

Specimen Agreement - Independent Commercial Radio

AN AGREEMENT made the _____ day of _____ 2010
BETWEEN (1) IRISH MUSIC RIGHTS ORGANISATION LIMITED whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2 ("IMRO") and (2)[insert name], whose registered office is at [insert address] , ("the Licensee")

WHEREAS:

- A. The Licensee is a "sound broadcasting contractor" within the meaning of section 4(2)(a) of the Radio and Television Act 1988
- B. The Licensee wishes to broadcast musical works and words associated therewith in the repertoire of IMRO (as hereinafter defined)

NOW IT IS HEREBY AGREED as follows:-

1. In this agreement, unless the context otherwise requires:-
 - (a) "copyright owner" shall mean in respect of any act in relation to a musical work, or words associated therewith, the person in whom for the time being is vested the right to authorise other persons to do that act.
 - (b) "dramatico-musical work" shall mean an opera, operetta, musical play, revue or pantomime, insofar as it consists of words and music written expressly therefor.
 - (c) "licence year" shall mean a period of 12 months beginning on 1st January and any subsequent anniversary thereof.
 - (d) "music use" shall mean the proportion of total broadcasting time occupied by the broadcasting of music (whether in the repertoire of IMRO or not) in any licence year, such proportion being calculated by IMRO by reference to programme logs required to be kept by the Independent Radio and Television Commission for the hours between 7.00 am and 1.00 am on up to four occasions randomly selected by IMRO in that licence year.
 - (e)
 - (i) "net advertising revenue" shall mean the gross advertising revenue of the Licensee less only any advertising agency, selling agent or Licensee's sales person's commission, wages or other costs calculated by reference to gross advertising revenue but not exceeding the total 20% of such gross advertising revenue.
 - (ii) "net revenue" shall mean the aggregate of net advertising revenue, income received from subscribers, donations and income received for the direct sponsorship of programmes or services less the levy, if any, payable by the Licensee to the Independent Radio & Television Commission or its successor, but only to the extent that the levy and any advertising agency or selling agents' commission does not exceed in total 20% of the gross advertising revenue of the Licensee but excluding revenue and income received from 'off air' promotions, by way of payment for the making of, or recording of, advertisements, to cover the direct costs of sponsored programmes where the costs would not otherwise have been incurred and actual bad debts.

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- (f) "programme" shall mean a programme for broadcasting and includes news material, advertisements, test transmissions, opening and closing routines, and any other material supplied for broadcasting, and any part of such programme.
 - (g) "repertoire of IMRO" shall mean all or any musical works including any words associated therewith in which rights to broadcast and to authorise others to do the same are or may be at any time during the term of this Agreement vested in IMRO in the territory.
 - (h) "the territory" shall mean the Republic of Ireland.
2. Subject to the exemptions and limitations hereinafter set out IMRO hereby grants to the Licensee licence and authority to broadcast the repertoire of IMRO in the territory.
3. (i) The extent of the licence and authority hereby granted is set out in Schedule I hereto which schedule may be amended from time to time pursuant to any change in the extent of rights administered by IMRO. IMRO shall inform the Licensee in advance, if possible, if not as soon as possible thereafter of any change so made and shall supply the Licensee with a revised version of Schedule I.
- (ii) In the event of any substantial amendment to Schedule I either party may require renegotiation in good faith of the terms of this Agreement without prejudice to the rights of either party under Clause 7.
4. In consideration of the licence and authority hereby granted the Licensee shall make payments to IMRO in accordance with the provisions set out in Schedule II hereto. In the event that the Licensee shall be in arrears in respect of any payment due hereunder the Licensee shall pay IMRO interest on the amount overdue calculated on a daily basis at the rate of 6 per cent per annum without prejudice to IMRO's rights of termination under Clause 7.
5. The Licensee shall during the term of this Agreement submit to IMRO details of musical works in accordance with the provisions of Schedule III.
6. Each of the parties hereto shall during the continuance in force of this agreement furnish to the other promptly all information in its possession sufficient to enable either party to protect its interests; and in particular the Licensee shall furnish to IMRO information as to the extent, if any, to which the Licensee derives, through broadcasting, revenue from sources other than advertising, subscribers, donations or sponsorship.
7. If (a) either IMRO or the Licensee goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation)
- (b) any substantial amendment is made to Schedule I by IMRO pursuant to clause 3

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- (c) the Licensee commits any breach of its obligations under this Agreement which is not remedied within 30 days of written notice of the breach requiring its remedy from IMRO.

then, in the case of (a) above, the party which is not so affected and, in the case of (b) above, either party and, in the case of (c) above, IMRO may terminate this Agreement forthwith by notice in writing without prejudice to any right of action accrued prior to the date of termination.

