



# AVP Agreement

For the manufacture and distribution  
of non-music audio-visual product for  
retail sale to the public for private use

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# AVP Agreement

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

BETWEEN:-

1) MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED whose registered office is at 3rd Floor, 107 Grays Inn Road, London, WC1X 8TZ ("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. DEFINITIONS

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

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

1.2 "*PRS for Music*" shall mean PRS for Music Limited of 1st Floor, Goldings House, 2 Hays Lane, London SE1 2HB.

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

1.4 "Associated Society" shall mean a collecting society with which the Society has at the relevant time reciprocal arrangements under which the Society and that society authorise each other to grant licences in relation to each other's repertoire for the making of audio and audio visual product reproducing such repertoire in the other's territory.

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

1.6 "Bundle" shall mean a single barcoded product which includes a Product together with other goods or unconnected product that fall outside this Agreement such as a game or a Music Product.

1.7 "Buyout" shall mean a licence granted to the Producer

(or the person from which the Producer derives its rights) to do all acts referred to in clause 2.1 of this Agreement in relation to one or more Repertoire Works

1.8 "Catalogue Number" shall have the meaning referred to in clause 18.15.

1.9 "Commencement Date" shall mean the date this Agreement is entered into unless otherwise agreed.

1.10 "Co-Exploitants" shall mean:

1.10.1 any person, firm or company which carries out or arranges the manufacture of Product which is licensed under this Agreement; and

1.10.2 any person, firm or company which acts as distributor of such Product for the Producer.

1.11 "Disc" shall mean:

1.11.1 a DVD in a format defined by the industry body known as the DVD Forum as "DVD - Video" and all subsets of that form and all subsets of that format including but not limited to DVD - 5, DVD - 9, DVD - 10, DVD - 18, and DVD - 14;

1.11.2 a VHS videocassette; or

1.11.3 a UMD.

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

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

1.14 "Format" shall mean the type of carrier(s) on which Products are Released by reference to its physical format, whether DVD, VHS or UMDs.

1.15 "Game" shall mean content on a Disc which consists of a game or competition of whatsoever nature and involves some degree of interaction by the user.

1.16 "Genre" shall mean the content of the Product by reference to its subject matter, including but not limited to productions made for children, comedy, documentaries, feature films, sports productions and television dramas.

1.17 "MCPS Claim" shall mean the total duration of Repertoire Works (save those which have been the subject of a Buyout) within the Product, including those Repertoire Works within Menus and special features, divided by the Relevant Product Duration.

1.18 "Member" shall mean each person, firm or company who or which has granted rights to the Society via the Society's Membership Agreement either before or during the term of this Agreement PROVIDED THAT a Member who has signed the Society's Membership Agreement after the commencement of the term shall only be regarded as a Member for the purposes of this Agreement with effect from the date of entry into the Society's Membership Agreement. For the avoidance of doubt, a person, firm or company that has granted rights to the Society through its membership of an Associated Society shall not be considered to be a Member for the purposes of this Agreement. If requested by a Producer, the Society will provide, in a timely manner, confirmation as to whether a person, firm or company is a Member, such information to be used for the sole purpose of establishing whether a licence is required under this Agreement.

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

1.20 "Music Product" shall mean product where music is the primary and not secondary or incidental feature.

1.21 "Musical Work" shall mean any work consisting of music and any lyrics or words written to be used with the music and any part thereof.

1.22 "Net Shipments" for the purposes of clause 11 shall mean the gross number of Shipments during the relevant Quarter of the relevant Product by Catalogue Number and Format in relation to which royalties are payable under this Agreement, less the number of Returns thereof during that Quarter. In calculating the gross number of Shipments and the Returns for this purpose, no account shall be taken

of Product which are deletions (clause 12) or which are exports (clause 9).

1.23 "New Release" shall mean a Product which has not previously been Released in the United Kingdom.

1.24 "Notification of Intended Release" shall mean the form referred to in clause 18.

1.25 "Permitted Excerpts" refers only to Dramatico-Musical Works and shall mean excerpts where the use of all such excerpts in any audio-visual material complies with all the following limitations:

1.25.1 the total duration of the excerpts does not exceed 20 minutes;

1.25.2 the use is not a "potted version" of the Dramatico- Musical Work;

1.25.3 the use is not or does not cover a complete act of the Dramatico-Musical Work;

1.25.4 each excerpt is not presented in a "dramatic form" as defined below; and

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

A dramatic form shall be deemed to be created only by a performance in which there is a distinct plot depicted by actors and where the story of the Dramatico- Musical Work and/or its associated words is woven into and carries forward the plot and its accompanying action (a dramatic form shall not, for example, be deemed to be created by the use of costume, scenery, and/or any dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph the word "actors" shall include actors, singers, mimics and/or puppets.

1.26 "Premium Disc" shall mean a Disc supplied for use, or with the express or implied authority to sell it for use, as an incentive to purchase or acquire other goods or services of whatsoever nature or to encourage brand awareness and/or loyalty.

1.27 "Producer" shall mean the person or entity which owns or controls the rights to the Product in the United Kingdom.

1.28 "Product" shall mean an audio-visual production (which is not a Music Product) Released on a Disc (or Discs) where the musical content is incidental to the main content. Musical Works used as a sound track to a film, TV production, new production or as a signature tune shall be treated as "incidental" for the purposes of this Agreement.

1.29 "Product Master" shall mean any master tape, disc or other contrivance of whatsoever nature from which Discs may be manufactured or duplicated or from which re-recordings can be made.

1.30 "Production Music Works" shall mean Repertoire Works in respect of which the Member (or Associated Society Member) has authorised the Society to license as so called production or library music.

1.31 "Production Music Sound Recordings (PMSRs)" shall mean recordings of Production Music Works.

1.32 "Public Domain" shall mean Musical Works the copyright of which have expired worldwide or in the territory in which Product is exploited.

1.33 "Published Dealer Price" or "PPD" shall mean the highest relevant price as published by or on behalf of the Producer payable by any bona fide dealer or retailer for a minimum quantity of Products without discounts, incentives, bonuses and any other reduction or deduction where such Products are Released. The relevant price shall be determined by reference to whether such Shipment is supplied for the purpose of retail sale or subsequent rental. Where a Product is supplied for the purposes of both retail sale and rental, two separate PPDs must be reported, one for each means of supply.

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

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

1.35.1 separately in relation to each Quarter:

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

1.35.1.2 the retention percentage applied in that Quarter;

1.35.1.3 the Net Shipments in that Quarter;

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

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

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

1.35.3 a summary of 1.35.1.4 and 1.35.1.5 for the total of all the relevant Quarters.

1.36 "Release" shall mean the placing on the market of a Product for the purpose of retail sale or subsequent rental to members of the public for private use and "Released" and "Releasing" shall be construed accordingly.

1.37 "Relevant Product Duration" shall mean the total running time of the Product less the duration of any trailers and advertisements and less the duration of any menus or special features which contain no Repertoire Works licensed under this Agreement. Where additional content is contained on a separate or bonus Disc, such content shall be treated as a "special feature" for the purposes of calculating the Relevant Product Duration and the MCPS Claim.

1.38 "Repertoire Work" shall mean each Musical Work and Production Music Sound Recording, 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.

1.39 "Re-Release" shall mean Product containing a particular content and configuration of tracks on, copies of which have previously been Released in the United Kingdom on Disc, and where the following criteria have been fulfilled:

1.39.1 any retention period as permitted by clause 11 when the Product was a New Release has terminated and a proper Reconciliation Statement delivered to the Society and the balance of the royalties due (if any) paid;

1.39.2 the previous Release has been deleted from the Producer's catalogue;

1.39.3 the Producer has either destroyed its remaining stock of Product or disposed of it as referred to in clause 12 and accounted to the Society for the royalties payable thereunder;

1.39.4 at least one Quarter has passed between completion of the above and the re-issue in 1.39.7 below;

1.39.5 the Producer, having complied with 1.39.1, 1.39.2 and 1.39.3 above, has decided to re-issue the same Product with the same content and configuration of tracks;

1.39.6 the Producer has given the Product a new Catalogue Number; and

1.39.7 the Producer has re-issued the Product.

1.40 "Retail Price" shall mean the fixed or suggested retail price of a Product.

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

1.42 "Sampling" shall mean the taking of part of the music and/or lyrics of a Repertoire Work and incorporating such part into another Musical Work or the distribution or reproduction in the form of a sample of such part of a Repertoire Work.

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

1.44 "Statement of Shipments" shall have the meaning set out in clause 19.1.

1.45 "Television Promoted Product" shall mean a Product which is the subject of a bona fide television campaign advertising that Product and where that campaign has taken place in more than one television region.

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

1.47 "Warehouse" shall mean any building or other store where Product is stored by or for the Producer including any fixed or moveable store (including vans).

## **2. GRANT OF LICENCE**

2.1 This Agreement sets out the terms and conditions upon which the Society will grant to the Producer a non-exclusive licence to make and Release Product containing one or more Repertoire Works as permitted under this Agreement.

