



DVD1 Agreement

For the manufacture and distribution
of music DVD videos for rental sale to
the public for private use

DVD1 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 (both as defined below) it represents; and

(2) _____ ("the Producer")

Of _____

IT IS HEREBY AGREED as follows:-

1. GRANT OF LICENCE

1.1 Subject to the terms and conditions of this Agreement (and, in particular, the restrictions set out in clause 2) the Society hereby grants to the Producer the following non-exclusive licences to do the following acts in the United Kingdom:

(a) make audio-visual master recordings embodying one or more Repertoire Works for the purpose referred to in clause (b) below;

(b) make audio-visual 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 clause (b) hereof into circulation with a view to such sale.

1.2 Subject always and without prejudice to the restrictions and exclusions set out in this Agreement, the Licence shall apply to Discs comprising a Music Product in a Relevant Format.

1.3 If a Producer disagrees with the Society as to whether a product falls within the definition of Music Product for licensing purposes the Producer may refer the issue to the Industry Panel for adjudication.

1.4 In relation to each Disc separately, the Licence 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 27.1:

(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.

2. RESTRICTIONS ON LICENCE

2.1 The Licence shall not apply in relation to a Disc, or in relation to a playable side of a Disc, in the following circumstances:

2.1.1 Where that Disc contains more than two hundred minutes of music.

2.1.2 Where all the Repertoire Works on the Disc or on a playable side of the Disc are synchronised into a film originally produced for theatrical release for which a valid licence for each and every Repertoire Work has been granted to the Producer for reproduction and distribution in the United Kingdom (in a Relevant Format).

2.1.3 Where all the Repertoire Works on the Disc or on a playable side of the Disc are synchronised into an audio-visual production originally produced for television transmission for which a valid licence for all Repertoire Works included in it has been granted to the Producer under a bona fide licensing scheme permitting the reproduction and distribution of the Disc in the United Kingdom (in a Relevant Format). This Clause does not apply to audio-visual products which comprise wholly or substantially of promotional pop videos where these form a Music Feature within such product.

2.1.4 Where a valid licence authorising the reproduction of all Repertoire Works on the Disc in a Relevant Format and their distribution in the

United Kingdom has already been granted to a Producer by an entity which is not a Member (as distinct from an Associated Society Member). This sub-clause is subject to the Producer having provided sufficient evidence of the relevant licence or grant of rights to the Society not less than seven days before the release of the Disc(s). For the purposes of this sub-clause "sufficient evidence" shall comprise 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 19.11 of this Agreement) of all Repertoire Works included on the Disc must be provided.

2.1.5 Where the Disc or a playable side thereof includes a Game or Games as its main feature. Where a Game is included on a Disc but not as a main feature, Repertoire Works within the Game shall not be licensed under the Agreement but Repertoire Works included on such Disc other than within the Game shall be licensable under the terms of the Agreement. For the purposes of this sub-clause, "main feature" shall mean the principle item (or collection of items) presented on the Disc on the basis of which the Disc is primarily promoted, marketed and/or advertised.

2.1.6 Where a Disc(s) includes any Excluded Web Links. An Excluded Web Link is a link to any site:

(a) that contains content involving third party branding or other associations to which the composers, writers or publishers of any Repertoire Works may reasonably object on the grounds that the branding or associations imply an endorsement of any third party product or service, a political party or cause, or sites of a violent, sexually obscene, religious or racist nature by the composer, writer or publisher of a Repertoire Work included on the Disc;

(b) where the Producer has been paid whether in cash or in kind in return for creating the link; or

(c) where the site provides access to Repertoire Works which are not licensed, save where the Producer has used its reasonable endeavours to ensure that a valid licence has been obtained for such Repertoire Works. Web links to official websites of Producers, artists, composers or publishers connected with a Repertoire Work are not Excluded Web Links for these purposes.

Where a web link does not fall within the definition of Excluded Web Links, the contents of the Disc shall, to the extent permitted under this Agreement, be licensed under this Agreement but the Licence shall not apply in any event to anything that is available online within the link or linked content.

2.1.7 Where any Disc is sponsored or includes any form of sponsorship, whether within the content contained on the Disc or the packaging relating to such Disc. The Licence shall not apply to any content

on the Disc which consists of any advertisement of whatsoever nature or to any Repertoire Work which is used in such a manner that a reasonable person might associate that Repertoire Work with an advertisement.

2.1.8 Where any Repertoire Work forms part of any Dramatico-Musical Work, in relation 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 distributed under this Agreement contains only excerpt(s) within the definition of Permitted Excerpts; and

(ii) 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 2.1.8, 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, the Licence 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.

2.2 Except where the Producer has obtained the express written permission of the relevant Member (and satisfactory evidence of such has been provided to the Society), the Licence shall not extend to or permit any adaptation of any Repertoire Work to be copied or distributed under this Agreement. By way of example only, this applies to:

(a) making any arrangement of the music; or

(b) making any alteration to the lyrics; or

(c) 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 distribution or reproduction in the form of a sample of such part of a Repertoire Work; or

(d) using with music lyrics other than those written to be used with the music or authorised for use with the music; or

(e) using with lyrics music other than that written to be used with the lyrics or authorised for use with the lyrics.

2.3 The Licence shall not extend to:

(a) any Disc where a Repertoire Work or part thereof is reproduced 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; or

(b) any Disc where any Repertoire Work is used 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.

2.4 The Licence 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.

2.5 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings, films, dramatic works, performers' rights, moral rights or rights in performances. Nothing in this Agreement shall entitle the Producer to exercise the licences or authorisations contained in this Agreement in relation to a particular Repertoire Work reproduced on a Disc 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.

2.6 It is the responsibility 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.

2.7 For the avoidance of doubt, the Licence does not extend to the graphic representation of music or lyrics of Musical Works in any format whatsoever.

2.8 Without prejudice to the generality of clause 2.7, the Licence shall not apply to any Disc 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) unless the Member(s) (or other persons) controlling such graphic rights have given their written consent and any applicable licence fees have been duly paid.

2.9 Without prejudice to the generality of clause 2.1.8, the Licence shall not apply to any Disc

reproducing a live performance of classical music (as that term is commonly understood within the music industry) unless the Member(s) controlling the Repertoire Works included within such live performance have given their written consent and any applicable synchronisation fees (as referred to in clause 7.9) have been duly paid.

2.10 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the United Kingdom or any other territory.

2.11 For the purposes of clauses 2.1.1, 30.22 or otherwise and the calculation of royalties under clauses 7 and 10, where:

(a) a Disc includes exactly the same Musical Works presented in more than one 'audio layer' in different audio formats (by way of example, one audio layer of the Musical Work being stereo and another audio layer being 'Dolby 5.1 Surround Sound'); and

(b) those audio layers are synchronised with the same visual content such that the viewer merely has an option of choosing which audio layer to listen to in combination with the visual content;

then, those audio layers shall be deemed to be a single non-repeated soundtrack.

2.12 Where a Disc contains exactly the same sound recordings presented in DVD format and also as compressed second session files contained on the Disc, those second session files shall be deemed to be a single non-repeated sound track for the purposes of clause 2.1.1 or otherwise.

2.13 Nothing in this clause 2 shall remove the obligation for the Producer to obtain relevant licences for Repertoire Works contained in products outside this Agreement.

3. SCOPE OF LICENCE

3.1 The Licence applies 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 Discs, Discs sold through record clubs or DVD clubs or other Discs sold by any direct marketing method to the public without the intermediary of a dealer.

3.2 This Agreement applies to 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.

3.3 The Licence applies to all Relevant Formats.

3.4 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.

3.5 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 1, 5 or 14 (by way of example only, Discs made and/or supplied for the purposes of broadcasting or cinematic exhibition) are not covered by the Licence.

3.6 The terms of this Agreement shall apply to Shipments up to 31 December 2005, subject to earlier termination of the Agreement under clause 27.

4. LABELS TO WHICH LICENCE APPLIES

4.1 The Licence applies to all Discs bearing the trademarks or trade names, or issued on the labels referred to in the Producer's application to the Society for this Agreement.

