

**MCPSI / [ ]**  
**Secondary Exploitation Agreement**



**THIS AGREEMENT** is made the                      day of

**BETWEEN :-**

- (1) **MECHANICAL-COPYRIGHT PROTECTION SOCIETY (IRELAND) LTD.** whose registered office is at Copyright House, Pembroke Row off Lower Baggot Street, Dublin 2, Ireland (**“MCPSI”**) contracting for and on behalf of itself and for and on behalf of and as agents of MCPS and its various Members and its affiliated societies; and
- (2) [ ] whose registered offices are at [ ] (**“the Licensees”**)

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**1. Definitions**

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

“Advance”	shall have the meaning set out in clause 5.1.
“Broadcast”	<p>shall have the meaning shall have the meaning means an electronic transmission of visual images, sounds or other information which (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public and which is not excepted as provided for at subclause 1 below and references to broadcasting shall be construed accordingly.</p> <p>1. Excepted from the definition of “broadcast” is any internet transmission unless it is:</p> <p>(i) a transmission taking place simultaneously on the internet and by other means;</p> <p>(ii) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.</p>
“Business Day”	shall mean any day which is not a Saturday, Sunday or Public Holiday
“Commercial Work”	shall mean any Repertoire Work other than Production Music.
“Commissioned Work”	shall mean a Musical Work which has been specially and expressly commissioned by the Licensee for use in Qualifying Programmes from composer/writer Members.
“Contract Year”	shall mean each successive period of a year during the Term, beginning on [ ]
“Cue Sheet”	shall mean a document, in the form set out in Schedule A, containing the relevant Reporting Information
“Dramatico-Musical Work”	shall mean any ballet, opera, operetta, musical, musical play or work of a similar nature.

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

“Duration of MCPSI Music”	shall mean the total duration of Repertoire Works incorporated into a Qualifying Programme.
“Gross Sales Price”	shall have the meaning set out in clause 6.
"Member"	shall mean each person firm or company who or which has entered into the MCPS Membership Agreement either before or during the Term PROVIDED THAT a Member who has signed the MCPS Membership Agreement after the commencement of the Term shall only be regarded as a Member for the purposes of this Agreement with effect from the date of entry into the MCPS Membership Agreement.
“MCPS”	shall mean Mechanical Copyright Protection Society Limited of 29-33 Berners Street London W1T 3AB.
“Musical Work”	shall mean any work consisting of music and any lyrics or words written to be used with the music. It includes any part of such a work.
“PMSR”	shall mean any production music sound recording being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in Ireland by MCPSI (or any Member of MCPS) and where such party has authorised MCPSi to license such recordings as so-called production or library music.
“Production Music”	shall mean Production Music Works and PMSRs.
“Production Music Work”	shall mean the Musical Work embodied on a PMSR.
“Qualifying Programme”	shall have the meaning set out in clause 3.
“Quarter”	shall mean each successive period of 3 months, the first beginning on [●].
“Repertoire Work”	shall mean: (a) each Musical Work (or part thereof) the copyright in which is owned or controlled in Ireland by MCPSI (or a Member or an affiliated society or an affiliated society member of MCPS); and (b) each PMSR; but excludes any Commissioned Work (solely in relation to the specific purpose for which it was commissioned).

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

“Reporting Information”	shall mean, in respect of each Qualifying Programme, full and accurate details of the Repertoire Works included within such Qualifying Programme
“Royalty Fee”	shall have the meaning set out in clause 5.4.
“Sales Information”	shall mean the information specified in Schedule B.
“Term”	shall mean the period from 1 September 2008 until 31 July 2009 (unless terminated earlier in accordance with clause 11).
“Terrestrial Broadcast”	shall mean a Broadcast by means of ‘free to air’ wireless transmission (whether in analogue or digital form). For the avoidance of doubt, it does not include Broadcast via a cable service or by satellite.
“Territory”	shall mean the World excluding the USA and Canada.
“2000 Act”	shall mean the Copyright and Related Rights Act 2000, as amended from time to time.

**2. Rights Licensed**

2.1 MCPSI authorises the Licensees to copy and supply to third parties, during the Term, Qualifying Programmes containing Repertoire Works to or for:

- (a) all forms of making available to the public by such third parties (including for the avoidance of doubt Broadcast and on demand transmissions) in the Territory (subject to clause 2.5 below) including but not restricted to terrestrial, satellite, cable, internet and mobile transmissions; and
- (b) viewing as in-flight entertainment on aircraft operated by airlines based in the Territory; and
- (c) viewing at non-fee paying television programme festival in the Territory; and
- (d) viewing by prospective purchasers of a Qualifying Programme, including for the avoidance of doubt, via the internet; and
- (e) educational establishments in the Territory for viewing by students as part of their studies, provided that no fee is charged to view such Qualifying Programme.

2.2 In circumstances where the Licensees wish to record into a Qualifying Programme (prior to supplying it as set out in clause 2.1 above) alternative music to that originally recorded in the Qualifying Programme, then, subject to the terms and conditions of this Agreement, MCPSI hereby grants the Licensees, for the foregoing sole purpose, the non-exclusive right to reproduce in Ireland Production Music into Qualifying Programmes during the Term.

- 2.3 For the avoidance of doubt, the authorisation granted under clause 2.1 above only applies in relation to Repertoire Works. It does not apply to any other rights in Qualifying Programmes.
- 2.4 The licences granted under this Agreement only apply in respect of copying of Qualifying Programmes taking place within Ireland and only for the purposes of exploiting the rights set out in clause 2.1 above.
- 2.5 The authorisation granted in clause 2.1(a) above shall not apply to the supply of a Qualifying Programme falling within clauses 3(a) or (b) where the Broadcast for which the Qualifying Programme is supplied is by way of Terrestrial Broadcast within the Ireland.
- 2.6 If the Licensees wish to supply Qualifying Programmes containing Repertoire Works for retail sale in the form of non music VHS videos or non music DVDs (falling within the scope of the MCPS AVP licensing scheme (“AVP”) then the Licensees must apply for an AVP agreement (or equivalent other agreement if AVP is replaced).
- 2.7 If the Licensees wish to supply Qualifying Programmes containing Repertoire Works for retail sale in the form of music DVDs (falling within the scope of the MCPS DVD 1 version 2 licensing scheme (“DVD1x2”)) then the Licensees must apply for a DVD1x2 agreement (or equivalent other agreement if DVD1x2 is replaced).

2

### **3. Qualifying Programmes**

For the purposes of this Agreement, “Qualifying Programme” shall, subject to clause 4, have the following meaning:

- (a) an audio-visual programme made by the Licensees where all Repertoire Works contained in such programme have been validly licensed for the purposes of primary Broadcast within Ireland and where such programme has already been Broadcast (or scheduled for Broadcast) within Ireland; and
- (b) an audio-visual programme made by a third party where all Repertoire Works contained in such programme have been validly licensed for the purposes of primary Broadcast within Ireland and where (i) the Licensees have entered into an agreement with such third party to distribute such programme for secondary exploitation and (ii) such programme has already been Broadcast (or scheduled for Broadcast) within Ireland; and
- (c) audio-visual promotional programmes relating to a music artist (or artists) made primarily for the purpose of Broadcast and which has been Broadcast (or scheduled for Broadcast) in Ireland and made in the Territory by the Licensees or a third party, the making of which has been commissioned or expressly approved by the artist’s record company or management company.

### **4. Restrictions in Relation to the Licence**

- 4.1 No programme or other material shall constitute a Qualifying Programme if it includes any of the following (unless the relevant Member has expressly consented to its inclusion for the purposes of the Agreement):
- (a) any adaptation of a Repertoire Work; by way of example only, this includes:
    - (i) making any arrangement of the music; or
    - (ii) making any alteration to the lyrics, save for any minor change which does not alter the meaning thereof; or
    - (iii) any sampling (as that expression is commonly used in the music industry) of the music and/or lyrics or reproduction in the form of a sample of the music and/or lyrics; or
    - (iv) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
    - (v) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics; or
  - (b) any Commercial Work or part thereof which is a parody or burlesque of any Commercial Work or of any composer or writer of any Commercial Work; or
  - (c) any Commercial Work in any context which the Licensees ought reasonably to consider as being likely to be detrimental to the composer or artist featured on the commercially released sound recording of the music or the relevant Member, for reasons including but not limited to obscene, derogatory or controversial context of the content; or
  - (d) any Dramatico-Musical Work; or
  - (e) any individual or potted version of a Commercial Work exceeding 7 minutes in duration; or
  - (f) any Repertoire Work included within an advertisement or sponsorship message or otherwise where the positioning of such Repertoire Work could reasonably lead a person to associate that Repertoire Work with an advertisement or sponsorship message; or
  - (g) without prejudice to clause 3(c), programming relating to a single composer or author, composer and/or author team, music artist or record label and/or where all Commercial Works contained within the programme are by the same composer or author, or composer and/or author team or music artist or record label.
- 4.2 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.
- 4.3 Although the supply of certain audio-visual programmes is authorised for certain purposes, the acts of Broadcasting, other making available to the public and (where relevant) public performance of Repertoire Works are not licensed hereunder. Such other licences as may be necessary must be obtained separately by the Licensees (or other party to whom Qualifying Programmes are supplied, as applicable).
- 4.4 The provisions of this Agreement authorise the supply of Qualifying Programmes for the specific purposes set out in this Agreement. In the event that a copy of any Qualifying

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

Programme or the soundtrack thereof is made or used in any way for any other purpose (including, without limitation, cinematic or theatric exploitation, video / DVD exploitation or rental or lending) whether by the Licensees or any other party then that supply and/or copy shall not be licensed under this Agreement. MCPS reserves all rights including those of its Members and its affiliated societies (and their members) to take action in relation to any such supply/copy.

- 4.5 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings (other than PMSRs), films, dramatic works, performers' rights, moral rights or rights in performances. Nothing in this Agreement shall entitle any party to exercise the licences or authorisations contained in this Agreement in relation to any Qualifying Programme where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling rights in relation to sound recordings containing one or more Repertoire Works or performers of Repertoire Works incorporated into such Qualifying Programme. For the purposes of this clause 4.5 (but only insofar as the reproduction of PMSRs in accordance with this Agreement is concerned), MCPSI, for and on behalf of the Members of MCPS, warrants that all the necessary performers' waivers and consents have been obtained from the relevant performers insofar as their performances are embodied on PMSRs.
- 4.6 It is the responsibility of the Licensees to obtain all necessary licences in relation to any Musical Work which is not a Repertoire Work, and nothing in this Agreement applies in relation to any such Musical Work.
- 4.7 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in Ireland or any other territory.

**5. Licence Fee**

- 5.1 The Licensees shall pay to MCPS:
- (a) a non-returnable advance against royalties of € plus VAT ("the Advance", this being subject to change according to clause 5.2 below) in respect of each Contract Year; and
  - (b) The Royalty Fees, as defined in clause 5.4 below.
- 5.2 The Advance is subject to increase each Contract Year in accordance with the increase in the Retail Price Index over the 12 month period immediately preceding the beginning of the new Contract Year.
- 5.3 Each Advance is recoupable against the Royalty Fees due in the applicable Contract Year, but is non-returnable. For the avoidance of doubt:
- (a) in the event that, throughout any Contract Year, the total Royalty Fees payable by the Licensees to MCPSI in respect of that Contract Year is less than the Advance paid, no part of the Advances shall be carried over to the following Contract Year; and

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

- (b) in the event that, throughout the Term, the total Royalty Fees payable by the Licensees to MCPSI is less than the total Advances paid, no part of the Advances shall be repayable to the Licensees by MCPSI.

5.4 The “Royalty Fee” shall mean, individually in relation to each Qualifying Programme:

- (a) except in the circumstances referred to in 5.4(b) below, the percentage of the Gross Sale Price calculated as follows:

$$\frac{\text{Duration of MCPS Music}}{\text{Total Duration of Programme}} \times 100 \times 8.5\% = \text{MCPS \% claim in Programme}$$

- (b) for Qualifying Programmes falling within clause 3(c) and which are supplied for Terrestrial Broadcast within Ireland, 17% of the Gross Sale Price.

5.5 For the avoidance of doubt, the Royalty Fees due under clause 5.1(b) shall be the aggregate of all Royalty Fees calculated pursuant to clause 5.4 above in respect of all sales of Qualifying Programmes during the applicable Contract Year.

**6. Gross Sale Price**

6.1 “Gross Sale Price” shall mean all amounts (in money or money’s worth) received or receivable by the Licensees (or any associate, agent, representative or other affiliate of the Licensees) in consideration for the supply of a Qualifying Programme to a third party for the purposes set out in clause 2.1 of this Agreement; subject only to the following deductions:

- (a) VAT;
- (b) any withholding tax not recoverable by the Licensees; and
- (c) a genuine refund paid by the Licensees as a result of the party to whom a Qualifying Programme was supplied not being able to Broadcast or otherwise use that Qualifying Programme as a result of the failure to clear other third party rights or as a result of censorship requirements.

6.2 For the purposes of clause 6.1 above, the consideration paid to the Licensees may take any form, including (without limitation) cash funds, services, goods, agreements to purchase advertising or sponsorship, or other barter or contra deals.

6.3 Where a supply of a Qualifying Programme by the Licensees to another party is not on a true arms-length basis (for example, if supply is to an affiliated company of the Licensees), then the consideration for the purposes of clause 6.1 shall be deemed to be the fair market value of the Qualifying Programme.

6.4 If a package of programmes is sold including one or a number of Qualifying Programmes for an inclusive fee, the Licensees shall, for the purposes of clause 6.1 above, ascribe a proportion of the total revenue to the individual Qualifying Programmes in the package on a genuine market-value basis. MCPS is entitled to challenge the allocation of prices as between programmes included in the package, following which the Licensees agree to reconsider in good faith such valuation.



**7. Payment and Reconciliation**

7.1 The Licensees shall pay to MCPSI the Advance in instalments, the invoices for which will be issued by MCPSI at the beginning of:

- (a) [ ] for €[ ] (+VAT)
- (b) [ ] for €[ ] (+VAT)
- (c) [ ] for €[ ] (+VAT)
- (d) [ ] for €[ ] (+VAT)

7.2 Following the end of each Contract Year (or, where the Term expires during a Contract Year, then following the expiry of the Term) and following submission by the Licensees of the Sales Information, MCPSI will calculate the Royalty Fee for that period (the “Period”) as per clause 5.4 above.

7.3 Where the Royalty Fee for a Period exceeds the advance paid during that same Period, MCPSI will invoice the Licensees for the difference between the two (“the Balancing Payment”) and the Licensees shall pay such invoice.

7.4 For the purposes of clause 7.3, the supply of a Qualifying Programme by the Licensees shall be regarded as one falling within a certain Period if the payment to the Licensees for that Qualifying Programme (or the *first* payment, if payment is to be in instalments) is made (or is due to be made) within that Period.

7.5 All invoices are due for payment in full within 28 days of the date of issue.

7.6 If any relevant change in Retail Price Index has not been published by the time that MCPSI is due to send a VAT invoice hereunder then MCPSI shall instead invoice the Licensees based on the previous Contract Year’s fees (adjusted with such adjustments for the current year as are available). The Licensees shall pay such invoice within 28 days of receipt thereof, such payment being on account of the correct fees due for that Quarter. When MCPSI has the information required to produce correctly adjusted fees for the relevant Quarter, it shall invoice the Licensees the relevant adjustment, which shall be payable by the Licensees within 28 days of receipt thereof. This clause 7.6 is without prejudice to MCPSI’s rights under clause 7.7.

7.7 Without imposing any obligation on MCPSI to accept late payment and without prejudice to any rights and remedies MCPSI may have by virtue of any failure of the Licensees to comply with this Agreement, MCPSI is entitled to charge interest on the licence fees at 3% above the Allied Irish Bank plc base rate if:

- (a) the Licensees have not paid an invoice within 28 days of its date of issue; or
- (b) MCPSI has been unable to invoice the Licensees for Royalty Fees due as a result of a failure by the Licensees to supply MCPSI with the Sales Information or the Reporting Information.

Interest shall run from the date upon which the Licensees would have paid the amount due had it complied fully with this Agreement until the date when MCPSI actually received the relevant amount.

## **8. Reporting Requirements**

- 8.1 The Licensees shall in respect of each Qualifying Programme supply to MCPSI a Cue Sheet by the end of the Quarter in which the Qualifying Programme is first supplied pursuant to this Agreement. Such Cue Sheet may be supplied in Excel format, either on disk or via email.
- 8.2 The Licensees shall supply to MCPSI the Sales Information, in the format set out in Schedule B, on a quarterly basis and within one month of the end of the Quarter in which the Qualifying Programme was supplied to a third party pursuant to this Agreement.
- 8.3 Unless notified otherwise, the Licensees will send (a) the Sales Information for the attention of the Licence Administrator at MCPSI's registered address via email – [paul.mallon@mcps.ie](mailto:paul.mallon@mcps.ie).
- 8.4 For the avoidance of doubt, where the Licensees record Production Music into Qualifying Programmes pursuant to clause 2.2, then they must provide to MCPSI a Cue sheet which incorporates details of such dubbed Production Music (and not the *original* cue sheet).

## **9. Auditing**

- 9.1 The Licensees 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 (a) the use of all Musical Works in Qualifying Programmes and (b) any income or other consideration received by or on behalf of the Licensees in relation to the supply of Qualifying Programmes to third parties, together with any supporting documentation relating thereto.
- 9.2 For the purposes of this clause 9, the Licensees shall allow upon reasonable notice access to its premises to inspect accounting records, but not more than once per annum. The duly authorised representatives of MCPSI 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.
- 9.3 If tests under any audit and verification process indicate under-payment of the correct Royalty Fee during which monitoring has been carried out by or on behalf of MCPSI, then, without prejudice to MCPSI's other rights under this Agreement, the Licensees 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 Allied Irish Bank plc).
- 9.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct Royalty Fee during which monitoring has been carried out by or on behalf of MCPSI 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 MCPSI, then, without prejudice to MCPSI's other rights under this Agreement, the Licensees shall pay, in addition to the payment referred to in clause 9.3, MCPSI's reasonable costs of such audit and verification within 28 days of receipt of MCPSI's VAT invoice therefore.

9.5 For the avoidance of doubt, books, records and accounting records as referred to in clauses 9.1 and 9.2 above shall be deemed to include data, information and records held on computers.

## **10. Confidentiality**

Neither party shall disclose to any third party any confidential information of the other party (so long as it remains confidential) received pursuant to this Agreement, save that MCPSI may disclose confidential information of the Licensees to members of MCPS, to societies affiliated to MCPS, and to MCPSI's professional advisors (where such advisors are under a duty of confidentiality in relation to information so received) for purposes connected with the administration of rights in Musical Works.

## **11. Termination**

11.1 Either party shall have the right at any time to terminate this Agreement forthwith where a Licensee:-

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt by that party of a formal notice specifying in reasonable detail the breach on which the terminating party relies; or
- (b) commits a material breach of this Agreement which is not capable of remedy in which event the party seeking to terminate shall specify in reasonable detail the material breach on which it relies by notice to the other party.

11.2 Either party shall also have the right to terminate this Agreement forthwith if the other party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation or
  - (ii) is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

- (e) has a resolution passed for its winding-up, examinership official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, examiner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
  - (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses (a) to (g) (inclusive); or
  - (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 11.3 No licence fees already paid (or payable) to MCPSI shall be returnable (or credited) to the Licensees upon termination of this Agreement.
- 11.4 Termination of this Agreement for whatever reason shall be without prejudice to any rights which have already accrued to the parties under this Agreement.
- 12. Notices**
- 12.1 Any notice or other written communication given under or in connection with this Agreement shall only be effective if it is in writing and (if not given by e-mail) signed by or on behalf of the party giving it. Notice may be given by fax and/or e-mail save that notice to terminate this Agreement shall not be served by e-mail.
- 12.2 The address for service of any party shall be its registered office marked for the attention of the Chief Executive or Managing Director, or, to such other address as may be notified in writing from time to time to the server.
- 12.3 Any such notice or other written communication shall be deemed to have been served:-
- (a) if personally delivered, at the time of delivery;
  - (b) if posted, two Business Days after the date of posting or in the case of airmail, four Business Days after the date of posting;
  - (c) if sent by fax or e-mail:
    - (i) if received during Business Hours (“Business Hours” for the purposes of this clause 13 shall mean 09.00 to 17.30 local time on any Business Day) at the time of receipt of transmission in the place to which it was sent; or

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

- (ii) if not received during Business Hours at the beginning of the next Business Day at the place to which it was sent.

12.4 In proving service of a notice it shall be sufficient proof that personal delivery was made, or that such notice or other written communication was properly addressed, stamped and posted or in the case of a fax or e-mail that an activity or other report from the sender's fax machine or computer can be produced in respect of the notice or other written communication (in the case of a fax, showing the recipient's fax number and the number of pages transmitted).

**13. Miscellaneous**

13.1 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.

13.2 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.

13.3 The Licensees shall be jointly and severally liable:

(i) for the performance of their obligations under this Agreement; and

(ii) for any breach of the terms of this Agreement.

13.4 The licences granted under this Agreement are personal to the Licensees and the Licensees may not assign, sub-license or otherwise transfer any or all of its rights or obligations under this Agreement without the written agreement of MCPSI.

13.5 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.

13.6 The parties respectively shall and shall procure that any other necessary party within its control shall execute and do all such documents acts and things as may be reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.

13.6 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.

13.7 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.

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

- 13.8 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.
- 13.9 The Licensees acknowledge that this is a ‘blanket’ licence agreement, and that for both parties to take advantage of the administrative simplicity of such a licence, the mechanism for calculating the licence fees (including the MCPSI claim in a Qualifying Programme) must take account of all copying of Repertoire Works, including where some such copying might fall within one of the exceptions set out in Part II of the 2000 Act. In the event that a licensee wishes to have the ability to claim in one or more cases that a licence is not required for a particular use of a Repertoire Work, then a blanket licence is not, for administrative reasons, the appropriate form of licence and such licensee should instead seek direct work by work licences from MCPSI.
- 13.10 This Agreement shall be construed according to the laws of Ireland and the parties agree to submit to the jurisdiction of the Irish Courts.

Signed:

\_\_\_\_\_

Print name:

\_\_\_\_\_

Date:

\_\_\_\_\_

On behalf of MCPSI

Signed:

\_\_\_\_\_

Print name:

\_\_\_\_\_

Date:


\_\_\_\_\_

On behalf of [ ]

**MCPSI / [ ] Secondary Exploitation Agreement**  
**SUBJECT TO CONTRACT**

**Schedule A**

**Format for Reporting Information**

<p align="center"><b>Music Cue Sheet</b></p> 		PROGRAMME TITLE			CONTRACT NUMBER:		TX DATE:		PAGE NUMBER 1 OF	
		EPISODE TITLE			EPISODE NUMBER:		ORIGIN CLASS X=Commissioned P=Live Performance V=Video T=Soundtrack C=Commercial L=Library		USE B=Background F=Featured S=Signature	
		PRODUCTION COMPANY AND TELEPHONE NUMBER:			PRODUCTION NUMBER (ITV):					
			REPEAT TX:							
TIME CODE	MUSIC TITLE	COMPOSER/ ARRANGER	PUBLISHER	PERFORMER (S)	RECORD LABEL AND No.	VIDEO LABEL AND No.	ORIGIN CLASS	USE	DURATION	

**Schedule B**

**Format for Sales Information**

Programme	Acquiring Party	Territory	Exploitation	Gross Payment	W/H Tax	Gross Sale Price

Where:

- ◆ 'Programme' is the title of the Qualifying Programme
- ◆ 'Acquiring Party' is the party to whom the Licensee supplied the Qualifying Programme
- ◆ 'Territory' is the territory (or territories) of broadcast for which the Qualifying Programme is supplied
- ◆ 'Exploitation' is the form of exploitation for which the Qualifying Programme is supplied (by reference to the categories in clause 2.1. In particular, the Licensee shall state whether the Qualifying programme has been supplied for Terrestrial Broadcast.
- ◆ 'Gross Payment' is the full consideration of the sale (calculated in accordance with clause 6) *before* withholding tax (if any) is deducted, but after deduction of VAT
- ◆ 'W/H Tax' is withholding tax on the Gross Payment (if any) but only to the extent not recoverable by the Licensee (or Acquiring Party)
- ◆ Gross Sale Price is the Gross Payment less withholding tax (if not recoverable) and is, for the avoidance of doubt, the sum defined in clause 6.



MCPSI Ref: MCPS Licence for Independent Radio Productions

Effective From January 17th 2013

Jason Duffy,  
Senior Licensing Administrator,  
MCPS (Ireland) Ltd.  
Copyright House,  
Pembroke Row,  
Lower Baggot Street,  
Dublin 2

Telephone: (01) 6448046  
Fax: (01) 6763125  
Email: [jason.duffy@imro.ie](mailto:jason.duffy@imro.ie)

Subject to Contract

MCPS Licence for Independent Radio Productions

Please find below an outline of the licensing arrangements under which independent radio producers may record MCPS members' repertoire into radio programmes produced for supply to radio stations.

The Mechanical-Copyright Protection Society Ltd represents the great majority of music composers and publishers in the UK and Ireland and, by agreement with overseas societies, most of the world. We issue licences to allow the recording of our members' musical works for most purposes and collect and distribute the royalties due to our members. MCPS is also the licensing agent for the vast majority of production library music companies, on whose behalf we also administer the sound recording copyright (in addition to the copyright in their musical work).

Any radio production into which MCPS members' works have been recorded must be licensed as follows:

## **1. Direct Commissions and Cash Sales of Programmes**

Where a producer receives a direct lump-sum payment from a Irish radio broadcaster other than RTE or a third-party sponsor for the supply of an original or existing radio programme into which MCPS members' repertoire has been recorded, a percentage of the gross revenue from that commission or sale is payable to MCPS.

### **1.1. Royalties**

The royalty payable in relation to the supply of each Production will be calculated on the following basis:

<b>% of Gross Revenue</b>	<b>Period</b>
10	Q1 2013
Royalty Rates applicable up until the 31st of March 2013	

All parties who enter into this Licensing Scheme must agree to meet with MCPSI (as agent for MCPS) in the first quarter of 2013 with a view to negotiating further royalty rates comparable to International Rates.

**Notes**

- 2.1 Gross Revenue is the total fee agreed for the supply of the programme to the recipient broadcaster or other third parties with no deductions other than any withholding tax which is not recovered. If a package of programmes is sold for an inclusive fee, the producer will be required to apportion a precise amount of the total revenue to each individual programme on a reasonable basis, although MCPSI as agent for MCPS will be entitled to challenge this allocation.
- 2.2 Payment will be due in any one quarter for programmes for which either payment has been made for the programme by the recipient third party (whether in full or in part), or delivery is made to the broadcaster - whichever is sooner.
- 2.3 The producer will account to MCPSI in the agreed electronic format 21 days after the end of the relevant quarter, having already supplied MCPSI with music cue sheet details (including the programme duration) for each programme on floppy disk in the agreed specification no later than 10 days after the first sale of the relevant programme within the contract period.
- 2.4 MCPSI will provide an invoice within 31 days of the end of the quarter and payment must be made within 45 days of the end of the quarter (or, if MCPSI fails to deliver an invoice within 31 days of the quarter, within 14 days of receipt).
- 2.5 MCPSI will have the right to audit relevant books of account to verify the accuracy of returns made.
- 2.6 Interest at 3% above base rate will be charged on royalties due on a programme-by-programme basis for which returns are received after the due dates, or where payment of the relevant invoice is later than the period specified above.

**If you wish to obtain this licence, please confirm in a ‘headed’ letter to us that you agree to abide by the terms and conditions of the licence (as set out in letter ref. BR5 / L118) and send in this written confirmation.**

## **2. ‘Indirect’ Commissions**

Where a producer receives a form of payment or consideration other than a direct lump sum (e.g. under a barter-type agreement), MCPSI as agent for MCPS will at its discretion license the recording of its members’ works for an annual fee, payable quarterly in advance. This fee will be determined by MCPS in consultation with the licensee based on the following information, which must be supplied:

- 2.1 the estimated number of thirty second units (or part thereof) of MCPS members’ repertoire to be recorded into indirectly-commissioned radio programmes over the period of one month
- 2.2 the financial and contractual arrangements under which any such programmes would be supplied to a broadcaster
- 2.3 a list of the indirect commissions your company currently has planned and the broadcasters for each.

On receipt of this information, MCPSI will contact the producer to discuss the matter further.

## **3. Individual Licensing**

As an alternative to licensing options 1, and 2 above, it may be more appropriate for individual programmes to be licensed on an individual basis. This will require the producer to submit to MCPSI in advance of production details of the works to be recorded, in order to seek approval and agree licence fees with the relevant copyright owners. Licence fees for production music are published in the MCPSI Production Music Rate Card. For all repertoire other than production music, licence fees must be agreed with the relevant copyright owner.

**General Notes**

1. Sponsored programmes are permitted under the licences described above, but separate permissions must be obtained to record music into any sponsorship messages or for any other purpose as a result of which the music becomes associated with a particular sponsor, product or service. All monies paid by a sponsor must be included in any gross revenue figure against which MCPSI calculates the royalty applicable.
2. Under the above MCPSI agreements, programmes may only be supplied to domestic or overseas radio broadcasters that hold a valid IMRO (or equivalent for the relevant territory).
3. In addition to an MCPSI licence, separate permissions will be required if commercially-released sound recordings are dubbed. Please contact Phonographic Performance Ireland Limited (tel. 01 2805977) for further information.

Please contact me on 01 6448046 or e-mail [jason.duffy@imro.ie](mailto:jason.duffy@imro.ie) if you require clarification of any of the points outlined above.

Yours sincerely

---

Jason Duffy  
Licensing Administrator  
MCPS (Ireland) Lt.

# Music Services (Business to Business) Scheme Agreement



NAME OF LICENSEE	[ _____ ] (" <b>the Licensee</b> ")
REGISTERED ADDRESS OF LICENSEE	[ _____ ]
COMMENCEMENT OF AGREEMENT	[ _____ ] (" <b>the Commencement Date</b> ")
ADVANCE	[ _____ ] (" <b>the Advance</b> ")
<b>The terms and conditions for this Agreement are contained in the attached schedule</b>	

**Signed on behalf of the LICENSEE:**

\_\_\_\_\_  
*Signature*                      *Name*                      *Position*                      *Date*

**Signed on behalf of the Mechanical-Copyright Protection Society (Ireland) Limited ("MCPSI"), contracting for and on behalf of and as an agent of the Mechanical Copyright Protection Society (Copyright House, 29-33 Berner Street, London W1T 3AB, UK) and for its various Members and the Associated Societies:**

\_\_\_\_\_  
*Signature*                      *Name*                      *Position*                      *Date*

**Signed on behalf of the Irish Music Rights Organisation ("IMRO"), contracting for and on behalf of itself and for and on behalf of and as agent of the Associated Societies:**

\_\_\_\_\_  
*Signature*                      *Name*                      *Position*                      *Date*

## 1. DEFINITIONS

The following words and expressions shall have the following meanings save

## MUSIC SERVICES (B2B) LICENSING SCHEME

where the context otherwise requires:-

**"the Act"** shall mean the Copyright and Related Rights Act, 2000, as amended from time to time.

**"Agreement"** shall mean these terms and conditions, the Appendix to these terms and conditions and the covering sheet completed and signed by the Licensee and the Licensors.

**"Advance"** shall mean the figure set out as such in the covering sheet to this Agreement.

**"Applicable Revenue"** shall mean the Gross Revenue less VAT (or other equivalent sales tax, as applicable).

**"Application Form"** shall mean the application, substantially in the form attached at Appendix 1, submitted to the Licensors prior to entering into this Agreement.

**"Associated Society"** shall mean a collecting society with which the Licensors have at the relevant time an agreement under which the Licensors are authorised to grant licences in relation to the other society's repertoire for the Authorised Exploitation.

**"Associated Society Member"** shall mean any person, firm or company who or which has been notified, from time to time, as being a member of an Associated Society.

**"Audio-Only Recording"** means any audio-only recording embodying a Musical Work whether or not such recording was originally made by or for the Licensee.

**"Audio-Visual Material"** shall mean any specific presentation of Musical Works in synchronisation or otherwise with images, whether moving or still.

**"Background Service"** shall mean a Licensed Service which does not allow members of the public present at the End Customer's Site to select the Musical Work(s) or Audio-Visual Material that is played at the End Customer's Site.

**"Catalogue Number(s)"** shall mean the identifying mark(s) applied by the Licensee for the purposes of clause 11.4.

**"Commercial Work"** shall mean any Repertoire Work other than a PMSR (where PMSR includes, for these purposes any Musical Work embodied on that PMSR).

**"Copyright Owner"** shall mean in relation to any Musical Work each person firm or company wholly or partially owning or controlling the right.

**"Dramatico-Musical Work"** shall mean any ballet, opera, operetta, musical play or work of a similar nature.

**"EEA"** shall mean those countries which from time to time constitute full member states of the European Economic Area.

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

**"Electronic Means"** shall mean any distribution of data in an electronic form and not in a physical hard copy, whether wire or wireless and shall include without limitation, public and private telecommunication networks, satellite and, for the avoidance of doubt, the Internet.

**"End Customer"** shall mean a customer of the Licensee or, where the Licensee appoints an authorised intermediary, a customer of such intermediary.

**"Gross Advertising Revenue"** shall mean:

- (a) the total sums payable by the advertisers, sponsors or any other party on their behalf or connected therewith to the Receiving Party (or to any party associated or connected with the same or to any other party at the express or implied direction of the Licensee, End Customer or authorised intermediary, or any party associated or connected with the same) in relation to each and every advertisement and sponsorship message included in the Licensed Service thereof pursuant to this Agreement; and/or
- (b) the total value of the goods or services supplied free of charge or the total value of any discount where such goods or services are provided below normal price or of any other advantage or privilege in relation to each and every such advertisement or sponsorship message whether such goods or services are supplied to or advantage or privilege conferred on the Receiving Party or to any party associated or connected with the same or to any other party at the express or implied direction of the Receiving Party or any party associated or connected with the same.

**"Gross Revenue"** shall mean:

- (a) all revenue received (or receivable) by the Licensee from End Customers in consideration for the provision of the Licensed Services; and
- (b) to the extent that the revenue received by way of paragraph (a) above is separate from any of the following amounts such amounts shall be added:
  - (i) the expenses, fees or charges of whatsoever nature of any direct or indirect distributors, sub-distributors, agents, sub-agents, producers, or the like; and
  - (ii) any sums paid (or payable) directly or indirectly by the recipient of the copy of the Master Copies in relation to such supply or the intended exploitation of the Master Copies, including without limitation the cost of masters and copies thereof, duplication, shipping, the costs of making, freight, customs, storage, press kits, advertising and insurance; and
  - (iii) the Gross Advertising Revenue.

and in each of the above cases such revenue shall, for the avoidance of



## **MUSIC SERVICES (B2B) LICENSING SCHEME**

doubt, include any such revenue whether received or receivable by such Licensee or any associate, affiliate, agent, distributor or representative of such party.

**"Hard Disc"** shall mean a computer or server based storage medium which can store sound recordings or other material and which is not primarily intended to be a means of physically distributing such material.

**"IMRO"** shall mean the Irish Music Rights Organisation (company registered number 133321) whose registered office is at Copyright House, Pembroke Row Lower Baggot Street, Dublin 2.

**"Karaoke Service"** shall mean a Licensed Service consisting of the supply of one or more audio-visual recordings of Musical Works whereby the lyrics are reproduced graphically on the screen as the music plays so that members of the general public can sing as the music plays.

**"Licensed Service"** shall mean the Licensee's service consisting of the provision of music to End Customers (whether directly or through an authorised intermediary) for the sole purpose of the playing thereof by End Customers as background music or background audio-visual material by means of loudspeakers and/or monitors installed in and only intended to be viewed/heard within Sites owned or occupied by such End Customer.

**"Licences"** shall mean the licences granted by MCPSI under clause 2.1 and by IMRO under clause 2.2 of this Agreement.

**"Licensor(s)"** shall mean MCPSI and IMRO.

**"Master Copy"** shall mean:

- (a) a master tape (whether magnetic or digital, reel to reel or endless loop and in cassette or cartridge form); or
- (b) a laser read disc (including for the avoidance of doubt compact discs and DVDs); or
- (c) a Hard Disc; or
- (d) such other format as the Licensors shall have authorised in writing in advance;

embodying a Recording (or Recordings) made for the purposes of duplication therefrom.

**"MCPS"** shall mean Mechanical Copyright Protection Society Limited (a company incorporated in England under registered number 3444246) whose registered office is at 29/33 Berners Street, London W1T 3AB.

**"MCPSI"** shall mean the MCPS (Ireland) Limited (registered number 173672) of Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2.

**"Member"** shall mean:

- (a) in the case of MCPSI, each person, firm or company who or which,

### **MUSIC SERVICES (B2B) LICENSING SCHEME**

from time to time, has appointed MCPS as agent in relation to the exploitation of Musical Works as set out in this Agreement PROVIDED THAT a member who has so appointed MCPS 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 MCPS; and

in the case of IMRO, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of IMRO has been admitted either before or during the Term as a member of IMRO, other than where such person, firm or company has reserved to himself or itself the relevant rights pursuant to the Articles of Association and Rules and Regulations of IMRO, PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the purposes of this Agreement with effect from the date of admission into IMRO.

**"Month"** shall mean a calendar month or part thereof.

**"Music Usage Information"** shall mean the information detailed in Appendix 3.

**"Music Videogram"** shall mean any audio-visual production:

- (a) which has as the main feature of the soundtrack thereof a recording of a single Repertoire Work copies of which recording have been or are intended to be released as audio records for sale to the general public; and
- (b) the making of which was carried out by or on behalf of the record company releasing that recording or by or on behalf of the main artist(s) featured in that recording.

**"Musical Work(s)"** shall mean any work consisting of music and/or any lyrics or words written to be used with music. It includes any part of such work.

**"On-Demand Service"** shall mean a Licensed Service which allows members of the public present at the End Customer's Site to select the Musical Work(s) or Audio-Visual Material to be played at the End Customer's Site, for example (without limitation) a jukebox system.

**"Permitted Excerpts"** refers only to Dramatico-Musical Works and means excerpts where the use of all such excerpts in any Audio-Visual Material complies with all the following limitations:

- (a) the total duration of the excerpts does not exceed 20 minutes; and
- (b) the use is not a "potted version" of the Dramatico-Musical Work; and
- (c) the use is not or does not cover a complete act of the Dramatico-Musical Work;
- (d) each excerpt is not presented in a "dramatic form" as defined below; and

## MUSIC SERVICES (B2B) LICENSING SCHEME

- (e) as regards ballets specifically devised for television or excerpts from existing ballets, the total duration does not exceed five minutes.

A dramatic form shall be deemed to be created only by a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-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 costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph, the word "actors" shall include actors, singers, mimics and/or puppets.

**"Physical Media"** shall mean physical media (such as, without limitation, tape, compact disc, DVD, CD-Rom, portable hard drive, laser disc) used for the physical distribution of content to End Customers.

**"PMSR"** shall mean 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 and where such party has authorised MCPS to license such recordings as so-called production or library music.

**"Quarter"** shall mean each of the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December.

**"Receiving Party"** shall mean the Licensee, the End Customer or authorised intermediary.

**"Recording"** means any audio-only or audio-visual recording embodying a Musical Work whether or not such recording was originally made by or for the Licensee.

**"Repertoire Work"** shall mean:

- (a) in relation to the licences granted by MCPSI, each PMSR, and each Musical Work the copyright in which is owned or controlled, from time to time, in the UK or Republic of Ireland by MCPS or a Member or an Associated Society or an Associated Society Member PROVIDED THAT (i) if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the Associated Society or the relevant Member or Associated Society Member, and (ii) it shall exclude any Musical Work that a Member of MCPS or an Associated Society has withdrawn or withheld from this Agreement (or a particular form of exploitation licensable under this Agreement); and
- (b) in relation to the licences granted by IMRO, each Musical Work the copyright in which is owned or controlled, from time to time, in the Republic of Ireland by IMRO or a Member or an Associated Society or an Associated Society Member PROVIDED THAT (i) if one or more

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

of those who own or control the copyright in a relevant Repertoire Work is not IMRO or a Member or an Associated Society or Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by IMRO or the Associated Society or the relevant Member or Associated Society Member, and (ii) it shall exclude any Musical Work that IMRO or an Associated Society has withdrawn or withheld from this Agreement (or a particular form of exploitation licensable under this Agreement).

For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor.

**"Reporting Form"** shall mean the form provided at Appendix 2.

**"Royalty Fee"** shall mean the royalties payable as set out in clause 4.5.

**"Sites"** shall mean premises to which members of the public have access including shops, restaurants, public houses, shopping malls, hotels, night clubs, aircraft, ships, trains, coaches and similar premises it being understood that if background music is played through a centrally located system and relayed to separate and distinct parts of such premises occupied by separate entities each such part shall be deemed to be a separate Site for the purposes of this agreement. By way of example only if a copy of a Master Copy is played in a shopping mall and is also played in individual shops within such shopping mall the mall and each shop shall be regarded as separate Sites. Sites shall include all forms of public transport and each vehicle for which a copy of a Master Copy is supplied pursuant to this Agreement shall be treated as a separate Site for the purposes of this Agreement.

**"Term"** shall mean the period starting on the Commencement Date and ending on the termination of the Agreement in accordance with clause 13.

**"Territories of Distribution"** shall mean the EEA and such other countries or territories (if any) as are notified by the Licensors to the Licensee from time to time.

**"Territories of Manufacture"** shall mean the Republic of Ireland and such other countries or territories (if any) as are notified by the Licensors to the Licensee from time to time.

**"United Kingdom"** shall mean the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.

## **2. LICENCE**

2.1 Subject to and conditional on compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clause 3, MCPSI grants to the Licensee a non-exclusive licence to do the following during the Term:

- (a) to reproduce Repertoire Works within the Territories of Manufacture onto Master Copies; and

### **MUSIC SERVICES (B2B) LICENSING SCHEME**

- (b) to import into the Territories of Manufacture Master Copies which reproduce Repertoire Works (provided that the manufacture of such Master Copies was duly licensed by the Copyright Owner in the country of manufacture); and
- (c) to make copies of Master Copies within the Territory of Manufacture in the form of Physical Media or Hard Discs; and
- (d) to distribute by means only of rental, Physical Media to End Customers within the Territories of Distribution; and
- (e) where Repertoire Works are delivered to End Customers by Electronic Means, to authorise such End Customers to cause temporary copies of Repertoire Works to be made on a Hard Disc at the End Customers' Sites in the Republic of Ireland only; and
- (f) to make available to the public PMSRs from within the Territories of Manufacture by Electronic Means;

all for the sole purpose of providing the Licensed Service.

- 2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clause 3, IMRO grants the Licensee a non-exclusive licence, during the Term, to make available to the public (as that term is defined in the Act) and to authorise the making available to the public of Repertoire Works from the Republic of Ireland for the sole purpose of providing the Licensed Service.
- 2.3 All rights in each Repertoire Work other than those expressly granted to the Licensee herein are reserved to the Licensors.
- 2.4 To the extent that the Act is amended so that the terminology in clauses 2.1 and 2.2 is not consistent with that found in the Act, then the provisions of clauses 2.1 and 2.2 shall be deemed to be modified so as to grant the equivalent rights to those currently set out in clauses 2.1 and 2.2, with effect from the date when the Act is amended.

### **3. EXCEPTIONS AND LIMITATIONS**

- 3.1 The incorporation of Commercial Works into Audio-Visual Material is only licensed under this Agreement where the Audio-Visual Material consists of:
  - (a) a Music Videogram; or
  - (b) a live concert performance or a film of a live concert performance by the artist performing that particular Commercial Work; or
  - (c) such Commercial Works being combined with photographs or other images relating to the artist performing the Commercial Work or the composer of the Commercial Work; or
  - (d) the lyrics of the Commercial Work(s) reproduced graphically on the screen as the music plays for the purpose singing along to the Commercial Work(s); or

## MUSIC SERVICES (B2B) LICENSING SCHEME

- (e) a performance of Permitted Excerpts of the Dramatico-Musical Work of which the Commercial Works forms part.

For the avoidance of doubt, such Audio-Visual Material as is licensed under 3.1(a) to (d) above is only licensed insofar as it is reproduced or made available to the public via the Licensed Services.

- 3.2 For the avoidance of doubt, this Agreement does not grant any "synchronisation licence" (to the extent that such a licence may be required by the Licensee) covering the initial fixation of Repertoire Works in combination with visual images to create and produce Audio-Visual Material.
- 3.3 For the avoidance of doubt, the Licences granted under clause 2 of this Agreement shall not extend to the public performance (as that term is used in the Act) of Repertoire Works at the End Customers Sites, whether as part of the Licensed Services or otherwise. A separate licence for the public performance of the Repertoire Work(s) must be obtained (by the entity requiring such a licence) from IMRO, and elsewhere from the relevant performing right society in the relevant country.
- 3.4 The licence granted under clause 2.1 of this Agreement shall not permit the use of Repertoire Work(s) with any advertising or sponsorship of whatsoever nature where:
  - (a) such Repertoire Work(s) are incorporated into such advertising or sponsorship; or
  - (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising or sponsorship.
- 3.5 For the avoidance of doubt (but without prejudice to the generality of clause 3.4), the licences granted under this Agreement shall not apply to any Repertoire Work(s) made available for the purpose of (whether in whole or in part):
  - (a) directly or indirectly encouraging the End Customer to purchase or obtain goods or services of whatsoever nature (other than music via the Licensed Service); or
  - (b) promoting the branding of the Licensee, any affiliate of the Licensee or any third party;in such a manner that:
  - (i) one or more particular Repertoire Works, composers or writers are associated with such promotions; or
  - (ii) a reasonable person might assume that there was an association between particular Repertoire Works, composers or writers and such promotion.
- 3.6 The licence granted under clause 2.1 shall not apply to graphic copies (meaning, without limitation, copies of lyrics, notation or scores) of

### **MUSIC SERVICES (B2B) LICENSING SCHEME**

Repertoire Works other than where lyrics are provided on-screen in a Karaoke Service.

3.7 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to Repertoire Works which are made available by the Licensee outside of the Licensed Service. However, such other exploitation of Repertoire Works may fall within the scope of other licensing schemes operated by the Licensors, details of which shall be made available to the Licensee on request.

3.8 Where any Repertoire Work forms part of any Dramatico-Musical Work, the Licences shall not apply, in relation to Audio-Visual Material, to the reproduction of:

- (a) the whole Dramatico-Musical Work; or
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
  - (i) that which is copied or made available to the public via the Licensed Services under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; and
  - (ii) neither of the Licensors has notified the Licensee in writing that their Member or the Associated Society Member objects to the reproduction of any such Repertoire Work.

3.9 Where any Repertoire Work forms part of any Dramatico-Musical Work, the Licences granted under this Agreement shall not apply, in relation to material other than Audio-Visual Material, to the reproduction of the whole or substantially the whole Dramatico-Musical unless:

- (a) the Licensee has specifically notified the Licensors that it wishes to reproduce the whole or substantially the whole work; and
- (b) the Licensors have notified the Licensee that all relevant Members consent to such reproduction

For the purposes of this clause 3.9, the expression "Dramatico-Musical Work" shall include any version of such work (with or without cuts, additions, interpolations or the like) which has been publicly performed. Furthermore, for the avoidance of doubt, substantially the whole work shall be deemed to be reproduced where all or nearly all the individual songs or other music included in the work are reproduced.

3.10 In any event, the Licences only apply to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.

3.11 The Licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work to be copied or made available to the public as part of a Licensed Service unless the relevant Member has consented to such adaptation. By way of example only, this applies to:

- (a) any sampling (meaning the taking of part of the music and/or lyrics

### **MUSIC SERVICES (B2B) LICENSING SCHEME**

of a Repertoire Work and incorporating such part into another Musical Work) or the making available to the public or reproduction in the form of a sample of such part of a Repertoire Work; or

- (b) using with music lyrics other than those written to be used with the music or authorised for use with the music; or
- (c) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

However, provided that such alterations do not amount to an adaptation of a Repertoire Work and do not contravene clause 3.12, then this Agreement shall apply in relation to Repertoire Works that have been modified (including music and/or lyrics) for the purpose of satisfying the requirements of the relevant recording.

3.12 The Licences granted under this Agreement shall not extend to:

- (a) the reproduction or making available to the public of any Commercial Work or part thereof in the form of a parody or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or
- (b) the use of any Commercial Work in any context which the Licensee ought reasonably to consider as being likely to be insulting or detrimental to the composer or artist featured on the commercially released sound recording of the music or the relevant Member or Associated Society Member.

3.13 Any additional limitations in relation to the Associated Societies' rights to grant the licences set out in clause 2 of this Agreement which have been notified to the Licensee in writing (which may include by email) and shall be binding no less than 10 days following such notice. Where any restriction of a material nature is added, the Licensee shall have the right to terminate this Agreement by giving written notice to the Licensors.

3.14 All rights not specifically granted under this Agreement are hereby reserved.

3.15 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings (other than PMSRs), films, dramatic works, performers' rights, moral rights or rights in performances. The Licensee is required to obtain the appropriate waivers, consents, and/or licences from the person(s) owning or controlling rights in relation to sound recordings (other than PMSRs) containing Repertoire Works or performers of that Repertoire Work. .

3.16 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.

3.17 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the Republic of Ireland or any other territory.



### **MUSIC SERVICES (B2B) LICENSING SCHEME**

- 3.18 The Licensee shall not reproduce or authorise or permit the reproduction in the form of any Master Copy or copy thereof or import or distribute or authorise the importation or distribution of any Master Copy or copy thereof embodying any Repertoire Work (whether in the form of an audio-only or audio-visual recording):
- (a) which has not previously been reproduced in the form of any Audio-Only Recording of any nature with the consent of the Copyright Owner thereof; or
  - (b) where copies of any such Audio-Only Recording have not been made available by or with the consent of the Copyright Owner thereof for the purposes of the commercial exploitation thereof; or
  - (c) where the Audio-Only Recording embodying such Repertoire Work was not made with the consent of the Copyright Owner thereof in the territory in which such Audio-Only Recording was made or where the Audio-Only Recording was made in a territory in which copyright does not subsist in such Repertoire Work.

## **4. LICENCE FEES**

- 4.1 In consideration of the Licences granted by the Licensors, the Licensee shall pay to the Licensors:
- (a) the Advance; and
  - (b) subject to clause 4.2, the Royalty Fee.
- 4.2 The Advance is recoupable against the Royalty Fee, but is non-returnable. For the avoidance of doubt, in the event that, throughout the Term, the total Royalty Fees paid by the Licensee to the Licensors is less than the Advance, no part of the Advance shall be repayable to the Licensee by the Licensors.
- 4.3 Where, in relation to any particular Quarter, the Licensee fails to provide the information necessary to allow the calculation referred to in clause 4.1(b), then the Licensors shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Quarters and (b) any other relevant factors which could reasonably lead the Licensors to believe that the Royalty Fees payable would be materially different to those paid or payable in previous Quarters.
- 4.4 The licence fees referred to in clause 4.1 are subject to VAT. The Licensee shall pay to the Licensors VAT (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 4.5 In respect of delivery of content via Physical Media the Royalty Fee is:
- (a) for a Background Service, 6% of the Applicable Revenue or a minimum royalty of €2.20 per Site per month, whichever is greater; and/or
  - (b) for an On-Demand Service, 6% of the Applicable Revenue or a minimum royalty of €2.75 per Site per month, whichever is greater; and/or

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

- (c) for a Karaoke Service, 9.5% of the Applicable Revenue or a minimum royalty of €2.75 per Site per month, whichever is greater.

In respect of delivery of content via Electronic Means the Royalty Fee is:

- (a) for a Background Service, 7% of the Applicable Revenue or a minimum royalty of €2.75 per Site per month, whichever is greater; and/or
- (b) for an On-Demand Service, 8% of the Applicable Revenue or a minimum royalty of €3.85 per Site per month, whichever is greater; and/or
- (c) for a Karaoke Service, 10.5% of the Applicable Revenue or a minimum royalty of €3.85 per Site per month, whichever is greater.

For the purposes of this Agreement the number of Sites per month will be the highest number of Sites at any time during the calendar month.

- 5.1 The Licensee shall pay the Advance to the Licensors upon signature of this Agreement.
- 5.2 Within 30 days of the end of each Quarter the Licensee shall provide to the Licensors (at the address provided to the Licensee by the Licensors, or electronically if notified by the Licensors that this is acceptable) a fully and accurately completed self-accounting royalty statement in the Reporting Form attached at Appendix 2.
- 5.3 Within 7 days of receipt of the Reporting Form referred to in clause 5.2, MCPSI shall, on behalf the Licensors, each of the Members and the Associated Societies, raise an invoice for the Royalty Fee due, and the Licensee shall pay such amount to the MCPSI no later than 15 days after the invoice is delivered to the Licensee (such delivery to be deemed to have occurred in accordance with clause 14).
- 5.4 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the prime overdraft rate, current from time to time, of Bank of Ireland payable from the date on which the payment should have been made to the date on which payment was made payable from the date on which the payment should have been made to the date on which the payment was made.
- 5.5 No deductions in respect of tax or any other deductions or allowances of whatever nature and no set-off shall be made in relation to any payment due hereunder except where expressly provided for in this Agreement or agreed in writing between the Licensors and the Licensee prior to the delivery of the applicable remittance.

## MUSIC SERVICES (B2B) LICENSING SCHEME

### 6. SUPPLY OF INFORMATION

- 6.1 In relation to any and all Repertoire Works reproduced under this Agreement, the Licensee will deliver the Music Usage Information to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) in the standard electronic reporting format (a copy of which is attached at Appendix 3) not later than 2 months following the end of the Quarter to which the Music Usage Information relates.
- 6.2 The Licensee must also supply the Licensors with any further information or documentation in its possession, power, custody or control (and use its best endeavours to supply the Licensors with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensors at any time, in order to enable the Licensors to verify the Repertoire Work(s) which have been reproduced and distributed under this Agreement or to verify that the Licensee is abiding by the terms and conditions of this Agreement.
- 6.3 The Licensee acknowledges that the Licensors have a responsibility to maximise the efficiency of their reporting to its Members and the Associated Societies. Therefore, if the Licensors wish to make any reasonable upgrade or alteration of whatsoever nature to the Reporting Form as specifically referred to in Appendix 2, and/or Music Usage Information or data specification referred to in Appendix 3 during the Term, the Licensee agrees to use its best endeavours to implement the changes required as soon as is reasonably practicable, PROVIDED THAT the Licensors shall not request that the Licensee implements the change within 3 months of the date on which the request is made, and in each case of a change the following procedures shall apply:
- (a) the Licensors shall give full details thereof in writing to the Licensee;
  - (b) the Licensee will respond in writing within 4 weeks of receipt of the request, stating the date by which it commits to comply with the change and the Licensors shall provide full assistance to the Licensee in order to assist the Licensee in complying with the change; and

the parties will then finalise the details and undertake tests to ensure that the change operates satisfactorily within the terms of this Agreement, satisfactory operation of which will be deemed acceptance of the change and Appendix 2 and/or Appendix 3 and/or the definition of the Reporting Form and/or Music Usage Information will be amended or replaced accordingly.

## MUSIC SERVICES (B2B) LICENSING SCHEME

### 7. LATE REPORTING

- 7.1 The following provision applies where the Licensee has:
- (a) failed to deliver prior to the required date fully complete Music Usage Information; or
  - (b) delivered such Music Usage Information prior to the required date, but it contains any material omission or error of whatsoever nature (by way of example only, a Repertoire Work having been omitted therefrom or incorrectly or misleadingly named) and the Licensee has failed to give notice in writing to the Licensors correcting the omission or error by the required date.
- 7.2 In such circumstances, the Licensee shall pay the fees set out in clauses 7.3 and 7.4 (in addition to those set out in clause 4).
- 7.3 Separately in relation to each relevant Repertoire Work either omitted from the relevant Music Usage Information or as regards which there was a material omission or error of whatsoever nature or in relation to which the relevant Music Usage Information was not delivered, the additional fees shall be calculated at the rate equivalent to that which has been or will be paid by the Licensors to its Member(s) in relation to the Music Usage Information which was submitted prior to the required date.
- 7.4 The Licensee will also pay interest on such additional fees computed in accordance with clause 5.4 and calculated from the date on which the Licensors first made a distribution to its Member(s) in relation to the relevant period to the date on which the Music Usage Information was received by the Licensors or the date on which the Licensors received written notice of the relevant error, as the case may be.
- 7.5 The provisions of this clause 7 apply notwithstanding any other provision of this Agreement, but are without prejudice to any other right which the Licensors have in relation to any failure to submit Reporting Form and/or Music Usage Information fully or accurately completed within the time stipulated in clause 6.1.

### 8. BOOKS OF ACCOUNT AND AUDITS

- 8.1 The Licensee shall keep and make available for inspection upon reasonable notice (and shall procure that each End Customer keeps and makes available for inspection upon reasonable notice), both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) the use of all Musical Works and (b) any income or other consideration received by or on behalf of the Licensee in relation to the Licensed Services, together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit.
- 8.2 For the purposes of this clause 8, the Licensee shall allow upon reasonable notice (and shall procure that each End Customer shall allow) access to its premises to inspect relevant accounting records, but not more than once per

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

annum. The duly authorised representatives of the Licensors 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 the provisions of this Agreement.

- 8.3 If tests under any audit and verification process indicate under-payment of the correct Royalty Fee during the period under audit, then, without prejudice to the Licensors' 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 set out in clause 5.4),
- 8.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct Royalty Fee during the period under audit and/or (b) failures to report correctly (so as to affect a distribution by the Licensors to their Members) amounting to at least 7.5% of the music usage during the period under audit, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to clause 8.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefore.
- 8.5 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee's written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 8, save that such confidential information may be disclosed to the Licensors' directors, board and board sub-committee members, officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.
- 8.6 For the avoidance of doubt, books, records and accounting records as referred to in clauses 8.1 and 8.2 above shall include data, information and records held on computers.
- 8.7 The Licensee shall, if requested by the Licensors, provide a statement from its auditors (but not more than once per year) confirming that the financial information submitted by the Licensee for the relevant requested period is in accordance with the actual Gross Revenue (as defined under this agreement) for that period.

## **9. PERSONAL LICENCE**

- 9.1 The Licence is personal to the Licensee and, except as expressly set out in this Agreement, the Licensee shall not assign, sub-license, transfer or dispose of or purport to assign, sub-license, transfer or dispose of the whole or any part thereof.
- 9.2 The Licensee may authorise a manufacturer to make and a distributor to distribute copies of any Master Copy on behalf of the Licensee provided that:
- (a) the Licensee shall notify the Licensors of the identity of any

### **MUSIC SERVICES (B2B) LICENSING SCHEME**

manufacturer and/or distributor it proposes to instruct, and provide the Licensors with a list of all manufacturers and/or distributors as part of their reporting requirements, and shall not authorise such manufacturer and/or distributor unless either:

- (i) such manufacturer and/or distributor appears on the Licensors' approved list in relation thereto; or
  - (ii) the Licensors give their consent in writing such consent not to be unreasonably withheld; and
- (b) the Licensee shall procure that such manufacturer and/or distributor shall at all times:
- (i) act in accordance with the terms of this Agreement and not do anything which would if done by the Licensee be a breach hereof;
  - (ii) if requested by the Licensors send to the Licensors copies of all order despatch or consignment notes or other documents relating to the manufacture, distribution or supply of copies of any Master Copy to the Licensee reproducing any Repertoire Work(s);
  - (iii) allow the duly authorised representatives of the Licensors access to the premises of such manufacturer and/or distributor in order to inspect all documents relating to the manufacture distribution or supply of copies of any Master Copy and/or the stock of such copies from time to time in the possession power custody or control of such manufacturer and/or distributor; and
- (c) in the case of appointment by the Licensee of a distributor, that distributor has a direct contractual relationship with the End Customers. The purpose of this restriction is to ensure that the correct revenue is taken into account in calculating the Licensors' royalty. This restriction may be relaxed where arrangements are made with the Licensors to ensure that the correct revenue basis is used to calculate the royalty.
- 9.3 If the Licensee is in breach of any term or condition of this Agreement the Licensors may give notice to any manufacturer and/or distributor of the Licensee requiring them to cease such manufacture and/or distribution until further notice.
- 9.4 Each Master Copy shall at all times be retained in the possession of the Licensee or any manufacturer of copies thereof authorised hereunder provided that the Licensee shall procure that any Master Copy or copy thereof retained in the possession of such manufacturer shall be held to the order of the Licensee.
- 9.5 Where the Licensee has his own facilities for the making or duplication of Master Copies (or copies thereof) the Licensee shall at the request of the Licensors send to the Licensors within 7 days of the end of each Month details of all such copies made or duplicated by the Licensee on behalf of any third

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

party together with all despatch or consignment notes or equivalent documents relating thereto to include the name and address of the party for or on behalf of whom the Licensee made or duplicated the same and of the consignee thereof.

- 9.6 If the Licensee or a manufacturer or distributor on behalf of the Licensee supplies copies of any Master Copy to a customer of the Licensee which acts as a central distribution operation such customer shall be permitted to supply and/or re-distribute such copies to End Customers for the sole purpose of the Authorised Exploitation.
- 9.7 The Licensee shall remain liable for all use and/or exploitation including (without limitation) any use and/or exploitation outside the Authorised Exploitation of any Master Copy and/or copies thereof whether by the Licensee, an End Customer or any other customer of the Licensee or a manufacturer or distributor appointed pursuant to clause 12.2 or any other third parties authorised by the Licensee and the Licensee undertakes to indemnify the Licensors and keep the Licensors indemnified from and against all actions, proceedings, claims, demands, costs (including reasonable legal costs on an indemnity basis) awards and damages arising directly or indirectly as a result of such use and/or exploitation.
- 9.8 For the purposes of this Agreement, references to "distributor" include distributors involved in the distribution of copies of Master Copies by Electronic Means as well as in the form of Physical Media.

### **10. LABELS**

- 10.1 The Licensee shall procure that there appears on each copy on Physical Media of any Master Copy in a prominent position the initials "MCPSI" of reasonable size surrounded by a box.
- 10.2 Nothing in this Agreement shall give the Licensee any rights in the "MCPSI" trademark and the Licensee may use that trademark only in accordance with clause 10.1.
- 10.3 The Licensee shall procure that the following words (or such other words as may subsequently be notified by the Licensors to the Licensee) appear on the label of each copy of any Master Copy and any packaging thereof in a prominent position and of reasonable size:
- "FOR BACKGROUND MUSIC USE ONLY. COPYING, COMMUNICATING TO THE PUBLIC AND PUBLIC PERFORMANCE PROHIBITED EXCEPT AS SPECIFICALLY AUTHORISED."

### **11. SUPPLY FOR AUTHORISED EXPLOITATION**

- 11.1 In providing the Music Service to any End Customer (or authorised distributor) the Licensee shall include the following specific terms and conditions:
- (a) that title to each Master Copy and copy thereof shall remain with the Licensee and that such End Customer or distributor shall return the same to the Licensee forthwith cessation of the provision of the Licensed Service to that End Customer or upon the Licensee being

### **MUSIC SERVICES (B2B) LICENSING SCHEME**

required to recover the same in accordance with the terms and conditions of this Agreement.

- (b) that such End Customer or distributor shall only use such copy for the purposes of providing a background music service and in particular the End Customer or distributor shall not do or authorise or permit any other party to do any of the following (except as expressly permitted under this Agreement):
    - (i) copy or re-record the whole or any part of the same or alter or add material of any nature to the same; or
    - (ii) recite or play or add any advertisement or sponsorship message during or immediately before or after the playing of the same.
  - (c) that such End Customer or distributor shall not make any use of the same unless it has and continues to have at all material times the necessary licence to perform publicly the Repertoire Work(s) from IMRO or other appropriate person owning or controlling the right to grant licences for the public performance thereof.
  - (d) that any authorised distributor shall impose the same terms and conditions of supply as contained in clauses (a) to (c) in the supply of any copy or copies of any Master Copies to customers of such third party.
- 11.2 The Licensee shall upon request supply the Licensors forthwith with a copy of the Licensee's standard terms and conditions applying to the supply of copies of any Master Copy to third parties (whether by Electronic Means or on Physical Media).
- 11.3 The Licensee shall use its best endeavours to procure the return from any End Customer of any copy of any Master Copy (or, in the case of copies provided by Electronic Means, the destruction thereof) immediately after the cessation of the provision of the Licensed Service to that End Customer.
- 11.4 The Licensee shall procure that each Master Copy and copy thereof bears a Catalogue Number and that such Catalogue Number shall distinguish a Master Copy and copies thereof embodying one Recording (or a compilation of Recordings) from a Master Copy and copies thereof embodying a different Recording (or compilation of Recordings).
- 11.5 The Licensee will utilise or require the utilisation of any industry security standard which is developed and is available for use in the protection of Repertoire Works. Until such time, the Licensee must use its best commercial endeavours to prevent unauthorised copying and/or the unauthorised issuing of copies of Repertoire Works by whatever technical means are practicable. The Licensee will keep the Licensors informed about progress made in relation to fulfilling this obligation.
- 11.6 Save as may be permitted by law, the Licensee agrees it shall not (and shall use best commercial endeavours to procure that any End Customer or distributor shall not) attempt to interfere with, remove or alter:



### **MUSIC SERVICES (B2B) LICENSING SCHEME**

- (a) any rights management or identifier information that may be associated with any Repertoire Works; or
- (b) any technical measures associated with any Repertoire Work which are designed to prevent or restrict the unauthorised use of any Repertoire Work.

## **12. CATALOGUES AND OTHER PROMOTIONAL MATERIAL**

- 12.1 The Licensee shall send to the Licensors forthwith upon the printing thereof and without charge 2 copies of any advertising promotional or trade publication relating in any way to or containing details of any Master Copy made and/or copy thereof made or imported by or for the Licensee and/or the supply or distribution thereof.
- 12.2 Upon the written request of the Licensors to the Licensee, the Licensee shall send to the Licensors 1 copy of any Master Copy (or copy thereof) for the purposes of the Licensors verifying that the Licensee has complied with his obligations hereunder.
- 12.3 The Licensee shall also use its best endeavours to supply the Licensors with any further information or material requested by the Licensors at any time in order to enable the Licensors to verify the Musical Work(s) embodied or to be embodied on any Master Copy or copy thereof made by or on behalf of the Licensee or to effect or administer this Agreement or to verify that the Licensee is complying with his obligations under this Agreement.

## **13. TERMINATION**

- 13.1 Each party shall have the right to terminate this Agreement on giving at least three months notice in writing to the other party.
- 13.2 Each party shall have the right to terminate this Agreement by notice forthwith where the other party:
  - (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt of notice of such breach; or
  - (b) commits a material breach of this Agreement which is not capable of remedy;and, for the avoidance of doubt, any breach which consists of a failure by either party to perform an obligation under this Agreement within any period required or by any date specified under this Agreement shall be deemed to be capable of remedy if such obligation is performed by such party within the 14 day cure period specified in clause 13.2(a) above.
- 13.3 The Licensors shall have the right to terminate this Agreement by notice forthwith if the Licensee:
  - (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

- (b) is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:
    - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation; or
    - (ii) is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;
  - (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
  - (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).
- 13.4 Any such termination shall be without prejudice to any rights or remedies arising under this Agreement in respect of such breach or any other antecedent breach and subject to clause 13.5 of the terms and conditions contained in this Agreement shall continue to have effect without limitation in time in relation to Master Copies or copies thereof to which this Agreement has applied.
- 13.5 Upon termination of this Agreement and howsoever occurring for any reason, the Licensee shall:-
- (a) cease to make or import any Master Copy or copy thereof and shall cease to supply the same to any third party and the Licence and any approval granted under clause 9.2 shall forthwith be of no

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

further effect;

- (b) procure that all copies of any Master Copy in the possession power custody or control of any third party shall be returned (or destroyed, if a copy not on Physical Media) forthwith to the Licensee and that every Master Copy or copy thereof shall, at the request of the Licensors be delivered up to the Licensors or be destroyed.

13.6 The Licences granted under clause 2 of this Agreement are so granted on the basis of the representations made by the Licensee in part A of the Application Form.

13.7 The Licensors shall in addition have the right to terminate this Agreement where there has been a material change in the factors on the basis of which the Licensors granted the Licensee this Agreement provided that the Licensors shall have given the Licensee 28 days notice in writing specifying the material change relied on.

## **14. NOTICES**

14.1 Except where expressly stated otherwise, any notice or other written communication given under or in connection with this Agreement shall only be effective if it is in writing. Faxes and e-mails are permitted save that notice to terminate this Agreement shall not be served by e-mail. In the absence of any legitimate electronic signature system, either party shall be permitted to require the confirmation in writing (signed by an authorised signatory) of any notice originally sent by email.

14.2 The address for service of any party shall be its registered office marked for the attention of the Chief Executive or Managing Director, or, if any other address for service has previously been notified to the server, to the address so notified. A single notice served on or sent to the MCPSI and addressed to either Licensor shall be treated as validly served on both Licensors.

14.3 Any such notice or other written communication shall be deemed to have been served:

- (a) if personally delivered, at the time of delivery;
- (b) if posted, at the expiry of two business days or in the case of airmail four business days after it was posted;
- (c) if sent by facsimile message or e-mail, at the time of receipt of transmission (if received during normal business hours that is 09.30 to 17.00 local time) in the place to which it was sent or (if not received during such normal business hours) at the beginning of the next business day at the place to which it was sent.

14.4 In proving service of a notice it shall be sufficient proof that personal delivery was made, or that such notice or other written communication was properly addressed stamped and posted or in the case of a facsimile message or e-mail that an activity or other report from the sender's facsimile machine or computer can be produced in respect of the notice or other written

## **MUSIC SERVICES (B2B) LICENSING SCHEME**

communication, in the case of a fax, showing the recipient's facsimile number and the number of pages transmitted.

### **15. MISCELLANEOUS**

- 15.1 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 15.2 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.
- 15.3 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.
- 15.4 The parties respectively shall (and shall procure that any other necessary party within its control shall) execute and do all such documents acts and things as may be reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.
- 15.5 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.
- 15.6 This Agreement shall be construed according to the laws of the Republic of Ireland and the parties agree to submit to the jurisdiction of the Irish Courts.

**MUSIC SERVICES (B2B) LICENSING SCHEME**

**Appendix 1**

**Application Form**

**MUSIC SERVICES (B2B) LICENSING SCHEME**

**Appendix 2**

**Reporting Form**

**MUSIC SERVICES (B2B) LICENSING SCHEME**

**Appendix 3**

**Music Usage Information**

## JOINT PPI/MCPSI DJ DIGITAL DUBBING LICENCE

These terms relate to the paid-for Joint PPI/MCPSI DJ Digital Dubbing Licence supplied to you by PPI Limited.

### 1 DEFINITIONS

In this Licence, the following terms shall have the following meanings:

**“Act”** means the Copyright and Related Rights Act 2000 as amended from time to time.

**“Agreement”** means these terms and conditions and your completed Application Form once approved.

**“Application Form”** means the form that you must complete and submit to us to apply for the Licence.

**“Audio-Visual Work”** means a work incorporating both a sound recording and a visual presentation, whereby the sound recording is synchronised to the visual presentation. Most commonly presented as a **“Music Video”**.

**“Back-up Database”** means a single physical computer or physical hard disk unit (or such other storage device as we may agree in writing) storing back-up copies in digital form of the Repertoire Works and/or PPI Sound Recordings copied under this licence. Virtual or “Cloud” storage is not permitted under the terms of this licence.

**“Copy”** means a single copy of a Repertoire Work and/or a PPI Sound Recording from any single source to any single Format. **“Copies”** shall be construed accordingly.

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

**“Format”** means the following physical formats: CD, cassette, minidisk, vinyl, DAT, DVD, Blu-ray disk, HD-DVD, VHS, CD-ROM, memory card, hard drive (external or internal) or other digital media player containing one or more Repertoire Works and or PPI Sound Recordings copied by you in accordance with these terms, as set out in more detail in your Application Form, or any other physical format notified by us.

**“Karaoke”** means the graphic representation of lyrics of one or more Repertoire Works presented in a form such that the lyrics of a particular Repertoire Work are reproduced graphically on the screen as the music plays, for the primary purpose of viewers being able to sing along to that Repertoire Work as the music plays.



**“Licence”** means the licence set out in paragraph 2 below, granted to you subject to this Agreement.

**“Licence Fee”** means the fee payable by you to purchase the Licence as set out in paragraph 5 below, that is, the Standard Licence Fee or the Licence Fee including the Karaoke uplift.

**“Licence Fee including the Karaoke uplift”** means the fees set out in the third column of the table at paragraph 5.2 below, payable for all copying authorised under this Licence, by a Licensee, where one or more Copies includes the on-screen reproduction of the text of lyrics of Repertoire Works in connection with the provision by a Licensee of Services at least some of which incorporate Karaoke.

**“Licensee”** means a person whose Application Form has been approved by PPI and who has paid the Licence Fee in accordance with paragraph 5 below.

**“MCPSI”** means MECHANICAL-COPYRIGHT PROTECTION SOCIETY IRELAND LIMITED whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2, Ireland (“MCPSI”) contracting for and on behalf of and as agent of MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED having its registered office at 29/33 Berners Street, London W1T 3AB, England (“MCPS”) and its various members and the associated societies it represent.

**“Musical Work”** means any work consisting of music and any lyrics or words written to be used with the music (if applicable), including any part of such a work.

**“Permitted Number of Copies”** means the number of Copies identified in your Application Form. For the avoidance of doubt, each copy of each track on a mix-CD (or similar) is a separate single Copy notwithstanding whether such separate tracks are presented as “one” track.

**“PMSR”** means any sound recording of a Musical Work being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in Ireland and the United Kingdom, from time to time, by MCPS (or a member of MCPS or a foreign society or a foreign society member) and where such party has authorised MCPSI to license such recordings as so-called production or library music.

**“PPI”** means Phonographic Performance Ireland Limited, a company registered in Ireland with company number 27726 whose registered office is at PPI House, 1 Corrig Avenue, Dun Laoghaire, County Dublin.

**“PPI Sound Recording”** means each Sound Recording the ownership or control of the relevant copyright in which shall be vested in PPI from time to time.

**“Repertoire Work”** means each PMSR and each Musical Work the copyright in which is owned or controlled in Ireland, from time to time, by MCPS (or a foreign society or a foreign society member) PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not an MCPS member (or an affiliated society or an affiliated society member), the expression "Repertoire Work" shall only apply to such interest in Repertoire Work as is owned or controlled by MCPSI (or an affiliated society or an affiliated society member).

**“Service”** means the performance at venues in Ireland by the Licensee acting as a performance artist, a disc jockey (**“DJ”**), or a DJ providing Karaoke, of Repertoire Works and/or PPI Sound Recordings.

**“Sound Recording”** has the meaning as set out in the Act.

**“Standard Licence Fee”** means the Licence Fee set out in the second column of the table at paragraph 5.2 below, payable for copying authorised under this Licence, by a Licensee, in connection with the provision by the Licensee of any Service other than a Service incorporating Karaoke.

**“Term”** means the period of 12 months from the date your Licence is granted.

**“Ireland”** means the **Republic of Ireland**.

## **2 LICENCE**

- 2.1 In consideration for your payment of the Licence Fee to us, and subject to the limitations and restrictions set out below, we grant you a non-exclusive licence during the Term and in Ireland to make Copies of Repertoire Works and/or PPI Sound Recordings for the sole purpose of you providing the Service, providing that such Repertoire Works and/or PPI Sound Recordings have been legally obtained by you., and providing that the number of Copies does not exceed the Permitted Number of Copies.
- 2.2 This Licence does not cover the public performance of Repertoire Works or PPI Sound Recordings. Separate Licences are required from IMRO and PPI for this activity.
- 2.3 You may keep a complete Back-up Database. The Back-up Database will not constitute a Copy for the purposes of the calculation of the Licence Fee.
- 2.4 During the Term, on PPI's reasonable request, you must make any Back-up Database, the equipment on which such Back-up Database is stored and all other equipment from which (and onto which) you make Copies (including but not limited to CDs and any other such formats) available for inspection by PPI or PPI's authorised representatives.
- 2.5 Upon receiving a written (or e-mail) request from PPI, you shall supply to PPI within 21 (twenty-one) days such information as requested relating to Copies you have made during the Term.

## **3 LIMITATIONS**

- 3.1 No licence is granted hereunder in respect of any copying of Repertoire Works or PPI Sound Recordings until PPI has authorised your Application Form and received payment in full of the Licence Fee in accordance with paragraph 5 below.
- 3.2 This Licence is applicable to the copying of audio-only material and audio-visual (including Karaoke) material.
- 3.3 This Licence only covers the limited copying of Repertoire Works and PPI Sound Recordings as provided for in these terms and conditions. This Licence does not extend to other rights or interests, including without limitation, Musical Works which are not Repertoire Works, Sound Recordings which are not PMSRs or PPI Sound Recordings, films, dramatic works, performers' rights, moral rights or rights in performances. The Licence does not cover any rights not expressly granted under these terms and conditions.
- 3.4 All authorised copying of Repertoire Works and/or PPI Sound Recordings under this Licence must be carried out exclusively by you.

## **4 EXCLUSIONS**

- 4.1 This Licence will not cover the following, which are prohibited unless (where appropriate) a separate licence and/or the approval of the relevant copyright owner(s) has been granted:
- 4.1.1 the distribution sale, hire, loan and/or sharing in any way of Repertoire Works or PPI Sound Recordings whether in a physical or non-physical format;
  - 4.1.2 making any adaptation or arrangement of the music and/or alteration of the lyrics of any Repertoire Work;
  - 4.1.3 using music with lyrics other than those written to be used with the music or authorised for use with the music;
  - 4.1.4 using lyrics with music other than that written to be used with the lyrics or authorised for use with the lyrics;
  - 4.1.5 carrying out of any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and/or PPI Sound Recording and incorporating such part into another Repertoire Work and/or PPI Sound Recording) or the distribution or reproduction in the form of a sample of such part of a Repertoire Work and/or PPI Sound Recording;
  - 4.1.6 making a recording of any Repertoire Work and/or PPI Sound Recording in the form of any type of arrangement (including, for the avoidance of doubt, in the form of a combination of two or more Repertoire Works) or adaptation of whatsoever nature;
  - 4.1.7 using a Repertoire Work and/or PPI Sound Recording in the form of a parody, burlesque or any use which is defamatory or likely to be detrimental to the writer and/or performer and/or producer of the work;
  - 4.1.8 using a Repertoire Work and/or PPI Sound Recording with material which is of a sexual, violent, drug-related, political or other contentious nature;
  - 4.1.9 using a Repertoire Work and/or PPI Sound Recording in any format or as part of a Service which contains, has added to it or is used in conjunction with, any kind of advertisement, sponsorship or any direct or indirect or implied promotion or endorsement of any commercial or political organisation or any form of illegal activity;
  - 4.1.10 reproducing musical notations of Repertoire Works in any form;
  - 4.1.11 reproducing lyrics of Repertoire Works in any hard-copy form;

- 4.1.12 reproducing lyrics of Repertoire Works on screen unless such reproduction is for the sole purpose of the provision of a Service incorporating Karaoke and you have paid the Licence Fee including the Karaoke uplift as set out in paragraph 5;
  - 4.1.13 using a Repertoire Work and/or PPI Sound Recording which at the time of receipt of your Application Form has not been released for retail sale to the public in the European Economic Area with the copyright owner's permission;
  - 4.1.14 incorporating a Repertoire Work and/or PPI Sound Recording into any toys, games, novelty products or similar products;
  - 4.1.15 Repertoire Works and/or PPI Sound Recordings forming part of Dramatico-Musical Works;
  - 4.1.16 copying any Repertoire Works and/or PPI Sound Recordings that infringe the moral rights of the composer of that Repertoire Work or PPI Sound Recording; or
  - 4.1.17 using any PPI Sound Recordings in ways that denigrate the artistic integrity of any copyright works or any performance embodied on any PPI Sound Recording or to subject any copyright works or performance embodied on any PPI Sound Recording to derogatory treatment.
- 4.2 This Licence covers the copying of Repertoire Works and PPI Sound Recordings for use by you as part of the Service but, for the avoidance of doubt does not license the Service in respect of:
- 4.2.1 the public performance, communication to the public or any other transmission of whatsoever nature of any Repertoire Works and/or PPI Sound Recordings; and
  - 4.2.2 copying any Repertoire Works and/or PPI Sound Recordings for the purposes of any use online or by means of the internet.

## **5 PPI/MCPSI LICENCE FEES AND PAYMENT**

- 5.1 The submission of the Application Form is an offer by you to purchase a Licence from us. The Licence will not be granted until your payment has been received and we notify you that your Application Form has been approved. There will be no contract of any kind between you and us unless and until you make authorised payment for the Licence and we notify you that your Application Form has been approved.
- 5.2 The Licence Fee is calculated and payable in advance in Euros as set out in the table below. Licence Fees are expressed exclusive of any VAT payable unless otherwise stated. The Licence Fees will be adjusted annually on the 1<sup>st</sup> of January in line with increases in the Consumer Price Index (CPI). However, the CPI-adjusted licence fee applies only to the next renewal date of this licence

Permitted Number of Copies Per Annum: 1 - 20,000	Standard Licence Fee	Licence Fee including Karaoke Uplift
1 <sup>st</sup> Year	€400	€480
2 <sup>nd</sup> & subsequent Years	€200	€240

Permitted Number of Copies Per Annum: 20,000 - 100,000	Standard Licence Fee	Licence Fee including Karaoke Uplift
1 <sup>st</sup> Year	€On application	€On application
2 <sup>nd</sup> & subsequent Years	€On application	€On application

5.3 You may pay by:

5.3.1 **Credit/Debit Card.** Telephone PPI on 01-2805977, selecting Option 1 for Accounts when requested. We will add an additional 3% (plus VAT) on to the licence fee to cover the costs we are charged by your credit card company

5.3.2 **Cash.** We strongly advise against sending cash via post. Cash can be delivered in person to PPI at the address above.

5.3.3 **Cheque, made payable to PPI.** Please write your name and address and “Digital DJ Dubbing Licence” clearly on the back. Your application will not be approved until such time as your cheque clears.

5.3.4 **Monthly Standing Order.** Please contact PPI by telephone or email ([info@ppiltd.com](mailto:info@ppiltd.com)) for further details.

5.4 We will contact you once your Application Form has been processed and payment has been received to notify you if we will grant you the Licence. We will be under no obligation to license you until the Licence Fee has been paid. Should the Licence not be granted, you will be refunded the full Licence Fee plus any credit card fees charged.

## 6 WARRANTIES AND LIABILITY

6.1 We warrant that we have the right to license the rights granted in this Licence.

- 6.2 You shall indemnify and keep indemnified us against any action, claim, costs, damages, losses or expenses incurred by reason of any breach or non-observance of any of this Agreement;

## **7 DATA PROTECTION**

- 7.1 We take the privacy of your personal information very seriously.
- 7.2 You consent to PPI and MCPSI making your name (and/or professional name) and the town or city in which you are resident available to the public (for example, by inclusion on a list of Licensees published on PPI's or MCPSI's websites or distributed to members of the public).
- 7.3 We will respect your wishes and you can change your mind at any time by sending us an email to [info@ppiltd.com](mailto:info@ppiltd.com), or writing to us at the address above.

## **8 CANCELLATION AND TERMINATION**

- 8.1 You are only licensed once you have paid for the Licence in full and we notify you that your Application Form has been approved. At that stage, because the Licence has already been granted to you, you are unable to cancel the Licence. The duration of the Licence is the Term.
- 8.2 Your Licence may be terminated by us by written notice if you are in breach of the Licence and this Agreement and the breach is not remedied within 14 days after written notice of the breach has been given to you. If we reasonably believe your breach of the Licence and this Agreement affects the rights of our members (whose rights we are licensing) we may suspend your Licence at any time.
- 8.3 Upon termination of the Licence in accordance with paragraph 8.2, you must immediately cease to copy any Repertoire Works and/or PPI Sound Recordings.
- 8.4 Upon termination of this Licence in accordance with paragraph 8.2, no Licence Fees shall be reimbursed to you.

## **9 MISCELLANEOUS**

- 9.1 Nothing in this Licence affects the moral rights of the authors of any Repertoire Works and/or PPI Sound Recordings.
- 9.2 You will promptly supply us with any further information or documents reasonably requested by us to verify the Musical Works and/or Sound Recordings used (including any hardware and/or software used by you in the provision of the Service), the Service being provided by you and/or to verify that these terms are being or have been complied with.
- 9.3 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 9.4 This Agreement represents the entire terms agreed between the parties in relation to their subject matter and supersede and extinguish any prior drafts, and all previous contracts, arrangements (including any usage or custom and any terms arising through any course of dealing), representations, warranties of any nature whether or not in writing between the parties relating to their subject matter.
- 9.5 If a court or administrative organisation with competent jurisdiction decides that a paragraph in these terms and conditions is not valid this will not affect the rest of these terms and conditions. The parties acting reasonably will try to agree on a suitable paragraph to replace the one which is not valid. The new paragraph should, as far as possible, achieve the same economic, legal and commercial aims of the invalid one.
- 9.6 This Licence is personal to you and you may not sell, assign, transfer or deal in any other manner with this Licence or any of your rights or obligations under it without our prior written consent.
- 9.7 This Licence shall be governed by Irish law and we and you agree to submit to the exclusive jurisdiction of the Irish Courts.



## JOINT PPI/MCPSI IN-HOUSE DUBBING LICENCE

**These terms relate to the paid-for Joint PPI/MCPSI In-house Dubbing Licence supplied to you by PPI Limited.**

### 1 DEFINITIONS

In this Licence, the following terms shall have the following meanings:

**“Act”** means the Copyright and Related Rights Act 2000 as amended from time to time.

**“Agreement”** means these terms and conditions and your completed Application Form once approved.

**“Application Form”** means the form that you must complete and submit to us to apply for the Licence.

**“Audio-Visual Work”** means a work incorporating both a sound recording and a visual presentation, whereby the sound recording is synchronised to the visual presentation. Most commonly presented as a **“Music Video”**.

**“Background Entertainment”** means the public performance of Repertoire Works and/or PPI Sound Recordings so as to be of a non-intrusive nature and not for the purposes of dancing.

**“Back-up Database”** means a single physical computer or physical hard disk unit (or such other storage device as we may agree in writing) storing back-up copies in digital form of the Repertoire Works and/or PPI Sound Recordings copied under this licence. Virtual or “Cloud” storage is not permitted under the terms of this licence.

**“Copy”** means a single copy of a Repertoire Work and/or a PPI Sound Recording from any single source to any single Format. **“Copies”** shall be construed accordingly.

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

**“Format”** means the following physical formats: CD, cassette, minidisk, vinyl, DAT, DVD, Blu-ray disk, HD-DVD, VHS, CD-ROM, memory card, hard drive (external or internal) or other digital media player containing one or more Repertoire Works and or PPI Sound Recordings copied by you in accordance with these terms, as set out in more detail in your Application Form, or any other physical format notified by us.

**“Karaoke”** means the graphic representation of lyrics of one or more Repertoire Works presented in a form such that the lyrics of a particular Repertoire Work are reproduced graphically on the screen as the music plays, for the primary purpose of viewers being able to sing along to that Repertoire Work as the music plays.

**“Licence”** means the licence set out in paragraph 2 below, granted to you subject to this Agreement.

**“Licence Fee”** means the fee payable by you to purchase the Licence as set out in paragraph 5 below, that is, the Standard Licence Fee or the Licence Fee including the Karaoke uplift.

**“Licence Fee including the Karaoke uplift”** means the fees set out in the third column of the table at paragraph 5.2 below, payable for all copying authorised under this Licence, by a Licensee, where one or more Copies includes the on-screen reproduction of the text of lyrics of Repertoire Works in connection with the provision by a Licensee of Services at least some of which incorporate Karaoke.

**“Licensee”** means a person whose Application Form has been approved by PPI and who has paid the Licence Fee in accordance with paragraph 5 below.

**“MCPSI”** means MECHANICAL-COPYRIGHT PROTECTION SOCIETY IRELAND LIMITED whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2, Ireland (“MCPSI”) contracting for and on behalf of and as agent of MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED having its registered office at 29/33 Berners Street, London W1T 3AB, England (“MCPS”) and its various members and the associated societies it represent.

**“Musical Work”** means any work consisting of music and any lyrics or words written to be used with the music (if applicable), including any part of such a work.

**“Permitted Number of Copies”** means the number of Copies identified in your Application Form. For the avoidance of doubt, each copy of each track on a mix-CD (or similar) is a separate single Copy notwithstanding whether such separate tracks are presented as “one” track.

**“PMSR”** means any sound recording of a Musical Work being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in Ireland and the United Kingdom, from time to time, by MCPS (or a member of MCPS or a foreign society or a foreign society member) and where such party has authorised MCPSI to license such recordings as so-called production or library music.

**“PPI”** means Phonographic Performance Ireland Limited, a company registered in Ireland with company number 27726 whose registered office is at PPI House, 1 Corrig Avenue, Dun Laoghaire, County Dublin.

**“PPI Sound Recording”** means each Sound Recording the ownership or control of the relevant copyright in which shall be vested in PPI from time to time.

**“Repertoire Work”** means each PMSR and each Musical Work the copyright in which is owned or controlled in Ireland, from time to time, by MCPS (or a foreign society or a foreign society member) PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not an MCPS member (or an

affiliated society or an affiliated society member), the expression "Repertoire Work" shall only apply to such interest in Repertoire Work as is owned or controlled by MCPSI (or an affiliated society or an affiliated society member).

**"Service"** means the public performance solely as Background Entertainment of Repertoire Works and/or PPI Sound Recordings at a venue or venues or premises owned and/or controlled and/or operated by the Licensee in Ireland. For the avoidance of doubt, the Licence granted hereunder shall permit the reproduction / copying of Musical Works and/or PPI Sound Recordings onto digital playout devices (e.g. laptop computers, digital media players etc.) by the owner or occupier of a commercial premises, for the purpose only of the provision of background entertainment to customers and/or staff in that premises. The service does not extend to the supply, be it commercial or otherwise, either by digital delivery or on a pre-loaded playout device or mass-storage medium, of pre-programmed background music to third parties.

**"Sound Recording"** has the meaning as set out in the Act.

**"Standard Licence Fee"** means the Licence Fee set out in the second column of the table at paragraph 5.2 below, payable for copying authorised under this Licence, by a Licensee, in connection with the provision by the Licensee of any Service other than a Service incorporating Karaoke.

**"Term"** means the period of 12 months from the date your Licence is granted.

**"Ireland"** means the Republic of Ireland.

## **2 LICENCE**

- 2.1 In consideration for your payment of the Licence Fee to us, and subject to the limitations and restrictions set out below, we grant you a non-exclusive licence during the Term and in Ireland to make Copies of Repertoire Works and/or PPI Sound Recordings for the sole purpose of you providing the Service, providing that such Repertoire Works and/or PPI Sound Recordings have been legally obtained by you, and providing that the number of Copies does not exceed the Permitted Number of Copies.
- 2.2 This Licence does not cover the public performance of Repertoire Works or PPI Sound Recordings. Separate Licences are required from IMRO and PPI for this activity.
- 2.3 You may keep a complete Back-up Database. The Back-up Database will not constitute a Copy for the purposes of the calculation of the Licence Fee.
- 2.4 During the Term, on PPI's reasonable request, you must make any Back-up Database, the equipment on which such Back-up Database is stored and all other equipment from which (and onto which) you make Copies (including but not limited to CDs and any other such formats) available for inspection by PPI or PPI's authorised representatives.
- 2.5 Upon receiving a written (or e-mail) request from PPI, you shall supply to PPI within 21 (twenty-one) days such information as requested relating to Copies you have made during the Term.

## **3 LIMITATIONS**

- 3.1 No licence is granted hereunder in respect of any copying of Repertoire Works or PPI Sound Recordings until PPI has authorised your Application Form and received payment in full of the Licence Fee in accordance with paragraph 5 below.
- 3.2 This Licence is applicable to the copying of audio-only material and audio-visual (including Karaoke) material.
- 3.3 This licence does not authorise the copying of Repertoire Works and/or PPI Sound Recordings for public performances of Repertoire Works and/or PPI Sound Recordings by a disc jockey ("DJ") or for the purposes (either intended or otherwise) of dancing.
- 3.4 This Licence does not allow members of the public to select Repertoire Work(s) or Audio-Visual Work(s) to be played at a venue or venues or premises owned and/or controlled and/or operated by the Licensee in Ireland.

- 3.5 This Licence only covers the limited copying of Repertoire Works and PPI Sound Recordings as provided for in these terms and conditions. This Licence does not extend to other rights or interests, including without limitation, Musical Works which are not Repertoire Works, Sound Recordings which are not PMSRs or PPI Sound Recordings, films, dramatic works, performers' rights, moral rights or rights in performances. The Licence does not cover any rights not expressly granted under these terms and conditions.
- 3.6 All authorised copying of Repertoire Works and/or PPI Sound Recordings under this Licence must be carried out exclusively by you.

#### **4 EXCLUSIONS**

- 4.1 This Licence will not cover the following, which are prohibited unless (where appropriate) a separate licence and/or the approval of the relevant copyright owner(s) has been granted:
- 4.1.1 the distribution sale, hire, loan and/or sharing in any way of Repertoire Works or PPI Sound Recordings whether in a physical or non-physical format;
  - 4.1.2 making any adaptation or arrangement of the music and/or alteration of the lyrics of any Repertoire Work;
  - 4.1.3 using music with lyrics other than those written to be used with the music or authorised for use with the music;
  - 4.1.4 using lyrics with music other than that written to be used with the lyrics or authorised for use with the lyrics;
  - 4.1.5 carrying out of any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and/or PPI Sound Recording and incorporating such part into another Repertoire Work and/or PPI Sound Recording) or the distribution or reproduction in the form of a sample of such part of a Repertoire Work and/or PPI Sound Recording;
  - 4.1.6 making a recording of any Repertoire Work and/or PPI Sound Recording in the form of any type of arrangement (including, for the avoidance of doubt, in the form of a combination of two or more Repertoire Works) or adaptation of whatsoever nature;
  - 4.1.7 using a Repertoire Work and/or PPI Sound Recording in the form of a parody, burlesque or any use which is defamatory or likely to be detrimental to the writer and/or performer and/or producer of the work;
  - 4.1.8 using a Repertoire Work and/or PPI Sound Recording with material which is of a sexual, violent, drug-related, political or other contentious nature;

- 4.1.9 using a Repertoire Work and/or PPI Sound Recording in any format or as part of a Service which contains, has added to it or is used in conjunction with, any kind of advertisement, sponsorship or any direct or indirect or implied promotion or endorsement of any commercial or political organisation or any form of illegal activity;
- 4.1.10 reproducing musical notations of Repertoire Works in any form;
- 4.1.11 reproducing lyrics of Repertoire Works in any hard-copy form;
- 4.1.12 reproducing lyrics of Repertoire Works on screen unless such reproduction is for the sole purpose of the provision of a Service incorporating Karaoke and you have paid the Licence Fee including the Karaoke uplift as set out in paragraph 5;
- 4.1.13 using a Repertoire Work and/or PPI Sound Recording which at the time of receipt of your Application Form has not been released for retail sale to the public in the European Economic Area with the copyright owner's permission;
- 4.1.14 incorporating a Repertoire Work and/or PPI Sound Recording into any toys, games, novelty products or similar products;
- 4.1.15 Repertoire Works and/or PPI Sound Recordings forming part of Dramatico-Musical Works;
- 4.1.16 copying any Repertoire Works and/or PPI Sound Recordings that infringe the moral rights of the composer of that Repertoire Work or PPI Sound Recording; or
- 4.1.17 using any PPI Sound Recordings in ways that denigrate the artistic integrity of any copyright works or any performance embodied on any PPI Sound Recording or to subject any copyright works or performance embodied on any PPI Sound Recording to derogatory treatment.
- 4.2 This Licence covers the copying of Repertoire Works and PPI Sound Recordings for use by you as part of the Service but, for the avoidance of doubt does not license the Service in respect of:
  - 4.2.1 the public performance, communication to the public or any other transmission of whatsoever nature of any Repertoire Works and/or PPI Sound Recordings; and
  - 4.2.2 copying any Repertoire Works and/or PPI Sound Recordings for the purposes of any use online or by means of the internet.

## **5 PPI/MCPSI LICENCE FEES AND PAYMENT**

- 5.1 The submission of the Application Form is an offer by you to purchase a Licence from us. The Licence will not be granted until your payment has been received and we notify you that your Application Form has been approved. There will be no contract of any kind between you and us unless and until you make authorised payment for the Licence and we notify you that your Application Form has been approved.

5.2 The Licence Fee is calculated and payable in advance in Euros as set out in the table below. Licence Fees are expressed exclusive of any VAT payable unless otherwise stated. The Licence Fees will be adjusted annually on the 1<sup>st</sup> of January in line with increases in the Consumer Price Index (CPI). However, the CPI-adjusted licence fee applies only to the next renewal date of this licence

Permitted Number of Copies Per Annum: 1 - 20,000	Standard Licence Fee	Licence Fee including Karaoke Uplift
Annual Fee	€400	€480

Permitted Number of Copies Per Annum: 20,000 - 100,000	Standard Licence Fee	Licence Fee including Karaoke Uplift
Annual Fee	€On application	€On application

5.3 You may pay by:

5.3.1 **Credit/Debit Card.** Telephone PPI on 01-2805977, selecting Option 1 for Accounts when requested. We will add an additional 3% (plus VAT) on to the licence fee to cover the costs we are charged by your credit card company

5.3.2 **Cash.** We strongly advise against sending cash via post. Cash can be delivered in person to PPI at the address above.

5.3.3 **Cheque, made payable to PPI.** Please write your name and address and “In-house Dubbing Licence” clearly on the back. Your application will not be approved until such time as your cheque clears.

5.3.4 **Monthly Standing Order.** Please contact PPI by telephone or email ([info@ppiltd.com](mailto:info@ppiltd.com)) for further details.

5.4 We will contact you once your Application Form has been processed and payment has been received to notify you if we will grant you the Licence. We will be under no obligation to license you until the Licence Fee has been paid. Should the Licence not be granted, you will be refunded the full Licence Fee plus any credit card fees charged.

## **6 WARRANTIES AND LIABILITY**

- 6.1 We warrant that we have the right to license the rights granted in this Licence.
- 6.2 You shall indemnify and keep indemnified us against any action, claim, costs, damages, losses or expenses incurred by reason of any breach or non-observance of any of this Agreement;

## **7 DATA PROTECTION**

- 7.1 We take the privacy of your personal information very seriously.
- 7.2 You consent to PPI and MCPSI making your name (and/or professional name) and the town or city in which you are resident available to the public (for example, by inclusion on a list of Licensees published on PPI's or MCPSI's websites or distributed to members of the public).
- 7.3 We will respect your wishes and you can change your mind at any time by sending us an email to [info@ppiltd.com](mailto:info@ppiltd.com), or writing to us at the address above.

## **8 CANCELLATION AND TERMINATION**

- 8.1 You are only licensed once you have paid for the Licence in full and we notify you that your Application Form has been approved. At that stage, because the Licence has already been granted to you, you are unable to cancel the Licence. The duration of the Licence is the Term.
- 8.2 Your Licence may be terminated by us by written notice if you are in breach of the Licence and this Agreement and the breach is not remedied within 14 days after written notice of the breach has been given to you. If we reasonably believe your breach of the Licence and this Agreement affects the rights of our members (whose rights we are licensing) we may suspend your Licence at any time.
- 8.3 Upon termination of the Licence in accordance with paragraph 8.2, you must immediately cease to copy any Repertoire Works and/or PPI Sound Recordings.
- 8.4 Upon termination of this Licence in accordance with paragraph 8.2, no Licence Fees shall be reimbursed to you.



## **9 MISCELLANEOUS**

- 9.1 Nothing in this Licence affects the moral rights of the authors of any Repertoire Works and/or PPI Sound Recordings.
- 9.2 You will promptly supply us with any further information or documents reasonably requested by us to verify the Musical Works and/or Sound Recordings used (including any hardware and/or software used by you in the provision of the Service), the Service being provided by you and/or to verify that these terms are being or have been complied with.
- 9.3 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 9.4 This Agreement represents the entire terms agreed between the parties in relation to their subject matter and supersede and extinguish any prior drafts, and all previous contracts, arrangements (including any usage or custom and any terms arising through any course of dealing), representations, warranties of any nature whether or not in writing between the parties relating to their subject matter.
- 9.5 If a court or administrative organisation with competent jurisdiction decides that a paragraph in these terms and conditions is not valid this will not affect the rest of these terms and conditions. The parties acting reasonably will try to agree on a suitable paragraph to replace the one which is not valid. The new paragraph should, as far as possible, achieve the same economic, legal and commercial aims of the invalid one.
- 9.6 This Licence is personal to you and you may not sell, assign, transfer or deal in any other manner with this Licence or any of your rights or obligations under it without our prior written consent.
- 9.7 This Licence shall be governed by Irish law and we and you agree to submit to the exclusive jurisdiction of the Irish Courts.

## **LICENSING SCHEME FOR THE MANUFACTURE OR IMPORT FOR RETAIL SALE OF SOUND RECORDINGS (MECHANICAL LICENCE)**

### **1 MECHANICAL LICENCE AGREEMENT**

1.1 The terms and conditions contained in the standard form Mechanical Licence Agreement (“the Mechanical Licence Agreement”) which is set out in Appendix I will apply to a manufacturer or importer for retail sale of sound recordings to the Producer where:

- (a) the Producer has applied to Licensor for that Agreement; and
- (b) Licensor has granted that application in writing.

1.2 Applications for a Mechanical Licence Agreement shall initially be in the form set out in Appendix 2 but Licensor shall be entitled to ask further questions.

### **2 DEPOSITS AND FINANCIAL GUARANTEES**

Licensor may make the grant of a Mechanical Licence Agreement conditional upon the provision of such financial guarantees (by way of example only deposits or advances) as are reasonably necessary to provide security against the risk that the members of MCPS may not receive such royalties as may be payable under the Mechanical Licence Agreement. Upon termination of a Mechanical Licence Agreement Licensor shall release or repay any guarantee or similar security and shall repay any deposit or similar payment with accrued interest within 14 days of the latest of (a) termination, or (b) Producer having complied with all of its obligations under the Mechanical Licence Agreement or (c) resolution of any claim under any audit or other claim in relation to which notice was given to the Producer prior to such termination.

### **3 COMMENCEMENT AND TERM OF SCHEME**

This scheme shall take effect on the 1<sup>st</sup> January 2005 and shall continue until the 31<sup>st</sup> December 2012 provided however that if the standard mechanical royalty rate in respect of the licensing scheme published by MCPS in the United Kingdom changes from the rate which is specified in the Mechanical Licence Agreement to another rate either the Licensor or the Producer shall be entitled to terminate the Mechanical Licence Agreement by not less than three (3) calendar months notice in writing to expire at the end of a Quarter as therein defined.

**APPENDIX I**

This AGREEMENT is made                                      of                                      2005

BETWEEN:-

- (1) MECHANICAL-COPYRIGHT PROTECTION SOCIETY IRELAND LIMITED having its registered office is at Pembroke Row, Lower Baggot Street, Dublin 2 (“the Licensor”) as agent for Mechanical Copyright Protection Society Limited having its registered office at 29/33 Berner Street, London, England (“the Society”) which in turn is contracting for itself and on behalf of its members and those Associated Societies (as defined below) it represents;  

and
- (2) \_\_\_\_\_ of  

(“the Producer”)

WHEREAS:-

- (a) The Licensor has agreed to enter into this Agreement to enable the Producer to make (or cause to be made on its behalf) in Ireland or to import into Ireland for retail sale in Ireland discs reproducing Musical Works as hereinafter defined and as hereinafter specified upon and subject to the terms and conditions herein contained.
- (b) This Agreement is to supersede from the Commencement Date the previous agreement between the Licensor and the Producer.

NOW IT IS HEREBY AGREED as follows:-

1.    DEFINITIONS

The following words and expressions shall have the following meanings, save where the context otherwise requires:-

- 1.1 “Associated Society” means a collecting society with which the Society has at the relevant time reciprocal arrangements under which the Society and that society authorise each other to grant licences in relation to each other’s repertoire for the making of Discs reproducing such repertoire in the other’s territory.
- 1.2 “Catalogue number” shall have the meaning referred to in clause 24.12.
- 1.3 “Commencement Date” means 1<sup>st</sup> January 2005.
- 1.4 “Co-Exploitants” means:-
  - (a) any person, firm or company which carries out or arranges the manufacture of Discs the subject of this agreement for the Producer; and
  - (b) any person, firm or company which acts as distributor of such Discs for the Producer.
- 1.5 “Disc” means a pre-recorded audio-only sound carrier and shall include all Formats whether now known or hereafter invented or exploited.
- 1.6 “EU” shall mean each country which is at the relevant time a full member state of the European Union.
- 1.7 “Equivalent Unit Quantity” for the purposes of clause 16 shall be calculated by multiplying the number of negative sales remaining of the discontinued Format by the PPD of that Format at the time it was discontinued, and then dividing by the PPD of the Format against which the deduction is to be made.
- 1.8 “Format” shall mean the following audio-only sound carriers:-
  - (i) 45 rpm 7 inch vinyl single

- (ii) 45 rpm 7 inch vinyl EP
- (iii) 45 rpm 10 inch or 12 inch vinyl single
- (iv) 33 rpm 7 inch vinyl EP
- (v) 33 rpm 10 inch vinyl LP
- (vi) 33 rpm 12 inch vinyl LP
- (vii) 3 inch or 5 inch CD single
- (viii) 5 inch CD LP
- (ix) Cassette single
- (x) Long-playing cassette

and each other individual type of audio-only sound carrier hereafter manufactured and distributed.

- 1.9 “Joint Record Agreement Committee” shall mean the committee consisting of the Licensor’s nominees and record industry nominees.
- 1.10 “Musical Works” shall mean any work consisting of music and any lyrics or words written to be used with music. The expression shall extend to any dramatico-musical work (subject however to the provisions of clause 2.2) and to any part of any Musical Work (subject to clause 9).
- 1.11 “Net Shipments” for the purposes of clause 17 shall mean the gross number of Shipments during the relevant Quarter of the relevant Disc by Catalogue Number and Format in relation to which royalties are payable under this Agreement, less the number of Returns thereof during that Quarter. In calculating the gross number of Shipments for this purpose, no account shall be taken of Discs which are Deletions (clause 18) or which are exports (clause 13).

- 1.12 “New Release” means a Disc containing a particular content and configuration of tracks, copies of which have not previously been put into circulation in Ireland in that Format. A Disc shall not qualify as a New Release for the purposes of this Agreement where there has been a minor change in the content thereof.
- 1.13 “Notification of Intended Release” shall mean the form referred to in clause 24.11 below.
- 1.14 “Premium Record” shall mean a Disc supplied for use, or with the express or implied authority to sell it for use, as an incentive to purchase or acquire other goods or services of whatsoever nature.
- 1.15 “Published Dealer Price” or “PPD” shall mean the highest price as published by the Producer (or where appropriate the Producer’s distributor) payable by any dealer for the minimum quantity of copies of the relevant Format of the relevant Disc which any dealer can purchase from the Producer (or as appropriate the Producer’s distributor) without the benefit of any applicable discounts, incentives, bonuses and other reductions or deductions.
- 1.16 “Quarter” shall mean each of the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December.
- 1.17 “Reconciliation Statement” for the purposes of clause 17 shall mean a statement showing the following information for each Disc by Catalogue Number and Format:-
- (a) separately in relation to each Quarter:-
    - (i) whether the retention was claimed under clause 17.1 or 17.2;
    - (ii) the retention percentage applied in that Quarter;
    - (iii) the Net Shipments in that Quarter;

- (iv) the total number of Shipments against which royalties have been retained in relation to that Quarter;
- (v) the total number of Shipments for which royalties have been paid in relation to that Quarter;
- (b) where the retention was claimed under clause 17.1, the release date;
- (c) where the retention was claimed under clause 17.2, the date on which the television campaign began, and the regions within which the campaign took Place;
- (d) a summary of (a)(iii), (iv) and (v) for the total of all the relevant Quarters.

1.18 “Recording Matrix” shall mean any master tape or other contrivance or whatsoever nature from which Discs may be pressed or duplicated or from which re-recordings can be made.

1.19 “Re-Release” means a Disc containing a particular content and configuration of tracks, copies of which have previously been put into circulation in Ireland in one or more Formats, and where the following criteria have been fulfilled:-

- (a) any retention period as permitted by clause 17 when the Disc was a New Release has terminated and a proper Reconciliation Statement delivered to the Society and the balance of the royalties due (if any) paid; and
- (b) the previous release has been deleted from the Producer’s catalogue; and
- (c) the Producer has either destroyed its remaining stock of Discs or disposed of them as referred to in clause 18 and accounted to the Society for the royalties payable thereunder; and

- (d) at least one Quarter has occurred between completion of the above and the re-issue in (g) below
- (e) the Producer, having complied with (a), (b) and (c) above, has decided to re-issue the same Disc with the same content and configuration of tracks; and
- (f) the Producer has given the Disc a new Catalogue Number; and
- (g) the Producer has re-issued the Disc.

1.20 “Return” shall mean a Disc on which royalties have been paid or are due to be paid under this Agreement and which has been physically returned to the relevant Warehouse and credited as a return in the relevant accounting documents provided that a Disc shall not qualify as a Return for the purposes of this Agreement where it is returned to the Warehouse as part of a transaction which involves any kind of payment to the Producer for such Disc other than a bona fide administration charge for handling the return.

1.21 “Shipment” means the shipment of a Disc from a Warehouse (other than to another Warehouse in the Ireland ) and to “Ship” shall be construed accordingly.

1.22 “Statement of Shipments” shall have the meaning set out in clause 25.1.

1.23 “Television-Promoted Disc” shall mean a Disc which is the subject of a bona fide television campaign advertising that Disc and where that campaign has taken place in more than one television region.

1.24 “Ireland” shall mean that part of the island of Ireland referred to in Article 3 of the Constitution of Ireland as being the area and extent of the application of the laws enacted by the Parliament established by the Constitution.



1.25 “Warehouse” shall mean any building or other store where Discs are stored by or for the Producer including any fixed or moveable store (including vans).

## 2. REPertoire OF THE SOCIETY

2.1 The repertoire of the Society consists of:-

(a) those Musical Works in relation to which and to the extent that the Society has been or is hereafter appointed agent as regards the right to reproduce such Works in the form of Discs and the right to distribute such Discs.

(b) Musical Works in the repertoire of the Associated Societies.

2.2 The limitations in relation to the rights of the Licensor as agent for the Society for itself and as agent of the Associated Societies to grant licences both to make Discs and to distribute those Discs in Ireland are set out in Annex A, and any licence referred to in this Agreement is subject to those limitations. The Licensor will notify the Producer of any change thereto which has been notified to the Licensor.

2.3 Where the Producer is exercising the option to account referred to in clause 27 below, the Licensor will send to the Producer a full list of the members of the Society within 7 working days of the end of each Quarter. Where the Producer is not so exercising that option, the Licensor shall send to the Producer a full list of its members upon written request therefore by the Producer provided that such requests shall not be made more than once in any Quarter.

## 3. OVERRIDING OF CONTROLLED COMPOSITION CLAUSES

The following provisions apply where any person, firm or company is or becomes a member of the Society or an Associated Society and that party itself or that party's predecessor in title or grantor has a current contract with the Producer or the Producer's predecessor in title or grantor. In such a case:-

- 3.1 to the extent that such contract would otherwise apply in relation to the grant of the licence(s) referred to in this agreement and/or the terms and conditions on which such licence(s) is or are granted, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract;
- 3.2 upon the written request of the Producer the Licensor will provide the Producer with evidence that the relevant member has become a member of the Society and has given the Society or the relevant Associated Society authority to bind the member as regards this Agreement.

#### 4. GRANT OF LICENCE

- 4.1 Subject to the terms and conditions of this Agreement the Licensor hereby grants to the Producer the following non-exclusive licences to do the following acts in Ireland:-
  - (a) make audio-only master recordings embodying one or more Musical Works within the Society's repertoire for the purpose referred to in sub-clause (b) below;
  - (b) make audio-only copies of such master recordings in the form of Discs with a view to their retail sale to the public for private use;
  - (c) put such Discs as have been made under sub-clause (b) hereof into circulation with a view to such sale.

4.2 In relation to each Disc separately, any licence referred to in clause 4.1 shall be conditional upon the Producer not being in such material breach of any one or more of the following provisions as would entitle the Licensor to terminate this Agreement under clause 33.1:-

- (a) those relating to the payment of royalties;
- (b) those relating to the purposes for which Discs may be made and/or supplied under this Agreement;
- (c) those relating to the circumstances in which Discs may not be made and/or supplied under this Agreement.

5. SCOPE OF LICENCE

5.1 The licences referred to in clause 4 apply only to Discs which are made available to the public through normal channels of retail distribution. Without prejudice to the generality of the foregoing therefore, it does not apply to Premium Records, Discs sold through record clubs or other Discs sold by any direct marketing method to the public without the intermediary of a dealer.

5.2 This Agreement applies to all such Discs:-

- (a) made after the Commencement Date, notwithstanding the fact that other copies thereof were released prior to such date;
- (b) put into circulation after the Commencement Date, notwithstanding the fact that such Discs were made prior to such date.

5.3 The licences referred to in clauses 4.1(b) and (c) above apply to all Formats.

5.4 All rights other than those expressly granted in this Agreement are reserved, and, without prejudice to the generality of the foregoing, Discs made for

purposes other than those referred to in clauses 4, 7.4 or 19 (by way of example only, Discs made and/or supplied for the purposes of broadcasting) are not covered by the licence referred to in clause 4.

5.5 Nothing in this agreement shall entitle the Producer to exercise the licences referred to in clause 4 in relation to Discs where the appropriate consents and/or licences have not been obtained from the person(s) owning or controlling rights in relation to the sound recordings and/or performances contained on such Discs.

## 6. LABELS TO WHICH LICENCE APPLIES

6.1 The licences referred to in clause 4 apply to all Discs bearing the trademarks or tradenames, or issued on the labels referred to in the Producer's application to the Licensor for this Agreement.

6.2 The licences shall be extended to Discs bearing any new trademark or tradename or issued on a new label which the Producer may hereafter exploit, provided that the Producer has given the Licensor advance written notice that it intends to exploit such trademark, tradename or label. If another record producer having a contract with the Licensor in the same terms as this Agreement has already given notice to the Licensor that it is using the same trademark, tradename or label, the Licensor shall notify the Producer.

6.3 The licences may also upon prior written notice to the Licensor be extended to Discs bearing any existing trademark or tradename or issued on any existing label not referred to in the Producer's application to the Licensor for this Agreement. However, the licences shall not be so extended where both:-

- (a) the Producer has acquired the right not only to exploit the trademark, tradename or label, but also to make and distribute recordings previously available under that trademark, tradename or label; and
- (b) any royalties payable to Licensor on behalf of the Society or any of its members or to any Associated Society in relation to Discs previously issued bearing such trademark or tradename or on such label remain unpaid.

6.4 The Producer is responsible for ensuring that it has the right to issue Discs bearing trademarks, tradenames or on labels which it notifies to the Licensor under the above provisions. The Producer will indemnify the Licensor, the Society and its members against any valid claims made against the Licensor and which relate to the Licensor having granted consent under this Agreement to the making and putting into circulation of Discs bearing any such trademark, tradename or label.

6.5 Where both the Producer and another record producer are exploiting Discs bearing the same trademark or tradename or using the same label, this Agreement shall only apply to the Discs bearing that trademark, tradename or on that label which have been made or put into circulation by or for the Producer.

6.6 The Licensor will notify the Producer of any importation of Discs bearing a trademark or tradename or issued on a label notified by the Producer to the Licensor under the above provisions which to the Licensor's knowledge infringes any right of the Producer in any such trademark, tradename or label.

7. RENTAL

- 7.1 It is hereby confirmed that, subject to clause 7.4, the licences referred to in clause 4 do not extend to the making or putting into circulation of such Discs by or on behalf of the Producer with a view to or with express or implied authorisation for either the rental thereof or the lending thereof by any library authority.
- 7.2 The Producer shall only carry out or authorise any such act after it has reached agreement with the Licensor as to the terms and conditions on which the same should take place, including the payment of a proportion of any royalties or fees (if any) payable to the Producer in relation to such rental or lending.
- 7.3 Where either the Producer or the Licensor becomes aware of a third party's intention to rent or lend Discs made by or for the Producer without the Producer's consent, such party will give notice of this to the other party.
- 7.4 The licences referred to in clause 4 do extend to the supply of Discs direct to a libraries and archives as referred to in Sections 59 to 70 inclusive of the Copyright and Related Rights Act 2000 for the purposes of such library or archive renting or lending such Discs where the Producer does not directly or indirectly charge or receive a royalty or other fee in relation to such renting or lending.

8. FIRST RECORDINGS

- 8.1 Where in relation to any particular Musical Work no Disc embodying that Work has previously been manufactured in or imported into the EU with the consent of the party entitled to grant consent for such reproduction or importation, the licences referred to in clause 4 shall not apply in relation to that Work until all the relevant members of the Society owning or controlling

the rights in that Work have consented to the grant of the licence in accordance with this Agreement.

8.2 Such consent shall be deemed to be applied for from the Licensor when following the procedure set out in clause 24. Alternatively, such consent may be applied for either from the Licensor or direct from the relevant member(s) of the Society by using the consent form appearing at Annex B. Copies of such forms may be obtained from the Licensor. Where the Producer obtains consent direct from the member(s), the Producer shall when submitting the notification of Intended Release (or label copy) to the Licensor as referred to in clause 24.11 send with it a copy of the completed and signed consent form.

8.3 In the event that the Producer bona fide wishes to know whether or not a particular Musical Work is subject to the restriction referred to in clause 8.1, the Producer may enquire of the Licensor also by using the standard form set out in Annex B. Such enquiry shall be sent to the Licensor by registered post and the Licensor shall respond to such enquiry within 7 working days of the receipt thereof.

## 9. ARRANGEMENTS AND MORAL RIGHTS

9.1 For the purpose of exercising the licence referred to in clause 4 and subject to clause 9.5, the Producer may make such modifications to the relevant Musical Work(s) as the Producer considers necessary in order to satisfy the requirements of the relevant recording.

9.2 No such modification shall however be made which:-  
(a) would amount to an adaptation of the Work; or

(b) would amount to a derogatory treatment of the Work within the meaning of Chapter 7 of the Copyright and Related Rights Act 2000 unless the relevant member of the Society or Associated Society has consented in writing thereto.

9.3 The licences referred to in clause 4 may only be exercised in relation to any modification which is authorised under clause 9.1, or to which the relevant member of the Society has consented in writing under clause 9.2.

9.4 Neither the Producer nor any party claiming through the Producer nor any party who carried out such modification may claim an interest in the copyright in the Musical Work, whether in its original or modified form, or any share of any income of whatsoever nature derived from the exploitation thereof, unless the relevant member of the Society has agreed otherwise, and any authority or consent contained in this clause or granted by the relevant member of the Society shall unless otherwise agreed be conditional upon no such claim being made.

9.5 Nothing in this Agreement affects the moral rights of the authors of Musical Works.

## 10. DURATION OF ROYALTIES PAYABLE

10.1 Royalties shall be payable under this Agreement in relation to every Musical Work from time to time in the repertoire of the Society which is the subject of copyright protection in Ireland.

10.2 Each Musical work in the repertoire of the Society and reproduced on a Disc shall also be taken into account in calculating the royalty payable to the



Licensor hereunder, so long as that Work is the subject of copyright protection in the territory to which the Disc is Shipped.

11. ROYALTIES PAYABLE

- 11.1 Save as otherwise provided herein, the Producer shall pay to the Licensor or (where the Licensor so directs) to the Society's member in relation to each Disc which reproduces one or more Musical Work(s) in the Society's repertoire a royalty of eight and a half percent (8.5%) of the Published Dealer Price applicable to the relevant Disc on the day of the Shipment of the Disc from the Warehouse.
- 11.2 Where the Producer has not published a Published Dealer Price in relation to the relevant Disc, but the Producer has published a fixed or suggested retail price in relation thereto, the royalty shall be calculated at a rate of six and a half percent (6.5%) of the fixed or suggested retail price applicable to the relevant Disc on the day of Shipment of the Disc from the Warehouse.
- 11.3 If the Producer is unable to show at the time the royalty is due that there was in force on the Shipment date a Published Dealer Price or fixed or suggested retail price (as the case may be) applicable to such Disc, the royalty shall be fixed by the Licensor on the basis of the price most generally used by other record producers in Ireland for a comparable type of Disc.
- 11.4 This clause applies to sales to record clubs. No royalty shall accrue in relation to a Disc which is supplied by the Producer to a record club if the royalty will be paid by the record club pursuant to an agreement between the Licensor or the Society or any Associated Society and that record club provided that where the record club is not paying the royalties due there under the relevant Society

is entitled on written notice to require that the Producer cease to supply such Discs until such royalties have been paid.

12. TAXES

- 12.1 Before calculating the royalties payable on any Disc, Value Added Tax (or, where clause 13.2 applies, any similar tax included in the royalty base price) shall be excluded.
- 12.2 No other tax which forms part of the relevant price shall be deducted there from prior to calculation of the royalty.
- 12.3 The Producer shall pay VAT at the rate or rates from time to time in force on any royalties payable under this Agreement.

13. EXPORTS

- 13.1 The Producer may elect to export Discs to a licensee, affiliate or importer in a territory outside Ireland without paying royalties thereon under this Agreement provided that:-
- (a) such licensee, affiliate or importer has an agreement with the Society or the Associated Society responsible for the collection of mechanical royalties in the territory to which such Discs are being exported under which such party is liable to pay mechanical royalties on such Discs; and
  - (b) the Licensor has not notified the Producer that such party has failed to comply with that agreement in a material respect; and
  - (c) at the same time as submitting the Statement of Shipments referred to in clause 25, the Producer delivers a separate statement identifying the

gross number of Discs by Catalogue Number and Format which have been exported royalty-free under this provision, and the name and address of the licensee, affiliate or importer to whom such Discs have been supplied.

13.2 Where the Producer has not elected to export any Discs royalty-free under clause 13.1, the Producer shall pay royalties on Discs exported to a territory outside Ireland in accordance with the provisions of this Agreement provided that:-

- (a) in relation to Discs exported to a territory within the EU, the royalty rate provided for in clause 11 shall be applied to the PPD or fixed or suggested retail price (as the case may be) of the Discs in the territory to which the Discs are exported;
- (b) in relation to Discs exported to a territory outside the EU, the royalty shall be calculated in accordance with the appropriate standard mechanical rights agreement or (in default thereof) in accordance with the law in the territory to which the Discs are exported.

13.3 Save where the Producer makes the election under clause 13.1 in relation to all copies of the relevant Disc per territory per Catalogue Number in the particular Quarter, exports not exceeding 500 Discs per territory per Catalogue Number per Quarter shall be deemed not to be exports and royalties thereon shall be calculated and paid fully in accordance with this Agreement.

13.4 Any export of Discs shall be subject to the exercise of any rights subsisting and lawfully exercisable in any territory to which such Discs are exported to prevent or control the importation of Discs into and distribution of Discs within such territory.

14. PRO-RATING PROVISIONS

14.1 This clause applies:-

- (a) where a Disc reproduces Musical Works in the repertoire of the Society together with Musical Works which are not within the repertoire of the Society; and
- (b) for the purposes of the Producer accounting, where the Producer has elected to account in accordance with clause 27.

14.2 In such circumstances:-

- (a) where the notification sent by the Society under clause 24.5 specifies the duration of the Musical Works, the Licensor's share of the royalty shall be in the proportion which the duration of each of the Works in its repertoire bears to the total duration of all the Musical Works on the Disc in question;
- (b) in all other cases, the Licensor's share of the royalty shall be in the proportion which the number of tracks containing Musical Works in its repertoire bears to the total number of tracks on the Disc in question.

15. ACCRUAL OF ROYALTIES

15.1 The royalty referred to in clause 11 accrues on the day of Shipment of the Disc from the Warehouse.

15.2 The provisions of this clause are subject to those relating to royalty-free exports contained in clause 13.

16. RETURNS

- 16.1 When calculating the royalties due at the end of a Quarter in relation to a particular Disc by Format and Catalogue Number, the number of Returns during that Quarter of the same Disc by Format and Catalogue Number may be deducted from the gross Shipments thereof (including for the avoidance of doubt any exports which are deemed to be Ireland sales under clause 13.3 but not any other exports)
- 16.2 The Producer may carry forward any negative number of Shipments in relation to a particular Format and Catalogue Number in one Quarter against any Shipments of the same Format and Catalogue Number in any subsequent Quarter
- 16.3 Where the Producer discontinues one Format of a particular Disc by Catalogue Number, and there remains a negative number of Shipments of that Format, then the Producer may deduct from any future Shipments of any Format of that Disc then remaining available the Equivalent Unit Quantity in relation to the negative number remaining, provided that the Musical Works and the duration thereof on each of the relevant Formats are identical, and there are no additional tracks or reduced number of tracks.
- 16.4 The Producer shall not be entitled to any form of refund for royalties already paid except as specifically set out in this Agreement.

17. RETENTIONS AGAINST RETURNS

The following retention provisions apply in relation to Discs which are new releases or re-releases and shall be applied separately in relation to each Format thereof:-

- (a) In relation to the fourth quarter of the year in which copies of the new releases or re-release were first put into circulation with a view to retail sale thereof to

the public for private use, the royalties payable on ten percent (10%) of the Net Shipments during that Quarter may be retained against any possible Returns.

- (b) Reconciliation must be effected in the first quarter of the new year (i.e. the following quarter) and a Reconciliation Statement delivered to the Licensor with the statement of Shipments relating to the first quarter of the new year.
- (c) The balance of royalties (if any) due to the Licensor shall be accounted for in the same manner and paid at the same time as the other royalties due in respect of the first quarter of each new year.

## 18. DELETIONS

- 18.1 If at least six months (three months in the case of singles) after the date of their first issue a Producer decides to delete Discs reproducing Musical Works in the repertoire of the Society or an Associated Society from its catalogues it may sell the deletions subject to the terms of this clause.
- 18.2 The Producer shall give notice to the Licensor of such deletions and keep proper stock records of the number of records disposed of in this way.
- 18.3 The Producer shall pay a royalty on each deletion calculated at the rate of eight point five per cent (8.5%) of the invoice price (exclusive of VAT) charged to an independent buyer by the Producer uplifted by ten per cent (10%) provided however that in no event shall the amount payable under this clause exceed eight point five per cent (8.5%) of the Published Dealer Price.
- 18.4 The accounting arrangements for royalties due on deletions shall be the same as those on other sales of Discs reproducing Musical Works in the repertoire of the Society or an Associated Society but there shall be no allowance for

Promotional Copies and the Producer shall not have the benefit of clause 19 hereof.

19. PROMOTIONAL COPIES

19.1 Promotional copies of Discs are those which are bona fide supplied free of charge solely for the purpose of genuine promotion of sales of either copies of the Discs in question supplied to a broadcaster or disc jockey or critic for the purpose of broadcasting it playing it in public or reviewing it respectively or for some other bona fide promotional purpose.

19.2 No royalties shall be chargeable on promotional copies of Musical Works in the repertoire of the Society or an Associated Society not intended for retail sale which are distributed to addresses within the EU PROVIDED THAT:-

(a) In the case of a Disc which is a single play record the aggregate number of Discs which may be shipped royalty free under the terms of this clause shall not exceed the following number in respect of the following sales:-

- |       |                     |           |
|-------|---------------------|-----------|
| (i)   | up to 50,000 Discs  | 500 Discs |
| (ii)  | up to 75,000 Discs  | 600 Discs |
| (iii) | up to 100,000 Discs | 750 Discs |

For the avoidance of doubt where the Producer issues a 7 inch single and a 12 inch single containing the same Musical Works such singles shall be treated separately for the purposes of calculating the free issue allowance under this clause. However, no more than one promotional allowance shall be granted for each of the 7 inch and 12 inch singles notwithstanding that different versions, mixes or additional tracks

appear in one or other format and no further allowances shall be made for any other configuration of the single.

- (b) In the case of a Musical Work or a Disc which is a long play record the aggregate number of records which may be shipped royalty free under the terms of this clause shall not exceed 100.
- (c) Notwithstanding the provisions of sub-clause 9(2)(b) the Producer shall have the right to Ship up to 400 (four hundred) long play records royalty free PROVIDED that all such Discs are either indelibly marked or have a permanent non-removable sticker applied to them indicating that the Discs are not for sale.
- (d) If the allowances in sub-clause 9(2)(b) or 9(2)(c) are exceeded the Producer shall pay the full royalties due under this Agreement on the excess notwithstanding the fact that the whole or part of such excess relate to promotional copies.
- (e) For the avoidance of doubt:-
  - (i) there is only one allowance for an LP and a cassette which have the same content and the same catalogue number (ignoring any difference prefix and/or suffix).
  - (ii) Discs reproducing Musical Works in the repertoire of the Society as an Associated Society which are double – or more – packed have only one allowance.
  - (iii) Such Discs which are re-releases have the appropriate allowance.

19.3 Where a Producer supplies the Licensor or a Copyright Owner with a copy of a Disc which includes his or its work no royalties shall be chargeable. The



Producer agrees that upon written request by a copyright owner the Producer will supply the Copyright Owner two Promotional copies of Discs which include his or its work.

19.4 For the purposes of this clause the term “Promotional Copies” shall not include those records which are given away free of charge for use in legal proceedings, registration or other legal purposes.

19.5 The Producer shall maintain information in reasonable detail for a period of not less than two (2) years as to the general nature of the recipients of promotional copies.

19.6 Records which are supplied free of charge to dealers by way of commercial discount shall attract royalties payable under clause 11 above.

## 20. NOTICES AND CREDITS

20.1 Each Disc reproducing a Musical Work in the repertoire of the Society shall bear the initials “MCPS Ireland”.

20.2 A notice to the following effect shall appear on the label on each side of the Disc:-

“ALL RIGHTS OF THE PRODUCER AND OF THE OWNER OF THE WORKS REPRODUCED RESERVED. UNAUTHORISED COPYING, HIRING, LENDING, PUBLIC PERFORMANCE AND BROADCASTING OF THIS RECORD PROHIBITED.”

20.3 On the label of each Disc there shall be reproduced:-

- (a) the title of each Musical Work reproduced thereon;
- (b) the name of each composer;
- (c) the name of each author;

- (d) the name of the arranger of the words and/or music where applicable.
- 20.4 Where it is technically impossible for the Producer to comply with clause 20.3, such information may be reproduced as follows:-
- (a) on the sleeve of the Disc; or
  - (b) on the cardboard insert; or
  - (c) on the surface of the Disc itself.
- 20.5 The Producer shall use its reasonable endeavours to include on the label (or as set out in clause 20.4) the name of the Irish publisher of each Musical Work in the repertoire of the Society.

## 21. SUPPLY OF INFORMATION

- 21.1 The Producer shall on entering into this Agreement, and during its continuance, supply to the Licensor the following documents without charge as soon as possible following the publication or issue thereof:-
- (a) two copies of all catalogues, supplements to catalogues and lists or notifications of New Releases and Re-Releases;
  - (b) two copies of each list of Published Dealer Prices or fixed or suggested retail prices and each amendment or addition thereto.
- 21.2 At the request of the Licensor the Producer shall also furnish it free of charge with:-
- (a) one copy (which shall be exempt from royalty payment) of any Disc;
  - (b) one copy of the label, sleeve or insert relating to any Disc.
- 21.3 The Producer must notify the Licensor immediately of any Disc which it deletes from its catalogue.

21.4 The Producer must also supply the Licensor with any further information or documentation in its possession, power, custody or control (and use its best endeavours to supply the Licensor with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensor at any time, in order to enable the Licensor to verify the Musical Work(s) which are or will be reproduced on any Disc made and/or distributed by or for the Producer or its Co-Exploitants or to verify that the Producer is abiding by the terms and conditions of this Agreement.

## 2.2. PRODUCER ACTING FOR THIRD PARTIES

22.1 If the Producer undertakes or arranges pressing of Discs for any other party (whether this is a third party or a licensee or affiliate), the Producer must inform the Licensor in writing of the identity of that party.

22.2 On compliance with clause 22.1, the Licensor confirms that it will not seek to recover royalties from or pursue any other remedy against the Producer in relation to such Discs, subject to the provisions of clause 22.4.

22.3 The Producer hereby agrees that it will not undertake or arrange pressing of Discs reproducing one or more Musical Works in the repertoire of the Society for any third party which either:-

- (a) does not have a current agreement with the Licensor unless the Licensor has expressly authorised the Producer to carry out or arrange the same, such authorisation not to be unreasonably withheld or delayed; or

(b) is in material breach of such an agreement, if the Licensor has notified the Producer of that breach and required the Producer to cease undertaking or arranging such pressing until such breach is rectified.

22.4 The Producer agrees that it will bear joint responsibility with the third party for any pressing carried out in contravention of clause 22.3.

22.5 In all cases, the Producer shall use its best endeavours to ensure that the Licensor has every facility for checking pressing undertaken or arranged for third parties. Where the relevant Discs reproduce one or more Musical Works in the repertoire of the Society, the Producer shall send to the Licensor copies of the relevant delivery or despatch notes or equivalent documentation indicating by Catalogue Number the quantities despatched and the name and address of the person, firm or company to whom they were despatched.

### 23. CO-EXPLOITANTS

23.1 The Producer shall use its best endeavours to procure that its Co-Exploitants:-

- (a) at no time act or fail to act in such a way as would cause the Producer to be in breach of this Agreement;
- (b) co-operate fully with the Licensor and its representatives in the application of this Agreement.

23.2 In exercising the licences to make Discs in accordance with clause 4, the Producer may only use a Co-Exploitant so to make such Discs if:-

- (a) such Co-Exploitant appears on the Licensor's approved list (a copy of which will be supplied on signature of this Agreement to the Producer by the Licensor, with any changes thereto promptly being notified to the Producer); or

- (b) the Licensor consents, such consent not to be unreasonably withheld or delayed.

## 24 NOTIFICATIONS OF INTENDED RELEASE

24.1 The procedure set out below need not be complied with by the Producer as regards Discs in the Producer's catalogue prior to the Commencement Date provided that:-

- (a) the Producer has complied with its copyright obligations in relation thereto as regards the period prior to the Commencement Date; and
- (b) the Producer has given sufficient information to the Society to enable the Licensor to verify that it has the relevant details of such Discs on its database or to incorporate such details on its database.

In such cases, the Society will send the Producer the information referred to in clause 24.5 in relation to such Discs as soon as practicable after the Producer has supplied the Society with such information.

24.2 In relation to each Disc by Catalogue Number and Format thereof, the Producer shall deliver to the Licensor a Notification of Intended Release fully and accurately completed, save in relation to any information which it is not possible to obtain. This applies whether or not the relevant master recording was made by or for the Producer or assigned or licensed to the Producer. For the avoidance of doubt:-

- (a) when a Disc has been deleted from the Producer's catalogue, but is later to be re-issued, a new Notification of Intended Release must be submitted; and

- (b) a Notification of Intended Release must be submitted whether or not the Producer believes that the Disc contains any Musical Work in the repertoire of the Society.
- 24.3 Save in exceptional circumstances not caused or occasioned by the Producer's neglect or default, the Notification of Intended Release must be delivered to the Licensor at least 7 working days prior to first release of copies of the Disc.
- 24.4 A new Notification of Intended Release must be delivered to the Licensor in the event of any material change to the information referred to in clause 24.11. The Producer must also notify the Licensor if it subsequently decides not to release the relevant Disc.
- 24.5 Upon receipt of such Notification, the Licensor shall process the same and send notification to the Producer of the following information not later than the 7th working day following receipt of the accurate and properly completed Notification of Intended Release:-
- (a) where the Licensor is making a claim on behalf of a member, the identity of that member;
  - (b) the share which that member claims in the relevant Musical Work;
  - (c) whether the royalties in relation thereto will be payable to the Licensor or direct to that member;
  - (d) the royalty percentage per track;
  - (e) any status referred to in clause 24.9;
  - (f) the Society's code number for the relevant Disc;
  - (g) the Society's code number for each relevant Musical Work;
  - (h) in relation to each Musical Work referred to in the Notification, for which the Licensor is making a claim, whether or not consent is being

refused by reason of such a limitation or restriction as is referred to in clause 2.2 or 8, and the identity of the member refusing that consent.

- 24.6 Subject to clauses 24.7 and 24.8 below, the licences referred to in clause 4 shall apply in respect of every Musical Work reproduced on the Disc which is in fact in the repertoire of the Society, and that licence shall take effect even if the Licensor notifies the Producer that the Musical Work has one of the statuses described in clause 24.9 below.
- 24.7 In relation to the rights reserved as referred to in clause 2.2, the licence shall not apply until all the relevant members of the Society or Associated Society owning or controlling the rights in the relevant Musical Work(s) have consented to the grant of the licence in accordance with this Agreement.
- 24.8 Where there are joint owners of a Musical Work, and the Society does not represent all the parties owning or controlling the rights in such Musical Work, the licences referred to in clause 4 are not licences for the joint owner(s) whom the Society does not represent.
- 24.9 The statuses referred to in clause 24.5 are:-
- (a) NS (non member);
  - (b) SAI (copyright status not known at present);
  - (c) PAI (copyright owner not known at present);
  - (d) Public Domain work.
- 24.10 Where the Licensor has notified the Producer that a Musical Work is in whole or in part in the Society's repertoire, and subsequently such Work or a share in such Work or an interest therein ceases to be in that repertoire (either because the relevant member has ceased to be a member or because the copyright in such Work or an interest therein has been transferred or reverted to a non-

member), then the Licensor shall promptly notify the Producer unless the Disc on which the Work was reproduced has been deleted from the Producer's catalogue.

24.11 The Notification of Intended Release shall be in the form appearing in Annex C to this Agreement or such other form as may have been agreed between the Society and the Producer PROVIDED THAT:-

- (a) the minimum information which the Producer is obliged to furnish is:-
  - (i) the Producer's name and address;
  - (ii) the label of the Producer on which the Disc will appear;
  - (iii) the title of the Disc;
  - (iv) the name of the main artist, broken down into tracks where the main artist is different on different tracks, (by way of example, compilations);
  - (v) the Format of the Disc;
  - (vi) the Catalogue Number;
  - (vii) the number of Discs, i.e. if double pack, boxed set etc;
  - (viii) the scheduled release date, where available;
  - (ix) the number of tracks;
  - (x) the titles of the Musical Works;
  - (xi) the writer/composer/arranger of each Musical Work;
  - (xii) the side and track sequence number, where available;
  - (xiii) the duration of each Work, where available;
  - (xiv) whether the track in whole or in part consists of a medley unless the Producer has supplied the side and track sequence numbers in relation to that Disc.



(b) the Licensor will accept the Producer's label copy instead of a Notification of Intended Release provided that it contains the required information.

24.12 In the event that notification of intended release are not received in the prescribed manner fifteen (15) days before release date the Licensor shall levy a sum of fifty euro (EUR50) per release in relation to acquiring the relevant product and/or details and ascertaining the copyright owners.

24.13 The Producer shall procure that each Disc is given a unique Catalogue Number applicable only to Discs with the same content and configuration of tracks. Each Format thereof must bear either a different Catalogue Number or a different prefix or suffix within that Catalogue Number.

24.14 Without prejudice to the rights of either party hereto in respect of any breaches of this Agreement, where the Licensor expressly notifies the Producer pursuant to a specific obligation hereunder that a particular musical work is in the Society's repertoire and such notification is incorrect in this respect, the Licensor shall indemnify the Producer against any liability for damages or costs which the Producer may reasonably incur in reasonable reliance upon such information having been correct. For the avoidance of doubt, the Producer shall not be entitled to continue to rely on such notification where it has notice from any party that such notification was or may have been incorrect. This indemnity shall not apply where the incorrectness of such notification was consequential upon the Producer having supplied incorrect, incomplete or misleading information. For the avoidance of doubt the foregoing indemnity does not extend to any claim by any party that a copyright

musical work properly licensed under this Scheme infringes some other copyright musical work.

25. STATEMENTS OF SHIPMENTS

25.1 At the end of each Quarter the Producer shall prepare a Statement of Shipments showing by Catalogue Number and Format the gross Shipments thereof and each deduction specifically provided for in this Agreement. The detailed information and format of such statement shall be in accordance with the Licensor's specification in relation thereto and notified by the Licensor to the Producer. The Licensor will give reasonable consideration to any reasonable proposal by the Producer for a variation in relation to the format thereof, provided that such variation will still enable the Licensor without additional expense to process the information in accordance with its normal procedure and comply with clause 26.

25.2 The statement shall be delivered to the Licensor no later than by close of business on the 21st day of the month following the end of the relevant Quarter (by way of example, the statement in relation to the first Quarter in each year shall be delivered on or before April 21st of that year).

25.3 The Producer shall deliver the statement in the form of industry standard computer readable magnetic media.

26. ACCOUNTING PERIOD AND PAYMENTS: CALCULATION BY SOCIETY

26.1 On receipt of the Statement of Shipments the Licensor will process the information included therein, and will prepare royalty statements in relation thereto.

26.2 The Licensor will deliver to the Producer such royalty statements and invoices in relation to the royalties payable there under no later than close of business on the 17th day following receipt of the Statement of Shipments from the Producer.

26.3 The Licensor will procure that each invoice indicates the payee (that is, the Licensor itself, or its relevant member) and the details of the account to which the monies should be transferred. Save in the case of and to the extent of any manifest error, the Producer must pay the invoices (including the VAT element thereof):-

- (a) in the case of payments to the Licensor, by irrevocable bank transfer by close of business on the 45th day following the end of the Quarter;
- (b) in the case of payments to members of the Society, by bank transfer or cheque by close of business on the 45th day following the end of the Quarter.

27. ACCOUNTING PERIOD AND PAYMENTS: CALCULATION BY PRODUCER

27.1 The Producer shall operate the procedure set out in clause 27.2 where it has notified the Licensor in writing that it wishes to do so at the date of signature of this Agreement. If the Producer does not do so, but later wishes to operate such procedure, then the Producer must notify the Licensor in writing not later than the first day of the Quarter preceding the Quarter in relation to which the Producer intends to start operating such procedure (by way of example, if the Producer wishes to operate the procedure with effect from the first Quarter in any year, the Producer must give notice to the Licensor not later than 1st October in the previous year). The same period of notice must also be given

where the Producer has at any time given such notice and wishes to cease operating such procedure.

27.2 The procedure referred to in clause 27.1 is as follows in relation to each relevant Quarter:-

- (a) the Producer shall still comply with clause 25 of this Agreement;
- (b) clause 26 shall not apply;
- (c) the Producer shall prepare a royalty statement showing the royalties due in relation to the Society's repertoire using exactly the same information as was contained in the statement referred to in clause 25 and delivered to the Licensor. Such royalty statement shall be in such standard form as shall enable the Licensor to process the royalties due to the Society's members without delay and to reconcile the Licensor's information and calculations with those of the Producer. The royalty statement shall further be provided to the Licensor on industry standard computer readable magnetic media in a format and layout to be agreed by the Licensor and shall include the information specified in Annex D hereto.
- (d) Not later than 35 days after the end of the relevant Quarter, the Producer shall deliver in relation to the relevant royalties due for that Quarter:-
  - (i) the royalty statement to the Licensor;
  - (ii) to any member which is collecting its royalties direct as notified by the Licensor to the Producer, a self-billing invoice for the royalties due to that member;

(iii) to the Licensor, a self-billing invoice for the remainder of the royalties.

(e) The Producer must pay the invoices (including the VAT element thereof):-

(i) in the case of payments to the Licensor, by irrevocable bank transfer by close of business on the 45th day following the end of the Quarter;

(ii) in the case of payments to members of the Society, by bank transfer or cheque by close of business on the 45th day following the end of the Quarter.

27.3 Where the Producer is carrying out the accounting as referred to in this clause, and there are inaccuracies in any such accounting, the Producer shall indemnify the Licensor, the Society and its relevant members and the author(s) of the relevant Musical Works for any costs, losses or damages of whatsoever nature (including legal costs on an indemnity basis) suffered by the Licensor or the Society or the member or author and which are caused by or occasioned by such error.

27.4 Where the Producer has elected to account in accordance with the above provisions, but delivers royalty statements and/or invoices materially late or which are materially inaccurate for 2 consecutive Quarters or 2 out of 4 consecutive Quarters, the Licensor shall be entitled by notice in writing to require that the Licensor carry out the accounting in accordance with clause 26. In such circumstances, the Producer shall not be entitled to elect to account again until the Producer has demonstrated to the reasonable satisfaction of the Licensor (subject to review by the Joint Record Agreement Committee

provided that the Producer has so elected a review in writing within 21 days of notification of the Licensor's decision to require that the Licensor continue to carry out the accounting) that the Producer will comply with the provisions hereof.

28. COPYRIGHT CONTROL ACCOUNT

- 28.1 The Licensor shall maintain an interest-bearing Copyright Control Account, and shall pay into such Account in relation to any Musical Work or interest therein which has been designated by the Licensor as PAI or SAI a sum equal to the royalties which would have been payable under this Agreement had such Musical Work been designated as a Work within the repertoire of the Society. The Producer shall continue to pay royalties in relation to that Work or interest therein into that account until it has discovered the person, firm or company entitled to the relevant royalties, or until the Licensor notifies the Producer that the Musical Work or interest is within the repertoire of the Society.
- 28.2 Where a third party (not being a member of the Society or an Associated Society) claims the right to grant the licences referred to in clause 4 in relation to a Musical Work or interest therein which remains designated by the Society as SAI or PAI:-
- (a) the party hereto in receipt of the claim shall notify the other in writing within 7 days of such claim;
  - (b) at the same time as the notice is given, the Producer may require the Licensor to investigate the position, and notify the Producer within 3 months of receipt of such notification whether the Licensor claims that the relevant rights are controlled by a member of the Society or a non-

member. In default of the Licensor so notifying the Producer, the relevant Musical Work or interest therein shall be deemed to be of non-member status, and the Licensor shall then repay the royalties collected to the Producer or the relevant third party and have no right to claim any royalties which are subsequently paid to the third party by the Producer, unless such royalties were paid to the third party after the Licensor has made a new claim in relation to the relevant Musical Work or interest therein.

28.3 Nothing in this Agreement shall prevent the Producer at its own risk in good faith paying royalties arising in relation to a Musical Work or interest therein which remains designated by the Licensor as SAI or PAI to a bona fide third party which is not a member of the Society or an Associated Society claiming the same provided that the Producer shall where possible give 7 days prior notice of its intention so to do to the Licensor.

28.4 No later than 45 days after the end of each Quarter the Licensor shall deliver to the Producer a statement showing:-

- (a) the Musical Works in relation to which the Producer paid royalties into the account referred to in clause 28.1;
- (b) the amount of royalties paid into such account in relation to each such Work;
- (c) the title and Catalogue Number of the Disc in relation to which such royalties arose.

## 29. DISPUTES

29.1 Where the Licensor at any time notifies the Producer that a Musical Work or interest therein is in the repertoire of the Society, and subsequently either the

Producer or the Licensor receives notice that a third party claims the relevant rights therein, and/or the royalties arising in relation thereto, the party receiving such notice shall notify the other party in writing within 7 days of receipt thereof.

29.2 In any circumstances where both the Licensor and a third party not being a member of the Society or an Associated Society make a claim against the Producer in relation to the same Musical Work or the same interest in a Musical Work, the Producer shall pay the royalties relating to that Work or interest therein (calculated in accordance with this Agreement) into an interest-bearing account in the joint names of the Licensor and the Producer. Any royalties held in such account shall be held in trust for the party entitled thereto and such royalties shall remain in that account until the dispute in relation thereto is resolved.

29.3 No later than 45 days after the end of each Quarter, the Producer shall deliver to the Licensor a schedule showing:-

- (a) the Musical Works in relation to which the Producer paid royalties into the account referred to in clause 29.2;
- (b) the amount of royalties paid into such account in relation to each such Work;
- (c) the title and Catalogue Number of the Disc in relation to which such royalties arose;

29.4 For the avoidance of doubt, where the ownership or control of a Musical Work or interest therein is in dispute between two or more members of the Society, the royalties in relation thereto shall be paid to the Licensor.



30. CHANGES IN INFORMATION AND ADJUSTMENTS

30.1 The Licensor will notify the Producer of any changes in the information referred to in clause 24.5 or any notice pursuant to Clause 24.10 during a Quarter not later than 7 working days following the end of that Quarter. Whether the Licensor is carrying out the accounting in accordance with clause 26 or the Producer is carrying out the accounting in accordance with clause 27, no account shall be taken of any information or change in information which the Licensor is required to provide under clause 24.5 or any notice pursuant to clause 24.10 unless it has been notified no later than the date specified above.

30.2 Where any royalties have been paid to a third party in accordance with clause 28, and the Producer accepts or the Court adjudicates that the Licensor is entitled thereto, then the Licensor's claim shall, subject to clause 28.2, be limited to such royalties as should have been paid if the Work or interest therein had been designated as within the repertoire of the Society, together with interest thereon from the date on which such royalties should normally have been paid to the date of payment. The Producer shall not be obliged to account for such royalties on magnetic media.

30.3 Without prejudice to clause 24.13 and the foregoing provisions of this clause, where the Licensor or the Producer discover that one or the other has by mistake or unintentionally provided the other with incorrect information on the basis of which incorrect royalties have been paid or invoiced or royalties have been paid or invoiced to the wrong party:-

- (a) the party discovering the error shall notify the other, giving full details thereof;

(b) where the party alleged to be in error accepts it, such party shall correct the error within 7 working days of receipt of notification of the same, and shall pay or repay any royalties owing to the other party, together with interest thereon computed in accordance with clause 33.6 from the date on which such royalties should have been paid or were paid (as the case may be) to the date of payment or repayment.

31. AUDITS

31.1 The Producer shall upon entering into this Agreement inform the Licensor of the addresses of the Warehouses (or in the case of moveable Warehouses the addresses at which they are normally situated) used for storing Discs the subject of this Agreement and shall promptly notify any changes to any such locations.

31.2 The Producer shall permit the Licensor by its duly authorised representatives at all reasonable times to have access to the Warehouses for the purpose of inspecting and checking the stocks of such Discs.

31.3 Where the Producer does not have its own warehousing facilities, the Producer shall use its best endeavours to procure reasonable rights of access to the warehouses of its Co-Exploitants for the duly authorised representatives of the Licensor.

31.4 The Producer shall keep proper accounting records dealing with, by reference to each Quarter, its activities the subject matter of this Agreement and without prejudice to the generality of the foregoing, setting out in particular the following:-

(a) the manufacture, Shipment, Return and stock holding of Discs;

- (b) the export of Discs;
- (c) the export of Recording Matrices;
- (d) the import of Recording Matrices;
- (e) the import of Discs;
- (f) the PPD and/or fixed or suggested retail prices of Discs;
- (g) the calculation of royalties due on Discs, where clause 27 applies;
- (h) any sale of Discs under clause 18, together with the names and addresses of the parties to whom they were sold;
- (i) any supply of Discs under clause 19, together with the information maintained under clause 19.5 and 19.6;
- (j) the dates and amounts paid in respect of mechanical royalties on Discs together with the identity of the party to whom such payments were made;
- (k) any retentions claimed under clause 17, the calculation thereof and their reconciliation;
- (l) the calculation and payment into the relevant accounts of royalties referred to in clauses 28 and 29.

31.5 These accounting records shall be maintained to a standard sufficient to enable an audit trail to be established and followed through.

31.6 Such accounting records together with any supporting documentation relating thereto shall be open for inspection (both during and for 9 months after termination of this Agreement) by representatives of the Licensor upon reasonable notice and no more than once a calendar year unless payment of royalties is over 45 days in arrears. For these purposes, the Producer shall allow access to the premises of the Producer. The Licensor's representatives

shall be entitled to inspect, make extracts and take copies of the information available, and to carry out such work as is in their reasonable opinion considered necessary to verify the royalties due to the Licensor including for the avoidance of doubt the examination of stock movements.

31.7 The reasonable fees incurred by the Licensor in auditing the Producer under this Agreement shall be borne by the Licensor except in circumstances where the audit report (a copy of which shall be made available to the Producer within nine months of the commencement of the audit) discloses underpayment of royalties in excess of a sum equal to seven and a half percent (7½%) of the total royalties found due for the calendar year or any other financial period to which the audit relates. In that event and provided that either:-

- (a) the Producer agrees and accepts that such unpaid royalties are due; or
- (b) the quantum of unpaid royalties is determined by the Court as a result of legal action

the said reasonable fees shall be paid by the Producer.

31.8 The Licensor undertakes to use its best endeavours to ensure that audits are carried out expeditiously to enable audit reports to be provided to the Producer within the nine month period specified in clause 31.7.

31.9 Any royalties accepted by the Producer as being unpaid or so adjudged by the Court shall be paid in full by the Producer to the Licensor within 30 days of acceptance or judgement to the Licensor and shall carry interest calculated in accordance with clause 33.6.

31.10 The agents of the Licensor with access to the premises of the Producer under clause 31.6 shall, subject to clause 31.11, be independent qualified Chartered

or Certified Accountants (or persons employed by or under the supervision of the same), and shall not directly or indirectly own any interest in any phonographic business or trade.

31.11 Where the turnover of the Producer from the sale of Discs for the four Quarters preceding the commencement of the relevant audit has not exceeded five million euro (EUR5,000,000) (such figure to be increased on 1st January 2006 and each subsequent 1st January by the percentage increase in the latest Retail Prices Index by comparison with the equivalent figure in the corresponding month of the previous year), the agents of the Licensor with access to the premises of the Producer under clause 31.6 may be:-

- (a) qualified Chartered or Certified Accountants who are employees of the Licensor or the Society; and/or
- (b) the manager of the Licensor's Audit Department (or some other person employed by the Licensor or the Society of equivalent rank); and/or
- (c) persons employed by the Licensor under the supervision of any person referred to in (a) or (b).

Where an audit is carried out in accordance with this sub-clause, clause 31.7 shall not apply and the costs relating to (a), (b) and (c) above shall be borne by the Licensor.

31.12 The obligation as to confidentiality referred to in clause 34.2 shall for the avoidance of doubt apply in relation to such audits as are referred to above and the Licensor shall procure that all its staff, agents and inspectors carrying out audits on behalf of the Licensor are notified of the obligation not to disclose information which is confidential to those who are not entitled to such information.

32. CIRCULATION OF RECORDING MATRICES

32.1 The Producer shall not export a Recording Matrix reproducing a Musical Work in the repertoire of the Society from Ireland or authorise the export thereof or supply such a Recording Matrix for the purposes of such export except in the following circumstances:-

- (a) where the territory to which the Matrix is exported is a member of the Berne Convention or the Universal Copyright Convention, and each Musical Work reproduced thereon is not protected by copyright in that territory; or
- (b) where the party to whom the Matrix is exported has an agreement with the Society or an Associated Society under which that party will pay mechanical royalties in relation to Discs which are copies thereof; or
- (c) where the Licensor has previously consented thereto, such consent not to be unreasonably withheld or delayed. The Licensor shall by way of example be entitled to withhold its consent where it reasonably considers that it has no satisfactory evidence that mechanical royalties will be paid by the consignee. The Licensor shall be entitled to impose reasonable terms and conditions for the grant of consent in order to prevent any infringement of copyright of Musical Works in its repertoire.

32.2 Upon the Producer exporting a Recording Matrix reproducing a Musical Work in the repertoire of the Society or authorising the export thereof or supplying a Recording Matrix for the purposes of such export, the Producer shall forthwith notify the Licensor in writing of the following information:-

- (a) the name and address of the consignee;
- (b) sufficient details to enable the Licensor to identify the recordings included on the Recording Matrix.

33. SANCTIONS AND CANCELLATION OF THE CONTRACT

33.1 The Licensor shall have the rights set out in clause 33.3 where the Producer:-

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt by the Producer of a formal notice served by registered post specifying in reasonable detail the breach on which the Licensor relies;
- (b) commits a material breach of this Agreement which is not capable of remedy, or commits fraud, in which event the Society shall specify in reasonable detail the fraud or material breach on which the Licensor relies, by notice to the Producer.

33.2 No notice served under clause 33.1 in respect of any failure to comply with clause 20 may require remedy other than with effect from the first subsequent repressing or reprinting of the item in respect of which the relevant obligation under clause 20 applied, unless there has been a previous failure in relation to the same information and the same Disc by Catalogue Number.

33.3 In such circumstances, the Licensor shall have the right to take the following action:-

- (a) to terminate this Agreement forthwith without prejudice to any rights which have already accrued to the Licensor or its members under this Agreement or to the Producer; or

- (b) to require the Producer to comply with the standard terms and conditions of the Licensor's licensing scheme for the manufacture and distribution of Discs for retail sale to the public for private use.
- 33.4 The Licensor shall in addition have the rights referred to in clause 33.3(a) or (b) where there has been a material change in the factors on the basis of which the Licensor granted the Producer this Agreement provided that:-
  - (a) the Licensor shall have given the Producer 28 days' notice in writing specifying the material changes relied on;
  - (b) the Producer may within 7 days of such notice elect to have the matter reviewed by the Joint Record Agreement Committee by notice in writing to the Company Secretary of the Licensor.
- 33.5 Upon the Licensor validly terminating this Agreement in accordance with the above provisions royalties shall become due on the total number of Discs remaining in the possession, power, custody or control of the Producer in accordance with the standard terms and conditions referred to in clause 33.3(b).
- 33.6 Without prejudice to any other right or remedy of the Licensor or its relevant member(s) under this Agreement, where the Producer fails to fulfil any of the following obligations it shall pay to the Licensor daily interest calculated at a rate of three percent (3%) above the base rate of published by the Central Bank of Ireland for that day, or, in the absence of such base rate, such equivalent rate as the Licensor shall determine within its reasonable discretion:-
  - (a) for failure to deliver the statements or invoices as referred to in clause 25.2 or 27.2 within the time specified therein, interest shall be payable



on the total royalties payable on the basis of the information which should have been included therein;

- (b) for omitting Musical Works in the repertoire of the Society notified as such by the Licensor or Discs reproducing any such Musical Work from such statements or invoices, interest shall be payable on the royalties which should have been payable in relation thereto;
- (c) for any invoices properly due and not paid in full within the time prescribed by clause 26.3 or 27.2, interest shall be paid on the relevant sums not paid.

In each case, interest shall be payable from the date of default to the date on which the default was rectified.

Provided that where the liability to interest arises under sub-clause (a) above, no interest shall be payable save to the extent of any loss or expense actually suffered or incurred by the Licensor or its relevant member(s) and arising by reason of the Producer's failure.

- 33.7 If the Producer shall cease to trade, or have a winding-up Petition presented against it which is not dismissed or withdrawn within 21 days, or goes into voluntary liquidation (other than for the purposes of reconstruction or amalgamation) or applies for an examiner to be appointed, or makes any composition with its creditors, or if a Trustee or Receiver or Administrative Receiver is appointed to take over all or a substantial part of its assets and undertaking and such appointment is not discharged within 21 days, or, being a subsidiary company, its parent suffers such an event, then the Licensor is entitled to terminate this Agreement immediately.

In such an event:-

- (a) all Discs remaining in the possession, power, custody or control of the Producer or the Producer's distributor or subsequently returned thereto shall be deemed unlicensed;
- (b) the Producer and its Co-Exploitants shall cease forthwith to make or supply any Discs containing Musical Works in the repertoire of the Licensor;
- (c) any royalties accrued which have not yet become payable or have not yet been paid shall become payable forthwith, and Statements of Shipments or (where the Producer is accounting under clause 27) royalty statements as referred to in clause 27.2(c) shall be sent to the Licensor within 21 days.

33.8 The Producer shall have the right to terminate this Agreement on giving at least one Quarter's notice in writing.

33.9 Upon the Licensor properly giving notice of termination in accordance with clause 33.3, 33.4 or 33.7, the Licensor may deduct from any deposit or advance paid to the Licensor such amount as is required to pay any sums payable under this Agreement.

33.10 Upon termination of this Agreement, the terms and conditions of this Agreement shall, save where otherwise expressly stated, continue to have effect as regards Discs in relation to which royalties have already been paid.

33.11 After termination of this Agreement (other than by the Licensor under clause 33.3 or 33.7) the Producer may place at the disposal of a third party which has signed an agreement with the Society or an Associated Society to pay mechanical royalties any Recording Matrix which has been lawfully made and/or exploited provided that such third party reaches agreement with such

Society that the terms of its agreement with that Society will govern the exploitation of such Recording Matrix. Subject thereto, the Producer shall not exploit the relevant Recording Matrix or authorise such exploitation or supply the Recording Matrix for the purposes of such exploitation without the consent of the Society or the Society's relevant member.

34. THE DEPOSIT AND ADVANCE

34.1 Where the Producer is entering into an agreement with the Licensor for the first time the Licensor may require an interest free deposit to be placed by the Producer with the Licensor as security for the due performance of the Producer obligations under this Agreement which the Licensor may in its discretion appropriate towards satisfaction of any quantified liability of the Producer arising under this Agreement or towards any accrued liability of the Producer which is unquantified due the default of the Producer.

34.2 Any Producer that persistently defaults in compliance with the terms of payment hereunder shall at the Licensors' discretion be obliged to pay to the Licensor an advance in the form of a sum of money to be determined by the Licensor but to be no more than is reasonable in the particular circumstances.

35. FINAL CLAUSES

35.1 This Agreement shall come into effect on the Commencement Date and shall continue until 31st December 2012 provided however that if the standard mechanical royalty rate in respect of the equivalent Licensing Scheme published by MCPS in the United Kingdom changes from the rate which is specified in this Agreement to another rate either the Licensor or the Producer shall be entitled to terminate this Agreement by not less than three (3) calendar months notice in writing to expire at the end of a Quarter as herein defined.

- 35.2 Save for the purposes of complying with its obligations to the Producer or to the Society or the Society's members or to any Associated Society and save for disclosure to its professional advisers, the Licensor shall not, without the Producer's written consent, disclose any confidential information (so long as it remains confidential) supplied by the Producer hereunder to any other person or Society.
- 35.3 For the purpose only of calculating interest under this Agreement where any payment or statement is sent by post:- (a) the postmark shall be sufficient proof of the date the payment or statement was sent; and (b) such payment or statement shall be deemed to have been received before close of business on the second working day after posting.
- 35.4 This Agreement shall be subject to the laws of Ireland and both parties agree to submit to the jurisdiction of the Courts of Ireland.

**AS WITNESS** the hands of the parties hereto:-

SIGNED by

for and on behalf of

MECHANICAL COPYRIGHT PROTECTION

SOCIETY (IRELAND) LIMITED

Victor Finn

Managing Director

in the

presence of

SIGNED by

for and on behalf of the

THE PRODUCER

in the presence

of:-



## ANNEX A

The rights of management entrusted to the Society in the field of mechanical reproduction are defined as follows:

<b><u>SOCIETY</u></b>	<b><u>CATEGORY OF WORK</u></b>	<b><u>RESERVATIONS</u></b>
ACUM	Literary works	Prior authorisation of rights owners for works exceeding 5 minutes and for works from a single author exceeding 20% of the total length of a Disc
	Dramatic works	
	Dramatical-musical works	None
	Musical works with or without words	None
AEPI	Dramatico-musical works	None
	Musical works with or without words	None
ARTISJUS	Literary works	None
	Extracts from dramatico-musical works	None
	Musical works with or without words	None
AUSTRO-MECHANA	Dramatico-musical works (2)	Prior authorisation of rights owners
	Musical works with or without words	None
AWA	Dramatico-musical works	None
	Musical works with or without words	None
GEMA	Dramatico-musical works	None
	Musical works with or without words	None
JASRAC	Dramatico-musical works	None
	Musical works with or without words	None
MCPS	Dramatico-musical works	Prior authorisation of rights-owners
	Musical works with or without words	Prior authorisation of rights-owners for first recordings
NCB	Literary works	Prior authorisation of rights-

	Dramatico-musical works Musical works with or without words	owners for first recordings
OSA	Literary works Dramatico-musical Dramatico-musical works Musical works with or without words	Prior authorisation of certain rights-owners Prior authorisation of certain rights-owners Prior authorisation of certain rights-owners None
SABAM	Literary works Dramatic works Dramatico-musical works Musical works with or without words	None None None None
SACEM/SDRM	Literary works Dramatic works Dramatico-musical works Musical works with or without words	Prior authorisation of certain rights-owners Prior authorisation of certain rights-owners for production of complete works or large extracts Prior authorisation by authors for production of complete works or large extracts of unpublished works None
SACERAU	Musical works with or without text	None
SADAIC	Literary works set to music Musical works with or without text	None None
SARRAL	Extracts from dramatico-musical works Musical works with or without words	Prior authorisation of rights-owners for unpublished works Prior authorisation of rights-owners for the first recording of unpublished works.
SGAE	Literary works Dramatic works Dramatico-musical works	Prior authorisation of rights-owners Prior authorization of rights-owners Prior authorisation of rights-owners for complete works and



	Musical works with or without words	(in all cases) for first recording. Prior authorisation of rights-owners for first recording.
SIAE	Literary works	Prior authorisation of rights-owners
	Dramatic works	Prior authorisation of rights-owners
	Dramatico-musical works	Prior authorisation of rights-owners
	Musical works with or without words	Prior authorisation of rights-owners for the first recording and for records made during the following four months (3)
SADRAC	Dramatico-musical works	None
	Musical works with or without text	None
SOKOJ	Literary works	None
	Dramatic works	None
	Dramatico-musical works	None
	Musical works with or without text	None
SOZA	Literary works	Prior authorisation of LITA
	Dramatic works	Prior authorisation of LITA
	Dramatico-musical works	Prior authorisation of LITA
	Musical works with or without words	None
SPA	Literary works	Prior authorisation of rights-owners
	Dramatic works	Prior authorisation of rights-owners
	Dramatico-musical works	Prior authorisation of rights-owners
	Musical works with or without words	None
STEMRA	Literary works	Prior authorisation of rights-owners
	Dramatic works	Prior authorisation of rights-owners
	Dramatico-musical works	Prior authorisation of rights-owners
	Musical works with or without words	None
ZAIKS	Literary works	None

Dramatic works	None
Dramatico-musical works	None
Musical works with or without words	None

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CMRRA

THE HARRY FOX AGENCY INC	Musical works with or without words	Prior authorisation of rights-owners
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- (1) For any category of works not mentioned, the relevant Society does not administer the same and the Producer should consult the rights-owners direct.
- (2) The same for abridged version of complete dramatico-musical works, complete individual acts and extracts extending over more than one long-playing record.
- (3) Reservations limited to entirely new works, i.e. the original version, declared since 1<sup>st</sup> January 1970 and in respect of which rights-owners have asked to be consulted.

**ANNEX B**

**FIRST RECORDING ENQUIRY/CONSENT FORM**

To: Name .....

Address.....

.....

From: Name .....

Address .....

.....

**PART A. ENQUIRY/REQUEST FOR CONSENT**

We hereby enquire whether any of the Musical Work(s) specified in the first and second columns in Part C below are subject to a first recording restriction, as referred to in the MCPS Licensing Scheme for the Manufacture and Distribution of Records for Retail Sale to the Public for Private Use.

If so, we hereby ask you to withdraw such first recording restrictions in relation to the product referred to in Part E below, and to confirm that licences will be available in relation thereto, subject to the other terms and conditions of the Scheme.

**PART B. ANSWER/CONSENT/REFUSAL**

- 2. First Recording Restriction  
Please see third column in Part C below.
- 3. Withdrawal/Refusal of Consent  
Please see fourth column in Part C below
- 4. Reservation

Where the party to whom this form is addressed is only one of the parties to whom it should have been addressed, this is indicated in Part D, together with the name and address of the party whom it is in good faith believed that the form should also be addressed.

Signature .....

for and on behalf of MCPS or the party to whom this is addressed.

**PART C. WORKS FOR WHICH THE REMOVAL OF FIRST RECORDING RESTRICTION IS SOUGHT**

TITLE	WRITER(S)	RESTRICTION IN PLACE	RESTRICTION REMOVED

**PART D. OTHER PARTIES TO WHOM FORM SHOULD BE ADDRESSED**

Name: .....

.....

Address: .....

.....

Name: .....

.....

Address .....

.....

Please see separate sheet for any further parties.


**PART E. PRODUCT IN RESPECT OF WHICH THE REMOVAL OF THE FIRST RECORDING RESTRICTION IS SOUGHT**

RECORD COMPANY	
LABEL	
*TITLE	
ARTIST	
*CATALOGUE NO.	
SCHEDULED RELEASE DATE (where known)	

\*Please supply at least one

ANNEX C

NOTIFICATION OF INTENDED RELEASE

 <span style="float: right;">Notification of Intended Release</span>										
<b>MCPS (Ireland) Limited</b> Copyright House Pembroke Row Lower Baqqot Street Dublin 2 PH: 01 6766340 FAX: 01 6611316 E-mail: info@mcps.ie						<b>Notification :</b> NIR by E-Mail <input type="checkbox"/> NIR by Post <input type="checkbox"/> Label Copy <input type="checkbox"/>				
Licence Number :										
<i>NOTIFICATION OF INTENDED RELEASE UNDER LICENSING SCHEME FOR THE MANUFACTURE OR IMPORT FOR RETAIL SALE OF SOUND RECORDINGS (MECHANICAL LICENCE)</i>										
<b>COMPANY/APP ADDRESS:</b>		<b>LABEL:</b> CAT NO: PERFORMER: PRODUCT TITLE: RELEASE DATE: MCPS % CLAIM:		<b>ROYALTY PERCENTAGE</b> MCPS: NON MEMBER: COPYRIGHT CONTROL: REFUND WITH HOLD: PUBLIC DOMAIN:		<b>TOTAL TRACKS:</b> TOTAL DURATION: CD QUANTITY : DEALER PRICE: RETAIL PRICE: MANUFACTURED BY:				
<b>CONTACT NAME:</b> <b>PHONE NUMBER:</b>		<b>FORMAT:</b>		<b>TOTAL:</b>						
SIDE	TRACK	TITLE	COMPOSER/PREVIOUS ARTIST	TUNECODE	COPYRIGHT OWNER	CAE	%MCPS CLAIM	MCPS LICENSED	MCPS COLLECT	TRACK DURATION

## ANNEX D

1. Overall Accounting Data:
  - (a) Record Company Name and Number
  - (b) Sales Period Start and End dates
2. Information on each Product Shipped:
  - (a) Catalogue Number
  - (b) MCPS Product Code
  - (c) Product Title
  - (d) Product Artist
  - (e) Label
  - (f) Format
  - (g) Release Date
  - (h) Gross Quantity Shipped
  - (i) Separately, each deduction is taken and all necessary information in relation thereto
  - (j) Net Quantity Shipped
  - (k) Sales Territory
  - (l) Price
  - (m) Price type (recommended retail or PPD)
  - (n) Type of Sale (normal, deletion)
  - (o) Sales transaction reference
  - (p) Adjustment information
3. Information on each Work:
  - (a) Side Track Sequence
  - (b) Work Title
  - (c) Writers, Composers, Publisher and Arrangers name
  - (d) Duration
  - (e) MCPS Tunecode
  - (f) For each Copyright Owner being paid:
    - (i) Copyright Owner Name and Number

- (ii) Share of the Work
- (iii) Royalty amount payable



# MCPSI Limited Manufacture Licence: Terms and Conditions

These terms relate to the paid-for limited manufacture licence supplied to you by the Mechanical Copyright Protection Society (Ireland) Limited through our website, [www.imro.ie/](http://www.imro.ie/) [●], and should be read in conjunction with our General Terms & Conditions and our Privacy Policy which also apply to your purchase.

To ensure you understand the terms and conditions that you are agreeing to, please consult our FAQs which explain the background to this licence and the terms used.

## 1. DEFINITIONS

In this Licence, the following terms shall have the following meanings:

**“Application Form”** The online form that you have completed and submitted to us to apply for the Licence.

**“Dramatico-Musical Works”** Any ballet, opera, operetta, musical, musical play or work of a similar nature.

**“Licence”** The licence set out in paragraph 2 below, granted to you subject to these terms.

**“Licence Fee”** The fee payable by you to purchase the Licence as set out in paragraph 5 below.

**“MCPSI”** The Mechanical Copyright Protection Society (Ireland) Limited, a company registered in Ireland with company number, 173672 whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2 contracting for and on behalf of and as agent of MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED having its registered office at 29/33 Berners Street, London W1T 3AB, England (“MCPS”) and its various members, foreign societies and the foreign society members. Also referred to as “us” or “we”.

**“Musical Work”** Any work consisting of music and any lyrics or words written to be used with the music (if applicable), including any part of such a work.

**“Permitted Number of Units”** The number of units identified in your Application Form corresponding to the Licence Fee paid by you to us.

**“PMSR”** Any sound recording of Musical Work being a sound recording (as opposed to a Musical Work) the copyright in which is owned or controlled in the Republic of Ireland, from time to time, by MCPS (or a member of MCPS or a foreign society or a foreign society member) and where such party has authorised MCPS to license such recordings as so-called production or library music.

**“Product”** The following physical formats: CD, cassette, minidisk, vinyl, DAT, DVD, Blu-ray disk, HD-DVD, VHS, CD-ROM containing one or more Repertoire Works manufactured by you in accordance with these terms, as set out in more detail in your Application Form, or any other physical format notified by us.

**“Repertoire Work”** Each Musical Work the copyright in which is owned or controlled in the Republic of Ireland, from time to time, by MCPS (or a member of MCPS or a foreign society or a foreign society member) and each PMSR.

**“Republic of Ireland”** the Territory of Ireland excluding Northern Ireland

**“Year”** The period of 12 months from the date your Licence is granted.

## **2. LICENCE**

- 2.1 In consideration for your payment of the Licence Fee to us, and subject to the limitations and restrictions set out below, we grant you a non-exclusive licence to incorporate Repertoire Works into the Product, make the Permitted Number of Units of the Product in the Republic of Ireland and to distribute them in the European Union for private use.
- 2.2 You must obtain all necessary licences in relation to any Musical Work or sound recording included in a Product which is not a Repertoire Work. You must also obtain all necessary licences in relation to any other copyright material and intellectual property included in the Product. This Licence does not, for example, cover rights or interests in commercial sound recordings, films or Dramatico Musical Works.

## **3. LIMITATIONS**

- 3.1 This Licence only applies where:
  - (a) you fall within one of the categories set out in the first column of the Schedule; and
  - (b) the Product falls within one of the categories set out in the second column of the Schedule.
- 3.2 If you and/or the Product do not belong to one of the categories set out in the Schedule, you should cease your application process and contact us by sending us an email to [info@mcps.ie](mailto:info@mcps.ie)
- 3.3 The Licence does not apply to any Product which contains more than 120 minutes of Repertoire Works.
- 3.4 You may only manufacture and distribute (whether for free or at a price) up to 1000 units of any one Product and a total of up to 2500 units of different Products during a Year.

- 3.5 You may sell the Products or provide them for free. Where you choose to sell them, they cannot be sold by any third party on your behalf, only directly by you.
- 3.6 The Licence permits you to use Repertoire Works in both audio and audio-visual material.

## **4. EXCLUSIONS**

- 4.1 This Licence will not cover the following, for which a separate licence and/or the approval of the relevant copyright owner(s) will be required:
- (a) making any adaptation or arrangement of the music and/or alteration of the lyrics of any Repertoire Work;
  - (b) using music with lyrics other than those written to be used with the music or authorised for use with the music;
  - (c) using lyrics with music other than that written to be used with the lyrics or authorised for use with the lyrics;
  - (d) using a Repertoire Work in the form of a parody, burlesque or any use which is defamatory or likely to be detrimental to the writer and/or performer of the work;
  - (e) using a Repertoire Work with material which is of a sexual, violent, drug-related, political or other contentious nature;
  - (f) using a Repertoire Work in any Product which contains, has added to it or is used in conjunction with, any kind of advertisement, sponsorship or any direct or indirect promotion of any commercial or political organisation or any form of illegal activity;
  - (g) reproducing lyrics or musical notations in any printed form or textual form, whether on screen, in print or otherwise;
  - (h) using a Repertoire Work which at the time of receipt of your Application Form has not been released for retail sale to the public in the European Economic Area with the copyright owner's permission;
  - (i) incorporating a Repertoire Work into any toys, games, novelty products or similar products;
  - (j) giving away the Product in conjunction with another product, magazine or newspaper;
  - (k) any use by any commercial organisation, whether internally or externally, unless the Product has been ordered from that commercial organisation by a non-commercial third party for non-commercial purposes; and
  - (l) in relation to Dramatico-Musical Works, the use of:

extracts exceeding 20 minutes in duration;

- (ii) "potted versions";
- (iii) extracts which cover a complete act of the Dramatico-Musical Work;  
or
- (iv) extracts which are presented in dramatic form where actors, through speech, mime or dance depict a distinct plot through which the story or associated words of the Dramatico-Musical Work are carried forward.

4.2 This Licence covers the supply by you of the Product for private use but not any of the following with respect to Repertoire Works:

- (a) copying for the purposes of broadcast or public performance;
- (b) acts of public performance;
- (c) broadcast or other communication to the public; or
- (d) use on the internet.

## **5. PRICES AND PAYMENT**

5.1 Submitting the Application Form is an offer by you to purchase a Licence from us. The Licence will be made available to you once your payment has been authorised and we notify you that your Application Form has been approved. There will be no contract of any kind between you and us unless and until you make authorised payment for the Licence and we notify you that your Application Form has been approved.

5.2 The Licence Fee is calculated and payable in advance in Euros as set out in the table below.

<b>Single events</b>	<b>25 minutes of music or less</b>	<b>Over 25 minutes of music</b>
<b>No. of units</b>	<b>PRICE</b>	<b>PRICE</b>
1 to 50	€24	€36
51 to 100	€36	€54
101 - 250	€60	€90
251 to 500	€100	€160
501 to 1000	€180	€300

5.3 Licence Fees are expressed inclusive of any VAT payable unless otherwise stated.

5.4 We recommend that you pay by credit/debit card so that your Application Form can be approved as soon as possible. Your credit/debit card details will be encrypted to minimise the possibility of unauthorised access or disclosure. Authority for payment must be given at the time of submitting your Application Form.

5.5 If you do not have a credit/debit card, please contact [info@mcps.ie](mailto:info@mcps.ie)

- 5.6 If you cannot make the application online, an administration fee of €19 will be applicable to cover the charges we incur in the manual administration of your payment. There is no charge for paying by credit or debit card. The administration fee is subject to VAT which is payable in addition to this fee.
- 5.7 We will contact you once your Application Form has been processed and payment has been received to notify you if we will grant you the Licence. We will be under no obligation to license you until the Licence Fee has been paid. Should the Licence not be granted, you will be refunded the full Licence Fee.

## **6. WARRANTIES AND LIABILITIES**

- 6.1 We warrant that we have the right to license the rights granted in this Licence.

## **7. DATA PROTECTION**

- 7.1 We take the privacy of your personal information very seriously. Our privacy policy (which forms part of these terms) sets out the way your information will be dealt with. When you registered on our website you agreed to our Privacy Policy.
- 7.2 We will respect your wishes and you can change your mind at any time by sending us an email to ***info@mcps.ie***, or writing to us at the following address: MCPSI, Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2

## **8. CANCELTION AND TERMINATION**

- 8.1 You are only licensed once you have paid for the Licence and we notify you that your Application Form has been approved. At that stage, because the Licence has already been granted to you, you are unable to cancel the Licence.
- 8.2 Your Licence may be terminated by us by written notice if you are in breach of the Licence and these terms and the breach is not remedied within 14 days after written notice of the breach has been given to you. If we reasonably believe your breach of the Licence and these terms affects the rights of our members (whose rights we are licensing) we may suspend your Licence at any time.

## **9. MISCELLANEOUS**

Nothing in this Licence affects the moral rights of the authors of any Repertoire Works. We reserve the right to change these terms with immediate effect. Any changes will not apply to licences granted prior to the date the changes were implemented.

- 9.3 After the date you manufacture the Product you will, if requested by us, supply a copy of the Product to us. You will also promptly supply us with any further information or documents reasonably requested by us to verify the Musical Works used, the Product and/or to verify that these terms are being or have been complied with.
- 9.4 This Licence is personal to you and you may not sell, assign, transfer or deal in any other manner with this Licence or any of your rights or obligations under it without our prior written consent.
- 9.5 This Licence shall be governed by Irish law and we and you agree to submit to the exclusive jurisdiction of the Irish Courts.

## Schedule

<b>Inclusions:</b>	
<b>The following uses ARE covered by the Licence</b>	
<b>Do you fit into one of the following categories?</b>	<b>Will you be using the Product for one of the following uses?</b>
<b>1</b> <b>Schools, colleges, universities, local education authorities, private tutors, students</b>	Recordings of student performances for sale or giving away to students, family, friends or to raise funds for the school.
	Recordings solely used for the giving and receiving of tuition.
	Student films that are shown only as part of the students' course work, educational assessment, student competitions and the students' personal portfolio.
<b>2</b> <b>Churches and other religious establishments</b>	Recordings of choirs or other services for sale or giving away to members of the congregation, family, friends or to raise funds for the church, or institutions of other religious denominations.
<b>3</b> <b>Private and domestic use (Includes professional wedding videographers and funeral service providers but only as set out in paragraph 2 above)</b>	Recordings of private events such as: weddings, christenings, bar mitzvahs, family holidays and funerals, which are sold or given away to family and friends associated with that event.
	Recordings made for playing at private events such as: weddings, christenings, bar mitzvahs, family holidays and funerals.
	Copies of existing films or recordings transferred from video (e.g. VHS) or audio (e.g. CD) formats to other physical formats (e.g. DVD-Video) solely for private and domestic use by the owner of the original version, their friends or family.
<b>4</b> <b>Amateur societies</b>	Recordings made for playing and showing only as part of the practicing, participating and competing in recognised amateur society activities, including: musical gymnastics, horse dressage, synchronized swimming, amateur dramatics and amateur film making.
<b>5</b> <b>Charities</b>	Recordings of community projects music or otherwise, funded by non-business entities and supported entirely by voluntary contributions and voluntary workers, which are sold or given away to members of the community, friends and family.
<b>6</b> <b>Amateur musicians</b>	Recordings made by non-record company affiliated musicians that are sold directly to audiences, family or friends, including amateur orchestras, singers and bands.

<b>Exclusions:</b>	
<b>The following ARE NOT covered by the Licence</b>	
<b>Do you fit into one of the following categories?</b>	<b>Will you be using the Product for one of the following uses?</b>
<b>1 Record companies</b>	Any recordings produced by any form of record company.
<b>2 Feature films</b>	Any professionally made films, any film made with the aid of corporate sponsorship or any films exploited by means of a restricted or general release.
<b>3 Premiums and corporate uses</b>	Any recordings or copies of recordings that are sponsored, paid for, or used as any form of incentive or advertisement to purchase or acquire products or services of any form that relate to any form of corporate company or entity.
	Any corporate training videos or any other forms of recordings used in-house or in a business to business capacity by any form of corporate company or entity.
<b>4 Cover mounts</b>	Any products accompanying any form of magazines or newspaper.
<b>5 Charities</b>	Any charity that employs on a PAYE basis and is anything other than described in the inclusions above.
<b>6 Karaoke</b>	Any karaoke products (including on-screen graphic rights) of any kind.
<b>7 Games and toys</b>	Any games, toys or novelty products of any kind.
<b>8 Grand rights/dramatico works</b>	All uses of grand or Dramatico Musical Works other than as permitted under these terms.
<b>9 General</b>	Any uses that are not specifically covered in the list of inclusions.



AVP Agreement

This AGREEMENT is made on \_\_\_\_\_

BETWEEN:

(1)

MECHANICAL-COPYRIGHT PROTECTION SOCIETY IRELAND LIMITED  
whose registered office is at Copyright House, Pembroke Row, Lower Baggot Street,  
Dublin 2, Ireland (“MCPSI”) contracting for and on behalf of and as agent of  
MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED having its  
registered office at 29/33 Berners Street, London W1T 3AB, England (“MCPS”) and  
its various Members and the Associated Societies (as defined below);

and

(2) \_\_\_\_\_ of

\_\_\_\_\_  
\_\_\_\_\_

(“the Producer”)

IT IS HEREBY AGREED as follows:

**1. DEFINITIONS**

The following words and expressions shall have the following meanings, save  
where the context otherwise requires:

1.1 “The Act” shall mean the Copyright and Related Rights Act, 2000, as  
amended from time to time.

- 1.2 “Application Form” shall mean the application, substantially in the form attached at Appendix 1, submitted to the Society prior to entering into this Agreement.
- 1.3 “Associated Society” shall mean a collecting society with which the Society has at the relevant time reciprocal arrangements under which the Society and that society authorise each other to grant licences in relation to each other’s repertoire for the making of audio and audio visual product reproducing such repertoire in the other’s territory.
- 1.4 “Associated Society Member” shall mean any person, firm or company who or which has been notified, from time to time, as being a member of an Associated Society by the relevant Associated Society to the Society.
- 1.5 “Bundle” shall mean a single barcoded product which includes a Product together with other goods or unconnected product that fall outside this Agreement such as a game or a Music Product.
- 1.6 “Buyout” shall mean a licence granted to the Producer (or the person from which the Producer derives its rights) to do all acts referred to in clause 2.1 of this Agreement in relation to one or more Repertoire Works.
- 1.7 “Catalogue Number” shall have the meaning referred to in clause 18.15.
- 1.8 “Commencement Date” shall mean the date this Agreement is entered into unless otherwise agreed.
- 1.9 “Co-Exploitants” shall mean:
- 1.9.1 any person, firm or company which carries out or arranges the manufacture of Product which is licensed under this Agreement; and

- 1.9.2 any person, firm or company which acts as distributor of such Product for the Producer.
- 1.10 “Disc” shall mean:
- 1.10.1 a DVD in a format defined by the industry body known as the *DVD Forum* as “DVD - Video” and all subsets of that format including but not limited to DVD - 5, DVD - 9, DVD - 10, DVD - 18, and DVD – 14;
- 1.10.2 a VHS videocassette; or
- 1.10.3 a UMD.
- 1.11 “Dramatico-Musical Work” shall mean any ballet, opera, operetta, musical, musical play or work of a similar nature.
- 1.12 “EU” shall mean each country which is at the relevant time a full member state of the European Union.
- 1.13 “Format” shall mean the type of carrier(s) on which Products are Released by reference to its physical format, whether DVD, VHS or UMDs.
- 1.14 “Game” shall mean content on a Disc which consists of a game or competition of whatsoever nature and involves some degree of interaction by the user.
- 1.15 “Genre” shall mean the content of the Product by reference to its subject matter, including but not limited to productions made for children, comedy, documentaries, feature films, sports productions and television dramas.
- 1.16 “Ireland” shall mean that part of the island of Ireland referred to in Article 3 of the Constitution of Ireland as being the area and extent of the application of the laws enacted by the Parliament established by the Constitution.

- 1.17 “MCPSI Claim” shall mean the total duration of Repertoire Works (save those which have been the subject of a Buyout) within the Product, including those Repertoire Works within Menus and special features, divided by the Relevant Product Duration.
- 1.18 “Member” shall mean each person, firm or company who or which has granted rights to the Society via the Society’s Membership Agreement either before or during the term of this Agreement PROVIDED THAT a Member who has signed the Society’s Membership Agreement after the commencement of the term shall only be regarded as a Member for the purposes of this Agreement with effect from the date of entry into the Society’s Membership Agreement. For the avoidance of doubt, a person, firm or company that has granted rights to the Society through its membership of an Associated Society shall not be considered to be a Member for the purposes of this Agreement. If requested by a Producer, the Society will provide, in a timely manner, confirmation as to whether a person, firm or company is a Member, such information to be used for the sole purpose of establishing whether a licence is required under this Agreement.
- 1.19 “Menu” shall mean the screen (or series of screens) which allows the user to navigate amongst the content included on a Product.
- 1.20 “Music Product” shall mean product where music is the primary and not secondary or incidental feature.
- 1.21 “Musical Work” shall mean any work consisting of music and any lyrics or words written to be used with the music and any part thereof.
- 1.22 “Net Shipments” for the purposes of clause 11 shall mean the gross number of Shipments during the relevant Quarter of the relevant Product by Catalogue Number and Format in relation to which royalties are payable under this Agreement, less the number of Returns thereof during that Quarter. In calculating the gross number of Shipments and the Returns for this purpose,

no account shall be taken of Product which are deletions (clause 12) or which are exports (clause 9).

- 1.23 “New Release” shall mean a Product which has not previously been Released in Ireland.
- 1.24 “Notification of Intended Release” shall mean the form referred to in clause 18.
- 1.25 “Permitted Excerpts” refers only to Dramatico-Musical Works and shall mean excerpts where the use of all such excerpts in any audio-visual material complies with all the following limitations:
  - 1.25.1 the total duration of the excerpts does not exceed 20 minutes;
  - 1.25.2 the use is not a "potted version" of the Dramatico-Musical Work;
  - 1.25.3 the use is not or does not cover a complete act of the Dramatico-Musical Work;
  - 1.25.4 each excerpt is not presented in a "dramatic form" as defined below; and
  - 1.25.5 as regards ballets specifically devised for television or excerpts from existing ballets, the total duration does not exceed five minutes.

A dramatic form shall be deemed to be created only by a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-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 costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For

the purposes of this paragraph the word "actors" shall include actors, singers, mimics and/or puppets.

- 1.26 “Premium Disc” shall mean a Disc supplied for use, or with the express or implied authority to sell it for use, as an incentive to purchase or acquire other goods or services of whatsoever nature or to encourage brand awareness and/or loyalty.
- 1.27 “Producer” shall mean the person or entity which owns or controls the rights to the Product in Ireland.
- 1.28 “Product” shall mean an audio-visual production (which is not a Music Product) Released on a Disc (or Discs) where the musical content is incidental to the main content. Musical Works used as a sound track to a film, TV production, new production or as a signature tune shall be treated as “incidental” for the purposes of this Agreement.
- 1.29 “Product Master” shall mean any master tape, disc of other contrivance of whatsoever nature from which Discs may be manufactured or duplicated or from which re-recordings can be made.
- 1.30 “Production Music Works” shall mean Repertoire Works in respect of which the Member (or Associated Society Member) has authorised the Society to license as so called production or library music.
- 1.31 “Production Music Sound Recordings (PMSRs)” shall mean recordings of Production Music Works.
- 1.32 “Public Domain” shall mean Musical Works the copyright of which have expired worldwide or in the territory in which Product is exploited.
- 1.33 “Published Dealer Price” or “PPD” shall mean the highest relevant price as published by or on behalf of the Producer payable by any bona fide dealer or retailer for a minimum quantity of Products without discounts, incentives,

bonuses and any other reduction or deduction where such Products are Released. The relevant price shall be determined by reference to whether such Shipment is supplied for the purpose of retail sale or subsequent rental. Where a Product is supplied for the purposes of both retail sale and rental, two separate PPDs must be reported, one for each means of supply.

1.34 “Quarter” shall mean each of the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December.

1.35 “Reconciliation Statement”, for the purposes of clause 11, shall mean a statement showing the following information for each Product by Catalogue Number and Format:

1.35.1 separately in relation to each Quarter:

1.35.1.1 whether the retention was claimed under clause 11.1 or 11.2;

1.35.1.2 the retention percentage applied in that Quarter;

1.35.1.3 the Net Shipments in that Quarter;

1.35.1.4 the total number of Shipments against which royalties have been retained in relation to that Quarter; and

1.35.1.5 the total number of Shipments for which royalties have been paid in relation to that Quarter;

1.35.2 where the retention was claimed under clause 11.1 or 11.2, the Release date; and

- 1.35.3 a summary of 1.35.1.4 and 1.35.1.5 for the total of all the relevant Quarters.
- 1.36 “Release” shall mean the placing on the market of a Product for the purpose of retail sale or subsequent rental to members of the public for private use and “Released” and “Releasing” shall be construed accordingly.
- 1.37 “Relevant Product Duration” shall mean the total running time of the Product less the duration of any trailers and advertisements and less the duration of any menus or special features which contain no Repertoire Works licensed under this Agreement. Where additional content is contained on a separate or bonus Disc, such content shall be treated as a “special feature” for the purposes of calculating the Relevant Product Duration and the MCPSI Claim.
- 1.38 “Repertoire Work” shall mean each Musical Work and Production Music Sound Recording, the copyright in which is owned or controlled in Ireland by the Society or a Member or an Associated Society or an Associated Society Member PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not the Society or a Member or an Associated Society or an Associated Society Member, the expression "Repertoire Work" shall only apply to such interest in Repertoire Work as is owned or controlled by the Society or the Associated Society or the relevant Member or Associated Society Member.
- 1.39 “Re-Release” shall mean Product containing a particular content and configuration of tracks on, copies of which have previously been Released in the Ireland on Disc, and where the following criteria have been fulfilled:
- 1.39.1 any retention period as permitted by clause 11 when the Product was a New Release has terminated and a proper Reconciliation Statement delivered to the Society and the balance of the royalties due (if any) paid;



- 1.39.2 the previous Release has been deleted from the Producer's catalogue;
- 1.39.3 the Producer has either destroyed its remaining stock of Product or disposed of it as referred to in clause 12 and accounted to the Society for the royalties payable thereunder;
- 1.39.4 at least one Quarter has passed between completion of the above and the re-issue in 1.38.7 below;
- 1.39.5 the Producer, having complied with 1.38.1, 1.38.2 and 1.38.3 above, has decided to re-issue the same Product with the same content and configuration of tracks;
- 1.39.6 the Producer has given the Product a new Catalogue Number; and
- 1.39.7 the Producer has re-issued the Product.
- 1.40 "Retail Price" shall mean the fixed or suggested retail price of a Product.
- 1.41 "Return" shall mean a Product on which royalties have been paid or are due to be paid under this Agreement and which has been physically returned to the relevant Warehouse and credited as a return in the relevant accounting documents provided that a Product shall not qualify as a Return for the purposes of this Agreement where it is returned to the Warehouse as part of a transaction which involves any kind of payment to the Producer for such Product other than a bona fide administration charge for handling the return.
- 1.42 "Sampling" shall mean the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work or the distribution or reproduction in the form of a sample of such part of a Repertoire Work.

- 1.43 “Shipment” shall mean the shipment of a Product from a Warehouse (other than to another Warehouse in the Ireland and to “Ship” shall be construed accordingly.
- 1.44 “Statement of Shipments” shall have the meaning set out in clause 19.1.
- 1.45 “Television Promoted Product” shall mean a Product which is the subject of a bona fide television campaign advertising that Product and where that campaign has taken place in more than one television region.
- 1.46 “Warehouse” shall mean any building or other store where Product is stored by or for the Producer including any fixed or moveable store (including vans).

## **2. GRANT OF LICENCE**

- 2.1 This Agreement sets out the terms and conditions upon which the Society will grant to the Producer a non-exclusive licence to make and Release Product containing one or more Repertoire Works as permitted under this Agreement.
- 2.2 For the purpose of clause 2.1 “make” shall mean the creation and making of copies of Product Masters and the making of copies of Product for Release.
- 2.3 The grant of this Agreement to the Producer will be subject to the approval of the Society’s board and the acceptable completion by the Producer of the Application Form. The Application Form shall be incorporated by reference into this Agreement. If in the Society’s reasonable opinion the completed Application Form discloses information which suggests that there is a risk that the Producer will be unable to comply fully with the payment terms under this Agreement, the Society reserves its right to vary such terms, including but not limited to requiring deposits, payments on account or financial guarantees.
- 2.4 Any and all licences granted pursuant to this Agreement shall be conditional upon the Producer paying royalties in a timely manner and fully complying with its material terms.

### **3. SCOPE OF LICENCE AND RESTRICTIONS**

3.1 This Agreement applies only to Product which is made available to the public through normal channels of retail distribution and through rental outlets. Without prejudice to the generality of the foregoing it does not apply to Product sold through VHS clubs, DVD clubs or otherwise sold by any direct marketing method to the public without the intermediary of a dealer.

3.2 The Agreement shall not apply:

3.2.1 to Music Product;

3.2.2 to Premium Discs;

3.2.3 to trailers and advertisements within a Product unless clause 3.3 applies;

3.2.4 where the Producer has obtained a Buyout;

3.2.4.1 Where a Producer relies upon this sub-clause, it shall, at the request of the Society, provide the Society with evidence of the Buyout where the Society (at its sole discretion) has grounds for believing that no valid licence is in effect, in which event the Producer shall provide sufficient evidence of the Buyout. "Sufficient evidence" for the purpose of this clause shall comprise of copies of the original licences issued by the relevant copyright owner(s) of the Repertoire Works and shall include documentation disclosing the product name, territory, rights granted and details of the parties (but not any commercial terms which are confidential between the parties). In addition, full details (meaning such information as is set out in clause 18.5 of this

Agreement) of all Repertoire Works included on the Product must be provided. The failure by the Producer to adequately provide this information to the Society within 30 days of request by the Society shall constitute a material breach of this Agreement.

3.2.4.2 Where a Product contains Repertoire Works which have been the subject of a Buyout together with Repertoire Works which have not, such Product will fall under this Agreement.

3.2.5 to a Product that has a Game as its main feature. Where a Game is included in a Product but not as the main feature, any Repertoire Works within that Game shall not be licensed under this Agreement. Further, the duration of the Game content and any Musical Works it contains shall be disregarded for the purpose of calculating the appropriate royalty under clause 7. For the purposes of this sub-clause, “main feature” shall mean the principal content in a Product by reference to which such Product is primarily promoted, marketed and/or advertised.

3.2.6 to any Repertoire Work which is:

3.2.6.1 a Dramatico-Musical Work; or

3.2.6.2 is an excerpt from such Dramatico-Musical Work unless that which is copied or distributed under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; AND the Society has not notified the Producer in writing that its Member or the Associated Society Member objects to the reproduction of any such Repertoire Work.

For the purposes of this clause, the expression “Dramatico-Musical Work” shall include any version of such work (with or without cuts,

additions, interpolations or the like) which has been publicly performed. Furthermore, for the avoidance of doubt, substantially the whole work shall be deemed to be reproduced where all or nearly all the individual songs or other music included in the work are reproduced.

In any event this Agreement only applies to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses.

- 3.3 Where a trailer or advertisement for one Product is included in another Product, the trailer or advertisement shall be deemed to be licensed in relation to the Product in which it is included provided that the use of any Repertoire Works is in context with their use on the other Product. However, the running time of any trailers or advertisements and the duration of any Musical Works contained in the Product shall be disregarded for the purpose of calculating the appropriate royalty under clause 7.
- 3.4 This Agreement does not permit the following which require the express written consent of the relevant Member. Satisfactory evidence of such consent must be provided to the Society prior to the Release of a Product:
- 3.4.1 Making any adaptation of any Repertoire Work by way of making any arrangement of the music, any alteration to the lyrics, Sampling, using the music with lyrics other than those written for use in conjunction with it or using the lyrics with music other than that written to be used with them or authorised for use with them;
- 3.4.2 Reproducing a Repertoire Work in the form of a parody or burlesque of any Repertoire Work or of any composer or writer of any Repertoire Work or any band or other group of artists which includes any composer or writer of any Repertoire Work;

- 3.4.3 Using the work in any context which the Producer ought reasonably to consider as being likely to be insulting or detrimental to the composer or artist featured on the commercially released sound recording of the music or the relevant Member or Associated Society Member; or
- 3.4.4 Making Product which contains content of an overtly political, sexual or religious nature.
- 3.5 This Agreement does not extend to the graphic representation of music or lyrics of Musical Works in any format whatsoever. Without prejudice to the generality of the foregoing, this Agreement shall not apply to any Product in which one or more Repertoire Works are presented in a form such that the lyrics of that Repertoire Work are reproduced graphically on the screen as the music plays, for the primary purpose of viewers being able to sing along to the Repertoire Work as the music plays (such as, without limitation, karaoke tracks).
- 3.6 This Agreement is subject to certain limitations in relation to the Associated Societies' rights and these limitations are available from the Society on request. Where the Society has provided details of such limitations, it will subsequently update the Producer with any changes thereto, if any.
- 3.7 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings (save in the case of Production Music Sound Recordings), films, dramatic works, performers' rights, moral rights or rights in performances. The Producer shall not be entitled to exercise the licences or authorisations contained in this Agreement in relation to a particular Repertoire Work where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling the rights in relation to that sound recording containing that Repertoire Work or performers of that Repertoire Work.
- 3.8 Nothing in this clause 3 shall:

- 3.8.1 remove the obligation of the Producer to obtain appropriate licences for the use of Repertoire Works, the use of which is not covered by this Agreement; or
- 3.8.2 remove the obligation of the Producer to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.
- 3.9 Nothing in this Agreement grants the Producer any rights as to the performing or communication to the public of any Repertoire Works including, for the avoidance of doubt, via the Internet.
- 3.10 This Agreement applies to Product which is manufactured and Released after the Commencement Date and to Product Released prior to the Commencement Date which would otherwise fall within the terms of this Agreement.
- 3.11 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the Ireland or any other territory.

#### 4. **PRIOR APPROVAL AND NOTIFICATION OF RELEASE**

- 4.1 Unless clause 4.2 applies the Producer must obtain the express written prior approval of the Society for the Release of Product containing Repertoire Works. The procedure relating to such prior approval is set out in clause 18.
- 4.2 Prior approval is not required in respect of:
  - 4.2.1 Product which comprises material, a substantial part of which has been previously licensed for broadcast on television in the Ireland or elsewhere in the world (whether or not actually broadcast);
  - 4.2.2 Product made for children;

- 4.2.3 Fitness Product;
- 4.2.4 Sports Product;
- 4.2.5 Production Music Works and Production Music Sound Recordings;
- 4.2.6 Repertoire Works which are used as background music in interviews with recording artists and/or composers who are associated with that music;
- 4.2.7 The incidental use of Repertoire Works within promotional music videos and live music concert footage; or
- 4.2.8 Repertoire Works which have been commissioned by the Producer or a person through whom the Producer obtained its rights.

**5. LABELS TO WHICH AGREEMENT APPLIES**

- 5.1 This Agreement covers all Product Released by the Producer which bear the trade mark(s), trade name(s) or label(s) notified by the Producer to the Society in its application for this Agreement.
- 5.2 This Agreement shall be extended to Product bearing any new trade mark or trade name or issued on a new label which the Producer may hereafter exploit, provided that the Producer has given the Society advance written notice that it intends to exploit such trade mark, trade name or label. If another producer having a contract with the Society in the same terms as this Agreement has already given notice to the Society that it is using the same trade mark, trade name or label, the Society shall notify the Producer.
- 5.3 This Agreement may also upon prior written notice to the Society be extended to Product bearing any existing trade mark or trade name or issued on any existing label not referred to in the Producer's application to the Society for this Agreement. However, the licences shall not be so extended where both:



- 5.3.1 the Producer has acquired the right not only to exploit the trade mark, trade name or label, but also to make and distribute recordings previously available under that trade mark, trade name or label; and
- 5.3.2 any royalties payable to the Society or any of its Members or to any Associated Society in relation to Product previously issued bearing such trade mark or trade name or on such label remain unpaid.
- 5.4 The Producer is responsible for ensuring that it has the right to issue Product bearing the trade mark, trade name or on the label which it notifies to the Society under the above provisions. The Producer will indemnify the Society and its Members against any valid claims made against the Society and which relate to the Society having granted consent under this Agreement to the making and Release of Product bearing any such trade mark, trade name or label.
- 5.5 Where both the Producer and another producer are exploiting Product bearing the same trade mark or trade name or using the same label, this Agreement shall only apply to the Product bearing that trade mark, trade name or on that label which have been made or Released by or for the Producer.

## **6. FIRST RECORDINGS**

- 6.1 Where a Product contains a Repertoire Work(s) which has not previously been recorded or where an audio or audio-visual sound carrier containing such Repertoire Work has not been manufactured in or imported into the EU, this Agreement shall not apply until ownership of such Repertoire Works has been established and consents have been obtained from the person entitled to give such consents.

6.2 The Producer shall be deemed to have applied for such consent from the Society when it follows the procedure set out in clause 18. Alternatively, such consent may be applied for either from the Society or direct from the relevant Member(s). Where the Producer obtains consent direct from the Member(s), the Producer shall, when submitting the Notification of Intended Release (or label copy) to the Society as referred to in clause 18, send with it a copy of the completed and signed consent.

## **7. ROYALTIES PAYABLE**

7.1. Save as otherwise provided herein, the Producer shall pay to the Society in relation to each Product, the royalties set out in this clause. Subject to sub-clauses 7.3, 7.4 and 7.5, the appropriate royalty shall be applied to the Published Dealer Price applicable to the relevant Product on the day of the Shipment of the Product from the Warehouse.

7.2 The royalty rate shall be 8.5% of Published Dealer Price multiplied by the MCPSI Claim.

7.3 Where the Producer has not published a Published Dealer Price in relation to the Product, but the Producer has published a Retail Price in relation thereto, the royalty shall be calculated at 6.5% of the Retail Price of the Product multiplied by the sum of the MCPSI Claim applicable on the day of Shipment of the Product from the Warehouse.

7.4 When a Product is sold as part of a Bundle the royalty rate shall be applied to the Published Dealer Price for such Bundle unless varied by the Society subsequent to good faith discussions with the Producer.

7.5 If the Producer is unable to show at the time the royalty is due that there was in force on the Shipment date a Published Dealer Price or Retail Price (as the case may be) applicable to such a Product, the royalty shall be fixed by the Society on the basis of the price most generally used by other producers in the Ireland for a comparable Product.

7.6 The royalty referred to in clauses 7.2 and 7.3 is inclusive of the synchronisation fee in relation to the Repertoire Works appearing on the Product.

7.7 Where a Product is supplied to VHS clubs or DVD clubs (which supply falls outside this Agreement pursuant to clause 3.1) or in any circumstances in which a third party is responsible for paying royalties, the Producer shall cease to supply such Product when it is notified in writing by the Society (or any Associated Society) that the club and/or third party has not paid the relevant royalty and shall not resume supply until the Society (or Associated Society) confirms that such royalty has been paid.

7.8 The royalty referred to in this clause 7 accrues on the day of Shipment.

## **8. TAXES**

8.1 Before calculating the royalties payable on the Product, Value Added Tax (or, where clause 8.2 applies, any similar tax included in the royalty base price) shall be excluded.

8.2 No other tax which forms part of the relevant price shall be deducted therefrom prior to calculation of the royalty.

8.3 The Producer shall pay VAT at the rate or rates from time to time in force on any royalties payable in respect of licences granted under this Agreement.

## **9. EXPORTS**

9.1 Subject to clause 19.1 the Producer may elect to export Product to a licensee, affiliate or importer in a territory outside the Ireland without paying royalties thereon under this Agreement provided that:

9.1.1 such licensee, affiliate or importer has an agreement with the Associated Society responsible for the collection of mechanical

royalties in the territory to which such Product is being exported under which such party is liable to pay mechanical royalties on such Product;

9.1.2 the Society has not notified the Producer that such party has failed to comply with that agreement in a material respect; and

9.1.3 at the same time as submitting the Statement of Shipments referred to in clause 19, the Producer delivers a separate statement identifying the gross number of sales of each Product by Catalogue Number and Format which have been exported royalty-free under this provision, and the name and address of the licensee, affiliate or importer to whom such Product has been supplied.

9.2 Where the Producer has not elected to export any Product royalty-free under clause 9.1, the Producer shall pay royalties on Product exported to a territory outside the Ireland in accordance with the provisions of this Agreement provided that:

9.2.1 in relation to Product exported to a territory within the EU, the royalty rate provided for in clause 7 shall be applied to the PPD or Retail Price (as the case may be) of the Product in the territory to which the Product is exported; and

9.2.2 in relation to Product exported to a territory outside the EU, the royalty shall be calculated in accordance with the appropriate standard local terms and conditions or (in default thereof) in accordance with the law in the territory to which the Product is exported.

Where the Society and a relevant trade association of which the Producer is a member agree a system for calculation of royalties which is different to those

contained in clauses 9.2.1 and 9.2.2 above, then that system shall apply to exports under this Agreement instead of clauses 9.2.1 and 9.2.2.

- 9.3 Save where the Producer makes the election under clause 9.1 in relation to all copies of the relevant Product per territory per Catalogue Number in the particular Quarter, exports not exceeding 100 units of Product per territory per Catalogue Number per Quarter shall be deemed not to be exports and royalties thereon shall be calculated and paid fully in accordance with this Agreement.
- 9.4 Any export of Product shall be subject to the exercise of any rights subsisting and lawfully exercisable in any territory to which such Product is exported to prevent or control the importation of Product into and distribution of Product within such territory.

## **10. RETURNS**

- 10.1 When calculating the royalties due at the end of a Quarter in relation to a Product by Format and Catalogue Number, the number of Returns from a given country during that Quarter of the same Product by Format and Catalogue Number may be deducted from the gross Shipments thereof to that same country. For the avoidance of doubt, Returns may only be applied against gross Shipments in the *same* country; excess Returns from one country may not be applied against gross Shipments in any other country.
- 10.2 For the avoidance of doubt, any Returns from exports which are deemed to be Ireland sales under clause 9.3 shall only be deducted from Irish Shipments.
- 10.3 The Producer may carry forward any negative number of Shipments to any particular country and in relation to a particular Format and Catalogue Number in one Quarter against any Shipments to the same country of the same Format and Catalogue Number in any subsequent Quarter.
- 10.4 The Producer shall not be entitled to any form of refund for royalties already paid except as specifically set out in this Agreement.

## 11. RETENTIONS AGAINST RETURNS

11.1 The following retention provisions will apply from the beginning of the 3rd Quarter of 2005 for all Product Released prior to that date and subsequently, in relation to Products which are New Releases or Re-Releases and shall be applied separately in relation to each Format and country of Shipment thereof:

11.1.1 in relation to the Quarter in which copies of the New Release or Re-Release (as the case may be) were first Released with a view to the retail sale thereof to the public for private use, the royalties payable on 10% of the Net Shipments during that Quarter may be retained against any possible Returns;

11.1.2 in relation separately to each of the following three Quarters, the royalties payable on 10% of the Net Shipments during the relevant Quarter may be retained against any possible Returns;

11.1.3 reconciliation must be effected in the 5th Quarter and a Reconciliation Statement delivered to the Society together with the Statement of Shipments relating to the 5th Quarter; and

11.1.4 the balance of royalties due to the Society (if any) shall be accounted for in the same manner and paid at the same time as the other royalties due in respect of the 5th Quarter.

11.2 The following retention provisions apply in relation to Product which is Television Promoted Product, whether or not they are New Releases or Re-Releases, but in substitution for those set out in clause 11.1 if they are New Releases or Re-Releases, and shall be applied separately in relation to each Format thereof:

11.2.1 in relation to the Quarter either in which copies of the Television Promoted Product were first put into circulation with a view to the

retail sale thereof to the public for private use or the Disc first qualified as a Television Promoted Product (whichever is the later), the royalties payable on 25% of the Net Shipments during that Quarter may be retained against any possible Returns;

11.2.2 in relation to the following Quarter, the royalties payable on 25% of the Net Shipments during that Quarter may be retained against any possible Returns;

11.2.3 in relation to each of the following two Quarters, the royalties payable on 10% of the Net Shipments during the relevant Quarter may be retained against any possible Returns;

11.2.4 reconciliation must be effected in the 5th Quarter and a Reconciliation Statement delivered to the Society together with the Statement of Shipments relating to the 5th Quarter; and

11.2.5 the balance of royalties due to the Society (if any) shall be accounted for in the same manner and paid at the same time as the other royalties due in respect of the 5th Quarter.

11.3 No retention may be claimed until the Producer has demonstrated to the Society's reasonable satisfaction that it is able to operate the relevant provisions in a timely and accurate manner. Where there is a dispute between the Society and the Producer as to whether this is so, the Producer may elect to have the matter decided by the Industry Panel.

11.4 No royalties may be retained by the Producer except as expressly set out in this Agreement.

## **12. DELETIONS**

12.1 Where at least 6 months after the date of first Release, the Producer deletes a Product from its catalogue, and thereafter sells or authorises the sale of its

remaining stock of Product to one or more independent buyers on an arm's length basis, the royalty provisions set out in this clause shall apply in substitution for those referred to above.

- 12.2 The royalties payable in relation to such Product shall be 10% of the gross price charged to the buyer(s) thereof with no deduction other than any appropriate duties or taxes provided for in clause 8.
- 12.3 The total number of Shipments of a particular Format in relation to which the Producer may apply this provision in each calendar year shall not exceed 5% of the total number of Shipments of the Producer containing one or more Repertoire Works during the preceding calendar year.
- 12.4 None of the provisions of this Agreement relating to Returns (nor for the avoidance of doubt those relating to any retention against Returns) shall apply in relation to such sales.
- 12.5 The Producer shall not manufacture Product solely for the purpose of benefiting from these provisions.

**13. PROMOTIONAL DISCS**

- 13.1 Product which is bona fide supplied free of charge only for the purposes of the genuine promotion of sales of other copies of the Product in question shall be exempt from the royalties otherwise payable under this Agreement on condition that the criteria set out in clauses 13.2 to 13.6 are fulfilled.
- 13.2 A Product shall only be regarded as having been supplied for such purposes as are referred to in clause 13.1 where it is supplied to a broadcaster, retailer or critic for the purposes of that party previewing it prior to purchasing copies or for the purposes of providing a bona-fide criticism of the Product to the public. For the avoidance of doubt, a Product shall not be regarded as having been supplied for such purposes where it (or any part of it) is:



- 13.2.1 distributed commercially;
  - 13.2.2 not supplied free of charge;
  - 13.2.3 supplied free of charge but in consideration of or as a result of the party to whom it is supplied taking other Product or other copies of the same Product or giving other valuable consideration; or
  - 13.2.4 used for the purpose of making a broadcast.
- 13.3 Each such Product and the packaging thereof must at the time of manufacture be prominently marked with a non-removable or non-erasable notice carrying the words “PROMOTIONAL COPY - NOT FOR SALE”.
- 13.4 The Statement of Shipments shall identify the number of units of Product by Catalogue Number and Relevant Format which the Producer has supplied under the above provisions.
- 13.5 The Producer shall maintain information in reasonable detail for a period of not less than 2 years as to the general nature and categories of the recipients of Product supplied under the above provision.
- 13.6 The Producer shall at all reasonable times and upon reasonable notice allow access to its premises by representatives of the Society for the purposes of the Society checking the then current details of the number of units of Product manufactured referred to in the above provisions and the persons, firms and companies to whom they are being supplied and the numbers supplied to each such person, firm or company and the Producer shall also maintain such information in such detail as will enable the representatives of the Society reasonably to verify during such access that the number of units of Product being supplied under the above provisions broadly corresponds with claims for royalty-free supply under Statements of Shipments.

**14. NOTICES AND CREDITS**

14.1 Each Disc comprising a Product shall bear the capitalised initials “MCPS”.

14.2 A notice to the following effect shall appear on the label of each Disc comprising a Product:

“ALL RIGHTS OF THE PRODUCER AND OF THE OWNER OF THE MUSICAL WORKS REPRODUCED RESERVED. UNAUTHORISED COPYING, HIRING, LENDING, PUBLIC PERFORMANCE AND COMMUNICATION TO THE PUBLIC OF THIS DISC PROHIBITED.”

**15. SUPPLY OF INFORMATION**

15.1 The Producer shall on entering into this Agreement, and during its continuance, supply to the Society the following documents without charge as soon as possible following the publication or issue thereof:

15.1.1 two copies of all catalogues, supplements to catalogues and lists or notifications of New Releases and Re-Releases; and

15.1.2 two copies of each list of Published Dealer Prices or Retail Prices each amendment or addition thereto.

15.2 At the request of the Society the Producer shall also furnish it free of charge with:

15.2.1 one copy (which shall be exempt from royalty payment) of any Product; and

15.2.2 one copy of the sleeve, insert or other packaging relating to any Product.

- 15.3 The Producer must notify the Society immediately of any Product which it deletes from its catalogue.
- 15.4 The Producer must also supply the Society with any further information or documentation in its possession, power, custody or control (and use its best endeavours to supply the Society with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Society at any time, in order to enable the Society to verify the Musical Work(s) which are or will be reproduced in any Product made and/or distributed by or for the Producer or its Co-Exploitants or to verify that the Producer is abiding by the terms and conditions of this Agreement.

**16. THIRD PARTY OBLIGATIONS**

- 16.1 If the Producer undertakes or arranges the manufacture of Product for any other party (whether a third party, a licensee or affiliate) and/or acts as a distributor on behalf of a third party, the Producer must inform the Society in writing of the identity of that party.
- 16.2 On compliance with clause 16.1, the Society confirms that it will not seek to recover royalties from or pursue any other remedy against the Producer in relation to such Product, subject to the provisions of clause 16.4, unless it is notified by the third party and is satisfied that, as between the Producer and that third party, the Producer has the obligation to obtain licences for Musical Works (including Repertoire Works) included on Product Released (or intended to be so Released) for sale or subsequent rental to the public.
- 16.3 The Producer hereby agrees that it will not undertake or arrange the manufacture of Product reproducing one or more Repertoire Works for any third party which either:
- 16.3.1 does not have a current agreement with the Society (in this form) unless the Society has expressly authorised the Producer

to carry out or arrange the same, such authorisation not to be unreasonably withheld or delayed; or

16.3.2 is in material breach of such an agreement, if the Society has notified the Producer of that breach and required the Producer to cease undertaking or arranging such pressing until such breach is rectified.

16.4 The Producer agrees that it will bear joint responsibility with the third party for any manufacture and/or distribution carried out in contravention of clause 16.3.

16.5 In all cases, the Producer shall use its best endeavours to ensure that the Society has every facility for checking manufacture undertaken or arranged for third parties. Where the relevant Product reproduces one or more Repertoire Works, the Producer shall send to the Society copies of the relevant delivery or despatch notes or equivalent documentation including but not limited to the Catalogue Number, the quantities despatched and the name and address of the person, firm or company to whom they were despatched.

## **17. CO-EXPLOITANTS**

17.1 The Producer shall use its best endeavours to procure that its Co-Exploitants:

17.1.1 at no time act or fail to act in such a way as would cause the Producer to be in breach of this Agreement; and

17.1.2 co-operate fully with the Society and its representatives in the application of this Agreement.

17.2 In exercising a licence granted pursuant to this Agreement to make Product, the Producer may only use a Co-Exploitant to make such Product if:

- 17.2.1 such Co-Exploitant appears on the Society's approved list (a copy of which will be supplied on request to the Producer by the Society, with any changes thereto promptly being notified to the Producer); or
- 17.2.2 the Society consents, such consent not to be unreasonably withheld or delayed.

**18. APPROVALS PROCEDURE AND NOTIFICATIONS OF INTENDED RELEASE**

- 18.1 Where prior approval is required for a Product (pursuant to clause 4), the Producer shall deliver to the Society not less than 21 days before the Producer intends to Release (whether a New Release or a Re-release) the Product, a Notification of Intended Release in the form prescribed in Appendix 2 to this Agreement.
- 18.2 Where prior approval is not required for a Product (pursuant to clause 4), the Producer shall deliver to the Society not less than 7 days before the Producer intends to Release (whether a New Release or a Re-release) a Product, the Producer shall deliver to the Society a Notification of Intended Release in the form prescribed in Appendix 2 to this Agreement.
- 18.3 Where Product comprises Repertoire Works which have been the subject of a Buyout together with one or more Repertoire Works which have not, a Notification of Intended Release must be delivered by the Producer to the Society (in accordance with clause 18.1 or 18.2, whichever is applicable).
- 18.4 Where a Producer Releases a Product which contains one or more Musical Works not subject to a Buyout, a Notification of Intended Release must be supplied, (in accordance with clause 18.1 or 18.2, whichever is applicable), even if the Producer believes that the Product does not contain any Repertoire Works.

18.5 The minimum information the Producer is required to provide pursuant to clauses 18.1 and 18.2 is as follows:

- 18.5.1 the Producer's name, address and contact details;
- 18.5.2 the Society's customer account number;
- 18.5.3 the label of the Producer on which the Product will appear;
- 18.5.4 the title of the Product;
- 18.5.5 the Catalogue Number;
- 18.5.6 the Catalogue Number(s) previously released under (if applicable);
- 18.5.7 the International Sound Recording Code (ISRC) (where available);
- 18.5.8 the barcode of the Product;
- 18.5.9 the scheduled release date;
- 18.5.10 the number of units of Product, i.e. if double pack, boxed set etc;
- 18.5.11 the Format of the Product(s);
- 18.5.12 the Genre of the Product;
- 18.5.13 the total duration of the Product(s);
- 18.5.14 the total Relevant Product Duration;

- 18.5.15 the duration of each Musical Work;
  - 18.5.16 the Published Dealer Price (the retail PPD ‘R’ and/or rental/lending ‘L’);
  - 18.5.17 the titles of the Musical Works;
  - 18.5.18 the track sequence number;
  - 18.5.19 the manufacturer’s name, address and contact details;
  - 18.5.20 the first distributor’s name, address and contact details;
  - 18.5.21 the writer/composer/arranger of each Musical Work;
  - 18.5.22 the copyright owner/publisher, where available;
  - 18.5.23 the recording artist of each Musical Work, where available; and
  - 18.5.24 a clear indication of the Musical Works, if any, that are subject to a Buyout.
- 18.6 The Society will accept the Producer’s label copy instead of a Notification of Intended Release provided that it contains the required information and is in a form approved by the Society.
- 18.7 The Society shall process the Notification of Intended Release and send notification to the Producer of the following information within 21 working days where clause 18.1 applies and within 7 working days where clause 18.2 applies following receipt of the accurate and properly completed Notification of Intended Release:
- 18.7.1 where the Society is making a claim on behalf of one or more Members, the identity of that Member or those Members;

- 18.7.2 the share which that Member or those Members claim in the relevant Musical Work;
- 18.7.3 the royalty percentage per track;
- 18.7.4 any category referred to in clause 18.13;
- 18.7.5 the Society's code number for the relevant Product;
- 18.7.6 the Society's code number for each relevant Repertoire Work;  
and
- 18.7.7 in relation to each Musical Work referred to in the notification for which the Society is making a claim, whether or not consent is being refused by reason of such a limitation or restriction as is referred to in clauses 3.6 and 6 and the identity of the Member refusing that consent.

The notification by the Society under this clause 18.7 shall constitute the formal licence for the Product referred to in clause 2.1 though, for the avoidance of doubt, such licence shall be subject to the terms and conditions of this Agreement.

- 18.8 A new Notification of Intended Release must be delivered to the Society in the event of any material change to the information referred to in clause 18.5. The Producer must also promptly notify the Society if it subsequently decides not to release the relevant Product.
- 18.9 The procedure set out above shall also apply to Product in the Producer's catalogue prior to the Commencement Date save that the time limit for the service of the Notification of Intended Release shall be 19 August 2005. Nothing in this sub-clause shall operate as a waiver of any rights of a Member



or Associated Society Member to object to a particular use of a Repertoire Work within a Product.

18.10 Subject to clause 18.12 below, this Agreement shall apply in respect of every Musical Work within a Product which is in fact a Repertoire Work, and any licences granted under this Agreement shall take effect even if the Society notifies the Producer that such Repertoire Work falls into one of the categories set out in clause 18.13 below.

18.11 In relation to the rights reserved as referred to in clause 3.7, this Agreement shall not apply until all the relevant Members or Associated Society Members owning or controlling the rights in the relevant Musical Work(s) have consented to the grant of a licence in accordance with this Agreement.

18.12 Where there are joint owners of a Musical Work, and the Society does not represent all the parties owning or controlling the rights in such Musical Work, any licence granted by the Society is not a licence for the joint owner(s) whom the Society does not represent.

18.13 The categories referred to in clauses 18.7.4 and 18.10 are:

18.13.1 NS (non member);

18.13.2 SAI (copyright status not known at present);

18.13.3 PAI (copyright owner not known at present); and

18.13.4 Public Domain work.

18.14 Where the Society has notified the Producer that a Musical Work is in whole or in part a Repertoire Work, and subsequently such Musical Work or a share in such Musical Work or an interest therein ceases to be a Repertoire Work (either because the relevant Member has ceased to be a Member or because the copyright in such Musical Work or an interest therein has been transferred

or reverted to a non-member), then the Society shall promptly notify the Producer unless the Product in which the Musical Work was reproduced has been deleted from the Producer's catalogue.

18.15 The Producer shall procure that each Product is given a unique Catalogue Number applicable only to Product with the same production and Format.

18.16 Without prejudice to the rights of either party hereto in respect of any breaches of this Agreement, where the Society expressly notifies the Producer pursuant to a specific obligation hereunder that a particular Musical Work (in whole or part) is a Repertoire Work and such notification is incorrect in this respect, the Society shall indemnify the Producer against any liability for damages or costs which the Producer may reasonably incur in reasonable reliance upon such information having been correct. For the avoidance of doubt, the Producer shall not be entitled to continue to rely on such notification where it has notice from any party that such notification was or may have been incorrect. This indemnity shall not apply where the incorrectness of such notification was consequential upon the Producer having supplied incorrect, incomplete or misleading information. For the avoidance of doubt, the foregoing indemnity does not extend to any claim by any party that a copyright musical work properly licensed under this Scheme infringes some other copyright Musical Work.

**19. STATEMENTS OF SHIPMENTS**

19.1 At the end of each Quarter the Producer shall prepare a Statement of Shipments showing by Catalogue Number and Format the gross Shipments thereof and each deduction specifically provided for in this Agreement. The detailed information and format of such statement shall be in accordance with the Society's specification in relation thereto and notified by the Society to the Producer. The Society will give reasonable consideration to any reasonable proposal by the Producer for a variation in relation to the format thereof, provided that such variation will still enable the Society without additional

expense to process the information in accordance with its normal procedure and comply with clause 20.

19.2 The Statement of Shipments shall be delivered to the Society no later than by close of business on the 21st day of the month following the end of the relevant Quarter (by way of example, the statement in relation to the first Quarter in each year shall be delivered on or before April 21st of that year).

19.3 The Producer shall deliver the Statement of Shipments in the form of industry standard computer readable magnetic media.

## **20. ACCOUNTING PERIOD AND PAYMENTS**

20.1 On receipt of the Statement of Shipments the Society will process the Information included therein, and will prepare royalty statements in relation thereto.

20.2 The Society will deliver to the Producer such royalty statements and invoices in relation to the royalties payable thereunder no later than close of business on the 17th day following receipt of the Statement of Shipments from the Producer.

20.3 The Society will procure that each invoice indicates the details of the account to which the monies should be transferred. Save in the case of and to the extent of any manifest error, the Producer shall pay the invoices (including the VAT element thereof) to the Society, by irrevocable bank transfer by close of business on the 45th day following the end of the Quarter.

20.4 Non-payment or repeated late payment of the royalties due under clause 7 constitutes a material breach of this Agreement.

## **21. COPYRIGHT CONTROL ACCOUNT**

- 21.1 The Licensor shall maintain an interest-bearing Copyright Control Account, and shall pay into such Account in relation to any Musical Work or interest therein which has been designated by the Licensor as PAI or SAI a sum equal to the royalties which would have been payable under this Agreement had such Musical Work been designated as a Work within the repertoire of the Society. The Producer shall continue to pay royalties in relation to that Work or interest therein into that account until it has discovered the person, firm or company entitled to the relevant royalties, or until the Licensor notifies the Producer that the Musical Work or interest is within the repertoire of the Society.
- 21.2 Where a third party (not being a Member or an Associated Society Member) claims the right to grant a licence in relation to a Musical Work or interest therein which remains designated by the Society as SAI or PAI:
- 21.2.1 the Producer shall notify the Society in writing within 7 days of such claim; and
- 21.2.2 at the same time as giving such notice, the Producer may require the Society to investigate the position, and notify the Producer within 3 months of receipt of such notification whether the Society claims that the relevant rights are controlled by a Member or a non-member. In default of the Society so notifying the Producer, the relevant Musical Work or interest therein shall be deemed to be of non-member status, and the Society shall then have no right to claim any royalties which are subsequently paid to the third party by the Producer, unless such royalties were paid to the third party after the Society has made a new claim in relation to the relevant Musical Work or interest therein.
- 21.3 Nothing in this Agreement shall prevent the Producer, at its own risk, in good faith paying royalties arising in relation to a Musical Work or interest therein which remains designated by the Society as SAI or PAI to a bona fide third

party which is not a Member or an Associated Society Member claiming the same provided that the Producer shall where possible give 7 days prior notice of its intention so to do to the Society.

## **22. DISPUTES**

22.1 Where the Society at any time notifies the Producer that a Musical Work or interest therein is a Repertoire Work, and subsequently either the Producer or the Society receives notice that a third party claims the relevant rights therein, and/or the royalties arising in relation thereto, the party receiving such notice shall notify the other party in writing within 7 days of receipt thereof.

22.2 In any circumstances where both the Society and a third party not being a Member or an Associated Society Member make a claim against the Producer in relation to the same Musical Work or the same interest in a Musical Work, the Producer shall pay the royalties relating to that Musical Work or interest therein (calculated in accordance with this Agreement) into an interest-bearing account in the joint names of the Society and the Producer. Any royalties held in such account shall be held in trust for the party entitled thereto and such royalties shall remain in that account until the dispute in relation thereto is resolved.

22.3 For the avoidance of doubt, where the ownership or control of a Musical Work or interest therein is in dispute between two or more Members (or Associated Society Members or a combination of both), the royalties in relation thereto shall be paid to the Society.

## **23. CHANGES IN INFORMATION AND ADJUSTMENTS**

23.1 The Society will notify the Producer of any changes in the information referred to in clause 18.7 or any notice pursuant to clause 18.14 during a Quarter not later than 7 working days following the end of that Quarter. No account shall be taken of any information or change in information which the

Society is required to provide under clause 18.7 or any notice pursuant to clause 18.14 unless it has been notified no later than the date specified above.

23.2 Where the Society identifies that a Musical Work or interest therein previously designated SAI or PAI is a Repertoire Work, it shall notify the Producer and the Producer shall transfer to the Society any royalties held in the Copyright Control Account (referred to in clause 21.1) in relation thereto, together with the interest thereon.

23.3 Without prejudice to clause 18.16 and the foregoing provisions of this clause, where the Society or the Producer discover that one or the other has by mistake or unintentionally provided the other with incorrect information on the basis of which incorrect royalties have been paid or invoiced or royalties have been paid or invoiced to the wrong party:

23.3.1 the party discovering the error shall notify the other, giving full details thereof; and

23.3.2 where the party alleged to be in error accepts it, such party shall correct the error within 7 working days of receipt of notification of the same and shall pay or repay any royalties owing to the other party, together with interest thereon computed in accordance with clause 27.6 from the date on which such royalties should have been paid or were paid (as the case may be) to the date of payment or repayment.

## **24. AUDITS**

24.1 The Producer shall upon entering into this Agreement inform the Society of the addresses of the Warehouses (or in the case of moveable Warehouses the addresses at which they are normally situated) used for storing Product the subject of this Agreement and shall promptly notify any changes to any such locations.

- 24.2 The Producer shall permit the Society, by its duly authorised representatives, at all reasonable times to have access to the Warehouses for the purpose of inspecting and checking the stocks of such Product.
- 24.3 Where the Producer does not have its own warehousing facilities, the Producer shall use its best endeavours to procure reasonable rights of access to the Warehouses of its Co-Exploitants for the duly authorised representatives of the Society.
- 24.4 The Producer shall keep proper accounting records dealing with, by reference to each Quarter, its activities the subject matter of this Agreement and without prejudice to the generality of the foregoing, setting out in particular the following:
- 24.4.1 the manufacture, Shipment, Return and stock holding of Product;
  - 24.4.2 the export of Product;
  - 24.4.3 the import of Product;
  - 24.4.4 the export of Product Masters;
  - 24.4.5 the import of Product Masters;
  - 24.4.6 the Publisher Dealer Price and/or Retail Price of Product;
  - 24.4.7 any sale of Product under clause 12, together with the names and addresses of the parties to whom they were sold;
  - 24.4.8 any supply of Product under clause 13, together with the information maintained under clause 13.4 and 13.5;

- 24.4.9 the dates and amounts paid in respect of mechanical royalties on Product together with the identity of the party to whom such payments were made;
  - 24.4.10 any retentions claimed under clause 11, the calculation thereof and their reconciliation;
  - 24.4.11 the calculation and payment into the relevant accounts of royalties referred to in clauses 21 and 22;
  - 24.4.12 details relating to the destruction of any Product; and
  - 24.4.13 details relating to Buyouts.
- 24.5 These accounting records shall be maintained to a standard sufficient to enable an audit trail to be established and followed through.
- 24.6 Such accounting records together with any supporting documentation relating thereto shall be open for inspection (both during and for nine months after termination of this Agreement or any licence granted pursuant to this Agreement) by representatives of the Society upon reasonable notice and no more than once a calendar year unless payment of royalties is over 45 days in arrears. For these purposes, the Producer shall allow access to its premises. The Society's representatives shall be entitled to inspect, make extracts and take copies of the information available, and to carry out such work as is in their reasonable opinion considered necessary to verify the royalties due to the Society including for the avoidance of doubt the examination of stock movements.
- 24.7 The reasonable fees incurred by the Society in auditing the Producer under this Agreement shall be borne by the Society, except in circumstances where the audit report (a copy of which shall be made available to the Producer within nine months of the commencement of the audit, such period to be extended accordingly where the Producer has caused delay in the progress of the audit)



discloses underpayment of royalties in excess of a sum equal to 7.5% of the total royalties found due for the calendar year or any other financial period to which the audit relates. In that event and provided that either:

24.7.1 the Producer agrees and accepts that such unpaid royalties are due; or

24.7.2 the quantum of unpaid royalties is determined by the Court as a result of legal action

the said reasonable fees shall be paid by the Producer.

24.8 The Society undertakes to use its best endeavours to ensure that audits are carried out expeditiously to enable audit reports to be provided to the Producer within the nine month period specified in clause 24.7.

24.9 Any royalties accepted by the Producer as being unpaid or so adjudged by the Court shall be paid in full by the Producer to the Society within 30 days of acceptance or judgement to the Society and shall carry interest calculated in accordance with clause 27.6.

24.10 The agents of the Society with access to the premises of the Producer under clause 24.6 shall, subject to clause 24.11, be independent qualified Chartered or Certified Accountants (or persons employed by or under the supervision of the same), and shall not directly or indirectly own any interest in any video industry business or trade.

24.11 Where the turnover of the Producer from the sale of Product for the four Quarters preceding the commencement of the relevant audit has not exceeded €7,788.00 (such figure to be increased on 1st January 2006 and each subsequent 1st January by the percentage increase in the latest Retail Prices Index by comparison with the equivalent figure in the corresponding month of the previous year), the agents of the Society with access to the premises of the Producer under clause 24.6 may be:

- 24.11.1 qualified Chartered or Certified Accountants who are employees of the Society;
- 24.11.2 the manager of the Society's Audit Department (or some other person employed by the Society of equivalent rank); and/or
- 24.11.3 persons employed by the Society under the supervision of any person referred to in 24.11.1 or 24.11.2.

Where an audit is carried out in accordance with this clause 24.11, clause 24.7 shall not apply and the costs relating to 24.11.1 to 24.11.3 above shall be borne by the Society.

24.12 The obligation as to confidentiality referred to in clause 29.2 shall for the avoidance of doubt apply in relation to such audits as are referred to above and the Society shall procure that all its staff, agents and inspectors carrying out audits on behalf of the Society are notified of the obligation not to disclose information which is confidential to those who are not entitled to such information.

24.13 Any failure by the Producer to:

- 24.13.1 permit access to the Society for the purposes of an audit under clauses 24.2 or 24.6; or
- 24.13.2 provide any of the information set out in clause 24.4

within 30 days of the Society's request, shall be deemed to be a material breach of this Agreement.

**25. CIRCULATION OF PRODUCT MASTERS**

25.1 The Producer shall not export a Product Master reproducing a Repertoire Work from the Ireland or authorise the export thereof or supply such a Product Master for the purposes of such export except in the following circumstances:

25.1.1 where the territory to which the Product Master is exported is a member of the Berne Convention or the Universal Copyright Convention, and each Musical Work reproduced thereon is not protected by copyright in that territory;

25.1.2 where the party to whom the Product Master is exported has an agreement with an Associated Society under which that party will pay mechanical royalties in relation to Discs which are copies thereof; or

25.1.3 where the Society has previously consented thereto, such consent not to be unreasonably withheld or delayed. The Society shall by way of example be entitled to withhold its consent where it reasonably considers that it has no satisfactory evidence that mechanical royalties will be paid by the consignee. The Society shall be entitled to impose reasonable terms and conditions for the grant of consent in order to prevent any infringement of copyright of Repertoire Works.

25.2 Upon the Producer exporting a Product Master reproducing a Repertoire Work or authorising the export thereof or supplying a Product Master for the purposes of such export, the Producer shall forthwith notify the Society in writing of the following information:

25.2.1 the name and address of the consignee; and

25.2.2 sufficient details to enable the Society to identify the recordings included on the Product Master.

**26. EXPIRY OF AGREEMENT**

26.1 Subject to clause 27, this Agreement shall expire on 31 December 2012 unless extended by the Society. Shipments of New Releases and previously Released Product after 31 December 2012 shall not be licensed under this Agreement unless otherwise agreed between the parties.

**27. SANCTIONS AND TERMINATION OF THE CONTRACT**

27.1 The Society shall have the right to terminate this Agreement and all licences made pursuant to it without further notice where the Producer:

27.1.1 commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt by the Producer of a formal notice served by recorded delivery specifying in reasonable detail the breach on which the Society relies; or

27.1.2 commits a material breach of this Agreement which is not capable of remedy, or commits fraud, in which event the Society shall specify in reasonable detail the fraud or material breach on which the Society relies, by notice (sent by recorded delivery) to the Producer.

27.2 The obligation to remedy under clause 27.1.1 in relation to breaches of clause 14 must be complied with as soon as is practicable and in any event not later than the point at which further Product is manufactured and/or printed material is produced.

27.3 Termination under clause 27.1 shall be without prejudice to any rights which have already accrued to the Society or its Members under this Agreement or to the Producer.

27.4 The Society shall also have the right to terminate where there has been a material change in the factors on the basis of which the Society granted the

Producer this Agreement provided that the Society shall have given the Producer 28 days notice in writing specifying the material changes relied on.

27.5 Upon termination by the Society, royalties (as set out in this Agreement) shall become due on the total number of units of Product remaining in the possession, power, custody or control of the Producer.

27.6 Without prejudice to any other right or remedy of the Society or its relevant Member(s) under this Agreement, where the Producer fails to fulfil any of the following obligations it shall pay to the Society daily interest calculated at a rate of 3% above the base rate of published by the Central Bank of Ireland for that day, or, in the absence of such base rate, such equivalent rate as the Society shall determine within its reasonable discretion:

27.6.1 for failure to deliver the statements or invoices as referred to in clauses 19.2 and 20.2 within the time specified therein, interest shall be payable on the total royalties payable on the basis of the information which should have been included therein;

27.6.2 for omitting Repertoire Works notified as such by the Society or Product reproducing any such Repertoire Work from such statements or invoices, interest shall be payable on the royalties which should have been payable in relation thereto; or

27.6.3 for any invoices properly due and not paid in full within the time prescribed by clause 20.3, interest shall be paid on the relevant sums not paid.

In each case, interest shall be payable from the date of default to the date on which the default was rectified.

Provided that where the liability to interest arises under clause 27.6.1 above, no interest shall be payable save to the extent of any loss or expense actually

suffered or incurred by the Society or its relevant Member(s) and arising by reason of the Producer's failure.

27.7 The Society shall have the right to terminate this Agreement and all licences granted pursuant to this Agreement forthwith if the Producer:

27.7.1 is dissolved (other than pursuant to a consolidation, amalgamation or merger);

27.7.2 becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

27.7.3 makes a general assignment, arrangement or composition with or for the benefit of its creditors;

27.7.4 institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition:

27.7.4.1 results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its administration, winding-up or liquidation; or

27.7.4.2 is not dismissed, discharged, stayed or restrained in the case of a winding-up petition within 14 days or in the case of an administration petition within 2 days, of the institution or presentation thereof;

- 27.7.5 has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - 27.7.6 seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - 27.7.7 has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
  - 27.7.8 causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses 27.7.1 to 27.7.7 (inclusive).
- 27.8 If the Society terminates this Agreement and all licences granted under this Agreement pursuant to clause 27.7:
- 27.8.1 all Product remaining in the possession, power, custody or control of the Producer or the Producer's distributor or subsequently returned thereto shall be deemed unlicensed;
  - 27.8.2 the Producer and its Co-Exploitants shall cease forthwith to make or supply any Product containing Repertoire Works; and
  - 27.8.3 any royalties accrued which have not yet become payable or have not yet been paid shall become payable forthwith, and

Statements of Shipments shall be sent to the Society within 21 days.

27.9 Each party shall have the right to terminate this Agreement on giving at least one Quarter's notice in writing to the other party.

27.10 Subject to clause 27.11, upon termination of this Agreement, within 14 days of the latest of:

27.10.1 such termination;

27.10.2 the Producer having complied with all of its obligations under this Agreement; or

27.10.3 the resolution of any claim under any audit or other claim in relation to which notice was given to the Producer prior to such termination;

the Society shall release or repay to the Producer any guarantee, deposit or similar security paid to the Society under clause 2.3.

27.11 Upon the Society properly giving notice of termination in accordance with clauses 27.1, 27.4, 27.7 or 27.9, the Society may deduct from any deposit or advance paid to the Society such amount as is required to pay any sums payable under this Agreement.

27.12 Upon termination, the terms and conditions of this Agreement shall, save where otherwise expressly stated, continue to have effect as regards Product in relation to which royalties have already been paid.

27.13 After termination of this Agreement (other than termination by the Society under clauses 27.1 or 27.7) the Producer may supply a Product Master to a third party provided that;



27.13.1 such third party has entered into an agreement with an Associated Society for the future exploitation of the Product Master; and

24.13.2 the Society or the Society's relevant Member has consented to the supply.

## **28. OVERRIDING OF CONTROLLED COMPOSITION CLAUSES**

28.1 The following provisions apply where any person, firm or company is or becomes a Member or an Associated Society Member and that party itself or that party's predecessor in title or grantor has a current contract with the Producer or the Producer's predecessor in title or grantor. In such a case:

28.1.1 to the extent that such contract would otherwise apply in relation to the grant of a licence and/or the terms and conditions on which this Agreement is entered into, subject to any Buyout granted to the Producer, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract; and

28.1.2 upon the written request of the Producer, the Society will provide the Producer with evidence that the relevant Member (or Associated Society Member) has become a Member (or Associated Society Member) and has given the Society or the relevant Associated Society authority to bind the Member (or Associated Society Member) as regards this Agreement.

## **29. MISCELLANEOUS**

29.1 This Agreement shall come into effect on the Commencement Date.

29.2 Save for the purposes of complying with its obligations to the Producer or to its Members or to any Associated Society and save for disclosure to its

professional advisers, the Society shall not, without the Producer's written consent, disclose any confidential information (so long as it remains confidential) supplied by the Producer hereunder to any other person.

29.3 For the purpose only of calculating interest under this Agreement where any payment or statement is sent by first class post:

29.3.1 the postmark shall be sufficient proof of the date the payment or statement was sent; and

29.3.2 such payment or statement shall be deemed to have been received before close of business on the second working day after posting.

29.4 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effective for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.

29.5 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.

29.6 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.

29.7 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.

29.8 Except as expressly set out herein, the Producer must not assign or transfer any of its rights or obligations under this Agreement (except with the written consent of the Society).

29.9 This Agreement shall be subject to the laws of Ireland both parties agree to submit to the exclusive jurisdiction of the Courts of Ireland.

Signed by:

\_\_\_\_\_  
**Duly authorised signatory on behalf of the Society**

Date: \_\_\_\_\_

Signed by:

\_\_\_\_\_  
**Duly authorised signatory on behalf of the Producer**

Date: \_\_\_\_\_

## APPENDIX 1

## APPENDIX 2

**Mechanical Copyright Protection Society (Ireland) Limited**

**Producers Agreement**

**Videograms for Retail Sale**

**THIS AGREEMENT** is made on

**BETWEEN**

- (1) MECHANICAL-COPYRIGHT PROTECTION SOCIETY (IRELAND) LIMITED whose registered office is at Copyright House, Pembroke Row, Baggott Street, Dublin 2.
- (2) (“THE PRODUCER”) (“the Producer”)

**WHEREAS**

- (A) The members of MCPS own or control the right to reproduce in the Republic of Ireland or may from time to time be able to license reproductions of certain copyright musical and associated literary works in the form of videograms.
- (B) The Producer wishes to manufacture in the Republic of Ireland and distribute videograms embodying such works for the purposes of the sale or rental of such videograms to members of the general public for the private and domestic viewing thereof.
- (C) The Producer is a member of the Irish Recorded Music Association (“IRMA”) with whom MCPS has agreed the terms and conditions set out in this agreement under which licences required by the Producer may be granted.
- (D) The IRMA is hereby authorised by the Producer to negotiate and contract on its behalf where indicated in this agreement.

**NOW IT IS HEREBY AGREED** as follows:-

1. **Definitions**

The following terms in this agreement shall have the following meanings:

- (i) "Authorised Exploitation" shall mean only:-
  - (a) distribution solely for the purposes of the sale or rental of the relevant Licensed Videogram to members of the general public for the in-home private and domestic viewing thereof and not for any other purpose of any nature;
  - (b) subject to compliance with clause 16(4), distribution of the relevant Licensed Videogram solely for the bona fide purposes of promoting the sale or rental of other copies of the Licensed Videogram by the in-store exhibition thereof or the review thereof in magazines or journals provided that nothing herein shall constitute a licence to perform any Repertoire Work in public;
- (ii) the use of a Musical Work shall be "background" when it is not featured;
- (iii) "Catalogue Number" shall mean the identifying mark applied by or for the Producer to Videograms made by or for the Producer which distinguish copies of Videograms with one title or embodying one or more Production(s) from copies with a different title or embodying different Production(s);
- (iv) "Commencement Date" shall mean \_\_\_\_\_ ;
- (v) "Copyright Owner" shall mean in relation to any Musical Work each person firm or company wholly or partially owning or controlling or having the right in the Republic of Ireland to grant the licence set out in clause 6 hereof;
- (vi) "Dealer Price" shall mean subject to clause 18(2) in relation to any Licensed Videogram the highest price per Licensed Videogram ordinarily payable by dealers for the minimum quantity of copies of the relevant Licensed Videogram which any dealer can purchase from the Producer or any distributor of the Producer authorised under



clause 14 hereof excluding or adding back (as appropriate) all discounts, incentives, bonuses and other reductions or deductions in such price of whatsoever nature but exclusive of Value Added Tax provided that:-

- (a) where two or more Licensed Videograms are packaged and distributed as one unit for the purposes of the sale or rental thereof as one unit to members of the general public and are not authorised for the purposes of sale or rental separately then the Dealer Price for each individual Licensed Videogram comprising the unit shall be deemed to be the Dealer Price of the unit as defined above divided by the total number of such individual Licensed Videograms so comprising the unit;
  - (b) for the avoidance of doubt the provisions of this sub-clause (vi) shall apply to all copies of the relevant Licensed Videogram(s) notwithstanding that the same are not supplied through dealers;
- (vii) a Licensed Videogram shall be "deleted" if and only if:-
- (a) the Producer decides to cease to manufacture or authorise the manufacture of such Licensed Videogram; and
  - (b) the Producer carries out no further manufacture and authorises no further manufacture of such Licensed Videogram (and for the purposes of this definition and the provisions of clause 11 hereof any manufacture of a Licensed Videogram with substantially the same material thereon or (without prejudice to the generality of the foregoing) with only minor alterations additions or deletions to such content or the addition deletion or substitution of advertisements or trailers therein shall be deemed to be manufacture of such Licensed Videogram) until the expiry of at least 4 (four) consecutive and complete Quarters thereafter;

- (c) simultaneously with (a) the Producer deletes such Licensed Videogram from its then current catalogue of Videograms available in Ireland for the purposes of the Authorised Exploitation and takes all steps necessary to bring such deletion to the attention of dealers ordinarily purchasing Licensed Videograms;
  
- (viii) "deletions" shall mean the stock of the deleted Licensed Videogram(s) in the Producer's Warehouse or the Warehouse of any manufacturer or distributor authorised under clause 14 hereof at or returned by customers of the same after the date on which the Producer deleted such Licensed Videogram(s);
  
- (ix) "Dramatico-Musical Work" shall have the same meaning as is from time to time prescribed by the Performing Right Society Limited;
  
- (x) "Duration" shall mean the length of time in minutes and seconds using in relation to seconds the decimal conversion table set out in the schedule hereto;
  
- (xi) "European Economic Community" ("EEC") shall mean those countries which from time to time constitute full member states of the same;
  
- (xi) the use of a Musical Work shall be "featured" when either:-
  - (a) it is the title or main musical theme of any Production; or
  - (b) it is played by or is capable of being heard by any person or character appearing in the Production;
  
- (xiii) the "Gross Royalty Rate" shall mean:-
  - (a) in the case of a Licensed Videogram in respect of which the total Weighted Duration constitutes 80% (eighty per cent) or more of the Videogram Duration: 7%;

- (b) in the case of a Licensed Videogram in respect of which the Total Weighted Duration constitutes less than 80% (eighty per cent) of the Videogram Duration: a fraction of 7% the numerator of such fraction being the Total Weighted Duration and the denominator being 80%;
  
- (xiv) "Production Music/Library Work" shall mean a Musical Work which is owned by a Production Music/Library Publisher as that term is normally understood in the music industry and which is generally exploited as background music in the form of discs records or tapes manufactured by or on behalf of such Production Music/Library Publisher;
  
- (xv) "Licensed Videogram" shall mean by Catalogue Number any copy of any Videogram in relation to which the procedure and consent referred to in clause 3 hereof have been complied with and obtained in full;
  
- (xvi) "Licensor(s)" means each Copyright Owner who is a member of MCPS and who has appointed one MCPS to act for such Licensor for the purpose of entering into this agreement and (to the extent provided by the agreement) of administering it for such Licensor(s) and shall where appropriate include:
  - (a) each Licensor's subsidiary companies;
  - (b) persons firms or companies for whom the Licensor or its subsidiary companies have been appointed agents sub-publishers or representatives;
  - (c) such other persons firms and companies as may be notified hereinafter by MCPS to the Producer;
  
- (xvii) "Music Cue Sheet" shall mean in relation to any Videogram by Catalogue Number a document embodying the following information:
  - (a) the title of the Production(s) to be embodied thereon;

- (b) the collective title of the Videogram to embody such Production(s) and whether such Videogram is one to which the provisions of sub-clause 1(vi)(a) and/or (b) apply;
- (c) the proposed Catalogue Number;
- (d) the Videogram Duration and (where different) the total Duration of all the Productions embodied therein;
- (e) the titles, composers, authors, and Copyright Owner(s) of each Musical Work intended to be reproduced in the Videogram;
- (f) the duration of each such Musical Work as is intended to be reproduced on the Videogram and whether the use thereof is to be featured or background;
- (f) all information referred to in sub-clause 5(2) hereof;

(xviii) "Music Videogram" shall mean any Videogram embodying one or more Musical Work(s) which is not:-

- (a) a motion picture made primarily for the purpose of the first exploitation thereof by means of theatrical release; or
- (b) a programme made primarily for the purpose of the first exploitation thereof by means of broadcasting or cable; or
- (c) a drama production;

PROVIDED THAT any audio-visual production which is intended for use in connection with the promotion and/or exploitation of musical performers and/or musical works and/or sound recordings embodying musical works shall not be within (a) or (b) or (c) hereof;

(xix) "Musical Work(s)" shall mean any musical work or part thereof including any literary work associated with any musical work and in the case of a Production Music/Library Work the sound recording on

which such musical work is embodied provided that nothing in this agreement shall apply to:-

- (a) any musical work after the copyright in such musical work has expired; or
- (b) any literary work after the copyright in such literary work has expired;

the relevant period of copyright being that applying under the 1963 Copyright Act (or any substitution therefor);

- (xx) "Net Royalty Rate" shall mean such proportion of the Gross Royalty Rate as the Weighted Duration of all the Repertoire Work(s) reproduced in the Videogram to which clause 4(3) does not apply bears to the Weighted Duration of all the Musical Work(s) reproduced therein but in each case excluding any Musical Work reproduced in any trailer which fulfils all the conditions contained in clause 5(2);
- (xxi) "Original Production" shall mean a Production in relation to which no licence has been granted to any person (whether or not the Producer) for the reproduction of all the Musical Work(s) embodied in such Production in any material form but shall also include a Production in relation to which such licence has expressly been granted for promotional purposes only;
- (xxii) "Production" shall mean any audio-visual production clip or programme or extract therefrom of whatsoever nature which the Producer proposes to or in the case of a Licensed Videogram does embody in the form of Videograms for the purposes of the sale or rental of such Videograms to members of the general public for the in-home private and domestic viewing thereof;
- (xxiii) "Published Dealer Price" shall mean in relation to each Licensed Videogram leaving the Warehouse in accordance with clause 8(3) hereof the last Dealer Price published in accordance with clause 18(1)

hereof or where the provisions of sub-clause 1(vi)(b) apply the last deemed Dealer Price agreed between the Producer and MCPS;

- (xxiv) "Quarter" means each three-monthly period ending respectively on 31 March, 30 June, 30 September and 31 December;
- (xxv) a Videogram shall be deemed to be "released" either on the date of first release announced by or on behalf of the Producer or when one or more copies thereof are supplied to any dealer or wholesaler or consumer whichever is the earlier;
- (xxvi) for the purposes of clause 10 hereof a Videogram shall be deemed to be "re-released" only when each of the following applies:-
  - (a) the Producer has ceased to make copies of such Videogram available to the public whether through dealers or otherwise howsoever for at least two full Quarters prior to copies being made available to the public again;
  - (b) the Producer has fully complied with the terms and conditions of this agreement in relation to accounting and payment of royalties as regards each previous release of such Videogram;
  - (c) such Videogram embodies the same material as the previous release of such Videogram and no other material provided that in determining whether or not this sub-clause (c) has been complied with any trailer for any other Videogram or any advertisement for any goods or services shall be ignored if the total Duration of every such trailer and advertisement does not constitute more than three (3) minutes or 5% of the Videogram Duration whichever is the greater;
- (xxvii) "Repertoire Work(s)" means those Musical Work(s) Ireland copyright in which or the right to grant the licence set out in clause 6 hereof in which is owned or controlled or administered by the Licensor(s);
- (xxviii) "Statement" shall mean a statement in relation to each Quarter showing by Catalogue Number:-

- (a) the total number of Licensed Videograms leaving the Warehouse in accordance with clause 8(3) hereof;
  - (b) a breakdown of the figure referred to in (a) hereof showing separately the number exported to each individual country of the Territories;
  - (c) the Published Dealer Price of each such Videogram;
  - (d) the royalty due hereunder in respect of each such Videogram;
  - (e) the number (if any) of Licensed Videograms in respect of which any retention has been made in accordance with the provisions of clause 10 hereof;
  - (f) where clause 11 applies:-
    - (1) the number of Licensed Videograms sold in accordance therewith;
    - (2) the total gross consideration therefor;
- (xxix) "the Territories" in relation to any particular Licensed Videogram shall mean the EEC and such other countries or territories as are notified by MCPS to the Producer from time to time;
- (xxx) "Total Weighted Duration" shall mean in relation to the relevant Licensed Videogram the percentage of Videogram Duration which the Weighted Duration of all the Musical Work(s) reproduced thereon (including for the avoidance of doubt the Duration of any Musical Work to which clause 4(3) applies but excluding the Duration of any Musical Work to the extent that the same is reproduced in any trailer which fulfils all the conditions contained in clause 5(2)) constitutes;
- (xxxi) "Videogram" shall mean:-

- (a) videocassettes whether in VHS or Betamax or V2000 format;
  - (b) videodiscs (but for the avoidance of doubt this shall not be construed as including "compact disc video" or "Digital Versatile Disc" DVD.);
  - (c) Sony 8mm Video;
  - (d) "compact disc video" as that term is presently understood in the music industry (including for the avoidance of doubt so-called laser discs) but excluding any such "compact disc video" which has embodied on it any audio-only track;
- (xxxii) "Videogram Duration" shall mean in relation to any Videogram the total Duration of the Production or of all the Productions embodied thereon excluding the Duration of any trailer which fulfils all the conditions contained in clause 5(2);
- (xxxiii) "Warehouse" shall mean any building or other store where Videograms are stored by or for the Producer or (in the case of any distributor authorised in accordance with clause 14 hereof) of the Producer's distributor including any fixed or moveable store (including vans);
- (xxxiv) "Weighted Duration" shall mean:-
- (a) where the use of the relevant Musical Work is featured, 100% (one hundred per cent) of the total Duration thereof;
  - (b) where the use of the relevant Musical Work is background, 75% (seventy-five per cent) of the total Duration thereof.

2. **Scope of Agreement**



Notwithstanding any other provision herein contained this agreement shall only apply to Videograms which are Music Videograms and the expressions "Videogram" and "Licensed Videogram" shall be construed accordingly.

3. **Licence Procedure**

- (1) Notwithstanding any other provision contained in this agreement the prior consent of each relevant Licensor(s) or MCPS on behalf of such Licensor shall be obtained by the Producer for the reproduction of any Repertoire Work in the form of any Videogram to be made for the purposes of the Authorised Exploitation.
- (2) Applications for such consent in relation to each relevant Licensor shall be delivered in writing to MCPS together with a Music Cue Sheet in relation to such Videogram at least 56 (fifty-six) days prior to the proposed first manufacture of such Videogram provided that where in good faith the Producer is by reason of extraordinary and unavoidable circumstances unable to comply with the time limit herein contained it shall as soon as is practicable inform MCPS of the same in writing setting out the reasons therefor in full and MCPS may extend such time limit by such period as MCPS in its reasonable discretion considers appropriate in the circumstances.
- (3) The Producer shall not reproduce or authorise the reproduction of any Repertoire Work in any Videogram or make or distribute or authorise the making or distribution of any Videogram reproducing any Repertoire Work where:-
  - (a) the procedure set out in sub-clause (2) hereof has not been properly carried out, or
  - (b) the consent referred to in sub-clause (1) hereof has not been granted.
- (4) Upon proper compliance by the Producer with the procedure set out in sub-clause (2) hereof within the time limit set out therein or any extension thereof granted by MCPS, MCPS shall use its reasonable

endeavours to obtain instructions from each relevant Licensor as to whether such Licensor is willing to grant the consent referred to in sub-clause (1) hereof within 28 (twenty-eight) days of such compliance and shall as soon as practicable thereafter but in any event within 28 (twenty-eight) days of compliance with such procedure deliver to the Producer a notice:-

- (a) stating whether such Licensor has granted consent;
  - (b) if every such Licensor has granted consent confirming the grant of such consent and stating the Net Royalty Rate and Territories applicable.
- (5) Upon delivery by MCPS of notice that every such Licensor has granted such consent but not otherwise the conditional licence as defined in clause 6 hereof shall apply in relation only to the relevant Videogram and copies thereof in respect of which the procedure in this clause has been followed.
- (6) For the avoidance of doubt any consent granted in accordance with sub-clause (5) hereof and referred to in this clause 3 shall be consent only to the grant of the conditional licence referred to in clause 6 hereof and it shall not unless specifically and expressly stated extend to the reproduction of any Repertoire Work in any other form or any other Videogram or any exploitation or use of the relevant Videogram in any other media of or for any other purpose of whatsoever nature and in respect of any such reproduction exploitation or use such consent shall be deemed to have no effect.
- (7) MCPS may from time to time by notice in writing in relation to one or more Videograms require that the Producer apply direct to any Licensor for the consent referred to in sub-clause (1) hereof in which event:-
- (a) the terms and conditions of this agreement shall not apply to the Repertoire Works of such Licensor reproduced or to be reproduced on the Videograms the subject of such notice;

- (b) the Producer shall so apply direct to such Licensor in accordance with such notice in writing unless and until otherwise notified by MCPS.

4. **Subsisting Licence Claims**

- (1) Where the Producer claims in good faith that it already has the full and complete right to reproduce any particular Repertoire Work in any particular Videogram for the purposes of the Authorised Exploitation it shall deliver to MCPS at least 56 (fifty-six) days prior to the proposed first manufacture of such Videogram a copy of all the relevant agreement(s) in title of the Licensor(s) or the predecessor(s) with the Licensor(s) by which it claims to have such right together with details of all facts and matters known by or disclosed to the Producer in relation thereto and in connection with such claimed right.
- (2) Within 21 (twenty-one) days of delivery of the same, MCPS shall deliver to the Producer a notice stating:-
  - (a) whether or not each relevant Licensor in relation to such Repertoire Work accepts that the Producer has such right; and
  - (b) (where not) the reasons therefore.
- (3) In the event that any Licensor accepts that the Producer has such right the provisions of this agreement shall not apply to the reproduction of the relevant Repertoire Work or the relevant part of such Repertoire Work (as the case may be) in such Videogram in the Republic of Ireland for the purposes of the Authorised Exploitation.
- (4) In the event that any Licensor does not accept that the Producer has such right, MCPS and/or each Licensor and the Producer shall have all such rights and remedies in law and howsoever arising as are available to them and MCPS on behalf of itself and the Licensor(s) and the Producer agree that nothing in this agreement shall affect such rights and remedies in any way.

- (5) If the Producer fails to fully comply with sub-clause (1) hereof then the Producer shall be deemed to require a licence to reproduce the relevant Repertoire Work(s) in the relevant Videogram for the purposes of the Authorised Exploitation and all the other terms and conditions of this agreement shall apply in relation thereto subject to sub-clause (8) hereof.
- (6) Nothing herein shall have any effect in relation to any other exploitation of the relevant Videogram or any Production embodied thereon and which reproduces the relevant Repertoire Work.
- (7) For the avoidance of doubt a warranty in any agreement under or through which the Producer claims the right to make and distribute the relevant Videogram to the effect that the right referred to in sub-clause (1) has already been granted shall not of itself constitute compliance with this clause.
- (8) In the event that sub-clause (5) applies but within 6 (six) calendar months of first release of any particular Licensed Videogram the Producer delivers to MCPS in relation to any Repertoire Work reproduced in the form of such Licensed Videogram the documentation and information as referred to in sub-clause (1) hereof and the relevant Licensor in the light of such documentation or information accepts that the Producer already has the full and complete right to reproduce the relevant Repertoire Work in the form of such Licensed Videogram for the purposes of the Authorised Exploitation then the provisions of sub-clause (3) shall apply in relation thereto provided that in such event the rights of the Producer against MCPS or the relevant Licensor shall be limited to the right to require MCPS to repay to the Producer all monies paid by the Producer to MCPS in accordance with this agreement.

5. **Trailers and Advertisements**

- (1) Notwithstanding any other provision in this agreement but subject to sub-clause (2) hereof the provisions of this agreement shall not extend to:-
  - (a) any advertisement of whatsoever nature; or

- (b) any Videogram or any Production embodied on any Videogram which is sponsored by any party where the name of the sponsor appears in the Videogram or Production as the case may be and/or on packaging or publicity or advertising relating thereto.

The Producer shall make a separate application for consent to reproduce any Repertoire Work in any such advertisement or Videogram or Production to the relevant Licensor(s) or to MCPS on their behalf.

- (2) This agreement shall extend to each trailer which is a trailer for any other Videogram released or to be released by the Producer and reproducing any Repertoire Work on condition that:-

- (a) the duration of each such trailer does not exceed 3 (three) minutes; and

- (b) the trailer is embodied in a Licensed Videogram in which the total Duration of all such trailers embodied therein does not exceed 10 (ten) minutes; and

- (c) each such trailer is clearly separate and distinct from every Production embodied in such Videogram; and

- (d) either:-

- (i) the trailer only reproduces Repertoire Works which are already reproduced in the Videogram the subject of such trailer or the Production to be embodied in the Videogram the subject of such trailer and are not additional to or in substitution for any such Repertoire Work in which event the reproduction of such Repertoire Work in such trailer embodied in the relevant Videogram shall not give rise to any charge under this agreement; or

- (ii) the trailer reproduces one or more Library Works in which event the Producer shall pay the fees referred to in clause 7(2) hereof in relation to the reproduction of such Library Work(s) in such trailer embodied in such Licensed Videogram;

PROVIDED THAT for the avoidance of doubt where sub-clause (d)(i) hereof applies the conditional licence contained in clause 6 hereof and the waiver of charge for such trailer shall be conditional upon the Videogram the subject of the relevant trailer being a Licensed Videogram and the Producer complying with the terms and conditions of this agreement in relation to the Videogram the subject of the relevant trailer.

- (3)
  - (i) Every advertisement (whether or not embodying a Repertoire Work) embodied in a Licensed Videogram which is not immediately preceded by another advertisement shall be preceded immediately by at least 5 (five) seconds during which no Repertoire Work is reproduced.
  - (ii) Every advertisement (whether or not embodying a Repertoire Work) embodied in a Licensed Videogram which is not immediately followed by another advertisement shall be followed immediately by at least 5 (five) seconds during which no Repertoire Work is reproduced.

6. **Conditional Licence**

- (1) The conditional licence referred to in clause 3(5) is a non-exclusive licence subject to all the terms and conditions of this agreement and conditional upon the Producer complying in full with all such terms and conditions for the Producer to make in Ireland the Licensed Videograms referred to in the relevant Music Cue Sheet embodying the Production(s) and reproducing the Repertoire Work(s) as referred to in such Music Cue Sheet and to distribute such Videograms in the Territories all for the sole purpose of the Authorised Exploitation PROVIDED THAT nothing

in this agreement shall constitute a licence to and the Producer shall not:-

- (a) rent or let for hire or authorise the renting or letting for hire of any Videogram reproducing any Repertoire Work(s) or distribute or authorise the distribution of the same for such purposes or permit any of the foregoing to continue after knowledge of the same has come to the notice of the Producer in any country where and during any period in which the copyright or other similar laws of such country contain any provision restricting or controlling such right of rental or letting for hire or sale or distribution for the purposes thereof;
- (b) make or authorise the making of any Videogram which reproduces more than 3 (three) songs from or an extract of more than 20 (twenty) minutes in length from any one Dramatico-Musical Work;

and in relation to any Videogram made or the making of which has been authorised in breach of this sub-clause any licence granted in accordance with this clause 6 shall be deemed never to have been granted.

(2) All rights in each Repertoire Work other than those expressly granted to the Producer herein are reserved to the relevant Licensor(s). In particular:

- (a) the Producer shall not reproduce or authorise or permit the reproduction of any Repertoire Work except as specifically licensed hereunder and declared in the relevant Music Cue Sheet and nothing herein shall be construed as a licence to reproduce any Repertoire Work in any other manner or form or in any other Videogram or for any other purpose;
- (b) the Producer shall not arrange adapt parody or burlesque a Repertoire Work unless the same has been authorised by the relevant Licensor in writing for the purposes of this agreement and any licence granted herein shall not extend to any arrangement adaptation parody or burlesque of the whole or

any part of any Repertoire Work or any reproduction of any Repertoire Work where the whole or any part thereof has been arranged or adapted or is parodied or burlesqued unless the same has been specifically authorised by the Licensor.

- (3) In respect of any use of any Videogram by the Producer or any third party or authorised or permitted by the Producer or such third party for any purpose other than the Authorised Exploitation or outside the Territories any licence herein contained shall be deemed never to have been granted and the Licensors and MCPS shall unless the same shall have been otherwise specifically licensed by the Licensor or by MCPS be entitled to all such rights and remedies against the Producer or such third party (as the case may be) as if the same had been made in infringement of copyright by the Producer or such third party (as the case may be).
- (4) The Producer admits and agrees that if any of the obligations of the Producer or conditions set out in this agreement are not fulfilled in relation to any Videogram whether such obligations or conditions are obligations or conditions precedent or subsequent the same will have been made in infringement of the copyright in the Repertoire Work(s) embodied thereon.

7. **Royalties and Fees: Library Works**

- (1) The following provisions shall apply in relation only to the reproduction in the form of Licensed Videograms of Repertoire Works which are Library Works.
- (2) The Producer shall pay to MCPS in relation to all copies of any Licensed Videogram:-

in relation to which Library Work contained in such Licensed Videogram a fee per 30" or part thereof, as follows:-

the fees published as appropriate for the year of production as defined in the MCPS Production Music Rate Card



8. **Royalties and Fees: Other Musical Works**

- (1) The following provisions shall apply in relation only to the reproduction in the form of Licensed Videograms of Repertoire Works which are not Library Works.
- (2) The Producer shall pay to MCPS for all copies of any Licensed Videogram embodying an Original Production:
  - (a) a single reproduction fee of £1 per one minute or part thereof of the total Weighted Duration calculated separately for each Musical Work;
  - (b) a service charge of £8.
- (3) The Producer shall also pay in manner hereinafter appearing a royalty in relation to each copy of any Licensed Videogram leaving any Warehouse of the Producer or (in the case of any distributor authorised in accordance with clause 14 hereof) of the Producer's distributor excluding any inter-Warehouse transfer thereof.
- (4) The said royalty shall be calculated in pence to two places of decimals by applying the appropriate Net Royalty Rate to the Dealer Price of the Licensed Videogram.
- (5) Where for any purpose it is necessary to apportion the said royalty as between each Repertoire Work reproduced in the relevant Licensed Videogram the royalty for each such Repertoire Work shall be such proportion of such royalty as the Weighted Duration of such Repertoire Work bears to the Weighted Duration of all such Repertoire Works provided that the provisions of this clause shall not apply to any Repertoire Work and no account shall be taken of the Duration of such Repertoire Work:
  - (a) to the extent that clause 4(3) applies thereto;

- (b) to the extent that the same is reproduced in any trailer which fulfils all the conditions contained in clause 5(2).

9. **Accounting**

- (1) The fees set out in clauses 5(2)(d)(ii), 7(2) and 8(2) hereof shall be paid by the Producer to MCPS within 14 (fourteen) days of the delivery to the Producer by MCPS of an invoice in relation thereto.
- (2) At the end of each Quarter the Producer shall prepare a Statement in relation to such Quarter and shall deliver the same to MCPS within 30 (thirty) days of the end of such Quarter.
- (3) Upon receipt of each such Statement MCPS shall prepare an invoice for the royalties due calculated in accordance with the provisions of this agreement and shall deliver the same to the Producer.
- (4) Upon delivery of such invoice the Producer shall pay the sums shown thereon to MCPS within 45 (forty-five) days of the end of the relevant Quarter provided that if MCPS fails to deliver such invoice within 38 (thirty-eight) days of the end of the relevant Quarter the Producer shall pay the same within 7 (seven) days of delivery thereof.
- (5) Provided that such notice is given prior to the expiry of a Quarter the Producer may give notice in writing to MCPS that the Producer will in relation to that Quarter and future Quarters both deliver the Statement and pay the royalties due in accordance with this agreement within 45 (forty-five) days of the end of the relevant Quarter in which event:
  - (a) the provisions of sub-clauses (2) and (4) shall cease to apply and the Producer shall in substitution therefor so deliver the Statement and pay such royalties;
  - (b) the Producer shall continue to deliver the Statement and pay the royalties as aforesaid until either:-

- (i) the Producer gives notice prior to the end of a Quarter that the Producer wishes to revert to the procedure set out in sub-clauses (2) and (4); or
  - (ii) where the Producer fails to so deliver the Statement or pay such royalties in relation to any Quarter for any 2 (two) Quarters in any calendar year and MCPS without prejudice to its other remedies or the remedies of any Licensor thereafter gives notice in writing to the Producer to revert to such procedure in which event sub-clauses (2) and (4) shall forthwith apply again.
- (7) Where the Producer has distributed a Licensed Videogram for the purposes of the Authorised Exploitation and has paid or is due to pay royalties thereon and subsequently such Licensed Videogram is returned to the Producer and accepted by him as being of faulty manufacture the Producer may issue a replacement copy of the same Licensed Videogram royalty-free.
- (8) No deductions or allowances of whatsoever nature shall be made in relation to any payment due under this agreement except where provided for in this agreement or agreed in writing between MCPS and the Producer prior to the delivery of the Statement.
- (9) MCPS shall have the right to require by notice in writing to the Producer that any Statement shall include a certificate to the effect that it has been verified by a responsible official of the Producer.
- (10) Without prejudice to any other remedy of MCPS and/or any Licensor and without imposing an obligation on MCPS to accept late payment where the fees and royalties referred to in this clause are not paid by the due date the Producer shall pay interest thereon calculated at an annual rate compounded on a daily basis of 3% over the base rate then current of Bank Of Ireland plc (provided that if the said Bank of Ireland plc shall at any time cease to publish a base rate then interest shall be calculated at an annual rate compounded on a daily basis equal to 3% over the best

interest rate at which the Producer may from time to time be able to borrow money on normal overdraft from its principal bankers).

- (11) Without prejudice to any other remedy of MCPS and/or any Licensor and without imposing an obligation on MCPS to accept late submission of any Statement hereunder the provisions as to interest contained in sub-clause (10) hereof shall also apply in the case of such late submission but with effect from 45 (forty-five) days of the end of the relevant Quarter and calculated on such part of the fees and royalties payable on the basis of the information which ought to have been set out in the relevant Statement as the Producer failed to pay within the said 45 (forty-five) days of the end of the relevant Quarter.
- (12) If the Producer fails to deliver a Statement or remittance or both within 60 (sixty) days of the end of the relevant Quarter for 2 (two) consecutive Quarters then "5%" shall be substituted for "3%" in sub-clause (10) and (11) hereof.
- (13) MCPS may from time to time by notice in writing direct that the Producer account to and pay the whole or any part of any sums due hereunder in respect of any one or more Licensed Videograms to any one or more individual Licensors and the Producer shall thereupon comply with such directions unless and until otherwise notified by MCPS.

10. **Deletions**

- (1) The provisions of this clause shall only apply to Licensed Videograms which the Producer has bona fide deleted:-
  - (a) after 1 April 1988, and
  - (b) not less than 1 (one) year after the date on which one or more copies thereof were first supplied to dealers for the purposes of the sale or rental of such copies by such dealers to members of the public.

- (2) Upon the Producer deleting any Licensed Videogram the Producer shall give notice thereof to MCPS specifying the number of deletions as at the date on which the Producer deleted such Licensed Videogram.
- (3) In relation to any arm's length sale of deletions after the date on which the Producer deleted the relevant Licensed Videogram to a third party not being a person firm or company associated with the Producer, the Producer shall not pay the royalties payable under clause 8(3) hereof but shall pay to MCPS 10 (ten) per cent of the gross consideration in respect of such sale exclusive of VAT PROVIDED THAT for the avoidance of doubt in the event that the Producer does resume manufacture or authorising the manufacture of the relevant Licensed Videogram before the expiry of at least 4 (four) consecutive and complete Quarters after the date on which the Producer deleted the relevant Licensed Videogram the provisions of clause 8(3) hereof shall apply to the relevant sale with retrospective effect.

11. **Books of Account and Audits**

- (1) The Producer shall keep proper Books of Account dealing with by reference to each Quarter his activities in relation to Videograms reproducing Musical Works and setting out in particular the following:-
  - (a) full details by date and quantity of the manufacture distribution sale return and stock holding of each Videogram by Catalogue Number;
  - (b) full details of the deletion of Licensed Videograms and any subsequent dealing with deletions thereof;
  - (c) the identity and address of each recipient of every Videogram leaving any Warehouse of the Producer or (in the case of any distributor authorised in accordance with clause 14 hereof) of the Producer's distributor;

- (d) the calculation and accumulation of royalties due on such Videograms;
  - (e) the dates and amounts paid in respect of such royalties.
- (2) Such Books of Account shall be maintained to a standard sufficient to enable a complete audit trail to be established and followed through.
- (3) Such Books of Account together with any and all supporting documentation in relation thereto shall be open for inspection by independent qualified Chartered Accountants on behalf of MCPS upon reasonable notice and no more than once a calendar year unless payment of royalties in relation to any Quarter is in arrears. Such Accountants shall be entitled to inspect make extracts and take copies of such Books of Account and documentation and to carry out such work as is in their reasonable opinion considered necessary to verify the royalties due hereunder and stock movements.
- (4) The fees incurred by MCPS in auditing the Books of Account of the Producer under this agreement shall be borne by them except in circumstances where the Audit Report (a copy of which shall be made available to the Producer within nine months of the commencement of the Audit) discloses under-payment of royalties in excess of a sum equal to 7.5% of the total royalties found due for the financial period to which the relevant Audit relates. In that event and provided that:
  - (a) in calculating any such under-payment there shall be ignored any under-payment attributable to the error of MCPS in any invoice delivered by MCPS under clause 9(3) hereof, and
  - (b) either:-
    - (i) the Producer agrees and accepts that unpaid royalties in excess of such sum are due, or
    - (ii) the quantum of unpaid royalties in excess of such sum is determined by the Court as a result of legal action the fees shall be paid by the Producer.

- (5) The royalties so accepted or determined as due shall be paid by the Producer within 30 (thirty) days of acceptance of liability of such determination as the case may be and shall bear interest as referred to in clause 9 hereof.

12. **Separate Permissions**

The Producer must obtain separate permission from the owners of the copyright(s) in any cinematograph film, sound recording (other than any sound recording licensed hereunder as a Library Work), broadcast or any other copyright work for the reproduction of the same in the form of any Videogram together with all necessary consents under the Copyright Act 1963 and any other similar legislation in the Territories whether now or at any other time subsisting.

13. **Personal Licence**

- (1) Subject to sub-clause (2) hereof any licence granted hereunder to the Producer is personal to the same and the Producer shall not assign or dispose of or purport to assign or dispose of the whole or any part thereof or sub-license such licence.
- (2) The Producer may authorise a manufacturer to make and a distributor to distribute Licensed Videograms on behalf of the Producer provided that:-
  - (a) the Producer shall notify MCPS of the identity of any manufacturer and distributor it proposes to instruct and shall not so instruct such manufacturer or distributor unless either:-
    - (i) such manufacturer and distributor appear on MCPS's approved list in relation thereto, or
    - (ii) MCPS gives its consent in writing so to authorise such consent not to be unreasonably withheld;

- (b) the Producer shall procure that such manufacturer and/or distributor shall at all times act in accordance with the terms of this agreement and shall not do anything which would if done by the Producer be a breach hereof;
  - (c) the Producer shall at the request of MCPS authorise and instruct such manufacturer and/or distributor (as the case may be) to send to MCPS copies of all despatch or consignment notes or equivalent documents relating to the manufacture distribution or supply of copies of any Videogram made for the Producer reproducing any Repertoire Work(s) to include the name and address of any consignee;
  - (d) in the event that either or both of clauses 19(5)(a) and (b) apply in relation to any particular Licensed Videogram MCPS may give notice to such manufacturer and/or distributor requiring them to cease such manufacture and/or distribution of such Licensed Videogram until further notice.
- (3) Where the Producer has his own facilities for the making or duplication of Videograms, the Producer shall within 28 (twenty-eight) days of the end of each calendar month send to MCPS details of all Videograms made or duplicated by the Producer for or on behalf of any third party together with all despatch or consignment notes or equivalent documents relating thereto to include the name and address of the party for or on behalf of whom the Producer made or duplicated such Videograms and of the consignee thereof.

14. **Warehouse**

- (1) The Producer shall supply MCPS with the address of every Warehouse used for the storing of Videograms made by or on behalf of the Producer.
- (2) The Producer shall permit or procure for MCPS by its duly authorised representatives access at all reasonable times to any such Warehouse for the purpose of inspecting and checking stocks of Videograms.



15. **Labels**

- (1) In relation to each Licensed Videogram the Producer shall procure that there appears:-
- (a) in a prominent position on the inlay card of each copy and of reasonable size the title of each Repertoire Work reproduced therein and the composer/author and Copyright Owner thereof;
  - (b) on the label of each such copy the initials "MCPS" of reasonable size;

provided that where in relation to any particular Licensed Videogram the number of Repertoire Works reproduced thereon is such that it will be bona fide impossible for the Producer to cause the details referred to in sub-clause (a) hereof to be listed in relation to each such Repertoire Work so that such details can be read with reasonable ease then the Producer may give notice thereof to MCPS and MCPS may in its reasonable discretion dispense with such requirement attaching such terms and conditions thereto as it may reasonably consider appropriate in the particular circumstances.

- (2) In relation to each copy of any Licensed Videogram to be exploited in the manner set out in clause 1(i)(a) hereof the Producer shall procure that the following words (or such other words as may subsequently be agreed between MCPS and the IRMA) appear on the label of each such copy in a prominent position and of reasonable size:-

"FOR DOMESTIC AND HOME VIEWING ONLY. ALL RIGHTS OF THE OWNERS OF THE WORKS REPRODUCED ON THIS VIDEOGRAM RESERVED. PUBLIC PERFORMANCE OR EXHIBITION AND COPYING STRICTLY PROHIBITED".

- (3) In relation to each copy of any Licensed Videogram to be exploited in the manner set out in clause 1(i)(b) hereof the Producer shall procure that the following words (or such other words as may subsequently be agreed between MCPS and the IRMA) appear on the label of each such copy and any packaging thereof in a prominent position and of reasonable size:-

"FOR PROMOTIONAL PURPOSES ONLY. COPYING PROHIBITED. NOT FOR SALE OR RENTAL. PUBLIC PERFORMANCE AND EXHIBITION PROHIBITED EXCEPT AS SPECIFICALLY AUTHORISED".

- (4) Upon request the Producer shall supply any Licensor whose Repertoire Work(s) are reproduced on a Licensed Videogram and MCPS with specimens of the label and inlay card in relation to such Videogram.

16. **Supply for Authorised Exploitation**

- (1) In supplying a copy of any Licensed Videogram to third parties for the purposes of the Authorised Exploitation, the Producer shall include the following terms and conditions in its terms and conditions of supply and shall use its best endeavours to ensure that such third parties abide by the same:-
- (a) that such third party shall only use or supply such copy for the purposes of the Authorised Exploitation and in the case of in-store exhibition as referred to in clause 1(i)(b) shall not so use such copy for the purposes thereof without a licence from all the owner(s) of the right to perform the relevant Repertoire Work(s) in public;
  - (b) that such third party shall not distribute such Videogram outside the Territories or supply such Videogram to any person firm or company situate outside the Territories;

- (c) that such third party shall not supply the Videogram to any other third party without imposing the same terms and conditions including this one on such third party.
- (2) The Producer shall upon request supply MCPS forthwith with a copy of the Producer's standard terms and conditions applying to the supply of Videograms made by or on behalf of the Producer to third parties.

17. **Catalogues etc.**

- (1) The Producer shall publish the Dealer Price of each Licensed Videogram prior to the release thereof and any alteration thereto shall be published by the Producer prior to the effective date of such alteration.
- (2) Where a Licensed Videogram will not be available through dealers or ceases to be available through dealers the Producer will forthwith give notice of the same to MCPS stating at what price such Licensed Videogram will be available for purchase or rental by consumers and the Producer and MCPS shall then agree in good faith a price for such Licensed Videogram equivalent to a Dealer Price as defined herein which price shall then be deemed to be the Dealer Price in relation thereto. The Producer shall not distribute such Licensed Videogram for the purposes of the Authorised Exploitation until such price is agreed. For the avoidance of doubt where such a Licensed Videogram is to be available through direct mail order in agreeing the deemed Dealer Price in relation thereto any element of postage and packaging (as those terms are generally understood in relation to supply by mail order) shall be excluded. If after agreeing a deemed Dealer Price the Producer increases the price at which such Licensed Videogram is available for purchase or rental the deemed Dealer Price in relation thereto shall be increased by the same percentage.
- (3) The Producer shall send to MCPS forthwith upon the printing thereof and without charge 2 (two) (2) copies of every catalogue and price list containing lists or details of Videograms made and/or distributed by or for the Producer and each advertising promotional or trade publication relating in any way to the terms or condition son which the Producer or

any manufacturer or distributor authorised under clause 13 hereof distributes supplies or sells such Videograms.

- (4) Upon the written request of MCPS to the Producer, the Producer shall deliver to MCPS free of charge 1 (one) copy of any Videogram made for and distributed by or for the Producer for the purposes of MCPS verifying that the Producer has complied with his obligations hereunder. MCPS shall not be required to return such Videogram to the Producer following such verification unless the Producer so notifies MCPS in writing at the same time as delivering such Videogram to MCPS.
- (5) The Producer shall also supply MCPS with any further information reasonably requested by MCPS at any time in order to enable MCPS to verify the Musical Work(s) embodied or to be embodied on any Videogram made by or on behalf of the Producer or to effect or administer this agreement.

18. **Termination Provisions**

- (1) This agreement shall apply with effect from the Commencement Date until it is terminated in accordance with the provisions of this clause.
- (2) This agreement may be terminated by any of the parties hereto giving not less than 3 (three) months notice in writing to the others to expire only at the end of any calendar month.
- (3) MCPS shall be entitled to determine this agreement by notice in writing to the Producer in the event that the Producer ceases to be a member of the IRMA such termination to take effect from the date on which the Producer ceases to be such a member.
- (4) Where this agreement expires or is determined in accordance with sub-clauses (2) or (3) hereof the Producer may continue to manufacture and distribute a Licensed Videogram in respect of which the procedure and consent referred to in clause 3 hereof was complied with and obtained prior to the date of expiry or determination as the case may be on the terms and conditions contained in this agreement provided that the

Producer shall cease so to do on the expiry of one month's written notice from MCPS or any Licensor whose Repertoire Work(s) is or are reproduced in the form of such Licensed Videogram such notice not to be given earlier than one month prior to the effective date of expiry or termination of this agreement and on the expiry of such notice:

- (a) any licence to manufacture or authorise the manufacture of Licensed Videograms hereunder shall forthwith cease;
  - (b) subject thereto the terms and conditions of this agreement shall continue to have effect in relation to any Licensed Videogram made by or on behalf of the Producer prior to the date of termination PROVIDED THAT the rights of distribution referred to in clause 6 hereof shall expire with effect from 1 (one) year after the date of termination and thereafter the Producer shall cease to distribute or authorise the distribution of the same.
- (5) Without prejudice to any other right or remedy of MCPS and/or any Licensor MCPS shall have the right to terminate this agreement forthwith:-
- (a) if the Producer shall be in material breach of any term or condition of this agreement and (in the case only of a breach capable of remedy) shall not have remedied the same in full within 21 (twenty-one) days of delivery of notice of such breach, or
  - (b) if the Producer ceases trading or enters into liquidation (other than voluntary liquidation for the purposes of amalgamation or reorganisation) or has a Petition presented against it for its winding-up and such Petition is not dismissed within 21 (twenty-one) days from the date of such Petition or if it makes any composition or arrangement with its creditors or if a Trustee or Receiver or Manager or Administrative Receiver or Administrator is appointed to take over all or a substantial part of its assets and undertaking;

- (c) upon termination under either (a) or (b) hereof:-
- (i) the Producer shall cease to make or distribute or authorise the making or distribution of any Licenced Videogram and shall procure that any manufacturer and/or distributor under clause 14 hereof shall cease to make or distribute any Licensed Videogram and any authority granted under clause 14 shall forthwith be of no further effect;
  - (ii) in respect of any Licensed Videogram which has already left the Producer's Warehouse or the warehouse of any Distributor authorised under clause 14 hereof in the ordinary course of business and in relation to which royalties have to already been paid in accordance with this agreement royalties shall immediately accrue thereon and a Statement and remittance shall forthwith be sent to MCPS;
  - (iii) in respect of any Licensed Videogram:
    - (aa) remaining in the possession power custody or control of the Producer or of any manufacturer or distributor authorised under clause 14 hereof; or
    - (bb) subsequently returned to the possession power custody or control of the Producer or to any such manufacturer or distributor in relation to which there has been a breach of any of the terms or conditions of this agreement;

any licence referred to in clause 6 hereof shall be withdrawn retrospectively and treated as having had no effect;

- (iv) subject to sub-clauses (i) to (iii) hereof the terms and conditions of this agreement shall continue to have effect in relation to any Licensed Videogram made by or on behalf of and distributed by or on behalf of the Producer prior to the date of termination.
- (6) In relation to any copies of any relevant Licensed Videogram following expiry of the period referred to in sub-clause (4)(b) hereof and any copies to which sub-clause (5)(c)(iii) applies MCPS shall be entitled to require at its option that the Producer either deliver up the same or destroy the same in the presence of a duly authorised representative of MCPS.
- (7) Any termination hereunder shall be without prejudice to any rights or remedies arising hereunder in respect of such breach or any antecedent breach.

19. **Miscellaneous**

- (1)
  - (a) The Producer shall not without the consent of MCPS approach or deal with any Licensor direct in relation to the construction of this agreement to Videograms embodying Repertoire Works.
  - (b) The Producer shall not apply direct to any Licensor for a licence in terms of clause 6(1) hereof without prior notification to MCPS in writing of its intention so to do.
- (2) MCPS may by 3 (three) months' notice in writing increase the fees referred to in clauses 7(2) and 8(2)(b) of this agreement provided that such notice shall be given to the IRMA and applies to all members of the IRMA who have an agreement in the same terms as this agreement.
- (3) Where the Producer's right to reproduce any production in the form of Videograms terminates whether by effluxion of time or otherwise

howsoever the Producer shall notify MCPS of such termination in writing together with (where known to the Producer) the name and address of the party controlling such right in succession to the Producer.

- (4) All royalties and fees referred to in this agreement are exclusive of Value Added Tax and the Producer shall pay such Value Added Tax or any like tax where the same is applicable not later than 30 (thirty) days of delivery of a Value Added Tax invoice in relation to the relevant such royalties and/or fees.
- (5) 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- (6) This agreement sets forth the entire agreement of the parties 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.
- (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.
- (8) Notices and all other documents referred to hereunder shall be sent or delivered to the address appearing at the head of this agreement of the relevant party. Any such notice or other document shall be deemed to have been delivered the next working day after posting if sent by pre-paid post, and on the day of transmission if sent by telex or fax.

20. **Warranty**



MCPS on behalf of each Licensor hereby warrants that such Licensor is entitled to grant to the Producer any licence granted to the Producer hereunder under clause 6(1) provided nevertheless and it is expressly agreed by the Producer that the aggregate liability of such Licensor for breach of this warranty in relation to the reproduction of any one Repertoire Work on all copies of any particular Licensed Videogram shall not under any circumstances exceed the sum of One thousand pounds (,1,000) or a sum equal to five times the total amount paid by the Producer for such licence in relation to such Repertoire Work.

21. **Transitional Provisions**

- (1) Where the Producer has prior to the Commencement Date manufactured or authorised the manufacture of Videograms in respect of which MCPS has issued Conditional Licences in either of the forms appearing as appendix A hereto or any predecessor to such forms:-
  - (a) the terms of the relevant such conditional licence shall continue to apply to all such Videograms manufactured by the Producer or a third party authorised by the Producer and distributed by the Producer or by a third party authorised by the Producer prior to the Commencement Date provided that nothing in this clause shall constitute a waiver of any cause of action which may exist in relation to any breach of or non-compliance with the terms of the relevant such conditional licence;
  - (b) the terms of this agreement shall apply in substitution for the terms of the relevant such conditional licence to all such Videograms:-
    - (i) manufactured by the Producer or a third party authorised by the Producer but not distributed by the Producer or by a third party authorised by the Producer prior to the Commencement Date;
    - (ii) manufactured on or after the Commencement Date;

PROVIDED THAT in relation to Videograms to which this sub-clause (b) applies:-

(aa) the Producer shall be deemed to have complied with the provisions of the licensing procedure referred to in clause 3 hereof; and

(bb) clauses 7 and 8(2) shall not apply.

(2) Where the Producer has prior to the Commencement Date manufactured or authorised the manufacture of Videograms in respect of which MCPS has not issued any conditional licence as is referred to in sub-clause (1) hereof all rights are reserved in relation to all such Videograms manufactured by the Producer or a third party authorised by the Producer and distributed by the Producer or by a third party authorised by the Producer prior to the Commencement Date and the Producer hereby agrees and acknowledges that the terms and conditions of this agreement are not relevant thereto.

22. **Law**

This agreement shall be construed according to the laws of Ireland and the Parties agree to submit to the jurisdiction of the Irish Courts.

AS WITNESS the hands of the parties hereto.

SIGNED by )  
for and on behalf of )  
MECHANICAL-COPYRIGHT PROTECTION )  
SOCIETY (IRELAND) LIMITED )

SIGNED by )  
for and on behalf of )  
("THE PRODUCER") )

DATED

- (1) MECHANICAL-COPYRIGHT PROTECTION  
SOCIETY (IRELAND LIMITED)
  
- (2) (“THE PRODUCER”)

---

MCPS/IRMA VIDEOGRAM AGREEMENT

for the production of music videograms

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Effective From January 17th 2013

Jason Duffy,  
Senior Licensing Administrator,  
MCPS (Ireland) Limited  
Copyright House,  
Pembroke Row,  
Baggot Street,  
Dublin 2.  
Telephone: 00-3531-6448046  
Fax: 00-3531-676 3125  
e-mail jason.duffy@imro.ie

Subject to Contract

### **AP7 and AP7N licensing schemes for Cover Mounted Products**

The licensing arrangements set out in this document explain the conditions of the licence offered by MCPSI as agent for MCPS, and the licensing procedures users are required to follow, in order to manufacture and distribute cover mounted products affixed to publications that include recordings of MCPS members' music works ("**Cover Mounted Products**").

Copyright owners who are members of MCPS have appointed MCPS to be their exclusive agent for licensing the manufacture and distribution of Cover Mounted Products.

Please note the information provided below carefully, as these conditions supersede any prior arrangements that related to the licensing of Cover Mounted Products. If you have any further questions relating to this or other MCPSI licensing schemes please contact Jason Duffy on 01-6448046

#### **1. RIGHTS LICENSED UNDER AP7 and AP7N**

Subject to the terms and conditions contained herein, copying and (where relevant) synchronisation of MCPS members' musical works onto Cover Mounted Products and distribution thereof.

#### **2. TERM OF THE LICENSING SCHEMES**

The term of the licensing scheme shall be for Cover Mounted Products distributed on publications between 17th January 2012 and 31st March 2012.

### 3. ROYALTIES PAYABLE

For Cover Mounted Product licences, royalties are paid on each unit manufactured, with the level of royalties paid being equal to = **“the Royalty Rate” X “the Base Price”, plus VAT**

3.1 The applicable **“Royalty Rates”** are as follows:

Audio only formats:	CD, Cassette	= 6.50%
Audio-visual capable formats:	DVD-V, DVD-A, SACD, ECD	= 7.65%

3.2 The **“Base Price”** of a Cover Mounted Product shall be calculated as follows:

AP7 (Magazines):

Audio only formats =	50% of the cover price, subject to a minimum of €2.04
Audio-visual capable formats =	50% of the cover price, subject to a minimum of €2.41

AP7N (Newspapers):

Audio only formats =	50% of the cover price, subject to a minimum of €1.36
Audio-visual capable formats =	50% of the cover price, subject to a minimum of €1.61

Maximum track provision

In all cases the above Base Prices apply to Cover Mounted Products with a maximum of 15 tracks. Each track, over 15, that is included on the product will have the effect of increasing the Base Price by an additional 6.5%.

#### 3.3 *Worked examples:*

##### **A 15 Tracks**

*The royalties paid on 20,000 copies manufactured of an 15 track CD, cover mounted on a magazine with a cover price of €5.21, will therefore be:*

$$= 20,000 \times \text{Royalty Rate} \times \text{Base price, plus VAT}$$

$$= 20,000 \times 6.5\% \times €2.61, \text{ plus VAT}$$

$$= €3,393.00, \text{ plus VAT}$$

##### **B 18 Tracks**

*The royalties paid on 20,000 copies manufactured of an 18 track CD, cover mounted on a magazine with a cover price of €5.21, will therefore be:*

$$= 20,000 \times \text{Royalty Rate} \times \text{Base price, plus VAT}$$

$$= 20,000 \times 6.5\% \times €3.11, \text{ plus VAT (where €3.11. = 50\% of (€5.21 plus 19.5\%)}$$

$$= €4,043.00, \text{ plus VAT}$$

### 4. MAIN CONDITIONS

The following conditions must be adhered to for each and every product licensed under AP7 and AP7N. Failure to comply with these conditions, even after a licence has been issued, will result in the AP7/AP7N licence being withdrawn and in most cases require the producer to seek Premium product licensing terms, which involves the prior consent of all the copyright owners and negotiated rates with set minimums.

#### 4.1 Reviews of the music

The licensing arrangements set out in this document only apply where the use of the musical works is for the purposes of review in a publication. No use of the musical works shall be permitted for any other purpose, and in the eventuality that such use is not bona fide for the purposes of review in the magazine, no licence shall be granted. Reviews must strictly consist of a commentary in respect of each individual musical work and/or track on the Cover Mounted Product, including a reference to the album(s) available for retail sale from which the recordings have been taken.

MCPSI monitors all Cover Mounted Products released to ensure accompanying publications contain a bona-fide review. Where it is found that they do not, further action will be taken in respect of this breach of the AP7 / AP7N licensing scheme.

#### 4.2 Third party sponsorship and associations

For the avoidance of doubt, no third party association, whether in the form of advertising or sponsorship on the packaging or discs themselves, shall be permitted under the AP7 or AP7N licensing schemes. Any such products must be licensed with MCPSI under the SG3 scheme, for Premium products (for which *prior approval* is required). This restriction extends to any branding that is not of the publication, owners of the sound recording or copyright owners of the musical works.

#### 4.3 Products affixed to publications

In all cases, no licence shall be granted by MCPSI under these terms and conditions if the product containing the musical works is not affixed to, or bagged with, the publication.

Upon request of MCPSI, you must provide to MCPSI a copy of the Cover Mounted Product together with the publication to which it is attached. This must be provided within 7 days of request (or within 7 days of pressing/printing of the product/publication, if later).

#### 4.4 Copyright awareness statement

All products licensed under AP7 and AP7N must carry a copyright awareness statement that consists of both the:

- British Music Rights “respect the value of music logo” &
- Strap-line “The producers of this CD [*insert other format if applicable*] have paid the composers and publishers for the use of their music”.

These requirements must be displayed together, without separation, and placed on either the product itself and/or the packaging sleeve.

Copies of the logo for such purposes are available upon request. No other use of this logo shall be made without specific and direct permission from British Music Rights.

#### 4.5 Single artist and/or multiple composer product restrictions

Products that contain recordings from a single artist, or that have more than two musical works written by the same composer or writing partnership, will only qualify for these

licensing conditions subject to specific approval from the individual copyright owners. This restriction applies only in the case of new/current repertoire.

Applications for such products need to be made well in advance. Producers are therefore advised to make such applications more than one month prior to when such approval to proceed with production is required.

#### 4.6 Music Product definition for audio-visual capable formats

The use of musical works on formats that have audio-visual capabilities must meet the definition of a “Music Product”, which is that all audio-visual material included on the product consists of one or more of the following:

Pop-promo videos; live performances and concert footage; photographs or other still images relating to the relevant artists or composers; interviews with artists, composers; producers or other persons involved in the creation, performance or production of the music used.

#### 4.7 Other conditions and restrictions

The licences detailed in this document do not apply to the following (for which separate licences and/or approval would be required):

- parodies and burlesques of any musical work, composer or writer or any artist associated with the work, or any derogatory or defamatory images or references thereto;
- use of a musical work which implies approval or endorsement by the composer, writer or any artist associated with the work;
- any political, religious, sexual or drug-related visual unless these are a direct pictorial image of the lyrics of the work;
- arrangements and adaptations (including using music with lyrics which were not written for use with that music and vice versa) and the sampling of works unless these have been authorised by the copyright owner(s);
- any broadcast, cable transmission or public performance of the musical works;
- any sponsorship messages or advertising of whatsoever nature;
- dramatico-musical works other than permitted excerpts therefrom (if you require more details on this restriction, contact MCPSI);
- any rights not specified hereunder.

Licences issued under these licensing schemes are without prejudice to the moral rights of the authors of the musical works.

MCPSI as agent for MCPS cannot license the rights in existing sound recordings or performers’ rights and, accordingly, no licence can be granted by MCPSI as agent for MCPS for the same. You may need separate licences and consents in relation to these rights.

## 5. APPLICATION PROCEDURES

To apply for a licence, the producer must complete an Application for Licence form (“AFL”) and a standard questionnaire, a copy of which is attached.

The completed forms must be sent to MCPSI for the attention of Jason Duffy, together with a covering letter confirming that the application is being made under AP7 / AP7N licensing schemes and that it fully complies with all the terms and conditions set out in this document.



The producer must also provide the name of the magazine and sufficient information for MCPSI to assess the Base Price.

So long as each track is identified and sufficient copyright information has been provided, the application will be processed by MCPSI. There may be tracks that cannot be identified as belonging to an MCPS member. In such cases it is the responsibility of the user to obtain permission for the use of those works.

MCPSI will usually process the AFL within seven working days after receipt. If one or more works listed on the AFL is not Public Domain or identified as being owned by a non-member of MCPS, the producer will be sent an invoice by MCPSI. After payment of this, a conditional licence will be sent to the producer. A copy of the conditional licence is also sent to the manufacturer indicated on the AFL.

**For the avoidance of doubt no licence shall be granted unless and until full payment of the invoice is made in advance to MCPSI.**

No allowances shall be made in the event of any publication and the attached audio products being returned, and nor shall there be any promotional allowance granted.

In some cases a licence will be refused and the user will be informed of this fact and the reason why. This may be, for example, because there is a first recording restriction on the works listed on the AFL.

## **6. ACCOUNTING PROCEDURES**

All invoices must be paid in full within 7 days of delivery to the producer.

Payment may be made by banker's draft or cheque upon the back of which the producer must specify the identifying number of the invoice. MCPSI as agent for MCPS reserves the right to wait until it holds cleared funds before treating a payment as having been made.

Invoices do not constitute an express or implied licence to manufacture or distribute records, and no licence shall be construed from an exchange of correspondence alone. Any licence sent or granted to the producer to reproduce the copyright in any musical works must be in writing and in the standard form, and shall not be sent until such time as payment of the invoice is received in full.

The producer shall keep proper accounting records dealing with its activities and these shall be of a sufficient standard to enable an audit trail to be established and followed through. Such accounting records together with any supporting documentation relating thereto shall be open for inspection (both during and for nine months after the date of any licence) by MCPSI upon reasonable notice. For these purposes the producer shall allow access to its premises. MCPSI and their representatives shall be entitled to inspect, make extracts and take copies of the information available, and to carry out such works as is in their reasonable opinion considered necessary to verify the royalties due to MCPSI, including for the avoidance of doubt the examination of stock movements.

Yours sincerely

Jason Duffy  
Senior Licensing Administrator

Enc.

**QUESTIONNAIRE FOR AP7 / AP7N LICENCE APPLICATION**

**PLEASE TICK APPROPRIATE BOX  
AND RETURN WITH COMPLETED  
AFL FOR THE ATTENTION OF  
JASON DUFFY**

IS THERE ANY THIRD PARTY ASSOCIATION  
INCORPORATED ON THE BODY OF THE DISC  
OR PACKAGING, INCLUDING (BUT NOT LIMITED  
TO) SPONSORSHIP, ADVERTISING, BRANDING, ETC?

YES

NO

WILL THE MUSIC ON THE PRODUCT  
BE REVIEWED IN THE PUBLICATION?

YES

NO

WILL THE REQUIRED COPYRIGHT AWARENESS  
STATEMENT AND LOGO BE INCLUDED?

YES

NO

HAS PERMISSION BEEN OBTAINED FOR THE USE  
OF THE SOUND RECORDINGS?

YES

NO

SIGNED .....

DATE .....

# IMRO/MCPSI JOINT GENERAL ENTERTAINMENT ON-DEMAND LICENCE FOR CABLE OPERATORS 2022

<b>NAME OF LICENSEE</b>	[REDACTED]
<b>REGISTERED ADDRESS OF LICENSEE</b>	[REDACTED]
<b>NAME OF THE LICENSORS</b>	IRISH MUSIC RIGHTS ORGANISATION CLG ('IMRO');  AND  Mechanical Copyright Protection Society of Ireland Limited ('MCPSI')
<b>REGISTERED ADDRESSES OF LICENSORS</b>	Copyright House, Pembroke Row, Lower Baggot Street, Dublin 2, Ireland
<b>LICENSED SERVICES</b>	"Standard Limited On Demand Streaming Service"  "Premium Limited On Demand Streaming Service"  <b>both of which are available only on the Licensees Cable Programme Service (as defined in the Copyright &amp; Related Rights Act 2000)</b>  (the "Licensed Services")
<b>COMMENCEMENT DATE</b>	1 <sup>st</sup> January 2022 ("the Commencement Date")
<b>ROYALTY FEES</b>	Royalties payable as set out in clause 5
<p><b>Clarification</b></p> <p>(a) For the avoidance of doubt, revenue which relates solely to services other than those derived from the Licensed Services shall not be included in the Gross Revenue.</p> <p>(b) For the further avoidance of doubt, Gross Revenue shall not be reduced by credit card commissions or similar payment process charges.</p>	

Signed on behalf of the Licensee:

\_\_\_\_\_ Date: \_\_\_\_\_

**Signed on behalf of the Mechanical-Copyright Protection Society Ireland Limited (“MCPSI”) of Copyright House, Pembroke Row, off Lower Baggot Street, Dublin 2 contracting for and as agent on behalf of MCPS and for and on behalf of and as agent of the various members and affiliated Societies of MCPS:**

\_\_\_\_\_ Date: \_\_\_\_\_

**Signed on behalf of the IRISH MUSIC RIGHTS ORGANISATION CLG (“IMRO”) of Copyright House, Pembroke Row, off Lower Baggot Street, Dublin 2, contracting on behalf of itself and for and on behalf of and as agents of its affiliated societies:**

\_\_\_\_\_ Date: \_\_\_\_\_

# JOINT IMRO AND MCPSI SHORT-TERM GENERAL ENTERTAINMENT ON- DEMAND LICENCE

## TERMS AND CONDITIONS

### 1. Definitions

“**the Act**” means the Copyright and Related Rights Act 2000, as amended from time to time.

“**Active Subscriber**” means a Base Subscriber who Streams at least thirty (30) seconds of any one (1) piece of Audio-Visual Material in the calculable monthly period.

“**Agreement**” means these terms and conditions and the cover sheet to these terms and conditions.

“**Audio-Visual Material**” means an On Demand Event in which there is presentation of Musical Works in conjunction with images, whether moving or still.

“**AV Usage Report**” means the information set out in the Licensors’ reporting format as set out in Schedule 2

“**Base Subscriber**” means any Cable Subscriber who can access the Licensed Services via the Licensees Cable Programme Service in a calculable monthly period.

“**Cable Programme**” and “**Cable Programme Service**” shall have the meaning given to them in the Act.

“**Cable Subscriber**” means a natural person in the Territory who subscribes to the Cable Programme Service offered by the Licensee for their own private and non-commercial use.

“**Commencement Date**” means the date as stated on the cover sheet of this Agreement.

“**Commercial Work**” means any Repertoire Work other than:

- (a) one where the Member owning or controlling the copyright in such Repertoire Work has authorised MCPSI to license it as so-called production or library music; or
- (b) a Commissioned Work, PROVIDED THAT for the purposes of clause 4.3, a Commissioned Work shall not be excluded from such definition where the commissioning agreement does not authorise the Licensee to use the Commissioned Work in the context set out in those clauses.

“**Commissioned Work**” means a Musical Work specially and expressly commissioned by the Licensee from composer/writer members of IMRO and/or MCPSI.

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

“**Gross Revenue**” means, all revenue received (or receivable) by the Licensee from Cable Subscribers in consideration solely for the provision of the Licensed Services; and such revenue shall, for the avoidance of doubt, include any such revenue whether received or receivable by the Licensee or any associate, affiliate, agent or representative of such party less any applicable sales taxes or VAT applicable to the provision of same.

“**Address**” means the residential address of a Licensee Cable Subscriber.

“**the Internet**” means the international network of computers which uses an addressing system and transmission protocol controlled by the World Wide Web consortium or its successors.

“**Licensed Service(s)**” means the service set out on the cover sheet of this Agreement.

“**Licensee**” means [REDACTED]

“**Licensors**” means IMRO and MCPSI.

“**MCPS**” means Mechanical-Copyright Protection Society Limited whose registered office is at 2<sup>nd</sup> Floor, Synergy House, 114-118 Southampton Row, London. WC1B 5A, UK.

“**Member**” means:

- (a) in the case of MCPS, each person, firm or company who or which, from time to time, has appointed MCPS as agent in relation to general entertainment on demand exploitation either before or during the Term, PROVIDED THAT a member who has so appointed MCPS 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 MCPS; and
- (b) in the case of IMRO, any person, firm or company who or which, from time to time, pursuant to the Articles of Association of IMRO has been admitted either before or during the Term as a member of IMRO, PROVIDED THAT a member who has been so admitted after the commencement of the Term shall only be regarded as a member for the

purposes of this Agreement with effect from the date of admission into IMRO.

**“Month”** means each calendar month or part thereof throughout the Term.

**“Musical Work”** means any musical work (as defined in the Act) and any lyrics or words written to be used with such musical work (if applicable). It includes any part of such a work.

**“On Demand Event”** means any movie, television programme, or other event ordered via On Demand TV

**“On Demand TV”** means Licensee’s On Demand TV service

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

- (a) the total duration of the excerpts does not exceed 20 minutes;
- (b) the use is not a "potted version" of the Dramatico-Musical Work;
- (c) the use is not or does not cover a complete act of the Dramatico-Musical Work;
- (d) each excerpt is not presented in a "dramatic form" as defined below; and
- (e) as regards ballets specifically devised for television or excerpts from existing ballets, the total duration does not exceed five minutes.

A dramatic form shall be deemed to be created only by a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico-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 costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph the word "actors" shall include actors, singers, mimics and/or puppets.

**“Premium Limited On Demand Streaming Service”** means the relevant part of the Licensed Service whereby a Cable Subscriber:

- (a) Is a Base Subscriber; and
- (b) may receive Audio-Visual Material via the Licensed Service by Streaming on-demand via the Cable Programme Service, where the time at which such Audio-Visual Material is received is selected by the Cable Subscriber, but where such Audio-Visual Material may not be retained by the Cable Subscriber on a permanent basis; and

- (c) pays to the Licensee a once off fee in order to access the Audio-Visual Material for a limited time period not exceeding 48 hours.

**“Repertoire Work”** means:

- (a) in relation to the licence granted by MCPSI, each Musical Work the relevant copyright in which is owned or controlled, from time to time, by MCPS or a Member or an associated society or an associated society member PROVIDED THAT (i) if one or more of those who own or control the copyright in a relevant Repertoire Work is not MCPS or a Member or an associated society or associated society member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by MCPS or the associated society or the relevant Member or associated society member, and (ii) it shall exclude any Musical Works that a Member of MCPS or an associated society has withdrawn or withheld from this Agreement; and
- (b) in relation to the licence granted by IMRO, each Musical Work the relevant copyright in which is owned or controlled, from time to time, by IMRO or a Member or an associated society or an associated society member PROVIDED THAT if one or more of those who own or control the copyright in a relevant Repertoire Work is not IMRO or a Member or an associated society or associated society member, the expression "Repertoire Work" shall only apply to such interest in the Repertoire Work as is owned or controlled by IMRO or the associated society or the relevant member or associated society member.

For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other, then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor.

**“Royalty Fees”** means the royalties payable, as set out in clause 5 of this Agreement.

**“RTÉ content”** means Audio-Visual Material produced by and supplied to the Licensee by Radió Telefís Éireann.

**“Service Provider”** means, the Licensee.

**“Sky Content”** means Audio-Visual Material produced by and supplied to the Licensee by British Sky Broadcasting Limited.

**“Standard Limited On Demand Streaming Service”** means the relevant part of the Licensed Service whereby a Cable Subscriber:

- (a) Is a Base subscriber; and
- (b) may receive Audio-Visual Material via the Licensed Service by Streaming on-demand via the Cable Programme Service, where the time at which such Audio-Visual Material is received is selected by the Cable Subscriber, but where such Audio-Visual Material may not be retained

by the Cable Subscriber on a permanent basis;  
and

- (c) gains access, only while they continue to be a Base Subscriber.

**“Stream”/ “Streaming”** means the making available to the public, under Sec 40 (1) (a) of the Act, of the Audio-Visual Material.

**“Term”** means the period starting on the Commencement Date and ending upon the date set out in clause 10.1 (unless terminated earlier under clauses 10.2 or 10.3).

**“Territory”** means the Republic of Ireland only

**“TG4 content”** means Audio-Visual Material produced by and supplied to the Licensee by Teilifís na Gaeilge

**“VAT”** means value added tax and each like tax imposed in addition to or in substitution therefor.

## 2. Grant of Licence

2.1 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, MCPSI grants the Licensee a non-exclusive licence to do the following during the Term:

- (a) to reproduce Repertoire Works incorporated into Audio-Visual Material on servers within the Territory for the purpose of transmitting such Audio-Visual Material to Cable Subscribers (for their own private and non-commercial use) by means of the Licensed Services; and
- (b) notwithstanding clause 3.2, to extend an existing synchronisation licence which has previously been granted by the copyright owner to reproduce Repertoire Works in RTE content, TG4 content and Sky content only for exploitation in an alternative media to that licensed under this Agreement so that such synchronisation is licensed for the purpose of making available the RTE content, TG4 content and Sky content on the licensed Service.

2.2 Subject to and conditional upon compliance with the terms and conditions contained herein and in particular subject to the exclusions and restrictions set out in clauses 3 and 4, IMRO grants the Licensee a non-exclusive licence, during the Term, to make available to the public (as that term is defined in Section 40 (1) (a) only and to authorise the making available to the public of Repertoire Works incorporated into Audio-Visual Material within the Territory solely as part of and for the purposes of the provision of the Licensed Services.

2.3 The provisions of clauses 3.5, 3.6, 4.1, 4.2, and 4.3 shall not apply to a particular Repertoire Work where the owner of the relevant rights in such

Repertoire Work has granted permission to the Licensee for the use of that Repertoire Work on the Licensed Services in the manner described under the relevant clause on such terms and conditions (including, if required, the payment of royalties or fees in addition to those specified under this Agreement) as the owner thinks fit.

## 3. Exceptions and Limitations

3.1 The licences granted under clause 2 of this Agreement are valid only insofar as:

- (a) the Licensed Services are general entertainment on demand services; and
- (b) the Licensee is the Service Provider in relation to the Licensed Services.

3.2 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not authorise the manufacture or distribution of physical products containing Audio-Visual Material, such as (without limitation) the ordering of compact discs, DVDs, or any other type of physical media, but which are distributed by mail.

3.3 For the avoidance of doubt, the licences granted under clause 2 of this Agreement shall not extend to the performing, showing or playing a copy in public (as those terms are used in the Act) of Repertoire Works, whether as part of the Licensed Services or otherwise.

3.4 Unless (i) the relevant Member has expressly consented to such use being covered under the MCPSI licence granted herein, the licence granted under clause 2.1 of this Agreement shall not permit the use of Repertoire Work(s) with any advertising or sponsorship where:

- (a) such Repertoire Work(s) are incorporated into such advertising or sponsorship; or
- (b) such Repertoire Work(s) are otherwise presented in such a way that a reasonable person might associate the Repertoire Work(s) with the advertising or sponsorship.

3.5 For the avoidance of doubt (and without prejudice to the generality of clause 3.4), the licence granted under clause 2.1 of this Agreement shall not apply to any Audio-Visual Material made available for the purpose of

- (a) promoting the branding of the Licensee, any affiliate of the Licensee or any third party; in such a manner that:
  - (i) one or more particular Repertoire Works, composers or writers are associated with such promotion; or
  - (ii) a reasonable person might assume that there was an association between particular Repertoire



Works, composers or writers and such promotion;

excerpt(s) within the definition of Permitted Excerpts; and

3.6 The licence granted under clause 2.1 shall not apply to graphic copies (meaning, without limitation, copies of lyrics, notation or scores) of Repertoire Works. For the avoidance of doubt, the licences granted under these terms and conditions shall not apply to any "karaoke" service.

(ii) neither of the Licensors has notified the Licensee in writing that their Member or the associated society member objects to the reproduction of any such Repertoire Work.

3.7 The licence granted under clause 2.2 shall only apply to a Repertoire Work made available to the public as part of a Licensed Service where the Licensee has the benefit of a valid licence for or a right to make a reproduction of that particular Repertoire Work and for that particular form of exploitation via the Licensed Service either pursuant to these terms and conditions or otherwise. By way of example only, the licence granted by MCPSI under clause 2.1 does not cover the copying of Repertoire Works in an advertisement (see clause 3.5 above). However, clause 3.5 does not apply to the licence granted by IMRO under clause 2.2. Therefore, pursuant to this clause 3.7, the licence granted by IMRO under clause 2.2 would not apply (in the context of this example) unless the Licensee has the benefit of a right to copy the Repertoire Work for use in that advertisement (and on the Licensed Service(s)).

In any event, any licence hereunder only applies to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such Dramatico-Musical Work is based on or uses

4.2 The licences granted under this Agreement shall not extend to or permit any adaptation of any Repertoire Work to be copied or communicated to the public as part of a Licensed Service unless the relevant Member has consented to such adaptation. By way of example only, this applies to:

3.8 For the avoidance of doubt, this Agreement grants no licence whatsoever in relation to:

- (a) Repertoire Works which are made available by the Licensee outside of the Licensed Services; or
- (b) Repertoire Works which are made available by the Licensee outside of a Cable Subscribers Address by way of the Internet, a mobile network or any other wired or wireless network.
- (c) material containing Repertoire Works (other than Audio-Visual Material) that is made available by the Licensee.

- (a) any sampling (meaning the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work) or the making available to the public or reproduction in the form of a sample of such part of a Repertoire Work; or
- (b) using with music, lyrics other than those written to be used with the music or authorised for use with the music; or
- (c) using with lyrics, music other than that written to be used with the lyrics or authorised for use with the lyrics.

However, such other exploitation of Repertoire Works may fall within the scope of other licensing schemes operated by the Licensors, details of which shall be made available to the Licensee on request.

#### 4. Further Restrictions

4.1 Where any Repertoire Work forms part of any Dramatico-Musical Work, the licence granted under clause 2.1 shall not apply, in relation to Audio-Visual Material, to the reproduction of:

4.3 The licences granted under this Agreement do not extend to the reproduction of any Commercial Work:

- (a) the whole Dramatico-Musical Work; or
- (b) any excerpt(s) from such Dramatico-Musical Work unless all of the following circumstances apply:
  - (i) that which is copied or made available to the public via the Licensed Services under this Agreement contains only

- (a) in the form of a parody, pastiche or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or
- (b) where there is a derogatory, facetious, obscene or demeaning reference to the Commercial Work, its composer(s) and author(s) or the performing artist; or
- (c) without prejudice to clauses 3.4 and 3.6 above, in any manner which is likely to or causes the public to believe that the Commercial Work (or the composer(s) thereof) is endorsing or promoting any product or service, or the views expressed in Audio-Visual Material.

Whether a use of a Commercial Work breaches this clause 4.3 shall be decided by the Licensors in their reasonable discretion.

4.4 All rights not specifically granted under this Agreement are hereby reserved.

- 4.5 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), rights in sound recordings, films, dramatic works, performers' rights or rights in performances. The Licensee is required to obtain the appropriate waivers, consents and/or licences from the person(s) owning or controlling rights in relation to sound recordings containing Repertoire Works or performers of that Repertoire Work.
- 4.6 It is the responsibility of the Licensee to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.
- 4.7 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in Ireland or any other territory.

## 5. Royalty Fees

In consideration of the licence granted under this Agreement, the Licensee shall pay to the Licensors the Royalty Fee calculated as follows:

- 5.1 In respect of the Standard Limited On Demand Streaming Service the Royalty Fee shall be
- (a) €0.047 per Base Subscriber per month: and;
  - (b) €0.047 per Active Subscriber per month.
- 5.2 In respect of the Premium Limited on Demand Streaming Service the Royalty Fee in respect of each piece, or part thereof, of Audio-Visual Material Streamed shall be for the Licence Term the higher of:
- a) 2.5% of the Gross Revenue: and
  - b) €0.04 per piece, or part thereof, of Audio-Visual Material Streamed.

## 6. Fees and Payment

- 6.1 In consideration of the licences and authorisations granted under this Agreement, the Licensee shall pay to the Licensors the Royalty Fees.
- 6.2 The Royalty Fee set out in clause 5 shall be paid to IMRO by Licensee within thirty (30) days of receipt of an invoice
- 6.3 All licence fees and payments referred to in this Agreement are subject to VAT or other equivalent sales tax. The Licensee shall pay to the Licensors VAT or other equivalent sales tax (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 6.4 Except as expressly set out in these terms and conditions, no deduction in respect of any tax, or any other deduction or set-off of whatsoever nature, shall be made in calculating or paying any sum due under this Agreement.

- 6.5 Within 15 working days of the end of each Month, the Licensee shall send to the Licensors a fully and accurately completed royalty statement (in the form attached in Schedule 1).

- 6.6 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date (or the date on which such fees should ordinarily have been paid in circumstances where the Licensors have been unable to submit an invoice) due to default of the Licensee, the Licensee shall (if required by the Licensors) pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the prime overdraft rate, current from time to time, of Bank of Ireland payable from the date on which the payment should have been made to the date on which the payment was made.

- 6.7 All payments made under this Agreement shall be in Euro unless otherwise agreed by the parties in writing. Where it is necessary to convert an amount payable to Euro from another currency, the exchange rate used shall be the Irish Times closing mid market rate on the first working day of the Quarter to which the payment relates. The Licensee shall pay all bank charges on transfers of sums payable by the Licensee to the Licensors

- 6.8 The Licensee shall notify the Licensors promptly of any change in the Licensed Service details.

## 7. Supply of Information

- 7.1 In relation to any and all Audio-Visual Material and made available to the public under this Agreement via all Licensed Services, the Licensee will deliver a fully and accurately completed AV Usage Report to the Licensors or to the Licensors' duly authorised agent (details of which will be provided to the Licensee) within 14 days of the end of each Month throughout the Term.

- 7.2 The Licensee must also supply the Licensors with any further information or documentation in its possession, power, custody or control (and use its reasonable endeavours to supply the Licensors with any further information or documentation not in its possession, power, custody or control) reasonably requested by the Licensors at any time, in order to enable the Licensors to verify the Repertoire Work(s) which have been reproduced or distributed via all Licensed Services.

- 7.3 Where any or all of the Licensed Services are accessible by Cable Subscribers only on payment of subscription or other similar payment (or access is otherwise limited or controlled in some way), the Licensee shall, upon request of the Licensors, use reasonable endeavours to ensure that such Licensed Services are at all times accessible by the Licensors free of charge for the purposes of the Licensors verifying that the Licensee is acting in accordance with this Agreement. For the avoidance of doubt, the Licensee shall not be required to provide free access to the Standard Limited On Demand

Streaming Service” or the “Premium Limited On Demand Streaming Service

- 7.4 The email addresses for delivery of the Music Usage Declaration referred to in clauses 7.1 are;

[david.galligan@imro.ie](mailto:david.galligan@imro.ie)  
[sean.donegan@imro.ie](mailto:sean.donegan@imro.ie)

- 7.5 Without prejudice to any right in law that the Licensors may have to obtain such information, the Licensee shall not be obliged to provide to the Licensors any information which identifies Cable Subscribers or which otherwise constitutes “personal data” as defined in the Data Protection Acts 1988 and 2003. For the avoidance of doubt, the Licensee must still provide all required Music Usage Information (or other information to be provided under this Agreement), but is entitled to remove any element of it which reveals the identity of Cable Subscribers or otherwise causes it to include or constitute “personal data”.

## 8. Auditing

- 8.1 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 termination of this Agreement, proper, detailed books and records relating to (a) use of all Musical Works and (b) any income or other consideration received by or on behalf of the Licensee in consideration for the provision of Licensed Services, together with any supporting documentation relating thereto covering the period up to six years prior to the date of notification of audit.

- 8.2 For the purposes of this clause 8, 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 the Licensors 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.

- 8.3 The Licensors shall not (and shall procure that their representatives shall not), without the Licensee’s written consent, disclose to any third party any confidential information of the Licensee (so long as it remains confidential) received in the course of an audit carried out under this clause 8, save that such confidential information may be disclosed to the Licensors’ directors, board sub-committee members officers, employees and professional advisors (solely where such persons are under a duty of confidentiality in relation to information so received and the Licensors shall be liable to the Licensee in respect of any breach of such confidentiality obligation) solely for purposes connected with this Agreement.

- 8.4 For the avoidance of doubt, books, records and accounting records as referred to in clauses 8.1 and 8.2 above shall include data, information and records held on computers.

## 9. Security and Encryption

- 9.1 Unless agreed otherwise, the Licensee will utilise or require the utilisation of an industry security standard which is developed and is available for use in the protection of Repertoire Works. Until such time, the Licensee must use its reasonable endeavours to prevent unauthorised copying and/or the unauthorised issuing of copies of Repertoire Works by whatever technical means are practicable. Upon request the Licensee will inform the Licensors concerning its progress in relation to fulfilling this obligation.

## 10. Termination and Expiry

- 10.1 This Agreement shall expire on 31<sup>st</sup> December 2023.

- 10.2 This Agreement may be terminated by either party by the terminating party giving the other party not less than three calendar months notice in writing.

- 10.3 Each party shall have the right to terminate this Agreement by notice forthwith where the other party:

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy such breach within 14 clear days after receipt of notice of such breach; or
- (b) commits a material breach of this Agreement which is not capable of remedy; or
- (c) the other goes into receivership or any resolution is passed for its winding-up, examinership or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts,

and, for the avoidance of doubt, any breach which consists of a failure by either party to perform an obligation under this Agreement within any period required or by any date specified under this Agreement shall be deemed to be capable of remedy if such obligation is performed by such party within the 14 day remedy period specified in this Clause 10.3.

## 11. No Assignment

- 11.1 The licences granted under this Agreement are personal to the Licensee and the Licensee may not assign, sub-license or otherwise transfer any or all of its rights or obligations under this Agreement without the written agreement of both IMRO and MCPSI.

## 12. Miscellaneous

- 12.1 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 thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 12.2 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.
- 12.3 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.
- 12.4 The parties 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 be reasonably be required on or subsequent to completion of this Agreement for securing each of the obligations of the respective parties under this Agreement.
- 12.5 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.
- 12.6 This Agreement shall be construed according to the laws of Ireland and the parties agree to submit to the jurisdiction of the Irish Courts.

## SCHEDULE 1

### Form of Accounting Statement

Licensee name:

Licensee Contact name:

Monthly Reporting:

Month Ending:

Name of Licensed Services: Premium Limited On Demand Streaming Service / Standard Limited on Demand Streaming Service

**Premium Limited On Demand Streaming Service**  
**Details for the Month**

Total Gross Revenue for the Month (exclusive of VAT):

Total number of individual pieces of Audio-Visual material or part thereof) Streamed per Cable Subscriber in the Month:

Total number of individual pieces of Audio-Visual material or part thereof) purchased per Cable Subscriber in the Month:

**Standard Limited On Demand Streaming Service**  
**Details for the Month**

Total Subscribers in Month:

- Base Subscribers:
- Active Subscribers:

**Declared to be a true and accurate return**

**Signed on behalf of Licensee**

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**Date supplied:**

Please e-mail completed forms, within 15 days after the end of each month, to:  
sean.donegan@imro.ie and David.galligan@imro.ie

## SCHEDULE 2

### AV Usage Report

1. The Licensee shall supply to IMRO lists identifying, to the reasonable satisfaction of IMRO and in a form acceptable to IMRO, details of Audio-Visual Material and all On Demand Events.
2. The lists to be supplied under paragraph 3 shall be supplied to IMRO within four weeks of the On Demand Event in question.
3. The Licensee is required to provide electronic only reports from the commencement date of this agreement and are required to provide details of all On Demand Events in the form set out below.

#### **(a) Standard Limited On Demand Streaming Service**

The details provided should include:

- Unique Identifier assigned to the production by the reporting company where these are provided in the metadata to Licensee (For example TV3, RTÉ and TG4)
- Production title
- Episode name
- Series name if provided to Licensee by a third party as part of metadata
- Year of production if provided to by a third party as part of metadata
- Number of times streamed

The details for advertisements should include

- Advertisement title
- Unique Identifier/ Clock Number
- Duration
- Source information
- Number of times streamed

#### **(b) Premium Limited on Demand Streaming Service**

The details provided should include:

- Production titles,
- Year of production if provided to Licensee by a third party as part of metadata
- Number of pieces, or part thereof, of Audio-Visual Material streamed
- Gross Revenue received per On Demand Event

On Demand events may be returned using an electronic report generated by the Licensees On Demand TV system provided that it meets with IMRO's approval.

4. The Parties shall discuss the provisions of additional reporting requirements that IMRO may require during the Term of this Agreement. Any variations to the AV Usage Report in this Schedule 2 must be agreed in writing by the Parties and signed by duly authorised representatives of both Parties.

# Production Company Primary Exploitation Licence Agreement

NAME OF LICENSEE	("the Licensee")
REGISTERED ADDRESS OF LICENSEE	
COMMENCEMENT OF AGREEMENT	("the Commencement Date")
END DATE OF AGREEMENT	("the End Date") (subject to the terms of Annex A/B)

The terms of this Agreement are contained in the attached Annexes A, B, C and D

**Signed by an authorised signatory for and on behalf of the Licensee:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Signed by an authorised signatory for and on behalf of the Mechanical-Copyright Protection Society Ireland Limited ("MCPSI"), contracting for and on behalf and as agent of its associated societies:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**ANNEX A**

**SPECIAL CONDITIONS**

**[This section can be used for:**

**(i) Details of any deposit paid by the Licensee and how it will be held (e.g. until the end of the Term in an interest-bearing account); or**

**(ii) Variations to the standard Terms and Conditions**

**(iii) Provisions relating to a Licensee that is a holding company which amend clause 10.1 to permit 100% owned subsidiary companies to benefit from the licences granted under the Agreement, subject to the Licensee taking on full liability for performance of the obligations under the Agreement and for any breach of the terms and conditions]**



## **ANNEX B**

### **STANDARD TERMS AND CONDITIONS**

#### **1. Definitions**

- “Agreement”** means this licence agreement.
- “Authorised Exploitation”** means:
- (a) the broadcast of the relevant Programme on the Television Channel in the Territory; and
  - (b) the making available in the Republic of Ireland of each episode of the Programme during a 30 day window before and a 30 day window after the date of first broadcast of the episode; and
- the making available in the Republic of Ireland of all episodes of the Programme during a 30 day window after the date of first broadcast of the final episode of the relevant Programme.
- “broadcast” or “broadcasting”** shall have the meaning means an electronic transmission of visual images, sounds or other information which (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or
- (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public and which is not excepted as provided for at subclause 1 below and references to “broadcasting” shall be construed accordingly.
1. Excepted from the definition of “broadcast” is any internet transmission unless it is:
- (i) a transmission taking place simultaneously on the internet and by other means;
  - (ii) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person

<b>“Commercial Work”</b>	means each Musical Work the copyright in which is owned or controlled in the United Kingdom and the Republic of Ireland by MCPSI (or an MCPSI member or an affiliated society or an affiliated society member) but excluding Production Music Works.
<b>“Delivery Date”</b>	means, in relation to a Programme, the date of delivery of the final version of the Programme to the Television Channel, or where the Programme consists of a series of episodes, delivery of the final episode.
<b>“Excluded Works”</b>	means any Musical Work(s) which MCPS notifies to the Licensee as being excluded from the licences granted under this Agreement
<b>“Making available”</b>	shall have the meaning ascribed thereto in section 40(1)(a) of the Copyright and Related Rights Act as amended.
<b>“MCPS”</b>	shall mean the Mechanical Copyright Protection Society Limited of 2nd Floor, Synergy House, 114-118 Southampton Row, London, England, WC1B 5AA.
<b>“Music Programme”</b>	<p>means a programme where the musical audio material and/or audio-visual material with a musical soundtrack is the primary theme and not merely secondary or incidental to the storyline or documentary material featured in the programme. A “Music Programme” includes but is not limited to the following (including any combination thereof):</p> <p>A programme which consists of:</p> <ul style="list-style-type: none"> <li>(a) one or more audio-visual live music performances by an artist, a group or a number of artists and/or groups;</li> <li>(b) an audio-visual documentary where the featured subject matter is one or more music artists, groups, songwriters or composers or a musical style or genre;</li> <li>(c) one or more promotional audio-visual productions which have a music sound recording as their main element;</li> <li>(d) audio-visual programming which has music as its primary theme, including, without limitation, archive collections of previously exploited television material;</li> <li>(e) an audio-visual recording of a music award event.</li> </ul>
<b>“Musical Work”</b>	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.

<b>“PMSR”</b>	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 MCPSI or any member (or any affiliated society or affiliated society member) and where such party has authorised MCPSI to license such recordings as so-called production or library music.
<b>“Production Music”</b>	means Production Music Works and PMSRs.
<b>“Production Music Rate Card”</b>	means for any Programme delivered to the Television Channel after 31 July 2010, the MCPSI production music rate card currently in force on the date of first broadcast of the first episode of the Programme  The current MCPSI production music rate card is available upon request from <a href="mailto:mcps.licensing@imro.ie">mcps.licensing@imro.ie</a>
<b>“Production Music Work”</b>	means any Musical Work: <ul style="list-style-type: none"> <li>(a) embodied on a PMSR; and</li> <li>(b) the copyright in which is owned or controlled in the United Kingdom and the Republic of Ireland by MCPSI (or an MCPSI member or an affiliated society or an affiliated society member).</li> </ul>
<b>“Programme”</b>	means a programme or series of episodes of a programme produced by the Licensee that is not a Music Programme.
<b>“Programme Related Material”</b>	means, in relation to a Programme, a piece of ancillary audio-visual material that is connected to a Programme and is created by the Licensee at the time of production of that Programme, including Re-versions. By means of example only, this may be ‘backstage footage’ or a ‘best-of’ or highlights programme.
<b>“Re-version”</b>	means a piece of audio-visual material that is produced by editing the content of a Programme into a different form. Re-versions will comprise substantially the same content as was contained in the original Programme, but may include some new content, provided that it is related to the original content.
<b>“Repertoire Work”</b>	means Commercial Works, Production Music Works and PMSRs, but excludes (i) any musical work forming part of a dramatico-musical work and (ii) commissioned music (i.e. Musical Works specially commissioned from MCPS composer/writer members).

<b>“Sponsorship Message”</b>	means any item which includes a specific audio and/or visual reference to a Programme sponsor.
<b>“Television Channel”</b>	means, in respect of the relevant Programme, the television channel in respect of which such Programme has been commissioned or, where the Programme is a licence fee secured programme, the channel which has secured the right of first broadcast in the Republic of Ireland.
<b>“Term”</b>	means the period starting on the Commencement Date and ending on the End Date or any earlier termination of the Agreement in accordance with clause 9.
<b>“Territory”</b>	means Ireland (commonly known as the Republic of Ireland and Northern Ireland in respect only of simultaneous retransmission of public service channels from Ireland in Northern Ireland only.)
<b>“Use”</b>	means each unit of 30 seconds (or part thereof) of a Repertoire Work which is included in an episode of the Programme. Each inclusion of a Repertoire Work (or part thereof) shall constitute a separate Use (although the inclusion of a Production Music Work and the PMSR on which it is embodied shall together constitute only one Use), even if the duration of such use is less than 30 seconds. All copies of Repertoire Works including those which might constitute acts of copying permitted under Part II of the Copyright and Related Rights Act 2000 shall be included when calculating the number of Uses under this Agreement.

## **2. Rights Licensed**

2.1 Subject to the terms and conditions set out in this Agreement, MCPSI hereby grants to the Licensee a non-exclusive licence during the Term to:

- (a) reproduce (including by way of synchronisation) Repertoire Works in the Territory into Programmes solely for the purpose of the Authorised Exploitation; and
- (b) reproduce (including by way of synchronisation) Repertoire Works in the Republic of Ireland into Programme Related Material solely for the purpose of supplying such Programme Related Material to a third party (or for retaining the material itself) for online and mobile exploitation.

Any copying of Repertoire Works for purposes beyond those set out in (a) and (b) above is not licensed under this Agreement.

## **3. Extent of the Licence**

3.1 This Agreement does not extend to or permit the inclusion of any adaptation of any Repertoire Work in an episode of the Programme unless the relevant MCPSI 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.

3.2 The Agreement does not extend to the reproduction of any Commercial Work:

- (a) in the form of a parody, pastiche or burlesque of any Commercial Work or of any composer or writer of any Commercial Work or any band or other group of artists which includes any composer or writer of any Commercial Work; or
- (b) where there is a derogatory, facetious, obscene or demeaning reference to the Commercial Work, its composer(s) and author(s) or the performing artist; or
- (c) without prejudice to clauses 3.3 and 3.4 below, in any manner which is likely to or causes the public to believe that the Commercial Work (or the composer(s) thereof) is endorsing or promoting any product or service, or the views expressed in the Programme.

Whether a use of a Commercial Work breaches this clause 3.2 shall be decided by MCPSI in its reasonable discretion.

3.3 For the avoidance of doubt, the licences granted under this Agreement do not cover the use of any Repertoire Work with any advertising where:

- (a) such Repertoire Work is incorporated into such advertising; or
- (b) such Repertoire Work is otherwise presented in such a way that a reasonable person might associate the Repertoire Work with the advertising.

3.4 The licences granted under this Agreement do not cover the use of any Commercial Work with any Sponsorship message where:

- (a) such Commercial Work is incorporated into such Sponsorship Message; or
- (b) such Commercial Work is otherwise presented in such a way that a reasonable person might associate the Commercial Work with the

## Sponsorship Message.

- 3.5 The use of any Commercial Work in title and/or credit sequences is excluded from this Agreement. Commercial Works for use in title and/or credit sequences must be licensed in advance individually with the copyright owner or via MCPSI.
- 3.6 The licences granted under this Agreement do not cover the use of any Repertoire Work in a Programme or a Music Programme which has a Delivery Date after the end of the Term
- 3.7 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.
- 3.8 The acts of broadcasting and making available of Repertoire Works within the Programme and within Programme Related Material are not licensed hereunder.
- 3.9 The provisions of this Agreement authorise the making of the Programme for the Authorised Exploitation only. In the event that a copy of the Programme 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 any party to this Agreement or any other party then that copy shall not be licensed under this Agreement. MCPSI reserves all rights including those of the members of MCPS and the affiliated societies and the affiliated society members to take action in relation to any such copy.
- 3.10 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings other than PMSRs, films, dramatic works, performers' rights, moral rights or rights in performances. MCPSI, for and on behalf of MCPS and 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.
- 3.11 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 Repertoire Work, and nothing in this Agreement applies in relation to any such Musical Work or sound recording or film producing any such Musical Work.
- 3.12 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the Republic of Ireland or any other territory.

## **4. Excluded Works**

- 4.1 The licences granted under clause 2 do not permit the reproduction of an Excluded Work unless (i) the relevant MCPS member has expressly consented to its reproduction, (ii) the Licensee has entered into an agreement with the relevant MCPS member to this effect and (iii) evidence of such agreement has been provided to MCPS.
- 4.2 Where the Licensee has obtained the prior written consent of the relevant MCPS member for the reproduction of an Excluded Work in a Programme or Programme Related Material then the Excluded Work shall, in respect of the specific Programme or

Programme Related Material for which the consent has been granted, be deemed a Repertoire Work and shall be licensed under this Agreement. The terms and conditions governing the reproduction of the Excluded Work set out in this Agreement will be subject to any specific terms and conditions agreed between the Licensee and the relevant MCPS member. Where a conflict arises between the terms and conditions agreed between the Licensee and the relevant MCPS member and the terms and conditions set out in this Agreement, then the former shall prevail over the latter in respect of the Excluded Work.

4.3 It is the responsibility of the Licensee to contact the relevant MCPS member directly for consent to reproduce Excluded Works.

4.4 MCPS will notify the Licensee of those Musical Works that are Excluded Works on or before the date of signature of this Agreement and the restriction on the reproduction of such Excluded Works pursuant to clause 4.1 shall apply to all Programmes and Programme Related Material with a Delivery Date following the relevant date of notification by MCPS. Thereafter, MCPS will notify the Licensee by email on or around the first working day of each month of any up-date to the list of Excluded Works. Any new Musical Works added to the list of Excluded Works will be Excluded Works in respect of all Programmes and Programme Related Material with a Delivery Date on or after the first working day of the second calendar month after the month in which MCPS provided notification of the new Excluded Works. By way of example, Excluded Works notified to the Licensee on the 1 July 2022 will apply to all Programmes and Programme Related Material with a Delivery Date on or after 1 September 2022.

## **5. Licence Fees – Commercial Works**

In respect of Commercial Works, the Licensee shall pay to MCPSI the licence fees set out in Annex C of this Agreement. These licence fees and the associated exploitation of Repertoire Works are offered by MCPSI on a strictly non-precedential basis and shall be subject to review upon expiry or termination of this Agreement.

## **6. Licence Fees – Production Music**

In respect of Production Music, the Licensee shall pay to MCPSI the licence fees set out in Annex D of this Agreement.

## **7. Payment**

7.1 All payments and sums referred to in this Agreement are subject to VAT.

7.2 MCPSI will issue invoices as set out in Annexes C and D to this Agreement. All invoices are due for payment in full within 28 days of the date of issue (“the Due Date”).

7.3 Without imposing any obligation on MCPSI to accept late payment and without prejudice to any rights and remedies MCPSI may have by virtue of any failure of the Licensee to pay the licence fees specified in this Agreement by the Due Date, MCPSI will be entitled to charge interest on the licence fees from the Due Dates at 3% above the Allied Irish Bank plc base rate. MCPSI 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 7 below.

## **8. Reporting**

8.1 In respect of the licence granted under clause 2.1(a) above the Licensee shall supply to MCPSI within 14 days (or within 28 days, where this is agreed in advance by MCPS) of the Delivery Date full and accurate details of all Repertoire Works copied into each episode of a Programme and the name of the television channel on which the Programme is to be (or has been) first broadcast.

The Licensee's reports must be in the format attached at Schedule 1 or such alternative format which the Licensee uses to report to broadcasters, provided that:

- (a) such format complies with MCPSI' reasonable requirements; and
- (b) it contains all the information that MCPSI requires (as set out in Schedule 1).

8.2 In respect of the licence granted under clause 2.1(b) above, the Licensee shall supply to MCPSI full and accurate details of all Repertoire Works copied into each piece of Programme Related Material 14 days (or within 28 days, where this is agreed in advance by MCPSI) from the date that such material is made available to the public for the first time. The Licensee's reports must be in the format attached at Schedule 1.

8.3 The Licensee shall also supply MCPSI with any further information or documentation in its possession, power, custody or control (and will supply MCPSI with reasonable assistance to obtain any further information or documentation not in its possession, power, custody or control) reasonably requested by MCPSI at any time, in order to enable MCPSI to verify the Musical Works which are contained with a Programme or to verify that the Licensee is abiding by the terms and conditions of this Agreement.

8.4 MCPSI reserves the right to charge additional royalty fees in respect of those Uses of Repertoire Works which are reported inaccurately to MCPSI. Furthermore, MCPSI shall be entitled to charge royalty fees on any Uses of Repertoire Works that are not initially reported by the Licensee (when reporting is delivered for a Programme) but are subsequently identified, as well as those Uses that cannot be identified as Repertoire Works at the time that reporting is initially processed by MCPSI but are subsequently found to be Repertoire Works. The royalty fee charged per additional Use identified will be based on the Use fees referred to in Annexes C and D. MCPSI shall in addition have the right to charge interest at 3% above the Allied Irish Bank plc base rate.

8.5 In order to facilitate the preparation of reporting, MCPSI will (upon request) grant the Licensee access to its online works database(s), subject to the Licensee's acceptance of MCPSI' standard terms and conditions of access. For the avoidance of doubt, should MCPSI withdraw access to such a database or should a database become unavailable (whether temporarily or permanently) for any reason, this shall in no way affect the obligations of the Licensee to deliver full, accurate and timely reporting as set out in this clause 7.



8.6 The Licensee shall supply to MCPSI throughout the Term a fully completed notification form (in the form set out in Schedule 2) for each new Programme within 14 days of being commissioned to produce the Programme (or within 14 days of the Licensee commencing production, if the Programme has not been commissioned) and shall notify MCPSI in writing immediately should any information contained on the notification form change at any time subsequently, including but not limited to the Programme title and scheduled Delivery Date.

8.7 Upon request, the Licensee shall supply to MCPSI a copy of any Programme (or episode of a Programme) produced by it under this Agreement within 7 days of such a request following the Delivery Date, in order that MCPSI may confirm that the Licensee is complying with the terms and conditions of this Agreement.

## **9. Auditing**

9.1 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 (a) the use of all Musical Works in Programmes, together with any supporting documentation relating thereto.

9.2 For the purposes of this clause 8, the Licensee shall allow upon reasonable notice access to its premises to inspect accounting and reporting records, but not more than once per annum. The duly authorised representatives of MCPSI 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.

9.3 If tests under any audit and verification process indicate under-payment of the correct licence fees during the period for which monitoring has been carried out by or on behalf of MCPSI, then, without prejudice to MCPSI' 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 MCPSI to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of Bank of Ireland).

9.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct licence fees during the period for which monitoring has been carried out by or on behalf of MCPSI 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 MCPSI, then, without prejudice to MCPSI' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 8.3, MCPSI' reasonable costs of such audit and verification within 28 days of receipt of MCPSI' VAT invoice therefore.

9.5 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.

## **10. Termination of Agreement**

10.1 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;
- (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.

10.2 Where MCPSI terminates this Agreement as a result of the non-payment of licence fees by the Licensee, any episode(s) of a Programme made during the period in which the licence fees were unpaid (whether in full or in part) shall be deemed to be unlicensed.

10.3 Any breach of clause 3.2 of this Agreement shall be deemed to be a material breach incapable of remedy for the purposes of clause 9.1(a). In the case of termination in these circumstances, the licence granted under this Agreement shall not apply to the episode(s) of the Programme containing the material which breached clause 3.2 (as well as any episode made after the date of termination).

10.4 For the avoidance of doubt, any exploitation of Repertoire Works by the Licensee following termination of this Agreement will be unlicensed.

## 11. Other

11.1 Other than as set out herein, this Agreement is personal and the Licensee shall not assign, sub-contract or otherwise transfer this Agreement or any of its rights or obligations under this Agreement in whole or in part without the prior written consent of MCPSI, not to be unreasonably withheld or delayed.

11.2 The Licensee acknowledges that this is a 'blanket' licence agreement, and that for both parties to take advantage of the administrative simplicity of such a licence, the mechanism for calculating the licence fees must take account of all copying of Repertoire Works, including where some such copying might fall within one of the exceptions set out in Part II Chapter III of the Copyright and Related Rights Act 2000 as amended.

11.3 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.

11.4 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.

11.5 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.

11.7 This Agreement shall be construed in accordance with the laws of Ireland and the parties submit to the exclusive jurisdiction of the Irish courts.

### ***ANNEX C***

#### ***COMMERCIAL MUSIC – LICENCE FEES***

The licence fees for Commercial Music shall be calculated on a per-Programme basis, as follows:

1. Where a Programme consists of a single episode, once reporting has been received for that Programme in accordance with clause 8.1 or 2.2 (as applicable), it will be analysed by MCPSI and the Commercial Music licence fees will be calculated based on the fees per Use listed in the table below. MCPSI will then send the Licensee an invoice for the licence fee. Where a Programme consists of a number of episodes, then invoicing shall take place monthly or quarterly (at MCPSI' discretion) and there shall be no obligation on MCPSI to wait until reporting all episodes have been delivered before it starts to invoice the Licensee.

## Commercial Music Rate Card

2. In respect of the licence granted under clause 2.1(a) of this Agreement, the total number of Uses in the Programme shall be calculated and multiplied by the appropriate Use rate. The resulting licence fee covers the supply of the Programme by the Licensee to the Television Channel for an initial number of broadcasts (together with the making available of the Programme on-demand, as detailed in the definition of Authorised Exploitation), as indicated. Where the Television Channel wishes to undertake additional broadcasts over and above this allowance, the Licensee shall pay an additional licence fee in respect of each such broadcast, based on the 'additional broadcast' Use rate set out above.

3. Where the Television Channel wishes to undertake additional broadcasts over and above those covered by any licence fees that MCPSI has already invoiced,

Channel	Commercial Music Rates per 30 secs
	Rate
RTE	€ 95.00
TG4	€ 47.00
Virgin Media Television	€ 63.00
Local TV Stations	€ 32.00

the Licensee shall notify MCPSI in writing as soon as it receives notice of the additional broadcasts itself so that MCPSI may calculate the additional licence fees due and invoice the Licensee accordingly. For the avoidance of doubt (and without prejudice to MCPSI' rights under this Agreement), nothing in this clause shall prevent MCPSI from issuing invoices earlier should it become aware of additional broadcasts prior to receiving written notification of them from the Licensee.

4. In respect of the licence granted under clause 2.1(b) of this Agreement, the Licensee shall pay a one-off fee to MCPSI for each piece of Programme Related Material, based on the number of Uses of Commercial Works in the Programme Related Material multiplied by the Use rate set out above. This fee shall become due once the piece of Programme Related Material is made available to the public for the first time. Once the Licensee has reported to MCPSI in accordance with clause 7.3 above, MCPSI will invoice the Licensee for the relevant amount.

5. The Licensee acknowledges that MCPSI may not be able to identify all Uses of

Commercial Works at the time that it initially receives reporting for a Programme from the Licensee. MCPSI shall be entitled to reprocess reporting at later dates and where Uses of Commercial Works are identified that have not previously been invoiced, to raise an invoice for the relevant licence fee, which the Licensee shall pay in accordance with clause 6.2.

## **ANNEX D**

### **PRODUCTION MUSIC – LICENCE FEES**

The licence fees for Production Music shall be calculated on a per-Programme basis, as follows:

1. Where a Programme consists of a single episode, once reporting has been received for that Programme, in accordance with clause 8. it will be analysed by MCPSI and the Production Music licence fees will be calculated based on the fees per Use listed in the Production Music Rate Card [www.mcps.ie](http://www.mcps.ie) and is attached. MCPSI will then send the Licensee an invoice for the licence fee. Where a Programme consists of a number of episodes, then invoicing shall take place monthly or quarterly (at MCPSI' discretion) and there shall be no obligation on MCPSI to wait until reporting all episodes have been delivered before it starts to invoice the Licensee.
2. In respect of the licence granted under clause 2.1(a) of this Agreement, the total number of Uses in the Programme shall be calculated and multiplied by the appropriate Use rate. The resulting licence fee covers the supply of the Programme to the Television Channel for an unlimited number of broadcasts.
3. Where the Television Channel of a Programme is in category T2 (as set out in the Production Music Rate Card), and the relevant Programme is subsequently broadcast on a category T1 television channel, the Production Music licence fees will be calculated based on the fees per Use listed in the Production Music Rate Card
4. In respect of the licence granted under clause 2.1(b) of this Agreement, the Licensee shall pay a one-off fee to MCPSI for each piece of Programme Related Material, based on the number of Uses of Production Music Works in the Programme Related Material multiplied by the Use rate set out in the Production Music Rate Card. This fee shall become due once the piece of Programme Related Material is made available to the public for the first time. Once the Licensee has reported to MCPSI in accordance with clause 7.3 above, MCPSI will invoice the Licensee for the relevant amount.
5. MCPSI will aggregate durations of the same Production Music Work contained in a single episode of a Programme and shall apply the relevant Use rate to the total aggregated duration of that Production Music Work when calculating licence fees for the episode in accordance with this Annex D.
6. In certain circumstances, a per programme rate cap shall apply to the licence fee payable for Production Music. The following calculation shall determine whether the cap will apply:
  - (i) calculate the total fee due in respect of Production Music for each individual episode of the Programme (after any aggregation has been performed, as set out above).

- (ii) if the figure arrived at above is equal to or greater than the per programme rate set out in the Production Music Rate Card then for each episode of the Programme the applicable rate cap shall apply.

For the avoidance of doubt, this cap applies to Production Music only.

- 7. The Licensee acknowledges that MCPSI may not be able to identify all Uses of Production Music at that the time that it initially receives reporting for a Programme from the Licensee. MCPSI shall be entitled to reprocess reporting at later dates and where Uses of Production Music are identified that have not previously been invoiced, to raise an invoice for the relevant licence fee, which the Licensee shall pay in accordance with clause 6.2.

The Appendix to this Agreement contains worked examples illustrating how MCPSI will undertake the licence fee calculation process.

### **Schedule 1**

MCPSI Reporting Format

### **Schedule 2**

Programme notification form







## **Schedule 3 MCPS Specific Permissions, Exclusions and Limitations**

### **(a) Single-artist Programmes**

Where a Programme relates to a single composer or author or composer and/or author team (who may also be a performing or recording artist), the Reproduction Licence shall not apply to the reproduction of Commercial Works written or composed by the composer or author, or composer and/or author team in question, save where the relevant Member has expressly consented to the inclusion of the relevant Commercial Works. For the purposes of this paragraph, the 'relevant Member' shall be the MCPS Member(s) representing the relevant composer, author, or composer or author team's share in the work.

For the avoidance of doubt, the consent of Members representing composers or authors or individuals in a composer and/or author team who are not the subject of the Programme in question shall not be required. As such, where the Programme relates only to a particular individual within a composer or author team, consent will only be required from the Member representing that individual's share in the works.

The restriction set out in this paragraph shall not apply where the relevant Programme is made in collaboration with the composer or author, or composer and/or author team in question (or their estate, as applicable), provided always that the Licensee shall promptly provide evidence of such collaboration to MCPS upon request.

Where any other type of Programme includes Commercial Works by a single composer or author, or composer and/or author team whereby such Commercial Works are effectively used as a complete soundtrack for that Programme, the MCPS Licence shall not apply to the reproduction of such Commercial Works without the relevant Member's (or Members') express consent.

### **(b) Prior Approval Commercial Works**

There is a published excluded Commercial Music works list that can be located at [www.prsformusic.com/ipc](http://www.prsformusic.com/ipc). These works are not permitted to be used unless the copyright owner(s) approve the requested usage and agree the work can be licensed under the IPC Blanket Licence.