2.2 For the purpose of clause 2.1 "make" shall mean the creation and making of copies of Product Masters and the making of copies of Product for Release.

2.3 The grant of this Agreement to the Producer will be subject to the approval of the Society's board and the acceptable completion by the Producer of the Application Form. The Application Form shall be incorporated by reference into this Agreement. If in the Society's reasonable opinion the completed Application Form discloses information which suggests that there is a risk that the Producer will be unable to comply fully with the payment terms under this Agreement, the Society reserves its right

to vary such terms, including but not limited to requiring deposits, payments on account or financial guarantees.

2.4 Any and all licences granted pursuant to this Agreement shall be conditional upon the Producer paying royalties in a timely manner and fully complying with its material terms.

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

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

3.2 The Agreement shall not apply:

3.2.1 to Music Product;

3.2.2 to Premium Discs;

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

3.2.4 where the Producer has obtained a Buyout;

3.2.4.1 Where a Producer relies upon this sub-clause, it shall, at the request of the Society, provide the Society with evidence of the Buyout where the Society (at its sole discretion) has grounds for believing that no valid licence is in effect, in which event the Producer shall provide sufficient evidence of the Buyout. "Sufficient evidence" for the purpose of this clause shall comprise of copies of the original licences issued by the relevant copyright owner(s) of the Repertoire Works and shall include documentation disclosing the product name, territory, rights granted and details of the parties (but not any commercial terms which are confidential between the parties). In addition, full details (meaning such information as is set out in clause 18.5 of this Agreement) of all Repertoire Works included on the Product must be provided. The failure by the Producer to adequately provide this information to the Society within 30 days of request by the Society shall constitute a material breach of this Agreement.

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

3.2.5 to a Product that has a Game as its main feature. Where a Game is included in a Product but not as the main feature, any Repertoire Works within that Game shall not be licensed under this Agreement. Further, the duration of the Game content and any Musical Works it contains shall be disregarded for the purpose of calculating the appropriate royalty under clause 7. For the purposes of this sub-clause, "main feature" shall mean the

principal content in a Product by reference to which such Product is primarily promoted, marketed and/or advertised.

3.2.6 to any Repertoire Work which is:

3.2.6.1 a Dramatico-Musical Work; or

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

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

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

3.3 Where a trailer or advertisement for one Product is included in another Product, the trailer or advertisement shall be deemed to be licensed in relation to the Product in which it is included provided that the use of any Repertoire Works is in context with their use on the other Product. However, the running time of any trailers or advertisements and the duration of any Musical Works contained in the Product shall be disregarded for the purpose of calculating the appropriate royalty under clause 7.

3.4 This Agreement does not permit the following which require the express written consent of the relevant Member. Satisfactory evidence of such consent must be provided to the Society prior to the Release of a Product:

3.4.1 Making any adaptation of any Repertoire Work by way of making any arrangement of the music, any alteration to the lyrics, Sampling, using the music with lyrics other than those written for use in conjunction with it or using the lyrics with music other than that written to be used with them or authorised for use with them;

3.4.2 Reproducing a Repertoire Work in the form of a parody or burlesque of any Repertoire Work or of any composer or writer of any Repertoire Work or any band or other group of artists which includes any composer or writer of any Repertoire Work;

3.4.3 Using the work in any context which the Producer ought reasonably to consider as being likely to be insulting or detrimental to the composer or artist featured on the commercially released sound recording of the music or the relevant Member or Associated Society Member; or

3.4.4 Making Product which contains content of an overtly political, sexual or religious nature.

3.5 This Agreement does not extend to the graphic representation of music or lyrics of Musical Works in any format whatsoever. Without prejudice to the generality of the foregoing, this Agreement shall not apply to any Product in which one or more Repertoire Works are presented in a form such that the lyrics of that Repertoire Work are reproduced graphically on the screen as the music plays, for the primary purpose of viewers being able to sing along to the Repertoire Work as the music plays (such as, without limitation, karaoke tracks).

3.6 This Agreement is subject to certain limitations in relation to the Associated Societies' rights and these limitations are available from the Society on request. Where the Society has provided details of such limitations, it will subsequently update the Producer with any changes thereto, if any.

3.7 This Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings (save in the case of Production Music Sound Recordings), films, dramatic works, performers' rights, moral rights or rights in performances. The Producer shall not be entitled to exercise the licences or authorisations contained in this Agreement in relation to a particular Repertoire Work where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling the rights in relation to that sound recording containing that Repertoire Work or performers of that Repertoire Work.