4.2 The Licence shall be extended to Discs bearing any new trademark 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 trademark, 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 trademark, trade name or label, the Society shall notify the Producer.

4.3 The Licence may also upon prior written notice to the Society be extended to Discs bearing any existing trademark 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:

(a) the Producer has acquired the right not only to exploit the trademark, trade name or label, but also to make and distribute recordings previously available under that trademark, trade name or label; and

(b) any royalties payable to the Society or any of its Members or to any Associated Society in relation to Discs previously issued bearing such trademark or trade name or on such label remain unpaid.

4.4 The Producer is responsible for ensuring that it has the right to issue Discs bearing trademarks, trade name or on labels 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 putting into circulation of Discs bearing any such trademark, trade name or label.

4.5 Where both the Producer and another DVD producer are exploiting Discs bearing the same

trademark or trade name or using the same label, this Agreement shall only apply to the Discs bearing that trademark, trade name or on that label which have been made or put into circulation by or for the Producer.

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

5. RENTAL

The Licence applies to the manufacture of Discs which are subsequently distributed by way of lending or rental (as those terms are defined in section 18A of the Act). However, the Licence shall not authorise the actual rental or lending of any Disc.

6. FIRST RECORDINGS

6.1 Where in relation to any particular Repertoire Work no audio-only or audio-visual sound carrier embodying that Repertoire 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 Licence shall not apply in relation to that Repertoire Work until all the relevant Members of the Society owning or controlling the rights in that Repertoire Work have consented to the grant of the Licence in accordance with this Agreement.

6.2 Such consent shall be deemed to be applied for from the Society when following the procedure set out in clause 19. 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 19.11, send with it a copy of the completed and signed consent.

6.3 In the event that the Producer bona fide wishes to know whether or not a particular Repertoire Work is subject to the restriction referred to in clause 6.1, the Producer may enquire of the Society. Such enquiry shall be sent to the Society by recorded delivery 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.

7. ROYALTIES PAYABLE

7.1 Save as otherwise provided herein, the Producer shall pay to the Society in relation to each Disc which is licensed under this Agreement, the royalties set out in this clause. Subject to sub-

clauses 7.6 and 7.7 the appropriate royalty shall be applied to the Published Dealer Price applicable to the relevant Disc on the day of the Shipment of the Disc from the Warehouse.

7.2 In this clause and for the purposes of this Agreement generally, the following terms shall have the following meanings:

7.2.1 "Category A Music Product" means a single bar-coded Music Product which includes a maximum of two audio-visual music tracks or single bar-coded Music Product comprising more than one Disc where each Disc has been individually released and each individual release includes a maximum of two audio-visual music tracks and where the two or more Discs together include no substantial content which is not included on the individual releases.

7.2.2 "Category B Music Product" means a single bar-coded Music Product which comprises more than two audio-only tracks with more than two audio-visual tracks including music.

7.2.3 "Category C Music Product" means a single bar-coded Music Product which is predominantly audio-visual in nature and which includes a maximum of two audio-only music tracks but does not come within the definition of Category A Music Product as a consequence of the dominant duration of the content comprising audio-visual material.

7.3 The royalty rate for Category A Music Product shall be 8.5%.

7.4 The royalty rate for Category B Music Product shall be 7.25%.

7.5 The rate for Category C Music Product shall be 6.25%.

7.6 Where the Producer has not published a Published Dealer Price in relation to the relevant Disc, but the Producer has published a Retail Price in relation thereto, the royalty shall be calculated at the following rates as a percentage of the Retail Price applicable to the relevant Disc on the day of Shipment of the Disc from the Warehouse:

(a) 6.5% of the Retail Price of Discs being Category A Music Product;

(b) 5.54% of the Retail Price of Discs being Category B Music Product;

(c) 4.78% of the Retail Price of Discs being Category C Music Product.

7.7 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 Disc, the royalty shall be fixed by the Society on the basis of the price most generally used by other producers in the United Kingdom for a comparable type of Disc.

