

**Further Education Printed Music Licence**

Name of Further Education Institution			
Address of Further Education Institution		Name of Further Education Institution contact	
		Telephone number of Further Education Institution contact	
		Email address of Further Education Institution contact	

Signed on behalf of PMLL:

Signature	
Name	

Signed on behalf of Further Education Institution:

Signature	
Name of authorised signatory	
Date	

## Definitions

Arrangement	A Licensed Copy which is a re-configuration of a Musical Work made by a Staff Member, by Students under direction of a Staff Member, or by Students otherwise in the course of their studies as part of a Music Course, that adds or alters aspects such as lyrics, harmony, rhythm, texture and instrumentation, including transcription (which means the direct apportioning of a Musical Work for a different combination of instrument or instruments (including voice) than originally intended by the composer, and/or translation of the lyrics to a Musical Work).
CLA	Copyright Licensing Agency Limited.
Claim Form	A formal notification of a legal claim issued by a court of competent jurisdiction or other statutory body.
Digital Copy	An electronic copy, (a) made by scanning from print or copying from a digital source, entry into music notation software or by any other digital means, in each case from a Printed Music Publication, or (b) which is an Arrangement made in electronic format, or (c) an electronic copy of a handwritten Arrangement.
Excluded Printed Music Publications	Any Printed Music Publication listed as being excluded from this Agreement as shown on PMLL's website.
Further Education	Has the meaning set out in sections 2(3) to (5) of the Education Act 1996.
Further Education Institution	An institution within the further education sector (as such expression is defined in section 91(3) of the Further and Higher Education Act 1992) providing Further Education and whether in the state or independent sector, but excluding, for the avoidance of doubt, any language schools.
Individual Vocal or Individual Instrumental Teaching	The teaching of instrumental or vocal technique and/or interpretative skills as part of a Music Course and documented as such by the Licensee in its course description or similar description of a Music Course.
Licence	Has the meaning given to it in clause 1 below.
Licence Fee	£10 multiplied by the number of Students declared to PMLL by the Licensee in accordance with Clause 6.43, both full and part time.
Licensed Copy	A Digital Copy or a Paper Copy, as appropriate, in either single or multiple format.
Licensee	The Further Education Institution set out on page 1 above in respect of which the Licence Fee has been paid.
Moral Rights	Any and all rights conferred on a writer or author by virtue of Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988 (as amended) and any other moral or like rights arising by virtue of any applicable statute, regulation, rule of law or otherwise in any part of the world.
Music Course	A Further Education course or module offered by the Licensee which: (a) requires the rights licensed in clause 2 below; (b) includes a music element; and (c) comprises a programme of study leading to a relevant Further Education qualification. ;

Musical Anthology	A Printed Music Publication that is a collection of Musical Works.
Musical Work	A musical work that appears within a Printed Music Publication, and which is defined by the Copyright Designs and Patents Act 1988 (as amended) <u>as a musical work, including together with any words or lyrics accompanying such musical work (if applicable).</u>
Paper Copy	A paper copy, (a) made by photocopying from a Printed Music Publication, (b) made by printing out from a Digital Copy, (c) which is a handwritten Arrangement, or (d) which is a photocopy of a handwritten Arrangement.
PMLL	Printed Music Licensing Limited acting as agent and/or licensee for various music publishers.
Printed Music Publications	Published editions being graphic representations of Musical Works, printed either on paper or in digital format, including musical scores and/or parts, diagrammatic representations, tablature and other ways of representing musical sound and any editorial notes, historical notes or commentaries or other text included in the said published editions. For the avoidance of doubt this does not include Excluded Printed Music Publications or sound recordings.
Secure Network	A network (whether a standalone network or a virtual network within the Internet) which is only accessible to those Students and Staff Members who are approved by the Licensee for access to the Secure Network, whose identity is authenticated at the time of login (and periodically thereafter) in a manner consistent with current best practice, and whose conduct is subject to regulation by the Licensee (including, where applicable, Virtual Learning Environments).
Source Copy	The Printed Music Publication from which Licensed Copies are made.
Staff Members	Staff teaching on, or otherwise connected with (for example, library staff) Music Courses.
Students	Further Education students registered on at least one Music Course.
Term	[DATE] – [DATE].
Territory	The United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man
VLE (Virtual Learning Environment)	A web-based platform for the digital aspects of courses of study within an educational institution which presents resources, activities and interactions within a course structure and provide for the different stages of assessment.
Workbook	A Printed Music Publication which consists mainly of Musical Works and extracts therefrom, with accompanying exercises and/or tests designed for educational purposes.

### **Further Education Printed Music Licence – Standard Terms**

This Licence is offered to Further Education Institutions within the Territory for the duration of the Term.