3.8 Nothing in this clause 3 shall:

3.8.1 remove the obligation of the Producer to obtain appropriate licences for the use of Repertoire Works, the use of which is not covered by this Agreement; or

3.8.2 remove the obligation of the Producer to obtain all necessary licences in relation to any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and no licence is granted under this Agreement in relation thereto.

3.9 Nothing in this Agreement grants the Producer any rights as to the performing or communication to the public of any Repertoire Works including, for the avoidance of doubt, via the Internet.

3.10 This Agreement applies to Product which is manufactured and Released after the Commencement Date and to Product Released prior

to the Commencement Date which would otherwise fall within the terms of this Agreement.

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

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

4.1 Unless clause 4.2 applies the Producer must obtain the express written prior approval of the Society for the Release of Product containing Repertoire Works. The procedure relating to such prior approval is set out in clause 18.

4.2 Prior approval is not required in respect of:

4.2.1 Product which comprises material, a substantial part of which has been previously licensed for broadcast on television in the United Kingdom or elsewhere in the world (whether or not actually broadcast);

4.2.2 Product made for children;

4.2.3 Fitness Product;

4.2.4 Sports Product;

4.2.5 Production Music Works and Production Music Sound Recordings;

4.2.6 Repertoire Works which are used as background music in interviews with recording artists and/or composers who are associated with that music;

4.2.7 The incidental use of Repertoire Works within promotional music videos and live music concert footage; or

4.2.8 Repertoire Works which have been commissioned by the Producer or a person through whom the Producer obtained its rights.

#### **5. LABELS TO WHICH AGREEMENT APPLIES**

5.1 This Agreement covers all Product Released by the Producer which bear the trade mark(s), trade name(s) or label(s) notified by the Producer to the Society in its application for this Agreement.

5.2 This Agreement shall be extended to Product bearing any new trade mark or trade name or issued on a new label which the Producer may hereafter exploit, provided that the Producer has given the Society advance written notice that it intends to exploit such trade mark, trade name or label. If another producer having a contract with the Society in the same terms as this Agreement has already given notice to the Society that it is using the same trade mark, trade name or label, the Society shall notify the Producer.

5.3 This Agreement may also upon prior written notice to the Society be extended to Product bearing any existing trade mark or trade name or issued on

any existing label not referred to in the Producer's application to the Society for this Agreement. However, the licences shall not be so extended where both:

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

5.3.2 any royalties payable to the Society or any of its Members or to any Associated Society in relation to Product previously issued bearing such trade mark or trade name or on such label remain unpaid.

5.4 The Producer is responsible for ensuring that it has the right to issue Product bearing the trade mark, trade name or on the label which it notifies to the Society under the above provisions. The Producer will indemnify the Society and its Members against any valid claims made against the Society and which relate to the Society having granted consent under this Agreement to the making and Release of Product bearing any such trade mark, trade name or label.

5.5 Where both the Producer and another producer are exploiting Product bearing the same trade mark or trade name or using the same label, this Agreement shall only apply to the Product bearing that trade mark, trade name or on that label which have been made or Released by or for the Product

#### **6. FIRST RECORDINGS**

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

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

#### **7. ROYALTIES PAYABLE**

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

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

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

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

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

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

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

7.8 Where Product is supplied by the Producer direct to HM Forces such sales shall be deemed to have been made in the United Kingdom.

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

## **8. TAX**

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

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

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

## **9. EXPORTS**

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

9.1.1 such licensee, affiliate or importer has an agreement with the Associated Society responsible for the collection of mechanical royalties in the territory to which such Product is being exported under which such party is liable to pay mechanical royalties on such Product;

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

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

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

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

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

9.3 Where the Society and a relevant trade association of which the Producer is a member agree a system for calculation of royalties which is different to those contained in clauses 9.2.1 and 9.2.2 above, then that system shall apply to exports under this Agreement instead of clauses 9.2.1 and 9.2.2.

Save where the Producer makes the election under clause 9.1 in relation to all copies of the relevant Product per territory per Catalogue Number in the particular Quarter, exports not exceeding 100 units of Product per territory per Catalogue Number per Quarter shall be deemed not to be exports and royalties thereon shall be calculated and paid fully in accordance with this Agreement.

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

## **10. RETURNS**

10.1 When calculating the royalties due at the end of a Quarter in relation to a Product by Format and Catalogue Number, the number of Returns from a given country during that Quarter of the same Product by Format and Catalogue Number may be deducted from the gross Shipments thereof to that same country. For the avoidance of doubt, Returns may only be applied against gross Shipments in the same country; excess Returns from one country may not be applied against gross Shipments in any other country.

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

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

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

#### **11. RETENTIONS AGAINST RETURNS**

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

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

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

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

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

11.2 The following retention provisions apply in relation to Product which is Television Promoted Product, whether or not they are New Releases or Re-Releases, but in substitution for those set out in clause 11.1 if they are New Releases or Re-

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

11.2.1 in relation to the Quarter either in which copies of the Television Promoted Product were first put into circulation with a view to the retail sale thereof to the public for private use or the Disc first qualified as a Television Promoted Product (whichever is the later), the royalties payable on 25% of the Net Shipments during that Quarter may be retained against any possible Returns;

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

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

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

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

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

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

#### **12. DELETIONS**

12.1 Where at least 6 months after the date of first Release, the Producer deletes a Product from its catalogue, and thereafter sells or authorises the sale of its remaining stock of Product to one or more independent buyers on an arm's length basis, the royalty provisions set out in this clause shall apply in substitution for those referred to above.

12.2 The royalties payable in relation to such Product shall be 10% of the gross price charged to the buyer(s) thereof with no deduction other than any appropriate duties or taxes provided for in clause 8.

12.3 The total number of Shipments of a particular Format in relation to which the Producer may apply this provision in each calendar year shall not exceed 5% of the total number of Shipments of the Producer containing one or more Repertoire Works during the preceding calendar year.

12.4 None of the provisions of this Agreement relating to Returns (nor for the avoidance of doubt those relating to any retention against Returns) shall apply in relation to such sales.

12.5 The Producer shall not manufacture Product solely for the purpose of benefiting from these provisions.

### **13. PROMOTIONAL DISCS**

13.1 Product which is bona fide supplied free of charge only for the purposes of the genuine promotion of sales of other copies of the Product in question shall be exempt from the royalties otherwise payable under this Agreement on condition that the criteria set out in clauses 13.2 to 13.6 are fulfilled.

13.2 A Product shall only be regarded as having been supplied for such purposes as are referred to in clause

13.1 where it is supplied to a broadcaster, retailer or critic for the purposes of that party previewing it prior to purchasing copies or for the purposes of providing a bona-fide criticism of the Product to the public. For the avoidance of doubt, a Product shall not be regarded as having been supplied for such purposes where it (or any part of it) is:

13.2.1 distributed commercially;

13.2.2 not supplied free of charge;

13.2.3 supplied free of charge but in consideration of or as a result of the party to whom it is supplied taking other Product or other copies of the same Product or giving other valuable consideration; or

13.2.4 used for the purpose of making a broadcast.

13.3 Each such Product and the packaging thereof must at the time of manufacture be prominently marked with a non-removable or non-erasable notice carrying the words "PROMOTIONAL COPY - NOT FOR SALE".

13.4 The Statement of Shipments shall identify the number of units of Product by Catalogue Number and Relevant Format which the Producer has supplied under the above provisions.

13.5 The Producer shall maintain information in reasonable detail for a period of not less than 2 years as to the general nature and categories of the recipients of Product supplied under the above provision.

13.6 The Producer shall at all reasonable times and upon reasonable notice allow access to its premises by representatives of the Society for the purposes of the Society checking the then current details of the number of units of Product manufactured referred to in the above provisions and the persons, firms and companies to whom they are being supplied and the numbers supplied to each such person, firm or company and the Producer shall also maintain such information in such detail as will

enable the representatives of the Society reasonably to verify during such access that the number of units of Product being supplied under the above provisions broadly corresponds with claims for royalty-free supply under Statements of Shipments.

### **14. NOTICES AND CREDITS**

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

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

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

### **15. SUPPLY OF INFORMATION**

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

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

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

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

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

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

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

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

### **16. THIRD PARTY OBLIGATIONS**

16.1 If the Producer undertakes or arranges the manufacture of Product for any other party

(whether a third party, a licensee or affiliate) and/or acts as a distributor on behalf of a third party, the Producer must inform the Society in writing of the identity of that party.

16.2 On compliance with clause 16.1, the Society confirms that it will not seek to recover royalties from or pursue any other remedy against the Producer in relation to such Product, subject to the provisions of clause 16.4, unless it is notified by the third party and is satisfied that, as between the Producer and that third party, the Producer has the obligation to obtain licences for Musical Works (including Repertoire Works) included on Product Released (or intended to be so Released) for sale or subsequent rental to the public.

16.3 The Producer hereby agrees that it will not undertake or arrange the manufacture of Product reproducing one or more Repertoire Works for any third party which either:

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

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

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

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

## **17. CO-EXPLOITANTS**

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

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

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

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

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

17.2.2 the Society consents, such consent not to be unreasonably withheld or delayed.

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

18.1 Where prior approval is required for a Product (pursuant to clause 4), the Producer shall deliver to the Society not less than 21 days before the Producer intends to Release (whether a New Release or a Re-release) the Product, a Notification of Intended Release in the form prescribed in Appendix 2 to this Agreement.

18.2 Where prior approval is not required for a Product (pursuant to clause 4), the Producer shall deliver to the Society not less than 7 days before the Producer intends to Release (whether a New Release or a Re-release) a Product, the Producer shall deliver to the Society a Notification of Intended Release in the form prescribed in Appendix 2 to this Agreement.

18.3 Where Product comprises Repertoire Works which have been the subject of a Buyout together with one or more Repertoire Works which have not, a Notification of Intended Release must be delivered by the Producer to the Society (in accordance with clause 18.1 or 18.2, whichever is applicable).

18.4 Where a Producer Releases a Product which contains one or more Musical Works not subject to a Buyout, a Notification of Intended Release must be supplied, (in accordance with clause 18.1 or 18.2, whichever is applicable), even if the Producer believes that the Product does not contain any Repertoire Works.

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

18.5.1 the Producer's name, address and contact details;

18.5.2 the Society's customer account number;

18.5.3 the label of the Producer on which the Product will appear;

18.5.4 the title of the Product;

18.5.5 the Catalogue Number;

18.5.6 the Catalogue Number(s) previously released under (if applicable);

18.5.7 the International Sound Recording Code (ISRC) (where available);

18.5.8 the barcode of the Product;

18.5.9 the scheduled release date;

18.5.10 the number of units of Product, i.e. if double pack, boxed set etc;

18.5.11 the Format of the Product(s);

18.5.12 the Genre of the Product;

18.5.13 the total duration of the Product(s);

18.5.14 the total Relevant Product Duration;

18.5.15 the duration of each Musical Work;

18.5.16 the Published Dealer Price (the retail PPD 'R' and/or rental/lending 'L');

18.5.17 the titles of the Musical Works;

18.5.18 the track sequence number;

18.5.19 the manufacturer's name, address and contact details;

18.5.20 the first distributor's name, address and contact details;

18.5.21 the writer/composer/arranger of each Musical Work;

18.5.22 the copyright owner/publisher, where available;

18.5.23 the recording artist of each Musical Work, where available; and

18.5.24 a clear indication of the Musical Works, if any, that are subject to a Buyout.

18.6 The Society will accept the Producer's label copy instead of a Notification of Intended Release provided that it contains the required information and is in a form approved by the Society.

18.7 The Society shall process the Notification of Intended Release and send notification to the Producer of the following information within 21 working days where clause 18.1 applies and within 7 working days where clause 18.2 applies following receipt of the accurate and properly completed Notification of Intended Release:

18.7.1 where the Society is making a claim on behalf of one or more Members, the identity of that Member or those Members;

18.7.2 the share which that Member or those Members claim in the relevant Musical Work;

18.7.3 the royalty percentage per track;

18.7.4 any category referred to in clause 18.13;

18.7.5 the Society's code number for the relevant Product;

18.7.6 the Society's code number for each relevant Repertoire Work; and

18.7.7 in relation to each Musical Work referred to in the notification for which the Society is making a claim, whether or not consent is being refused by reason of such a limitation or restriction as is referred to in clauses 3.6 and 6 and the identity of the Member refusing that consent.

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

18.8 A new Notification of Intended Release must be delivered to the Society in the event of any material change to the information referred to in clause 18.5. The Producer must also promptly notify the Society if it subsequently decides not to release the relevant Product.

18.9 The procedure set out above shall also apply to Product in the Producer's catalogue prior to the Commencement Date save that the time limit for the service of the Notification of Intended Release shall be 19 August 2005. Nothing in this sub-clause shall operate as a waiver of any rights of a Member or Associated Society Member to object to a particular use of a Repertoire Work within a Product.

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

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

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

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

18.13.1 NS (non member);

18.13.2 SAI (copyright status not known at present);

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

#### 18.13.4 Public Domain work.

18.14 Where the Society has notified the Producer that a Musical Work is in whole or in part a Repertoire Work, and subsequently such Musical Work or a share in such Musical Work or an interest therein ceases to be a Repertoire Work (either because the relevant Member has ceased to be a Member or because the copyright in such Musical Work or an interest therein has been transferred or reverted to a non-member), then the Society shall promptly notify the Producer unless the Product in which the Musical Work was reproduced has been deleted from the Producer's catalogue.