8. A discount of 10% from the actual royalty amount is allowable, provided that all terms set out in Schedule II of this document are complied with.
9. This Agreement shall be deemed to have commenced on xxxxxxxx and shall continue from year to year unless terminated by either party giving to the other 6 calendar months' notice to expire at the end of a 'licence year'.
10. This Agreement is personal to the Licensee. The Licensee shall not be entitled to assign any of its rights and obligations hereunder without the prior written consent of IMRO such consent not to be unreasonably withheld.
11. This Agreement shall be construed under the laws of the Republic of Ireland and both parties hereby submit to the non-exclusive jurisdiction of the Irish courts.

AS WITNESS the hand of _____ for and on behalf of IMRO

and the hand of _____ for and on behalf of the Licensee

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SCHEDULE I

The licence granted in clause 2 of this Agreement shall not extend to nor authorise the broadcast of:-

1. a dramatico-musical work; provided that the rights administered by IMRO do nevertheless include the right to broadcast on radio an excerpt or excerpts from a dramatico-musical work the total duration of which in the course of the same programme does not exceed 25 minutes or 25% of the total length of the work whichever shall be the shorter and which excerpt or excerpts -
 - (i) are not a "potted" version of the work or
 - (ii) are not or do not cover a complete act of the work;
2. words written for the purpose of a commercial advertisement unless such words are sung to music specially written for a commercial advertisement or to non-copyright music and the sung performance has a duration of not less than five seconds;
3. any musical work, with or without associated words by microwave distribution;
4. unless authorised in writing by IMRO or the copyright owner
 - (a) any musical work accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner;
 - (b) any musical work with or without associated words in any adapted or rearranged form in such manner as to produce parodied or burlesqued effects;
5. any musical work, with or without associated words, in a dramatic form. A dramatic form shall be deemed to be created only by performance in a programme in which there is a distinct plot depicted by authors and where the story of the musical work and/or its associated words is woven into and carries forward the plot and its accompanying action. (A dramatic form shall not for example be deemed to be created by the use of costumes, scenery and/or dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph, the word "actors" shall include actor-singers, mimers and/or puppets;
6. any musical work by means of a recording if the making of such recording infringed the copyright in such work;
7. any words associated with a musical work or ballet if unaccompanied by the music thereof.

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SCHEDULE II

1. The royalty payable for any licence year shall be determined as follows:-

- (a) The "base royalty" is first calculated on the assumption that music use is 80% and the base royalty rates are applied to the Licensee's net revenue as follows:-

Net Revenue		Royalty Rate
First	€1,584,627	4.0%
Next	€2,641,101	5.5%
to	€4,225,728	
Next	€4,225,728	6.25%
to	€8,451,456	
Next	€4,225,728	7.5%
to	€12,677,184	
Above	€12,677,184	9.0%

- (b) The actual royalty payable by the Licensee is calculated by multiplying the base royalty determined under paragraph 1(a) with the proportion which the licensee's music use bears to 80%, save that if music use is less than 60% or greater than 85%, music use shall be deemed to be 60% and 85% respectively. By way of examples only:-

Example 1

If the base royalty is €A and music use is 70% then the actual royalty will be

$$\text{€A} \times \frac{70}{80}$$

Example 2

If the base royalty is €B and the music use is 58% then the actual royalty will be

$$\text{€B} \times \frac{60}{80}$$

- (c) The forgoing in the cases outlined below are subject to the following minima fees:

Community/Community of Interest Radio Stations	€568.31 pa
Hospital/Institutional Radio Stations	€ 78.05 pa
Temporary Sound Broadcasting Services	€ 78.05 pa

- (d) The foregoing net revenue tranches and minima are related to the Consumer Price Index of Retail Prices for November 1996, as published in the Irish Statistical Bulletin, and will be adjusted on each subsequent anniversary of that date in proportion to annual changes in that Index and shall be rounded to the nearest Euro in the case of the tranches.

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2. The royalties calculated in accordance with paragraph 1 shall be paid by the Licensee to IMRO in accordance with the following paragraphs of this schedule.
3. The Licensee shall complete a Banker's Direct Debit mandate to effect payment of the royalties and Value Added Tax due.
4. The royalty shall be paid on-account by twelve instalments on the fifteenth day of each month.
5. The amount payable on-account in any licence year shall be calculated in accordance with the following scheme:-

No later than 1st October before the licence year the Licensee shall furnish, and IMRO shall consider, a statement in respect of such licence year which estimates the net revenue of the Licensee. If the Licensee fails to furnish such a statement IMRO shall itself be entitled to estimate the net revenue by a notional increase of 10% over the previous licence year. Such estimate shall be agreed in writing by the parties not later than 15th November in the licence year and in the absence of agreement IMRO may use its own estimate. The Licensee may adjust its estimate of net revenue at the end of the quarters 31st March, 30th June and 30th September. Notification of such adjustments must be received, by IMRO, not later than 1st March, 1st June and 1st September. Such adjusted estimates shall be agreed in writing by the parties no later than 15th April, 15th July or 15th October respectively in the licence year. The music use of the Licensee shall be estimated by assuming music use will be the same as the previous licence year.