7.8 Where a Music Product is included in a single bar-coded product but also contains a Disc or a

playable side of a Disc which wholly comprises content excluded under clause 2, the percentage of the Published Dealer Price applicable to such Disc or playable side of a Disc shall be excluded for the purposes of calculating the royalties payable if the terms of the Agreement are applied to the remainder of such Music Product.

7.9 The royalty referred to in clauses 7.3, 7.4, 7.5 and 7.6 is inclusive of the synchronisation fee in relation to the Repertoire Works appearing on the Disc except in the case of Discs reproducing live performances of classical music (as that term is generally understood in the music industry). In relation to such Discs, the Licence shall not apply unless or until the relevant Member(s) have approved the Disc and all synchronisation fees required by such Member(s) have been duly paid.

7.10 This clause applies to sales to record clubs or DVD clubs. No royalty shall accrue in relation to a Disc which is supplied by the Producer to a record club or DVD club if the royalty will be paid by the record club or DVD club pursuant to an agreement between the Society or any Associated Society and that record club or DVD club provided that where the record club or DVD 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.

7.11 Where Discs are supplied by the Producer direct to HM Forces such sales shall be deemed to have been made in the United Kingdom.

7.12 The royalty referred to in this clause 7 accrues on the day of Shipment of the Disc from the Warehouse.

7.13 Each Repertoire Work reproduced on a Disc shall be taken into account in calculating the royalty payable to the Society hereunder, so long as that Repertoire Work is the subject of copyright protection in the territory to which the Disc is Shipped.

8. TAXES

8.1 Before calculating the royalties payable on any Disc, Value Added Tax (or, where clause 9.2 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 under this Agreement.

9. EXPORTS

9.1 The Producer may elect to export Discs to a licensee, affiliate or importer in a territory outside the United Kingdom without paying royalties thereon under this Agreement provided that:

(a) 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 Discs are being exported under which such party is liable to pay mechanical royalties on such Discs; and

(b) the Society 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 20, the Producer delivers a separate statement identifying the gross number of Discs by Catalogue Number and Relevant 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.

9.2 Where the Producer has not elected to export any Discs royalty-free under clause 9.1, the Producer shall pay royalties on Discs exported to a territory outside the United Kingdom 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 7 shall be applied to the PPD or 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.

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(a) and (b) above, then that system shall apply to exports under this Agreement instead of clauses 9.2(a) and (b).

9.3 Save where the Producer makes the election under clause 9.1 in relation to all copies of the relevant Disc per territory per Catalogue Number in the particular Quarter, exports not exceeding 100 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.

9.4 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.

10. PRO-RATING PROVISIONS

10.1 This clause applies where a Disc reproduces Repertoire Works together with Musical Works which are not Repertoire Works.

10.2 In such circumstances, the Society's share of the royalty shall be in the proportion which the total duration of each of the Repertoire Works bears to the total duration of all the Musical Works on the Disc in question.

11. RETURNS

11.1 When calculating the royalties due at the end of a Quarter in relation to a particular Disc by Relevant Format and Catalogue Number, the number of Returns from a given country during that Quarter of the same Disc by Relevant Format and Catalogue Number may be deducted from the gross Shipments thereof to that same country.

11.2 For the avoidance of doubt, any Returns from exports which are deemed to be United Kingdom sales under clause 9.3 shall only be deducted from United Kingdom Shipments.

11.3 The Producer may carry forward any negative number of Shipments to any particular country and in relation to a particular Relevant Format and Catalogue Number in one Quarter against any Shipments to the same country of the same Relevant Format and Catalogue Number in any subsequent Quarter.

11.4 The Producer shall not be entitled to any form of refund for royalties already paid except as specifically set out in this Agreement.

12. RETENTIONS AGAINST RETURNS

12.1 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 Relevant Format and country of Shipment thereof:

(a) in relation to the Quarter in which copies of the New Release or Re-Release (as the case may be) were first put into circulation 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;

(b) 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;

(c) 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;

(d) 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.

12.2 The following retention provisions apply in relation to Discs which are Television Promoted Discs, whether or not they are New Releases or Re-Releases, but in substitution for those set out in clause 12.1 if they are New Releases or Re-

Releases, and shall be applied separately in relation to each Relevant Format thereof:

(a) in relation to the Quarter either in which copies of the Television Promoted Disc 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 Disc (whichever is the later), the royalties payable on 25% of the Net Shipments during that Quarter may be retained against any possible Returns;

(b) 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;

(c) 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;

(d) 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;

(e) 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.

12.3 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.

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

13. DELETIONS

13.1 Where at least 6 months after the date of first release, the Producer deletes a Disc reproducing non-classical music from its catalogue, and thereafter sells or authorises the sale of its remaining stock of such Discs 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.

13.2 The provisions of clause 13.1 above shall apply to Discs reproducing classical music (as that term is generally understood in the music industry), but substituting 2 years for 6 months.

13.3 The royalties payable in relation to such Discs 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.

13.4 The total number of Shipments of a particular Relevant 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.

13.5 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.

13.6 The Producer shall not manufacture Discs solely for the purpose of benefiting from these provisions.

14. PROMOTIONAL COPIES

14.1 Discs which are 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; or

(c) supplied free of charge but in consideration of or as a result of the party to whom it is supplied taking other Discs or other copies of the 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 Statement of Shipments shall identify the number of Discs by Catalogue Number and Relevant Format which the Producer has supplied under the above provisions.

14.5 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 Discs supplied under the above provision.

14.6 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 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 corresponds with claims for royalty-free supply under Statements of Shipments.

Each Disc reproducing a Repertoire Work shall bear the initials "MCPS".

15. NOTICES AND CREDITS

15.1 A notice to the following effect shall appear on the label of the Disc:

15.2 "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."

15.3 On the sleeve, cardboard/paper insert or other packaging 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; and
- (d) the name of the arranger of the words and/or music where applicable.

15.4 The Producer shall use its reasonable endeavours to include on the sleeve or insert the name of the United Kingdom publisher of each Repertoire Work that has been reproduced on the applicable Disc.

16. SUPPLY OF INFORMATION

16.1 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 catalogues, supplements to catalogues and lists or notifications of New Releases and Re-Releases; and
- (b) two copies of each list of Published Dealer Prices or Retail Prices and each amendment or addition thereto.

16.2 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; and
- (b) one copy of the sleeve, insert or other packaging relating to any Disc.

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

16.4 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.

17. PRODUCER ACTING FOR THIRD PARTIES

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

17.2 On compliance with clause 17.1, the Society confirms that it will not seek to recover royalties from or pursue any other remedy against the Producer in relation to such Discs, subject to the provisions of clause 17.4.

17.3 The Producer hereby agrees that it will not undertake or arrange pressing of Discs reproducing one or more Repertoire Works for any third party which either:

- (a) 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
- (b) 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.

17.4 The Producer agrees that it will bear joint responsibility with the third party for any pressing carried out in contravention of clause 17.3.

17.5 In all cases, the Producer shall use its best endeavours to ensure that the Society has every facility for checking pressing undertaken or arranged for third parties. Where the relevant Discs reproduce one or more Repertoire Works, the Producer shall send to the Society 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.

18. CO-EXPLOITANTS

18.1 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.

18.2 In exercising the Licence to make Discs, 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 request to the Producer by the Society, with any changes thereto promptly being notified to the Producer); or

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

19. NOTIFICATIONS OF INTENDED RELEASE

19.1 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 Society 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 19.5 in relation to such Discs as soon as practicable after the Producer has supplied the Society with such information.

19.2 In relation to each Disc by Catalogue Number and Relevant Format thereof, the Producer shall deliver to the Society 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 Repertoire Work.

19.3 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 Society at least 7 working days prior to first release of copies of the Disc.

19.4 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 19.11. The Producer must also notify the Society if it subsequently decides not to release the relevant Disc.

19.5 Upon receipt of such Notification of Intended Release, the Society 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 Society is making a claim on behalf of one or more Members, the identity of that Member or those Members;

(b) the share which that Member or those Members claim in the relevant Musical Work;

(c) the royalty percentage per track;

(d) any status referred to in clause 19.9;

(e) the Society's code number for the relevant Disc;

(f) the Society's code number for each relevant Repertoire Work; and

(g) 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 2.4 or 6, and the identity of the Member refusing that consent.

19.6 Subject to clauses 19.7 and 19.8 below, the Licence shall apply in respect of every Repertoire Work reproduced on the Disc, and the Licence shall take effect even if the Society notifies the Producer that the Musical Work has one of the statuses described in clause 19.9 below.

19.7 In relation to the rights reserved as referred to in clause 2.4, the Licence 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 the Licence in accordance with this Agreement.

19.8 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 Licence is not a licence for the joint owner(s) whom the Society does not represent.

19.9 The statuses referred to in clause 19.5 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.

19.10 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 Disc on which the Musical Work was reproduced has been deleted from the Producer's catalogue.

19.11 The Notification of Intended Release shall be in the form appearing in Annex A 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 Relevant 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 track sequence number, where available;
- (xiii) the duration of each Musical Work;
- (xiv) whether the track in whole or in part consists of a medley unless the Producer has supplied the track sequence numbers in relation to that Disc;

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

19.12 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 Relevant Format thereof must bear either a different Catalogue Number or a different prefix or suffix within that Catalogue Number.

19.13 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.

20. STATEMENTS OF SHIPMENTS

20.1 At the end of each Quarter the Producer shall prepare a Statement of Shipments showing by Catalogue Number and Relevant 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 21.

20.2 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).

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

21. ACCOUNTING PERIOD AND PAYMENTS

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

21.2 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.

21.3 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 must 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.

22. COPYRIGHT CONTROL ACCOUNT

22.1 The Producer 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 Society 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 Repertoire Work. 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 Society notifies the Producer that the Musical Work or interest is a Repertoire Work.

22.2 Where a third party (not being a Member or an Associated Society Member) claims the right to grant the Licence in relation to a Musical Work or

interest therein which remains designated by the Society as SAI or PAI:

(a) the Producer shall notify the Society in writing within 7 days of such claim;

(b) 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.

22.3 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.

22.4 No later than 45 days after the end of each Quarter the Producer shall deliver to the Society a statement showing:

(a) the Musical Works in relation to which the Producer paid royalties into the account referred to in clause 22.1;

(b) the amount of royalties paid into such account in relation to each such Work; and

(c) the title and Catalogue Number of the Disc in relation to which such royalties arose.

23. DISPUTES

23.1 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.

23.2 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 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.

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

(a) the Musical Works in relation to which the Producer paid royalties into the account referred to in clause 23.2;

(b) the amount of royalties paid into such account in relation to each such Work; and

(c) the title and Catalogue Number of the Disc in relation to which such royalties arose.

23.4 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 (or Associated Society Members or a combination of both), the royalties in relation thereto shall be paid to the Society.

24. CHANGES IN INFORMATION AND ADJUSTMENTS

24.1 The Society will notify the Producer of any changes in the information referred to in clause 19.5 or any notice pursuant to clause 19.10 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 19.5 or any notice pursuant to clause 19.10 unless it has been notified no later than the date specified above.

24.2 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 22.1) in relation thereto, together with the interest thereon.

24.3 Without prejudice to clause 19.13 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:

(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 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.

25. AUDITS

25.1 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.

25.2 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 Discs.

25.3 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.

25.4 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 Retail Price of Discs;

(g) any sale of Discs under clause 13, together with the names and addresses of the parties to whom they were sold;

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

(i) 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;

(j) any retentions claimed under clause 12, the calculation thereof and their reconciliation;

(k) the calculation and payment into the relevant accounts of royalties referred to in clauses 22 and 23; and

(l) details of the destruction of any Discs.

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

25.6 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) 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.

25.7 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:

(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.

25.8 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 25.7.

25.9 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.

25.10 The agents of the Society with access to the premises of the Producer under clause 25.6 shall, subject to clause 25.11, 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.

25.11 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 £5,130,000 (such figure to be increased on 1st January 2005 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 25.6 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 an audit is carried out in accordance with this clause 25.11, clause 25.7 shall not apply and the costs relating to (a), (b) and (c) above shall be borne by the Society.

25.12 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.

25.13 For the avoidance of doubt, any failure by the Producer to:

- (a) permit access to the Society for the purposes of an audit under clauses 25.2 or 25.6; or
- (b) provide any of the information set out in clause 25.4;

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

26. CIRCULATION OF RECORDING MATRICES

26.1 The Producer shall not export a Recording Matrix reproducing a Repertoire Work 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 an agreement with an Associated Society under which that party will pay mechanical royalties in relation to Discs which are copied 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 Repertoire Works.

26.2 Upon the Producer exporting a Recording Matrix reproducing a Repertoire Work 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.

27. SANCTIONS AND TERMINATION OF THE CONTRACT

27.1 The Society shall have the rights set out in clause 27.3 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 recorded delivery 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 (sent by recorded delivery) to the Producer.

27.2 No notice served under clause 27.1 in respect of any failure to comply with clause 15 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 15 applied, unless there has been a previous failure in relation to the same information and the same Disc by Catalogue Number.

27.3 In the circumstances set out in clause 27.1, 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.

27.4 The Society shall in addition have the right referred to in clause 27.3 where there has been a material change in the factors on the basis of which the Society granted the Producer this Agreement provided that:

(a) the Society 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 Industry Panel by notice in writing to the Company Secretary of the Society.

27.5 Upon the Society validly terminating this Agreement in accordance with the above provisions, royalties (as set out in this Agreement) shall become due on the total number of Discs 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 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:

(a) for failure to deliver the statements or invoices as referred to in clause 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;

(b) for omitting Repertoire Works notified as such by the Society or Discs 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;

(c) for any invoices properly due and not paid in full within the time prescribed by clause 21.3, 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 (a) 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 forthwith if the Producer:

(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;

(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).

27.8 If the Society terminates this Agreement pursuant to clause 27.7:

(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 Repertoire Works; and

(c) 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 Upon the Society properly giving notice of termination in accordance with clauses 27.3, 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.

27.11 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.

27.12 After termination of this Agreement (other than by the Society under clauses 27.3 or 27.7) 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.

28. OVERRIDING OF CONTROLLED COMPOSITION CLAUSES

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 To the extent that such contract would otherwise apply in relation to the grant of the Licence and/or the terms and conditions on which the Licence is granted, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract; and

28.2 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 and *PRS for Music*, 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, (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.

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 the United Kingdom and both parties agree to submit to the jurisdiction of the Courts of England.

30. DEFINITIONS

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

30.1 "The Act" shall mean the Copyright Designs and Patents Act 1988, as amended from time to time.

30.2 "*PRS for Music*" shall mean PRS for Music Limited of 2 Pancras Square, London, N1C 4AG.

30.3 "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 Discs reproducing such repertoire in the other's territory.

30.4 "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.

30.5 "Catalogue Number" shall have the meaning referred to in clause 19.12.

30.6 "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.

30.7 "Co-Exploitants" shall mean:

(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.

30.8 "Disc" shall mean a pre-recorded optical disc in a Relevant Format which carries sound whether or not in conjunction with visual images.

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

30.10 "EU" shall mean each country which is at the relevant time a full member state of the European Union.

30.11 "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.

30.12 "Industry Panel" shall mean the committee consisting of Society nominees and record industry nominees.

30.13 "Licence" shall mean the licences granted under clause 1.1(a), (b) and (c) of this Agreement.

30.14 "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 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 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.

30.15 "Menu" shall mean the screen (or series of screens) which allows the user to navigate amongst the content included on a Disc.

30.16 "Music Product" is a product which complies with all of the following criteria:

(a) one or more Discs are released in a Relevant Format as a single bar-coded product in which Repertoire Works are re-produced;

(b) the Disc(s) includes one or more Music Features;

(c) not less than 30% of the aggregated linear playing time of all playable sides of any Discs included in the product comprise music audio material or audio-visual material with a musical soundtrack provided that, in calculating duration, the duration of any introductory material (including "Menus") shall be ignored save that all Repertoire Works which are included in any such introductory material or Menus shall be licensed under this Agreement;

(d) one or more of the Discs includes audio-visual material;

(e) each playable side of any Disc includes music.

30.17 "Music Feature" means a Disc 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 product. A "Music Feature" includes but is not limited to the following (including any combination thereof):

(a) one or more audio-visual live music performances by an artist, a group or a number of artists and/or groups;

(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;

(c) one or more promotional audio-visual productions which have a music sound recording as their main element;

(d) audio-visual programming which has music as its primary theme, including, without limitation, archive collections of previously exploited television material;

(e) an audio-visual recording of a music award event.

30.18 "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, but subject to the provisions of this Agreement.

30.19 "Net Shipments" for the purposes of clause 12 shall mean the gross number of Shipments during the relevant Quarter of the relevant Disc by Catalogue Number and Relevant 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 Discs which are deletions (clause 13) or which are exports (clause 9).

30.20 "New Release" shall mean a Disc containing a particular content and configuration of tracks, copies of which have not previously been put into circulation in the United Kingdom in that Relevant 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.

30.21 "Notification of Intended Release" shall mean the form referred to in clause 19.11.

30.22 "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:

- (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.

30.23 "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.

30.24 "Published Dealer Price" or "PPD" shall mean the highest price as published by the Producer (or, where there is one, the Producer's bona fide distributor) payable by any bona fide dealer for the minimum quantity of copies of the applicable Relevant Format of the relevant Disc which any dealer can purchase from the Producer (or as appropriate the Producer's bona fide distributor) without the benefit of any applicable discounts, incentives, bonuses and other reductions or deductions.

30.25 "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.

30.26 "Reconciliation Statement", for the purposes of clause 12, shall mean a statement showing the following information for each Disc by Catalogue Number and Relevant Format:

- (a) separately in relation to each Quarter:
 - (i) whether the retention was claimed under clause 12.1 or 12.2;
 - (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 12.1, the release date;
- (c) where the retention was claimed under clause 12.2, 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.

30.27 "Recording Matrix" shall mean any master tape, disc or other contrivance or whatsoever nature from which Discs may be pressed or duplicated or from which re-recordings can be made.

30.28 "Relevant Format " means the 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. Relevant Format includes, for the purposes of this Agreement, a Relevant Audio Format which forms part of any Category B Music Product as defined in Clause 7.2.2. However, when all Discs (whether a single Disc or multiple Discs) within a single bar-coded product contain only audio-only material such Disc(s) shall not comprise Music Product for the purposes of this Agreement.

30.29 "Relevant Audio Format " shall mean any format as defined in and capable of being licensed under the Society's AP Schemes known as "AP1" "AP2" or "AP2A" together with Enhanced CD, Super Audio CD, and the Relevant Format defined by the DVD forum as "DVD Audio" and all subsets thereof.

30.30 "Repertoire Work" shall mean each Musical Work the copyright in which is owned or controlled in the United Kingdom 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.

30.31 "Re-Release" shall mean a Disc containing a particular content and configuration of tracks, copies of which have previously been put into circulation in the United Kingdom in one or more Relevant Formats, and where the following criteria have been fulfilled:

(a) any retention period as permitted by clause 12 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;

(b) the previous release has been deleted from the Producer's catalogue;

(c) the Producer has either destroyed its remaining stock of Discs or disposed of them as referred to in clause 13 and accounted to the Society for the royalties payable thereunder;

(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;

(f) the Producer has given the Disc a new Catalogue Number; and

(g) the Producer has re-issued the Disc.

30.32 "Retail Price" shall mean the fixed or suggested retail price of a Disc.

30.33 "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.

30.34 "Shipment" shall mean the shipment of a Disc from a Warehouse (other than to another Warehouse in the United Kingdom) and to "Ship" shall be construed accordingly.

30.35 "Statement of Shipments" shall have the meaning set out in clause 20.1.

30.36 "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.

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

30.38 "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).

Signed by:

Duly authorised signatory on behalf of the Society

Date:

Signed by:

Duly authorised signatory on behalf of the Producer

Date:
