

# MCPS/BPI/AIM Joint Import Licence Agreement



## **BETWEEN:-**

- (1) **MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED** whose registered office is 3rd Floor, 107 Grays Inn Road, London, WC1X 8TZ ("**MCPS**") contracting for itself and on behalf of its members and those Associated Societies (as defined below) it represents, and as agent for and on behalf of the British Phonographic Industry Limited ("**BPI**") who in turn acts as agent for and on behalf of the Association of Independent Music ("**AIM**");  
and
  
- (2) [ ] ("**the Licensee**");

## **WHEREAS**

- (a) The Licensee intends to Issue to the Public in the UK Products containing Repertoire Sound Recordings and/or Repertoire Musical Works that were first placed on the market outside the EEA, for the subsequent retail sale of such Products in the United Kingdom.;
  
- (b) MCPS represents the great majority of copyright owners of Musical Works and MCPS issues licences on its Members' behalf;
  
- (c) BPI and AIM represent record companies and their interests in respect of Repertoire Sound Recordings and have been authorised by those members to enter into this licence on their behalf;
  
- (d) BPI and AIM have, under a separate agreement with MCPS, delegated the task of administering the respective parts of this Agreement to MCPS who is authorised by BPI and AIM to give a good and valid receipt for monies collected.

## **Additional definition:**

"Commencement Date"	[ ]
---------------------	-----

**The terms and conditions of this licence are attached**

**Signed on behalf of the Mechanical-Copyright Protection Society Limited**

\_\_\_\_\_

**Date:** \_\_\_\_\_

**Signed on behalf of the Licensee**

\_\_\_\_\_

**Date:** \_\_\_\_\_

# Terms and Conditions

## 1 DEFINITIONS

The following words and expressions shall have the following meanings:-

"AIM"	means the Association of Independent Music of Hill House, Highgate Hill, London, N19 5UU.
"AIM Member"	means a full member of AIM from time to time as published by AIM.
"PRS for Music Limited"	means PRS for Music Limited of 1 <sup>st</sup> Floor Goldings House, 2 Hays Lane, London SE1 2HB.
"Associated Society"	means a collecting society with which MCPS has at the relevant time reciprocal arrangements under which MCPS and that society authorise each other to grant licences in relation to each other's repertoire for the making of Products reproducing such repertoire in the other's territory.
"Associated Society Member"	means 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 MCPS.
"Banned List"	A register held by MCPS (in accordance with BPI Members' and/or AIM Members' requirements) of Products to which the grant of licence in clause 2 shall not apply.
"BPI"	means the British Phonographic Industry Limited of Riverside Building, County Hall, Westminster Bridge Road, London, SE1 7JA
"BPI Member"	means a full member of the BPI from time to time as published by BPI.
"EEA"	means each country which is at the relevant time a member of the European Economic Area.
"Issue to the Public"	means the bringing in, dispatch, supply, sale, and/or importation to the UK of any Product by or on behalf of the Licensee and including without limitation the bringing into the UK of any Product for delivery to customers who have placed orders for any Product with, and/or purchased such Product from, the Licensee for delivery to them.
"Imported Product"	means Product which has been Issued to the Public by the Licensee under the terms of this Agreement.

"Karaoke Sound Carrier"	means a collection of audio or audio visual plus graphic recordings of Repertoire Works and/or Repertoire Sound Recordings where the lyrics are reproduced graphically on the screen as music plays and which are specifically designed for members of the general public to sing the Repertoire Works as the music plays.
"Licences"	means the licences granted under clause 2 of this Agreement.
"MCPS Member"	means each person firm or company who or which has entered into the MCPS Membership Agreement either before or during the Term PROVIDED THAT a Member who has signed the MCPS Membership Agreement after the commencement of the Term shall only be regarded as a Member for the purposes of this Agreement with effect from the date of entry into the MCPS Membership Agreement. For the avoidance of doubt, a person, firm or company that has granted rights to MCPS through its membership of an Associated Society shall not be considered to be a Member for the purposes of this Agreement. If requested by the Licensee, MCPS 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.
"Music Sound Carrier"	means any pre-recorded audio-only, audio plus graphic or audio-visual sound carrier including one or more Repertoire Works and/or Repertoire Sound Recordings, in a Relevant Format, where the i) musical audio material and/or ii) audio plus graphic material and/or iii) audio-visual material with a musical soundtrack, is the primary feature of the product and not merely secondary or incidental to the material featured. For the avoidance of doubt a Karaoke Sound Carrier is a Music Sound Carrier for the purposes of this Agreement.
"Musical Work"	means any work consisting of music and any lyrics or words written to be used with music. The expression shall extend to any dramatico-musical work (subject however to the provisions of clause 1.8 of Schedule 2) and to any part of any Musical Work (subject to clause 1.8 of Schedule 2).
"Non-Music Sound Carrier"	means any pre-recorded audio-only or audio-visual sound carrier including one or more Repertoire Works and/or Repertoire Sound Recordings, in a Relevant Format, which is not a Music Sound Carrier.
"Premium Product"	means a Product 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.

"Product"	means any Music Sound Carrier, any Non-Music Sound Carrier or any combination of one or more Music Sound Carriers and/or one or more Non-Music Sound Carriers offered for sale as a single bar coded entity that has been lawfully manufactured by or on behalf of the owner or exclusive licensee of the copyright subsisting therein and that has been first placed on the open market outside the EEA, and which is not included in the UK catalogue of the relevant BPI Member and/ or AIM Member.
"Quarter"	means 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.
"Relevant Format"	means those formats as listed in Schedule 1 hereto.
"Repertoire Sound Recording"	shall mean each Sound Recording the UK copyright in which is owned by or exclusively licensed to a BPI Member or an AIM Member.
"Repertoire Work"	shall mean each Musical Work the copyright in which is owned or controlled in the UK by MCPS 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 MCPS 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.
"Sound Recording"	shall have the same meaning as set out in section 5 of the 1988 Act.
"Statement of Imports"	shall have the meaning set out in clause 7.
"Term"	shall mean the period starting on the Commencement Date until such time as this Agreement is terminated in accordance with clause 10.
"UK"	shall mean the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.
"UK Catalogue"	means the UK catalogue from time to time of the Members of the BPI and/or AIM.
"Warehouse"	shall mean any building or other store where Products are stored by or for the Licensee including any fixed or moveable store (including vans).
"1988 Act"	shall mean the Copyright, Designs and Patents Act 1988, as amended.

## 2 GRANT OF LICENCE

2.1 Subject to the terms and conditions of this Agreement (and, in particular, the restrictions referred to in clause 3) MCPS hereby grants to the Licensee the following non-exclusive licences to do the following acts in the UK:

- (a) to Issue to the Public for the purposes of retail sale to the public for private use in the UK Products which contain one or more Repertoire Works;
- (b) to offer and expose for sale, sell, distribute and possess for sale to the public for private use Imported Products containing one or more Repertoire Works.

2.2 Subject to the terms and conditions of this Agreement (and, in particular, the restrictions referred to in clause 3), MCPS on behalf of BPI and AIM hereby grants to the Licensee the following non-exclusive licences to do the following acts in the UK:

- (a) to Issue to the Public for the purpose of retail sale to the public for private use in the UK Products which contain one or more Repertoire Sound Recordings;
- (b) to offer and expose for sale, sell, distribute and possess for sale to the public for private use Imported Products.

2.3 This Agreement applies to all Products containing Repertoire Works and/or Repertoire Sound Recordings:-

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

2.4 For the avoidance of doubt, the Licences only apply to Repertoire Works and Repertoire Sound Recordings included in a Product. They do not apply to other Musical Works or other Sound Recordings included in any Product.

## 3 RESTRICTIONS ON LICENCE

3.1 The restrictions on the Licences are set out in Schedule 2 attached, as may be amended from time to time.

- 3.2 For the avoidance of doubt, where a Product consists of a combination of one or more Music Sound Carriers and one or more Non-Music Sound Carriers, then the Licences shall not apply to such Product where any one of the Music Sound Carriers or Non-Music Sound Carriers falls within the restrictions set out in Schedule 2.

## 4 ROYALTIES PAYABLE

- 4.1 Save as otherwise provided herein, the Licensee shall pay to MCPS in relation to each copy of a Music Sound Carrier or Non-Music Sound Carrier Issued to the Public which embodies one or more Repertoire Sound Recordings and/or one or more Repertoire Works the following royalties:

	Music Sound Carrier	Non-Music Sound Carrier
<b>Sound Carriers incorporating equal to or less than 25 minutes of music.</b>	£0.48	£0.15
<b>Sound Carriers incorporating more than 25 minutes of music</b>	£1.30	£0.40
<b>Karaoke Sound Carriers</b>	£1.80	n/a

- 4.2 For the avoidance of doubt, where a Product consists of a combination of one or more Music Sound Carriers and one or more Non-Music Sound Carriers, the rates set out at 4.1 above shall be payable in respect of each Music Sound Carrier and/or Non-Music Sound Carrier, as applicable.
- 4.3 50% (fifty percent) of the relevant royalties set out above shall be payable by the Licensee in respect of each copy of a Music Sound Carrier or Non Music Sound Carrier Issued to the Public which embodies one or more Repertoire Works, but which does not embody any Repertoire Sound Recordings, save for copies of Karaoke Sound Carriers for which, a royalty of £1.15 shall be payable where such Karaoke Sound Carrier embodies one or more Repertoire Works, but does not embody any Repertoire Sound Recordings.
- 4.4 The royalties referred to above accrue on the day of Issue to the Public of the relevant Product.

## 5 TAXES

- 5.1 The Licensee shall pay VAT at the rate or rates from time to time in force on any royalties payable under this Agreement.

## 6 SUPPLY OF INFORMATION

At the request of MCPS the Licensee shall furnish it free of charge with:-

- (a) one copy (which shall be exempt from royalty payment) of any Product to which this Agreement applies;
- (b) one copy of the label, sleeve or insert relating to any Product to which this Agreement applies.

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

6.3 MCPS shall have the right to share the information supplied by the Licensee under this Agreement with BPI and/or AIM for the purposes of enforcement of this Agreement and/or for any reporting or royalty distribution purposes.

## 7 STATEMENTS OF IMPORTS

7.1 At the end of each Quarter the Licensee shall prepare a Statement of Imports detailing the following information:

- 7.1.1 Licensee's name and address
- 7.1.2 Quarter of reporting
- 7.1.3 Product Title for each Product Issued to the Public that Quarter
- 7.1.4 Quantity of each Product Issued to the Public
- 7.1.5 Date of Issue to the Public



- 7.1.6 Catalogue Number and/or product code (mandatory)
- 7.1.7 Barcode (mandatory)
- 7.1.8 Relevant Format(s)
- 7.1.9 Territory of origin of Product
- 7.1.10 Name and address of manufacturer of the Product (where available)
- 7.1.11 Identification of any Music Sound Carriers and/or Non-Music Sound Carriers reported that contain only Repertoire Works and not Repertoire Sound Recordings.
- 7.1.12 In respect of each Imported Product , whether it consists of Music Sound Carrier(s) and/or Non-Music Sound Carrier(s) and/or Karaoke Sound Carrier(s) and in each case whether it incorporates more or equal/less than 25 minutes of music, for the purposes of calculating the royalties set out in clause 4.

The detailed information and format of such statement shall be in accordance with Schedule 3 hereof.

- 7.2 The Statement of Imports shall be delivered to MCPS no later than by close of business on the 45th 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 May 15<sup>th</sup> of that year). In the event that the Licensee has no Imported Products to report in respect of any one Quarter, they shall notify MCPS in writing of such fact by close of business on the 45th day of the month following the end of the relevant Quarter.
- 7.3 The Licensee shall deliver the statement in Excel electronic format or such other format as may be agreed by MCPS.
- 7.4 MCPS shall have the right to carry out random checks from time to time of the information provided by the Licensee in the Statement of Imports to verify the compliance by the Licensee with the terms and conditions of this Agreement. For the avoidance of doubt, should MCPS discover any Product which has been Issued to the Public by the Licensee in breach of the terms and conditions of this Agreement, any payment by the Licensee of royalties in respect of such Product shall not be deemed to constitute a licence, or any form of settlement in respect of such Product, and MCPS reserve the right to take such action as it shall deem appropriate in respect of such infringing Product.

## **8 ACCOUNTING PERIOD AND PAYMENTS**

On receipt of the Statement of Imports MCPS will process the information included therein, and will prepare invoices in relation thereto.

8.2 MCPS will deliver to the Licensee such invoices in relation to the royalties payable thereunder no later than close of business on the 17<sup>th</sup> day following receipt of the Statement of Imports from the Licensee.

8.3 MCPS 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 Licensee must pay the invoices (including the VAT element thereof) to MCPS by irrevocable bank transfer by close of business on the 28<sup>th</sup> day following the date of the invoices.

## **9 AUDITS**

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

9.2 The Licensee shall permit MCPS 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 Products.

9.3 Where the Licensee does not have its own Warehousing facilities, the Licensee shall procure rights of access to the Warehouses of its coexploitants for the duly authorised representatives of MCPS.

9.4 The Licensee 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 number of Imported Products and stock holding of Products;
- (b) the calculation of royalties due;
- (c) the payment of royalties referred to in clause 4.

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

- 9.6 Such accounting records together with any supporting documentation relating thereto shall be open for inspection (both during the Term and for twelve months after termination of this Agreement) by representatives of MCPS 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 Licensee shall allow access to the premises of the Licensee. MCPS's representatives shall be entitled to inspect, make extracts and take copies of any information and/or documentation available, and to carry out such work as is in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement including for the avoidance of doubt the royalties due to MCPS and the examination of stock movements.
- 9.7 If tests under any audit and verification process indicate underpayment of the correct royalties due during the period under audit, then, without prejudice to MCPS's other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to MCPS to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of Santander UK Plc).
- 9.8 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct royalties during the period under audit and/or (b) failures to report correctly amounting to at least 7.5% of the music usage during the period under audit, then, without prejudice to MCPS's other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 9.7 above, MCPS's reasonable costs of such audit and verification within 28 days of receipt of MCPS's VAT invoice therefore.
- 9.9 MCPS shall use its reasonable endeavours to ensure that audits are carried out expeditiously.
- 9.10 The agents of MCPS with access to the premises of the Licensee under clause 9.6 shall, subject to clause 9.11, be independent qualified Chartered or Certified Accountants (or persons employed by or under the supervision of the same).
- 9.11 Where the turnover of the Licensee from the Imported Products for the four Quarters preceding the commencement of the relevant audit has not exceeded £5 million (such figure to be increased on 1st January 2008 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 MCPS with access to the premises of the Licensee under clause 9.6 may be:-

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

9.12 The obligation as to confidentiality referred to in clause 11.2 shall for the avoidance of doubt apply in relation to such audits as are referred to above and MCPS shall procure that all its staff, agents and inspectors carrying out audits on behalf of MCPS are notified of the obligation not to disclose information which is confidential to those who are not entitled to such information.

## **10 SANCTIONS AND TERMINATION OF THE AGREEMENT**

A party shall have the rights set out in clause 10.2 where the other party:-

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

10.2 In such circumstances, the party serving notice upon the party in breach shall have the right to terminate this Agreement forthwith without prejudice to any rights which have already accrued under this Agreement;

10.3 MCPS shall in addition have the rights referred to in clause 10.2 where there has been a material change in the factors on the basis of which MCPS granted the Licensee this Agreement provided that MCPS shall have given the Licensee 28 days' notice in writing specifying the material changes relied on;

10.4 Upon MCPS validly terminating this Agreement in accordance with the above provisions, royalties shall become due on the total number of Products remaining in the possession, power, custody or control of the Licensee.

10.5 Without prejudice to any other right or remedy of MCPS or its relevant member(s) under this Agreement, where the Licensee fails to fulfil any of the following obligations it shall pay to MCPS daily interest calculated at a rate of 3% above the base rate of Santander UK plc for that day, or, in the absence of such base rate, such equivalent rate as MCPS shall determine within its reasonable discretion:-

- (a) for failure to deliver the statement as referred to in clause 7.2 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 Products from such statements, 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 8.3, 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.

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

In such an event:-

- (a) all Products remaining in the possession, power, custody or control of the Licensee or the Licensee's distributor or subsequently returned thereto shall be deemed unlicensed;
- (b) the Licensee and its co-exploitants shall cease forthwith to Issue to the Public any Products

- (c) any royalties accrued which have not yet become payable or have not yet been paid shall become payable forthwith, and Statements of Imports shall be sent to MCPS within 21 days.
- 10.7 Both parties shall have the right to terminate this Agreement on giving at least one Quarter's notice in writing.
- 10.8 Upon MCPS properly giving notice of termination in accordance with clause 10.2, 10.3 or 10.6, MCPS may deduct from any deposit or advance paid to MCPS such amount as is required to pay any sums payable under this Agreement.
- 10.9 Upon termination of this Agreement, the terms and conditions of this Agreement shall, save where otherwise expressly stated, continue to have effect as regards Products in relation to which royalties have already been paid.
- 10.10 Following termination of this Agreement, any subsequent Issue to the Public of Products shall be unlicensed and shall be deemed to be in infringement of copyright, the remedies of the copyright owners for which may include damages, an injunction to prevent further Issue to the Public, and delivery up of infringing Products.

## **11 MISCELLANEOUS**

- 11.1 This Agreement shall come into effect on the Commencement Date.
- 11.2 Save for the purposes of complying with its obligations to the Licensee or to its Members or to any Associated Society and save for disclosure to its professional advisers, PRS for Music, BPI and AIM, MCPS shall not, without the Licensee's written consent, disclose any confidential information (so long as it remains confidential) supplied by the Licensee hereunder to any other person.
- 11.3 For the purpose only of calculating interest under this Agreement where any payment or statement is sent by first class post:
- 11.3.1 the postmark shall be sufficient proof of the date the payment or statement was sent; and
- 11.3.2 such payment or statement shall be deemed to have been received before close of business on the second working day after posting.
- 11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 Except as expressly set out herein, the Licensee must not assign or transfer any of its rights or obligations under this Agreement (except with the written consent of MCPS).

11.9 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.

## **Schedule 1 – Relevant Formats**

1. Vinyl and all derivatives of Vinyl
2. Cassette and all derivatives of Cassette
3. CDs and all derivatives of CD (including but not limited to Super Audio CD, Enhanced CD and CD-Rom)
4. DVD-Audio
5. VHS
6. DVD-Video
7. HD DVD
8. Blu Ray
9. Memory Cards
10. Universal Media Disc

11. Musical chip as incorporated in toys or giftware items
12. CD+G
13. NEO+G
14. DivX
15. Karaoke Chips.
16. All X-Box, PlayStation, and Nintendo formats.
17. USB sticks
18. Pre-loaded music players, including but not limited to mobile phones
19. And/or any other format expressly agreed by MCPS.

## Schedule 2 – Restrictions of Licences

1. In respect of **all Products**, the following restrictions shall apply:
  - 1.1 The Licences referred to in clause 2 apply only to Products which are made available for retail sale to the public through normal channels of retail distribution and for private use only. Without prejudice to the generality of the foregoing, it does not apply to Premium Products.
  - 1.2 The Licences referred to in clause 2.1 shall not apply in relation to a particular Repertoire Work where the Licensee has not obtained the appropriate waivers, consents and/or licences (whether pursuant to this Agreement or otherwise) from the person(s) owning or controlling the rights in relation to the Sound Recording containing that Repertoire Work or performers of that Repertoire Work.
  - 1.3 The Licences do not extend to any Product which appears on the Banned List.
  - 1.4 For the avoidance of doubt, the Licences do not extend to any product included in the UK Catalogue.



- 1.4 The Licences do not apply to any Product containing ringtones or mastertones, as these terms are commonly understood.
- 1.5 Nothing in this Agreement grants the Licensee any rights as to the performing right or the communication to the public right of any Repertoire Works or Repertoire Sound Recordings, including, for the avoidance of doubt, via the internet.
- 1.6 All rights other than those expressly granted in this Agreement are reserved, and, without prejudice to the generality of the foregoing, Products Issued to the Public for purposes other than those referred to in clauses 2.1(a) or 2.2 (a) (by way of example only, Products made and/or supplied for the purposes of broadcasting) are not covered by the Licences referred to in clause 2.
- 1.7 The Licences shall not apply to any content on the Product which consists of any advertisement of whatsoever nature or to any Repertoire Work and/or Repertoire Sound Recording which is used in such a manner that a reasonable person might associate that Repertoire Work with an advertisement.
- 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) MCPS has not notified the Licensee in writing that it's Member or the Associated Society Member objects to the reproduction of any such Repertoire Work.

"Permitted Excerpts" refers only to Dramatic-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 DramaticoMusical 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 dance routine merely to provide an acceptable presentation of the work). For the purposes of this paragraph, “actors” shall include actors, singers, mimics and/or puppets.

For the purposes of this clause 1.7, 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 Licences only apply to the relevant Repertoire Works and not (by way of example only) to any underlying dramatic or literary work which forms part of the Dramatico-Musical Work or which such DramaticoMusical Work is based on or uses.

- 1.9 Except where the Licensee has obtained the express written permission of the relevant Member (and satisfactory evidence of such has been provided to MCPS), the Licences shall not extend to or permit any adaptation of any Repertoire Work to be incorporated on any Imported Product 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.

1.10 The Licences shall not extend to:

- (a) any Product where a Repertoire Work and/or Repertoire Sound Recording or part thereof is reproduced in the form of a parody or burlesque of any Repertoire Work and/or Repertoire Sound Recording 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 Product where any Repertoire Work and/or Repertoire Sound Recording is used in any context which the Licensee ought reasonably to consider as being likely to be insulting or detrimental to the composer or artist featured on the commercially released Sound Recording of the Repertoire Work or the relevant Member or Associated Society Member.

1.11 The Licences are subject to certain limitations in relation to the Associated Societies' rights and these limitations are available from MCPS on request.

Where MCPS has provided details of such limitations, it will subsequently update the Licensee with any changes thereto, if any.

1.12 The Licence shall not apply to any Music Sound Carrier or Non-Music Sound Carrier that contains more than 200 minutes of music.

1.13 This Agreement only covers Repertoire Works and Repertoire Sound Recordings. It does not extend to other rights or interests, including (by way of example only), Musical Works which are not Repertoire Works, films, dramatic works, performers' rights, moral rights or rights in performances. Nothing in this Agreement shall entitle the Licensee to exercise the licences or authorisations contained in this Agreement in relation to a particular Repertoire Work reproduced on a Product where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling the rights in relation to the performers of that Repertoire Work.

- 1.14 It is the responsibility of the Licensee to obtain all necessary licences in relation to (i) any Musical Work which is not, or to the extent that it is not, a Repertoire Work, and (ii) any Sound Recording which is not, or to the extent that it is not, a Repertoire Sound Recording and no licence is granted under this Agreement in relation thereto.
  - 1.15 For the avoidance of doubt, the Licences do not extend to Products manufactured illegally or without the necessary licences from the relevant copyright owners in the country of manufacture.
  - 1.16 Nothing in this Agreement affects the moral rights of authors of Repertoire Works whether subsisting in the UK or any other territory.
2. In respect of **Music Sound Carriers** the following additional restrictions shall apply:
- 2.1 Each Music Sound Carrier shall bear a reasonable level of notices and credits.
  - 2.2 The Licences shall not apply to any Music Sound Carrier that is sponsored or includes any form of sponsorship, whether within the content contained on the Music Sound Carrier or the packaging relating to such Music Sound Carrier.
  - 2.3 The Licences shall not apply to any Music Sound Carrier that includes weblinks that are sponsored by third parties.
3. In respect of **Karaoke Sound Carriers** only, the following restrictions shall apply:
- 3.1 This Agreement shall not apply to Karaoke Sound Carriers comprising more than 30 tracks.
  - 3.2 This Agreement shall not apply to Karaoke Sound Carriers comprising in excess of five tracks written by one single composer or writer or song writing partnership or associated with a single performing artist or band.

- 3.3 No Repertoire Work may be used in such a way as to imply approval or endorsement by the writer of, or a performer associated with, such a Repertoire Work, or of the content of the Karaoke Sound Carriers or the part of the Karaoke Sound Carriers which includes the Repertoire Work, unless the relevant Member has specifically consented thereto for the purposes of this Agreement.

Without prejudice to the generality of the above, any Karaoke Sound Carriers will be deemed to be in breach of this clause (unless the relevant Member has specifically consented thereto for the purposes of this Agreement), if:

- (a) the Product title names featured artists or groups and/or featured composer(s)/writer(s), and/or
- (b) the packaging or supporting campaign for any Product names or graphically depicts featured artists or groups and/or featured composer(s)/writer(s), and/or
- (c) the Karaoke Sound Carrier includes content depicting an artist(s) associated with one or more Repertoire Works included on such Karaoke Sound Carrier (unless the artist(s) or the artist(s)'s management has consented thereto).

### **Schedule 3 – Statement of Imports**

See supplied Excel file.