible for ensuring that the service is licensed to copy recorded music;
- (m) the mixing or editing or tampering with any sound recording; or
- (n) the playing in public of an infringing copy of a sound recording such as a bootleg, counterfeit or pirated copy of a sound recording.

7. Data Protection

- (a) For purposes of this section 7, the terms “data subject”, “joint controller”, “data controller”, “personal data” and “processing” have the meanings ascribed to them in the Data Protection Acts 1988 to 2018 (as amended, superseded or replaced from time to time) and the General Data Protection Regulation (together referred to herein as the **“DPA”**).
- (b) Some information that IMRO obtains relating to this Dual Licence Contract, or that a Licensee otherwise provides to IMRO, may comprise personal data. For the purposes of the DPA:

- IMRO is the data controller where it processes personal data on its own behalf as data controller for its own business purposes in relation to this Licence Contract;, including administering the Licensee’s IMRO licence, collecting IMRO licence Royalties, carrying out IMRO’s obligations and enforcing and defending its rights under this Dual Licence Contract;
- IMRO is joint controller with PPI in respect of personal data for which the means and purpose of processing is jointly determined by IMRO and PPI;
- IMRO acts as the Data Processor in its capacity as agent for PPI (and on behalf of PPI as data controller) where it processes personal data on behalf of PPI to administer the Licensee’s PPI licence, collect PPI licence Royalties, carry out PPI’s obligations and enforce and defend PPI’s rights under this Dual Licence Contract.

- (c) IMRO collect and processes this data to manage and administer the relationship between the Licensee on the one hand and, IMRO and PPI on the other.

The legal grounds for collecting your personal data are:

- to enable IMRO and PPI perform the Dual Licence Contract with you;
- to comply with IMRO and PPI’s obligations as registered Licensing Bodies under the Copyright and Related Rights Acts;
- to carry out IMRO and PPI’s obligations as Collective Management Organisations under the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016;

- to enable IMRO to perform its contractual obligations as agent for PPI;
- to further IMRO and PPI's legitimate business interests where appropriate and where such interests are not overridden by your interests or fundamental rights and freedoms.

If you do not provide the personal data which we need or help us keep your data up to date when requested, we may not be in a position to enter into/fulfil this Dual Licence Contract. As a result, you will not be in a position to use copyright music in your business.

- (d) IMRO and PPI do not transfer your personal data outside the EEA.
- (e) The time periods for which IMRO and PPI retain your Personal Data depend on the purposes for which IMRO and PPI use it. IMRO and PPI will keep your Personal Data for no longer than is required or permitted. In the case of this Dual Music Dual Licence Contract the data will be held by IMRO and PPI for the duration of your licence and for a further six years thereafter, to reflect the six year statute of limitations for contractual claims in Ireland. A copy of our Data Retention Policies is available on request.
- (f) You have the following rights in relation to your Personal data which is held by IMRO or PPI ("we" and "us"):
- the right to access the personal data we hold about you;
 - the right to require us to rectify any inaccurate personal data about you without undue delay;

- the right to have us erase any personal data we hold about you in circumstances such as where it is no longer necessary for us to hold the information for your use of our services;
- if you have given and now wish to withdraw your consent to the processing;
- the right to object to us processing personal data about you for direct marketing;
- the right to ask us to provide your information to you in a portable format or, where technically feasible, for us to port that information to another service provider provided it does not result in a disclosure of personal data relating to other people;
- the right to request a restriction of the processing of your personal data; and
- the right to lodge a complaint with the Data Protection Commissioner.

Where our processing of your personal data is based on your consent to such processing, you have the right to withdraw that consent at any time but any processing that we have carried out before you withdrew your consent remains lawful.

If you wish to avail of these rights, a request must be submitted in writing to IMRO at dpo@imro.ie or to PPI at GDPR@pimusic.ie In order to protect your privacy, you may be asked to provide suitable proof of identification before IMRO and/or PPI can process your request.

For further information on the data IMRO and PPI collect and process please see IMRO's privacy statement at www.imro.ie/privacy-statement and PPI's privacy policy at www.ppimusic.ie/about-ppi/privacy-policy-Licensees.

Information on IMRO's Data Protection Officer (DPO) is available on request and IMRO's DPO may be contacted at dpo@imro.ie. Information on PPI's Data Protection Contact is available on request from PPI and PPI's Data Protection Contact may be contacted at GDPR@ppimusic.ie.

- (g) IMRO (and PPI) may also use personal data to respond to any queries or other communications that the Licensee submits to IMRO (or PPI), to notify the Licensee about changes to the IMRO tariffs or PPI tariffs, and for direct marketing purposes where the Licensee has opted in to receive information in relation to our services and our organisation.
- (h) The IMRO Privacy Statement (which is available on IMRO's website at www.imro.ie/privacy-statement sets out further details of how IMRO may use the Licensee's personal data (on its own behalf or on behalf of PPI, as applicable). The PPI Privacy Statement (which is available on PPI's website at www.ppimusic.ie/about-ppi/privacy-policy-Licensees) provides details on how PPI uses Licensee personal data. These Privacy Statements, as amended from time to time, are hereby incorporated into this Dual Licence Contract and form an integral part of it, so please read and familiarise yourself with their terms.

- (i) Please direct any questions regarding IMRO's processing of personal data (on its own behalf or on behalf of PPI) to IMRO at Irish Music Rights Organisation CLG, Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2 or by email to dpo@imro.ie, in each case marked for the attention of the Data Protection Officer - IMRO.
- (j) Please direct any questions regarding PPI's processing of personal data to PPI at 63 Patrick Street, Dun Laoghaire, Co Dublin or by email to GDPR@ppimusic.ie, in each case marked for the attention of the Data Protection Contact - PPI.

8. General

- (a) Change of Address. The Licensee shall give prompt written notice to IMRO of any change in the physical or email address of the Licensee or the Premises or of any change in the name of the Premises.
- (b) Severability. The benefits of each of the provisions set out in this Dual Licence Contract, and each and every part of each such provision, shall be deemed to be separate and severable and enforceable accordingly. While any term or condition in this Dual Licence Contract (including without limitation, any restrictions contained in this Dual Licence Contract) are considered by the parties to be reasonable in all the circumstances, it is hereby agreed that in the event of any provision of this Dual Licence Contract being found to be void or otherwise unenforceable, but such provision nonetheless being

valid if some part thereof were deleted or if the period or area of application were reduced or the range of activities were limited, such provision shall apply with such modification and shall be given effect to in such modified form as may be necessary to make it valid and effective.

- (c) **Waiver.** No relaxation, forbearance or delay by IMRO or PPI in enforcing any provision of this Dual Licence Contract, or in exercising any right or remedy to which it is entitled under this Dual Licence Contract, shall constitute a waiver or prejudice, affect or restrict the rights and powers of IMRO or PPI. No waiver of any provision of this Dual Licence Contract by IMRO or PPI shall be effective unless made in writing and signed by an authorised representative of IMRO or PPI. The waiver of any breach of this Dual Licence Contract by IMRO or PPI shall not constitute a waiver of any subsequent or other breach.
- (d) **No Assignment.** The Licensee shall not assign this Dual Licence Contract (or part with the possession of the licences), or delegate any of its rights or obligations under this Dual Licence Contract, without in each and every case, the express prior written consent of an authorised representative of IMRO.
- (e) **IMRO's Right of Entry.** IMRO, through its auditor or representative, shall have the right of access during normal business hours to the Premises licensed by IMRO (both in its own right and as PPI's agent), solely for the purpose of checking the Performance Particulars on which the Royalties payable are calculated, for which

purpose the Licensee shall make available all necessary personnel and information during such inspection.

- (f) **IMRO's Right of Audit.** IMRO shall at its request and at its expense, on reasonable written notice to the Licensee, be entitled to appoint a third party selected by IMRO (the "Auditor") to inspect during normal business hours, such of the relevant books, records, VAT returns and other information (to include both hard copy and soft copy files and documents) (collectively "Books and Records") of the Licensee as IMRO and the Auditor deem necessary for the purpose of verification of the Performance Particulars and other information upon which the Royalties are calculated, and for the purpose of otherwise verifying whether the conduct of the Licensee is in accordance with the terms of this Dual Licence Contract.

The Licensee and the Auditor shall enter into a Non-Disclosure Agreement, which in addition to protecting the confidentiality of the Books and Records, shall specify that:

- provided there is not an under-declaration by the Licensee of greater than 5% of the correct Royalties payable for the period audited, the only disclosure requirement of the Auditor and the Licensee to IMRO in respect of the audit shall be the amount of and reason for the under-declaration, and
- if there is an under-declaration by the Licensee of greater than 5% of the correct Royalties payable for the period audited, the Auditor

shall be entitled to make full disclosure to IMRO of the Auditor's audit records and related documents, including copies of all relevant Books and Record, provided however that IMRO shall only be permitted to use such information for purposes of enforcing its rights under this Dual Licence Contract.

In addition, if on conducting any such audit, it is revealed that an under-declaration by the Licensee of greater than 7% of the correct Royalties payable for the period audited has occurred solely as a result of the Licensee's under-declaration of Receipts pursuant to section 5 above, all IMRO's costs of the audit will be borne by the Licensee.

In all cases where an audit reveals an under-declaration by the Licensee of Royalties, of whatever amount and for whatever reason, the Licensee shall promptly pay IMRO the additional Royalties calculated by IMRO (at the applicable higher Royalty rate(s)) that are due based on the audited figures and Performance Particulars.

The Licensee shall cooperate with the Auditor in connection with any audit conducted pursuant to the section 8(f).

- (g) Governing Law and Jurisdiction. This Dual Licence Contract shall be governed by and construed in accordance with the laws of Ireland. The parties hereby agree to submit to the exclusive jurisdiction of the Irish courts seated in Dublin, irrespective of the place in which this Dual Licence Contract is executed or deemed to be executed.

- (h) Survival. Those terms and conditions which by their nature are intended to survive the termination of this Dual Licence Contract (irrespective of the reason for such termination) shall so survive, including without limitation, those terms applicable to the following matters: IMRO and PPI's reservation of their respective copyrights; Royalty and related terms to the extent Royalties remain outstanding as of termination; data protection; IMRO's rights of entry and audit; and governing law and jurisdiction.

More Information

Please visit our Dual Licence website at www.imro.ie/duallicence or contact our Customer Services Team at 1800 661 030 or email customerfirst@imro.ie and we will be happy to answer your queries.

Web

www.imro.ie/duallicence

Phone

1800 661 030

Email

customerfirst@imro.ie