



# AP2 Agreement

For the manufacture and distribution  
of records for retail sale to the public  
for private use



## AP2 Agreement

This agreement is made on \_\_\_\_\_

BETWEEN:-

1) MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED whose registered office is at 2nd Floor, Synergy House, 114-118 Southampton Row, London, WC1B 5AA ("the Society") contracting for itself and on behalf of its members and those Associated Societies (as defined below) it represents; and

2) \_\_\_\_\_ ("the Producer")

Of \_\_\_\_\_  
\_\_\_\_\_

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 "Accounting Period" means every three calendar month period commencing with the date of the first day of the month in which the invoice referred to in clause 4.8 is issued.

1.2 "AFL and "AFRL shall have the meanings referred to in clause 4.2.

1.3 "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.

1.4 "Catalogue Number" shall have the meaning referred to in clause 16.6.

1.5 "Commencement Date" shall be the date on which the Society and the Producer enter into this Agreement unless the Producer and the Society agree in writing on an alternative date.

1.6 "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.

1.7 "Disc" means a pre-recorded audio-only sound carrier and shall include all Formats whether now known or hereafter invented or exploited.

1.8 "EC" means each country which is at the relevant time a full member state of the European Community.

1.9 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 any other audio-only sound carrier hereafter manufactured and distributed.

1.10 "Musical Work" 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 10).

1.11 "Notification of No Claim" shall have the meaning referred to in clause 4.5.

1.12 "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.

1.13 "Pressing Plant" shall mean the pressing plant or other duplicating facility at which the relevant Discs are to be made.

1.14 "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.

1.15 "Recording Matrix" shall mean any master tape or other contrivance of whatsoever nature from which Discs may be pressed or duplicated or from which re-recording can be made.

1.16 "Return" shall mean a Disc the subject of a Licence to which clause 15.1 applies on which royalties have been paid to the Society in relation to that Licence for Discs of the same Format and Catalogue Number (being royalties which the Society is required to be holding in accordance with clause 15) and which has been physically returned to the relevant Warehouse and credited as a return in the relevant accounting documents including the accounting statement referred to in clause 15.3 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.

1.17 The Producer and a member of the Society shall be regarded as "Related Parties" where:-

(a) (if the Producer and the member are incorporated under the Companies Act 1985) one is the holding company or a subsidiary of the other, or one is the subsidiary of the holding company, of the other (all such terms to be construed in accordance with that Act as amended);

(b) (in any other case) where the Producer and the member are the same person or legal entity, or where one owns the business of the other.

1.18 "Related Party, Repertoire Work(s)" means those Musical Works in the repertoire of the Society at the time of manufacture of the relevant Discs:-

(a) the copyright(s) in which are controlled or administered by a member of the Society who is or which is a Related Party of the Producer; and

(b) in relation to which such member has properly excluded from the Society's powers of agency the collection of royalties from the Producer.

1.19 "United Kingdom" shall mean the United

Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.

1.20 "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 Society's and the Associated Societies' rights to grant licences both to make Discs and to distribute those Discs in the United Kingdom are set out in Annex A, and any licence referred to in this Agreement is subject to those limitations.

## **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 referred to in this Agreement and/or the terms and conditions of 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 Society will provide the Producer with evidence that the relevant member has become a member and has given the Society or the relevant Associated Society authority to bind the member as regards this Agreement.

## **4. PROCEDURE FOR OBTAINING A LICENCE TO MANUFACTURE AND DISTRIBUTE**

4.1 The Producer shall follow the procedure contained in this clause wherever it wishes to manufacture or authorise the manufacture of any Disc in the United Kingdom which reproduces one or more Musical Works with a view to its retail sale to the public for private use.

4.2 Specimens of the Society's forms Application for Licence ("AFL") and Application for Repress Licence ("AFRL") appear respectively at Annex C and Annex D. In respect of each order of Discs as referred to in clause 4.1, the Producer shall submit to the Society the appropriate form fully and accurately completed, save in relation to any information which it is not possible to obtain. The appropriate form is as follows:-

(a) an AFL is required for the first order of Discs with a particular Catalogue Number and content and configuration of tracks. An AFL is also necessary in the case of a subsequent order if no Licence under this Agreement has been issued by the Society in relation to any previous order of Discs with the same Catalogue Number and content and configuration of tracks;

(b) an AFRL is required for any subsequent order where a Licence under this Agreement has been issued by the Society in relation to a previous order of Discs with the same Catalogue Number and content and configuration of tracks.

4.3 Supplies of the AFL Forms may be obtained from the Society. Together with any Licence as referred to in clause 4.8, the Society will send to the Producer an AFRL for the Producer to use for subsequent orders of Discs with the same Catalogue Number and content and configuration of tracks.

4.4 Following receipt and processing of each properly completed AFL or AFRL, the Society will send out the relevant notice or invoice to the Producer in accordance with the following provisions, within 7 working days following receipt in the case of an AFL, and within 1 working day following receipt in the case of an AFRL.

4.5 Where the AFL submitted by the Producer refers only to Musical Works which are in the public domain and/or which are not Works which the Society believes to be in its repertoire at that time, then the Society will send to the Producer (as well as to the Pressing Plant specified in the AFL) a notice that the Society has at that time no claim in relation to such Musical Works. Such statement is called in this Agreement a Notification of No Claim. Notwithstanding the terms of clause 4.2, once a Notification of No Claim has been issued to the Producer, neither an AFL nor AFRL need be submitted to the Society by the Producer in relation to subsequent orders of Discs with the same content and configuration of tracks unless the Society otherwise notifies the Producer.

4.6 Where the AFL or AFRL submitted by the Producer refers to one or more Works in the repertoire of the Society, the Society may refuse to grant a Licence or issue an invoice for a Licence under this Agreement in the following circumstances:-

(a) where the AFL or AFRL contains materially incorrect or materially incomplete information;

(b) where the Society has reasonable cause to believe that the intended manufacture and/or distribution is outside the scope of or would be in material breach of the terms and conditions contained in this Agreement;

(c) where the Producer has failed to pay royalties or other fees owing and due to the Society or its members hereunder or is in breach of any other material term or condition contained in this

Scheme, whether in relation to previous copies of Discs with the same content and track configuration or other Discs;

(d) where there is a reservation of rights as referred to in clause 2.2, and the relevant party refuses to grant consent for the making of such Discs.

4.7 Where the Society refuses to grant a Licence, the Society will notify the Producer of this decision promptly specifying the reason for refusal. The Society may also notify the Pressing Plant, save where refusal is solely on the grounds referred to in clause 4.6(a).

4.8 Save where the Society has refused to grant a Licence or issue an invoice for a Licence under clause 4.7, the Society will raise and send to the Producer an invoice for the royalties due in relation to the quantity of Discs specified in the AFL or AFRL, specifying the Musical Work(s) or interest therein to which it relates and in relation to which the Society will subject to Clause 4.6 above grant a Licence upon payment thereof. No Licence will be granted until the invoice has been paid in full.

4.9 Each invoice for royalties or other sums and VAT thereon must be paid in full within 28 days of delivery of the invoice to the Producer. If any invoice is not paid in full within that period, the Society, reserves the right without further notice to cancel the invoice, and refuse to grant the Licence other than upon receipt of a further application duly submitted in accordance with this Clause 4. Payment may be made by banker's draft or cheque, upon the back of which the Producer must specify the identifying number of the Society's invoice in payment of which that cheque or banker's draft is submitted. The Society reserves the right to wait until it holds cleared funds before treating a payment as having been made. Where a Licence is issued before cleared funds have been received by the Society, the Society, reserves the right to cancel the invoice and revoke the Licence if any banker's draft or cheque for the royalties' payable for that Licence is dishonoured.

4.10 As soon as reasonably practicable and in any event no later than 2 working days after receipt as cleared funds of payment in full of the invoice the Society will send to the Producer and the Pressing Plant specified in the AFL or AFRL a Licence to Manufacture and Distribute the relevant quantity, of Discs. The Producer must not authorise the Pressing Plant to manufacture any Disc unless or until the Pressing Plant has received from the Society the relevant Licence or Notification of No Claim.

4.11 Where the relevant Discs contain either:-

(a) only Related Party Repertoire Works; or

(b) only Related Party Repertoire Works together with Musical Works which are public domain works or not in the Society's repertoire.

No invoice will be raised and the Licence referred to in clause 4.8 will be supplied to the Producer and Pressing Plant within the time set out in clause 4.4.

4.12 In any case where the Producer decides not to proceed with the manufacture in respect of which an AFL or AFRL has been submitted, the Producer must notify the Society in writing promptly. Where the Society, has already issued a Licence, the Society will then send a Notice of Cancellation of the Licence to both the Producer and the Pressing Plant and issue a credit note in respect of the relevant invoice.

4.13 Where the identity of either the Musical Works or Catalogue Number or the quantity ordered to be manufactured as specified in the AFL or AFRL is changed, then the Producer must submit a new AFL or AFRL as appropriate, and notify the Society that this replaces the previous AFL or AFRL. Where the Society has already issued a Licence, the Society will send a Notice of Cancellation and replacement Licence to both the Producer and the Pressing Plant. Where the identity of the Pressing Plant changes, the Producer shall promptly notify the Society, but the Licence shall continue to have effect subject to clause 19.2.

4.14 The Producer must notify the Society promptly of any other material change in the information notified in the AFL or AFRL, and in particular any, changes as to the Published Dealer Price, or any fixed or suggested retail price, or the title of the Disc, or the identity of its distributor and the effective date of such change. In such circumstances however, no Notice of Cancellation or replacement Licence will be raised.

4.15 After the Society has issued a Notification of No Claim or where a Licence has been granted in relation to Discs which contain Musical Works to which the Society made no claim, it is possible that one or more of the relevant Musical Works may become ones for which the Society has a claim. Where this happens, the Society notify the Producer. Unless the Producer already has a licence from, and has paid royalties to, the correct party entitled thereto in relation to the relevant quantity of such Discs, the Society may raise an invoice in accordance with the provisions of clause 4.8. Such invoice must be paid by the payment date of the original invoice or within 7 days, whichever is the later and the Society will send to the Producer a retrospective Licence. Where the Producer claims it already has a licence from and has paid royalties to the correct party entitled thereto, it must on the Society's request provide evidence that it has done so.

4.16 At the same time as the relevant Discs are transferred from the Pressing Plant to the Producer's distributor(s) the Producer shall deliver a copy of the relevant Licence to each such distributor.

4.17 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 is in its repertoire (other than pursuant to a claim by an entity which is a Related Party to the Producer) and such notification is incorrect in this respect, the Society shall indemnify the Producer against any liability for damages or costs 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.

4.18 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.

## **5. OVERPRESSINGS AND UNDERPRESSINGS**

5.1 The Society recognises that, as a result of the process by which Discs are made, the number of Discs specified on the AFL or AFRL and for which orders are placed with Pressing Plants may not equate exactly with the number of Discs which are actually made and supplied to the Producer. Where this occurs, the provisions set out in this clause shall apply.

5.2 Where the quantity of Discs manufactured materially exceeds the quantity specified in the relevant AFL or AFRL, the Society reserves the right to issue supplemental invoices in respect of the excess quantity manufactured. Where the quantity manufactured is materially less than the quantity specified in the AFL or AFRL, the Society, shall at the request of the Producer made within 30 days of the relevant manufacture:-

(a) where it is still holding in accordance with clause 16 sufficient sums in relation to those Discs, refund the royalties already paid in relation to the excess;

(b) where it is not holding such sums, send the Producer a credit note in relation to further pressings of the same Disc with the same content and configuration of tracks.

## **6. DEFINITION OF THE LICENCE**

6.1 The Licence to Manufacture and Distribute Discs referred to in clause 4 is a non- exclusive licence, subject to the terms and conditions of this Agreement, to do the following acts in the United Kingdom in relation to the Musical Works or interests therein specified in the Licence-

(a) make audio-only master recordings of such Works for the purpose referred to in subclause (b) below;

(b) make the quantity of Discs specified in the Licence with a view to their retail sale to the public for private use;

(c) put such Discs as have been made under (b) above into circulation with a view to such sale.

6.2 In relation to each Disc separately, any licence referred to in clause 6.1 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 Society to terminate this Agreement under clause 21.1:-

(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.

## **7. SCOPE OF LICENCE**

7.1 The licence referred to in clause 6 does not apply to Premium Records.

7.2 The licence referred to in clause 6 applies to all Formats.

7.3 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 licence referred to in clause 6 is not a licence for the joint owner(s) whom the Society does not represent.

7.4 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 6, 8.4 or 14 (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 6.

## **8. RENTAL**

8.1 It is hereby confirmed that, subject to clause 8.4, the licence referred to in clause 6 does 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.

8.2 The Producer shall only carry out or authorise any such act after it has reached agreement with the Society 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.

8.3 Where either the Producer or the Society becomes aware of a third party's intention to rent or lend Discs made by or for the Producer without the Producer's consent, they will give notice of this to the other party.

8.4 The licence referred to in clause 6 does not extend to the supply of Discs direct to a library authority (as defined by the Public Libraries and Museums Act 1964) for the purposes of such library authority, 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.

## **9. FIRST RECORDINGS**

9.1 Where in relation to any particular Musical Work no Disc embodying that Work has previously been manufactured in or imported into the EC with the consent of the party, entitled to grant consent for such reproduction or importation, the licence referred to in clause 6 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.

9.2 Such consent shall be deemed to be applied for from the Society when following the procedure set out in clause 4. Alternatively, such consent may be applied for either from the Society or direct from the relevant member(s) by using the consent form appearing at Annex B. Copies of such forms may be obtained from the Society. Where the Producer obtains consent direct from the member(s), the Producer shall when submitting the AFL to the Society as referred to in clause 4 send with it a copy of the completed and signed consent form.

9.3 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 9.1, the Producer may enquire of the Society also by using the standard form set out in Annex B. Such enquiry shall be sent to the Society, by registered post and the Society shall respond to such enquiry within 7 working days of the receipt thereof. In the event that the Society fails to respond within such time and subsequently the Producer has to make extensive and expensive enquiries which the Producer should not have needed to make had the Society responded, then the Society, shall reimburse the Producer its costs in relation to such enquiries.

## **10. ARRANGEMENTS AND MORAL RIGHTS**

10.1 For the purpose referred to in clause (5 and subject to clause 10.5, the Producer may make such modifications to the relevant Musical Works) as the Producer considers necessary in order to satisfy the requirement of the relevant recording.

10.2 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 IV of the Copyright Designs and Patents Act 1988, unless the relevant member of the Society or Associated Society has consented in Writing thereto.

10.3 The licences referred to in clause 6 may only be exercised in relation to any modification which is authorised under clause 10.1, or to which the relevant member of the Society has consented in writing under clause 10.2.

10.4 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 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.

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

### **11. ROYALTIES PAYABLE**

11.1 Save as otherwise provided herein, the royalties payable in relation to each order of Discs shall be 8.5% of the Published Dealer Price which will be applicable to the relevant Discs on the date of first distribution thereof, applied to the number of Discs the subject of that order.

11.2 Where the Producer has not published a Published Dealer Price in relation to the relevant Discs, but the Producer has published a fixed or suggested retail price in relation thereto the royalties payable shall be calculated at a rate of 6.5% of the fixed or suggested retail price will be applicable to the relevant Discs on the date of first distribution thereof, applied to the number of Discs the subject of that order.

11.3 In the event that the Producer is unable to show at the time the royalties are due that there will be in force a Published Dealer Price or fixed or suggested retail price (as the case may be) applicable to such Discs, the royalties shall be fixed by the Society on the basis of the price most generally, used by other record producers in the United Kingdom for a comparable type of Disc.

### **12. TAXES**

12.1 Before calculating the royalties payable on any Disc, Value Added Tax 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. PRO-RATING PROVISIONS**

13.1 This clause applies 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.

13.2 In such circumstances: -

(a) where the AFL or AFRL specifies the duration of the Musical Works, the Society'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 Society'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.

### **14. PROMOTIONAL COPIES**

14.1 Discs which are manufactured and bona fide supplied free of charge only for the purposes of the genuine promotion of sales of other copies of the Discs in question shall be exempt from the royalties otherwise payable under this Agreement on condition that the criteria set out in clauses 14.2 to 14.6 are fulfilled.

14.2 A Disc shall only be regarded as having been supplied for such purposes as are referred to in clause 14.1 where it is supplied to a broadcaster or disc jockey or critic or other party for the purposes of that party broadcasting it or playing it in public or reviewing it, or some other bona fide promotional situation. For the avoidance of doubt a Disc shall not therefore be regarded as having been supplied for such purposes where it is:

(a) distributed commercially; or

(b) not supplied free of charge;

(c) supplied free of charge but in consideration of or as a result of the party to whom it is supplied taking same Disc or giving other valuable consideration.

14.3 Each such Disc 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".

14.4 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 Discs supplied under the above provision.

14.5 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 numbers of Discs 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 numbers of Discs being supplied under the above provisions broadly correspond with claims for royalty-free supply under Statements of Shipments.

14.6 The Producer shall specify in the AFL or AFRL (as the case may be) the number of Discs to which the provisions of clause 14.1 will apply. At the end of each calendar month, the Producer shall prepare a statement setting out by Licence number, title and Catalogue Number the Discs supplied by the Producer during that month which qualify under the above provisions. The statement shall be delivered to the Society within 21 days of the end of each calendar month.

14.7 Where a Licence which includes Discs for which it is claimed the provisions of this clause 14 apply and the Discs manufactured under that Licence do not satisfy the provisions of clauses 14.1 to 14.6, then the Society may issue an invoice in respect of that Licence which shall be paid in accordance with clause 4.9, save that payment shall be made within 7 days of the date of the invoice.

## **15. ROYALTIES OPTION**

15.1 The provisions of this clause will only apply where in relation to a particular order for Discs for which an AFL or AFRL is submitted:-

(a) the royalties generated under this Agreement in relation to that order will be either more than £50 for each Musical Work in the repertoire of the Society reproduced thereon or more than £500 for the order such amounts to be increased on 1st January 1993 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 preceding year; and

(b) the Producer elects to take such option at the time of submitting the AFL or AFRL; and

(c) the Producer has demonstrated to the reasonable satisfaction of the Society that it is capable of accounting accurately and promptly in accordance with the provisions contained in this clause.

15.2 In such circumstances, the Society will not release the royalties paid in relation thereto to its members except as specified in this clause.

15.3 For every Accounting Period in respect of each Licence from the date of the relevant invoice to the completion of all procedures set out in clause 15.7 for that Licence the Producer shall prepare an accounting statement showing the total number of the relevant Discs which are the subject of that Licence which have been supplied by or for the ' Producer or the Producer's distributor, and the total number of Returns in that period by Format. The detailed information and format required in relation to such statement shall be in accordance with the Society's specification in relation thereto and notified by the Society to 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 release the royalties to its members expeditiously.

15.4 Such statement shall be delivered to the Society in the form of industry standard computer readable magnetic media within 21 days of the end of the Accounting Period referred to.

15.5 Upon receipt of the accounting statement referred to in clause 15.3, the Society may, pay, through to its relevant member(s) the royalties paid in relation to the number of Discs supplied less the number of Discs by Format and Catalogue Number which are Returns.

15.6 The Society may also pay, through to its member(s) the total royalties or remaining royalties held by it in relation to the relevant order of Discs in the following circumstances:-

(a) where the Producer submits an AFRL or further AFRL in relation to the same Discs in the same format with the same content and configuration of tracks; or

(b) where the Producer fails to deliver an accounting statement in accordance with clause 15.4 within the time stipulated; or

(c) where the Producer delivers a statement which is accounting materially inaccurate as regards the number of Discs supplied or the number of Returns; or

(d) where the Producer agrees in writing.

15.7 Within 30 days after the expiry of four Accounting Periods as referred to in clause 15.3, the Producer shall by notice in writing to the Society elect to do one or more of the following in relation to the remaining stock of the relevant Discs (and, where it elects to do more than one, shall identify the number of Discs in respect of which each option is to apply).

(a) deliver up such Discs for destruction by the Society. Where the Producer elects to take this option, the Society shall within 14 days give written notice to the Producer of the address to which such



Discs should be delivered up. Within 14 days of receipt of such notice, the Producer shall deliver the Discs to such address, having made prior arrangements as to the precise delivery date, and, within 14 days thereafter, the Society shall refund the royalties payable in relation to those Discs which have been delivered up and the Society shall authorise or arrange the destruction of the Discs. If there is then any balance of royalties left, the Society may pay, this through to its members

(b) delete them. In such circumstances, the Society will not later than 14 days after delivery of invoices referred to in sub-clause (ii) below refund the difference between the royalties field in relation to those Discs and 10% of the gross price charged to the thereof, exclusive only of VAT provided that:

(i) such Discs have been sold to one or more independent buyer, on an arm's length basis; and

(ii) copies of the invoices to the buyer(s) thereof are delivered to the Society within 3 months of the one year period;

and the Society, may then pay the balance of royalties through to its members.

(c) continue to sell them. The Society may pay through the remaining royalties to its members.

15.8 If the Producer fails to give a notice of election under clause 15.7 (a) or (b), it shall be deemed to have elected to take the option under clause 15.7 (c).

15.9 Where the Producer notice of election under clause 15.7 (a) or (b), and there are any sums arising under this Agreement which should have been paid but have not been paid, the Society may use any sums due to be refunded to the Producer to pay such invoices.

15.10 No interest shall be payable to the Producer on any sums referred to in this clause, and no refund of monies shall be made except as specifically set out in this clause.

## **16. NOTICES AND CREDITS**

16.1 Each Disc reproducing a Musical Work in the repertoire of the Society shall bear the initials "MCPS".

16.2 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."

16.3 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.

16.4 Where it is technically impossible for the Producer to comply, -with clause 16.3 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

16.5 The Producer shall use its reasonable endeavours to include on the label (or as set out in clause 16.4) the name of the United Kingdom publisher of each Musical Work in the repertoire of the Society

16.6 The Producer shall procure that each Disc is given a unique Catalogue Number applicable 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.

## **17. SUPPLY OF INFORMATION**

17.1 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:-

(a) two copies of all 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

17.2 At the request of the Society, 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.

17.3 The Producer must notify the Society forthwith of any Disc which it deletes from its catalogue.

17.4 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 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.

#### **18. CO-EXPLOITANTS**

a.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 Society and its representatives in the application of this Agreement including, without limitation, providing the Society with every facility for checking pressings undertaken for the Producer.

18.2 In exercising the licence to make Discs in accordance with clause 6, the Producer may only use a Co-Exploitant so to make such Discs if:-

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

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

#### **19. AUDITS**

19.1 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 Discs the subject of this Agreement and shall promptly notify any changes to any such locations.

19.2 The Producer shall permit the Society by its duly authorised representative's at all reasonable times to have access to the Warehouses for the purpose of inspecting and checking the stocks of such Discs.

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

19.4 The Producer shall keep proper accounting records dealing with 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 and supply, of Discs;

(b) the export of Recording Matrices;

(c) the import of Recording Matrices;

(d) the PPD and/or fixed or suggested retail price of Discs;

(e) any supply of Discs under clause 14, together with the information maintained under clauses 14.5 and 14.6;

(f) 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.

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

19.6 Such accounting records together with all supporting documentation relating thereto shall be open for inspection (both during and for 9 months after termination of this Agreement) by representatives of the Society, upon reasonable notice and no more than once a calendar year, unless payment of any invoice is over 28 days in arrears. For these purposes, the Producer shall allow access to the premises of the Producer. 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.

19.7 The reasonable costs of 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) discloses underpayment of royalties in excess of a sum equal to the greater of £1000 or 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.

19.8 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 19.6.

19.9 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 or judgment to the Society and shall carry interest calculated in accordance with clause 21.4.

19.10 The agents of the Society, with access to the premises of the Producer under clause 19.6 shall

subject to clause 19.11 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 or trade.

19.11 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 £5 million (such figure to be increased on 1st January 1993 and each subsequent 1st January by the percentage increase in the latest Retail Index by comparison with the figure in the corresponding month of the previous year), the agents of the Society with access to the premises of the Producer under 19.6 may be:-

(a) qualified Chartered or Certified Accountants who are employees of the Society; and/or

(b) the Manager of the Society's Audit Department (or some other person employed by the Society of equivalent rank); and/or

(c) persons employed by the Society under the supervision of any person referred to in (a) or (b).

Where all audit is carried out in accordance with this sub-clause, clause 19.7 shall apply as if the words "the greater of £1000 or" were deleted. Further, if the Producer is required to pay the said reasonable audit costs in such circumstances and there is a bona fide dispute as to the fees claimed by the Society, are reasonable, then provided that the Producer pays to the Society, a sum representing its bona fide determination of the said reasonable fees, the Society, shall not, pending settlement or determination by a court of competent jurisdiction of the reasonableness of the fees, exercise, by virtue of the Producer's failure to pay such fees, any right to refuse to grant licences or to terminate this agreement.

19.12 The obligation as to confidentiality, referred to in clause 22.2 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.

## **20. CIRCULATION OF RECORDING MATRICES**

20.1 The Producer shall not export a Recording Matrix reproducing it Musical Work in the repertoire of the Society from the United Kingdom 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 all agreement with all Associated Society under which that party will pay mechanical royalties in relation to Discs which are copies thereof; or

(c) 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 Musical Works in its repertoire.

20.2 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 Society in writing of the following information:-

(a) the name and address of the consignee;

(b) sufficient details to enable the Society

to identify the recordings included on the Recording Matrix.

## **21. SANCTIONS AND CANCELLATION OF THE CONTRACT**

21.1 The Society shall have the rights set out in clause 21.3 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 Society 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 Society relies, by notice to the Producer.

21.2 No notice served under clause 21.1 in respect of any failure to comply with clause 16 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 16 applied, unless there has been a previous failure in relation to the same information and the same Disc by Catalogue Number.

21.3 In such circumstances, the Society shall have the right to terminate this Agreement forthwith, without prejudice to any rights which have already accrued to the Society, or its members under this Agreement or to the Producer.

21.4 Without prejudice to any other right or remedy, of the Society, or its relevant member(s), where the Producer fails to pay any sum arising under this Agreement by, the date on which it should have been paid, the Society shall be entitled to require daily interest to be paid from the date on which payment should have been made to the date when payment is made, calculated at a rate of 3% above the base rate of National Westminster Bank plc for that day, or, in the absence of such base rate, such equivalent rate as the Society shall determine within its reasonable discretion.

21.5 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 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 Society is entitled to terminate this Agreement immediately. In such an event, any invoices which have not yet become payable shall become payable forthwith.

21.6 The Producer shall have the right to terminate this Agreement on giving at least 3 calendar months' notice in writing not to expire except on the last day of a calendar month.

21.7 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.

21.8 Upon the Society properly giving notice of termination in accordance with clauses 21.3, 21.4 or 21.7, 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.

21.9 After termination of this Agreement (other than by the Society under clause 21.3 or 21.7) the Producer may place at the disposal of a third party which has signed an agreement with 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.

## **22. FINAL CLAUSES**

22.1 This Agreement shall come into effect on the Commencement Date.

22.2 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 or Society.

22.3 For the purpose only of calculating interest under this Agreement where any payment or statement is sent by first class 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.

22.4 This Agreement shall be subject to the laws of the United Kingdom and both parties agree to submit to the jurisdiction of the High Court of England and Wales.