Paragraph 1 shall be applied to the estimates of net revenue and music use to establish the on-account payments but the amount of each on-account payment shall not be less than one-twelfth of the annual royalty in respect of the preceding year.

6. Within 60 days after the end of the licence year in question, the Licensee shall furnish to IMRO a statement of the net revenue for such licence year in respect of which estimates had been made under paragraph 5. The Licensee shall promptly answer all reasonable enquiries of IMRO about such a statement.
7. Within 90 days after the end of the licence year, IMRO shall, on the basis of such statement, determine the actual amount of royalty payable in respect of that licence year and shall notify such amount to the Licensee.
8. Within 120 days after the end of the licence year in question, the Licensee shall furnish a statement of net revenue, certified by the Licensee's auditor. IMRO shall be entitled to contact such auditors and such auditors shall promptly answer all reasonable enquiries about such a statement. IMRO may call for certified accounts in respect of the net revenue.
9. If at the end of such licence year it shall be found that there has been an overpayment or underpayment arising from the operation of paragraph 5, IMRO shall, in the case of an overpayment, repay the excess and the Licensee shall, in the case of an underpayment, repay the shortfall, in both cases as if the excess or shortfall had been due in equal instalments on the days set out in paragraph 4 during the licence year in question with interest at an annual rate of 6%.
10. Value Added Tax at the appropriate rate will be due on all payments to be made in accordance with this Schedule.

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SCHEDULE III

1. The Licensee shall supply to IMRO lists identifying, to the reasonable satisfaction of IMRO and in a form acceptable to IMRO, details of musical works (and any words associated therewith) included in its broadcasts.
2. The lists to be supplied under paragraph 1 shall be supplied to IMRO with all reasonable despatch, if practicable within one week, but in no case later than four weeks, from the date of the broadcast in question.
3. **General Music**
Stations are required to provide electronic only reports from the commencement date of this agreement and are required to provide details of all music broadcast.

The details provided should include:

Programme details

- title,
- date of broadcast,
- time of broadcast

and

Music Copyright information per item with minimum information fields as follows:

- Artist/Performer
- Title of song/music
- Composer or Arranger
- Publisher
- Label
- Catalogue No
- Duration

Music played using programme-planning software or an automated system e.g. (Selector, Radiomation, Autotrack, etc.) may be returned using the electronic report generated by that system provided that it meets with IMRO's approval. All non-automated music is to be returned in a mutually agreed electronic file format incorporating both the programme and copyright information as outlined above.

4. **Advertising and Promos**

Stations are required to provide details of all music broadcast within this category in electronic format.

Product, performance and music copyright information is required in a complete performance file for all agency and in-house produced advertisements plus promos and must include the following:

Performance file details must include

- date of transmission
- number of performances of each advert or promo

and must be cross-referenced to Copyright information covering the following fields:

- Product Name (with campaign title, if given)
- Agency (if Agency)

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- Title of song/music
- Composer
- Publisher
- Label
- Catalogue No.
- Duration

Alternatively, the transmission log (containing product and performance details) may appear separately, each item clearly referenced to the relevant copyright details (as listed in the above fields), by means of a Unique ID Number. The electronic file format is to be agreed with IMRO.

5. *Miscellaneous Other (including Station Identification Music, Trails, Jingles etc.)*

Performance and music copyright details required in electronic format as per the following fields:

Performance details: - Transmission date
- Number of Plays

and

Copyright details: - Ident/Trail or Jingle Title
- Composer
- Publisher
- Label
- Catalogue Number
- Duration

The electronic file format is to be agreed with IMRO.

6. The Licensee shall give to IMRO such further information as to its programmes or any such musical works (and any words associated therewith) contained therein as IMRO may from time to time reasonably require and which may be available in the records for the time being normally kept by the Licensee for its own purposes including any recording which may be required to be kept by the Licensee under section 4(8) of the Radio and Television Act 1988.

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Date:

**IRISH MUSIC RIGHTS
ORGANISATION LIMITED**

and

[insert name]

**L I C E N C E
A G R E E M E N T**

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