## 1 Contracting Parties

This Agreement (the "Licence") records the standard terms on which PMLL grants a licence to Further Education Institutions in the Territory.

## 2 Licence

Subject to the terms and conditions set out in this Licence, including the limitations and exclusions set out in Clause 4 below, and in consideration of and subject to the payment of the Licence Fee, the Licensee is granted the following non-exclusive rights, exercisable during the Term in the Territory:-

- a) to make, or permit Staff Members to make, Licensed Copies;
- b) to distribute, and to permit the distribution of, such Licensed Copies to Students and Staff Members; and
- c) the making of Arrangements by Staff Members or Students solely for pedagogic purposes,

in each case solely for use by Students and Staff Members within Music Courses.

## 3 Payment and Licensee Obligations

### 3.1 Payment

The Licence Fee, together with VAT thereon, is payable by the Licensee to PMLL within 30 days of receipt of an invoice from PMLL. PMLL reserves the right to charge interest on any late payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

### 3.2 Credit

With the exception of Arrangements, for which the credit is set out in Clause 4.7(h), all Licensed Copies made under this Licence must be annotated as follows:

"Copy made on [date] only for use in connection with [~~name of course~~ name] under the FEPML held by [name of Further Education Institution]."

## 4 Limitations and Exclusions

- 4.1 Licensed Copies shall only be made by Staff Members and shall not be made by Students.
- 4.2 The making of Licensed Copies shall not directly or indirectly substitute for the purchase of Printed Music Publications or for the commissioning, reproduction, hire or any other use of Printed Music Publications or underlying Musical Works or part thereof. At least one original Source Copy of the Printed Music Publication must be owned by the relevant Staff Member or Further Education Institution. For the avoidance of doubt this Licence does not permit the copying of Printed Music Publications accessed by hire or borrowed from a library, other than a library owned by the Licensee.
- 4.3 The Licensee must limit the number of Licensed Copies to one Licensed Copy for each Student (and Staff Member) participating in or teaching on the Music Course for which those Licensed Copies are intended. Licensed Copies may be used within a group that includes students who are not registered on a Music Course, except that (a) the group's purpose must be directly

connected with a Music Course, and (b) any student not taking the Music Course with which the group's purpose is directly connected may not be supplied with Licensed Copies.

- 4.4 The Licensee must not make copies of more than ten percent (by number of items) of the individual pieces of music in a published Musical Anthology or multi-movement vocal score or not more than ten percent (by the number of pages) of any Workbook. If there are fewer than ten individual pieces of music in a Musical Anthology or multi-movement vocal score the Licensee may only make copies of one of them.
- 4.5 Licensed Copies may be made only in connection with Music Courses and not for the private purposes of Staff Members, Students or anyone else. Individual Vocal or Individual Instrumental Teaching is included within the Licence but only where it forms a set part of a Music Course.
- 4.6 The Licensee must take steps, for example via an announcement, to ensure no audio or audio-visual recording takes place of any performances of any Musical Works or Arrangements (save that the Licensee shall be permitted to record such performances if it is otherwise validly licensed or authorised to do so).
- 4.7 The following conditions will apply in respect of the creation of Arrangements under the Licence:
- (a) Arrangements must respect the Moral Rights of the creator of the original Musical Work on which they are based.
  - (b) Arrangements must not change the character of the Musical Work and must not parody the Musical Work or treat the Musical Work in a derogatory way.
  - (c) Save as set out in clause 2(c), no use shall be made of Arrangements by their creator or, for the avoidance of doubt, by anyone else, including but not limited to public performance, audio recording, broadcasting, or in any other way making available (including uploading audio recordings to a website).
  - (d) Ownership of any Arrangement made under this Licence is automatically assigned to the owner of the Musical Work arranged, and, on request, the Licensee shall (or procure that the relevant Student or Staff Member shall) provide to the owner of the Musical Work, in a form prescribed by such owner, a written assignment of all the rights in any such Arrangement.
  - (e) The Licensee shall immediately cease using and shall destroy all copies of any Arrangement which PMLL notifies the Licensee in writing has been objected to by the relevant author or composer or publisher of the Musical Work of which it is an Arrangement.
  - (f) Arrangements must not adapt or otherwise change any lyrics.
  - (g) The Licensee shall submit a pdf of the full score of the Arrangement by email to [info@mpagroup.com](mailto:info@mpagroup.com) or via such other method as PMLL shall notify them.
  - (h) Each Arrangement must include the following credit:
    - i Prominently at the top of the first page, the title of the Musical Work, the name of the composer(s), and the name of the arranger.
    - ii At the foot of the first page, the copyright credit from the source publication together with the following notice:

“This arrangement was made on [date] under the Further Education Printed Music Licence held by [name of Further Education Institution] and is subject strictly to the terms and conditions of that agreement, including its use solely in connection with [course name]. All copyright is reserved by the publisher.”

- 4.8 For the avoidance of doubt, Excluded Printed Music Publications are wholly excluded from the scope of this Licence and the rights granted under this Licence may not be exercised in respect of such publications. A list of Excluded Printed Music Publications is provided on PMLL’s website.
- 4.9 The Licensee must not lend, sell or hire out Licensed Copies.
- 4.10 Digital Copies may only be made available via the Licensee’s Secure Network via secure and valid authentication and must be deleted at the end of the academic year in which such Digital Copies were created.
- 4.11 The copying of hymns and worship songs for the purposes of use in collective worship and included in licences issued by Christian Copyright Licensing International is excluded from this Licence.
- 4.12 The Licence does not apply to any book, journal, magazine or other printed or digital publication unless the publication consists primarily of Printed Musical Works. For the avoidance of doubt, publications which may be included in licences issued by CLA are not covered by this Licence.
- 4.13 The Licence does not apply to and specifically excludes photographs, illustrations or other visual artworks contained in a Printed Music Publication.
- 4.14 For the avoidance of doubt the Licence does not authorise the general public performance right, broadcast right, making available right or audio recording of any music (including putting audio recordings on any website) for which the Licensee must ensure that it has the appropriate licences in place before undertaking any of these activities.
- 4.15 Paper Copies made in any one academic year must either be archived at the end of that academic year and, if used again in a subsequent academic year, must be licensed as a new use.
- 4.16 The grant of the licence in clause 2 is subject to the Licensee being a Further Education Institution, and the Licensee hereby represents and warrants that it is a Further Education Institution.
- 4.17 This licences granted hereunder apply to Musical Works only to the extent that the relevant copyright is controlled, from time to time, by PMLL including pursuant to its agreements with Members (as defined below). If one or more of those who own or control the copyright in a relevant Musical Work is not PMLL, the grant of rights hereunder shall apply to such interest in the Musical Work as is owned or controlled by PMLL. For the purpose of this Agreement, “**Member**” means each person, firm or company who or which, from time to time, has appointed PMLL as agent or licensee in respect of the reproduction and other exploitation of printed music either before or during the Term, provided that a member who has so appointed PMLL after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date on which the Member so appointed PMLL.

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## 5 Licence Management

- 5.1 Any notice required by this Licence shall, unless otherwise specified, be in writing and sent by first class post, in the case of the Licensee to the address shown on page 1 above, (or any address notified by the Licensee to PMLL), and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.
- 5.2 This Licence is personal to the Licensee, relates only to that Further Education Institution, and cannot be assigned.
- 5.3 This Licence shall be governed under English law and the parties submit to the exclusive jurisdiction of the English courts. All references to legislation in this Agreement refer to Acts of Parliament of the United Kingdom.
- 5.4 The parties agree that the terms of this Contract are not enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.
- 5.5 Given reasonable notice, the Licensee will allow PMLL to enter the Licensee's premises to review the implementation of the Licence by the Licensee and its compliance with its terms and to inspect the procedures the Licensee uses when applying the Licence.
- 5.6 The Licensee will explain the terms of this Licence to its Staff Members (particularly those with responsibility for reprographic equipment) and Students, and will require Staff Members and Students to agree in writing to comply with these terms.
- 5.7 The Licensee shall appoint a Staff Member as a Licence Co-ordinator to liaise with PMLL in connection with the administration and implementation of the Licence.

## 6 Data Collection

- 6.1 The Licensee shall report to PMLL data on all Licensed Copies ~~it makes during the Term of the Licence~~ in such form as PMLL shall reasonably direct ~~as soon as reasonably practicable after their creation and in any event by no later than 30 days following the end of each six-month period of the Term in respect of the Licensed Copies created in each such six-month period and within three months following the end of the Term.~~ The information obtained will assist PMLL to identify what Licensed Copies are being made and thus inform the accurate redistribution of Licence Fees to rightsholders, including publishers and composers.
- ~~6.2.3~~ ~~Apart from as set out in Clause 6.2,~~ PMLL undertakes not to disclose any information obtained as a result of any data submitted except:
  - ~~6.3.2.1~~ as required by a court or other authority of competent jurisdiction; or
  - ~~6.3.2.2~~ in aggregated form from which the identity of the Licensee cannot directly be identified; or
  - ~~6.3.2.3~~ as required to enable PMLL to distribute the Licence Fees to rightsholders, including music publishers and authors.
- ~~6.3.4~~ As soon as reasonably practicable following commencement of the Term (and in any event prior to 1 December of the current Term) the Licensee shall deliver a fully and accurately completed report to PMLL of either:
  - ~~6.4.3.1~~ the number of Students for the current Term; or
  - ~~6.4.3.2~~ the number of Students for the previous academic year.
- ~~6.5.4~~ The Licensee shall also supply PMLL with any further information or documentation in its possession, power, custody or control (and use its reasonable endeavours to supply PMLL with any further information or documentation not in its possession, power, custody or control)

reasonably requested by PMLL at any time, in order to enable PMLL to verify: (a) the number of Students; and (b) the Licensed Copies which have been made or distributed under this Licence.

## 7 Indemnity

~~7.1~~ Subject to clauses 7.2 and 7.3, in the case of any claim, PMLL will indemnify the Licensee in respect of all reasonable and proper legal costs, expenses and damages awarded against or incurred by the Licensee, to the extent: ~~{7.1.1}~~ determined by an adverse judgement of a court of competent jurisdiction; or (7.1.2) ~~payable pursuant to~~ a settlement entered into by the Licensee with the prior written approval of PMLL. For the purposes of this clause 7, "claim" shall mean any third party claim made in writing that the Licensee while acting in compliance with the Licence has infringed copyright in any Printed Music Publication.

- 7.2 The indemnity conferred by clause 7.1 will not apply:
- 7.2.1 if the Licensee is in material breach of any term of the Licence; or
  - 7.2.2 if the Licensee has not given PMLL due notice of any claim within ten (10) working days or of any Claim Form within five (5) working days of the same having been received by the Licensee.
- 7.3 Liability under this indemnity is conditional on the Licensee discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Licensee which may reasonably be considered likely to give rise to a liability under the indemnity in clause 7.1, the Licensee shall:
- 7.3.1 as soon as reasonably practicable, and in any event within the timeframes set out in clause 7.2.2, give written notice of the claim to PMLL, specifying the nature of the claim in reasonable detail and along with any other relevant information and documentation;
  - 7.3.2 not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of PMLL;
  - 7.3.3 be deemed to have given to PMLL sole authority to avoid, dispute, compromise or defend the claim.
- 7.4 For the avoidance of doubt the Licensee acknowledges that it must obtain permission from the respective rights owners to reproduce Printed Music Publications outside the limits permitted by the Licence, and for the avoidance of doubt the indemnity in this clause 7 shall not apply to any claims in respect of any such reproductions.

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## 8 Cancellation and Breach

- 8.1 Should the Licensee commit any material breach of any of the terms and conditions of this Licence and remain in such breach 14 days after receiving notice to remedy the same (where the breach is remediable) then PMLL, without prejudice to any of its other rights, may either terminate or suspend the terms of the Licence until PMLL shall be satisfied such breaches will not recur. In the event of termination of the Licence by PMLL pursuant to this clause, the Licensee must permanently delete all Digital Copies stored on its VLE, and take all reasonable steps to ensure immediate destruction of all other Licensed Copies.
- 8.2 The Licensee must cease making new Licensed Copies at the end of the Term and, unless retention is permitted by a subsequent licence rollout documented in writing by PMLL and subscribed to by the Licensee, must permanently delete all Digital Copies stored on its VLE, and take all reasonable steps to ensure the immediate destruction of all other Licensed Copies.

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## 9 Audit

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- 9.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each relevant party keeps and makes available for inspection upon reasonable notice), both during and for twelve months after expiry or earlier termination of this Agreement, proper, detailed books and records relating to (a) all Licensed Copies made during the Term and (b) number of Students and Licence Fees payable hereunder, ~~together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit.~~
- 9.2 For the purposes of this clause 9, the Licensee shall allow upon reasonable notice (and shall procure that each relevant party shall allow) access to its premises to inspect relevant accounting records, but not more than once per annum. The duly authorised representatives (who shall be external qualified accountants or auditors unless otherwise agreed between the parties) of PMLL shall have such access to the Licensee's premises and 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 this Agreement.
- 9.3 If tests under any audit and verification process indicate under-payment of the correct Licence Fee during the period under audit, then, without prejudice to PMLL'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 PMLL to the date when it was actually paid at the rate set out in clause 3.1.
- 9.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct Licence Fee during the period under audit and/or (b) a failure to report correctly (so as to affect a distribution by PMLL to its Members) amounting to at least 7.5% of the Licensed Copies during the period under audit, then, without prejudice to PMLL's other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 9.3. PMLL's reasonable costs of such audit and verification within 28 days of receipt of PMLL's VAT invoice therefor.