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

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

#### **19. STATEMENTS OF SHIPMENTS**

19.1 At the end of each Quarter the Producer shall prepare a Statement of Shipments showing by Catalogue Number and Format the gross Shipments thereof and each deduction specifically provided for in this Agreement. The detailed information and format of such statement shall be in accordance with the Society's specification in relation thereto and notified by the Society to the Producer. The Society will give reasonable consideration to any reasonable proposal by the Producer for a variation in relation to the format thereof, provided that such variation will still enable the Society without additional expense to process the information in accordance with its normal procedure and comply with clause 20.

19.2 The Statement of Shipments shall be delivered to the Society no later than by close of business on the 21st day of the month following the end of the relevant Quarter (by way of example, the statement

in relation to the first Quarter in each year shall be delivered on or before April 21st of that year).

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

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

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

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

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

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

#### **21. COPYRIGHT CONTROL ACCOUNT**

21.1 The 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 Musical 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.

21.2 Where a third party (not being a Member or an Associated Society Member) claims the right to grant a licence in relation to a Musical Work or interest therein which remains designated by the Society as SAI or PAI:

21.2.1 the Producer shall notify the Society in writing within 7 days of such claim; and 21.2.2 at the same time as giving such notice, the Producer may require the Society to investigate the position, and notify the Producer within 3 months of receipt of such notification whether the Society claims that the relevant rights are controlled by a Member or a non-member.

In default of the Society so notifying the Producer, the relevant Musical Work or interest therein shall be deemed to be of non-member status, and the

Society shall then have no right to claim any royalties which are subsequently paid to the third party by the Producer, unless such royalties were paid to the third party after the Society has made a new claim in relation to the relevant Musical Work or interest therein.

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

## **22. DISPUTES**

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

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

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

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

23.1 The Society will notify the Producer of any changes in the information referred to in clause 18.7 or any notice pursuant to clause 18.14 during a Quarter not later than 7 working days following the end of that Quarter. No account shall be taken of any information or change in information which the Society is required to provide under clause 18.7 or any notice pursuant to clause 18.14 unless it has been notified no later than the date specified above.

23.2 Where the Society identifies that a Musical Work or interest therein previously designated SAI or PAI is a Repertoire Work, it shall notify the Producer and the Producer shall transfer to the Society any royalties held in the Copyright Control

Account (referred to in clause 21.1) in relation thereto, together with the interest thereon.

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

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

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

## **24. AUDITS**

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

24.2 The Producer shall permit the Society, by its duly authorised representatives, at all reasonable times to have access to the Warehouses for the purpose of inspecting and checking the stocks of such Product.

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

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

24.4.1 the manufacture, Shipment, Return and stock holding of Product;

24.4.2 the export of Product;

24.4.3 the import of Product;

24.4.4 the export of Product Masters;

24.4.5 the import of Product Masters;

24.4.6 the Publisher Dealer Price and/or Retail Price of Product;

24.4.7 any sale of Product under clause 12, together with the names and addresses of the parties to whom they were sold;

24.4.8 any supply of Product under clause 13, together with the information maintained under clause 13.4 and 13.5;

24.4.9 the dates and amounts paid in respect of mechanical royalties on Product together with the identity of the party to whom such payments were made;

24.4.10 any retentions claimed under clause 11, the calculation thereof and their reconciliation;

24.4.11 the calculation and payment into the relevant accounts of royalties referred to in clauses 21 and 22;

24.4.12 details relating to the destruction of any Product; and

24.4.13 details relating to Buyouts.

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

24.6 Such accounting records together with any supporting documentation relating thereto shall be open for inspection (both during and for nine months after termination of this Agreement or any licence granted pursuant to this Agreement) by representatives of the Society upon reasonable notice and no more than once a calendar year unless payment of royalties is over 45 days in arrears. For these purposes, the Producer shall allow access to its premises. The Society's representatives shall be entitled to inspect, make extracts and take copies of the information available, and to carry out such work as is in their reasonable opinion considered necessary to verify the royalties due to the Society including for the avoidance of doubt the examination of stock movements.

24.7 The reasonable fees incurred by the Society in auditing the Producer under this Agreement shall be borne by the Society, except in circumstances where the audit report (a copy of which shall be made available to the Producer within nine months of the commencement of the audit, such period to be extended accordingly where the Producer has caused delay in the progress of the audit) discloses underpayment of royalties in excess of a sum equal to 7.5% of the total royalties found due for the calendar year or any other financial period to which the audit relates. In that event and provided that either:

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

24.7.2 the quantum of unpaid royalties is determined by the Court as a result of legal action the said reasonable fees shall be paid by the Producer.

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

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

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

24.11 Where the turnover of the Producer from the sale of Product for the four Quarters preceding the commencement of the relevant audit has not exceeded £5,294,160 as at 1 January 2017 (such figure to be increased each subsequent 1st January by the percentage increase in the latest Retail Prices Index by comparison with the equivalent figure in the corresponding month of the previous year), the agents of the Society with access to the premises of the Producer under clause 24.6 may be:

24.11.1 qualified Chartered or Certified Accountants who are employees of the Society;

24.11.2 the manager of the Society's Audit Department (or some other person employed by the Society of equivalent rank); and/or persons employed by the Society under the supervision of any person referred to in 24.11.1 or 24.11.2.

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

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

24.13 Any failure by the Producer to:

24.13.1 permit access to the Society for the purposes of an audit under clauses 24.2 or 24.6; or

24.13.2 provide any of the information set out in clause 24.4

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

## **25. CIRCULATION OF PRODUCT MASTERS**

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

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

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

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

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

25.2.1 the name and address of the consignee;

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

## **26. CONTRACT**

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

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

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

26.2 The obligation to remedy under clause 26.1.1 in relation to breaches of clause 14 must be

complied with as soon as is practicable and in any event not later than the point at which further Product is manufactured and/or printed material is produced.

26.3 Termination under clause 26.1 shall be without prejudice to any rights which have already accrued to the Society or its Members under this Agreement or to the Producer.

26.4 The Society shall also have the right to terminate where there has been a material change in the factors on the basis of which the Society granted the Producer this Agreement provided that the Society shall have given the Producer 28 days notice in writing specifying the material changes relied on.

26.5 Upon termination by the Society, royalties (as set out in 24.7.4.1 this Agreement) shall become due on the total number of units of Product remaining in the possession, power, custody or control of the Producer.

26.6 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:

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

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

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

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

Provided that where the liability to interest arises under clause 26.6.1 above, no interest shall be payable save to the extent of any loss or expense actually suffered or incurred by the Society or its relevant Member(s) and arising by reason of the Producer's failure.

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

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

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

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

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

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

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

26.7.5 has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

26.7.6 seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

26.7.7 has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or

26.7.8 causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses 27.7.1 to 27.7.7 (inclusive).

26.8 If the Society terminates this Agreement and all licences granted under this Agreement pursuant to clause 26.7:

26.8.1 all Product remaining in the possession, power, custody or control of the Producer or the

Producer's distributor or subsequently returned thereto shall be deemed unlicensed;

26.8.2 the Producer and its Co-Exploitants shall cease forthwith to make or supply any Product containing Repertoire Works; and

26.8.3 any royalties accrued which have not yet become payable or have not yet been paid shall become payable forthwith, and Statements of Shipments shall be sent to the Society within 21 days.

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

26.10 Subject to clause 26.11, upon termination of this Agreement, within 14 days of the latest of:

26.10.1 such termination;

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

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

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

26.11 Upon the Society properly giving notice of termination in accordance with clauses 26.1, 26.4, 26.7 or 26.9, 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.

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

26.13 After termination of this Agreement (other than termination by the Society under clauses 26.1 or 26.7) the Producer may supply a Product Master to a third party provided that;

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

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

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

27.1 The following provisions apply where any person, firm or company is or becomes a Member or an Associated Society Member and that party itself or that party's predecessor in title or grantor

has a current contract with the Producer or the Producer's predecessor in title or grantor. In such a case:

27.1.1 to the extent that such contract would otherwise apply in relation to the grant of a licence and/or the terms and conditions on which this Agreement is entered into, subject to any Buyout granted to the Producer, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract; and

27.1.2 upon the written request of the Producer, the Society will provide the Producer with evidence that the relevant Member (or Associated Society Member) has become a Member (or Associated Society Member) and has given the Society or the relevant Associated Society authority to bind the Member (or Associated Society Member) as regards this Agreement.

## **28. MISCELLANEOUS**

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

28.2 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.

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

28.3.1 the postmark shall be sufficient proof of the date the payment or statement was sent; and

28.3.2 such payment or statement shall be deemed to have been received before close of business on the second working day after posting.

28.4 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.

28.5 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.

28.6 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.

28.7 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.

28.8 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).

28.9 This Agreement shall be subject to the laws of England and Wales and both parties agree to submit to the exclusive jurisdiction of the Courts of England.

Signed by:

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Duly authorised signatory on behalf of the Society

Date:

Signed by:

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Duly authorised signatory on behalf of the Producer

Date: