



# AP1 Agreement

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



# AP1 Agreement

FOR THE MANUFACTURE AND DISTRIBUTION OF RECORDS FOR RETAIL SALE TO THE PUBLIC FOR PRIVATE USE

This AP1 agreement forms part of the Audio Product Licensing Scheme ordered by the Copyright Tribunal on the 12th March 1992. The full text of the scheme is available for inspection upon request to the MCPS Audio Product Scheme Manager.

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

BETWEEN:-

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

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

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

IT IS HEREBY AGREED as follows:-

## 1. DEFINITIONS

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

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

1.2 "Catalogue Number" shall have the meaning referred to in clause 24.12.

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

1.4 "Co-Exploitants" means:-

- (a) any person, firm or company which carries out or arranges the manufacture of Discs the subject of this Agreement for the Producer; and
- (b) any person, firm or company which acts as distributor of such Discs for the Producer.

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

1.6 "EC" shall mean each country which is at the relevant time a full member state of the European Community.

1.7 "Equivalent Unit Quantity" for the purposes of clause 16 shall be calculated by multiplying the number of negative sales remaining of the discontinued Format by the PPD of that Format at the time it was discontinued, and then dividing by the PPD of the Format against which the deduction is to be made.

1.8 "Format" shall mean the following audio-only sound carriers:-

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

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

1.9 "Joint Record Agreement Committee" shall mean the committee consisting of MCPS nominees and record industry nominees.

1.10 "Musical Work" shall mean any work consisting of music and any lyrics or words written to be used with music. The expression shall extend to any dramatico-musical work (subject however to the provisions of clause 2.2) and to any part of any Musical Work (subject to clause 9).

1.11 "Net Shipments" for the purposes of clause 17 shall mean the gross number of Shipments during the relevant Quarter of the relevant Disc by Catalogue Number and Format in relation to which royalties are payable under this Agreement, less the number of Returns thereof during that Quarter. In calculating the gross number of Shipments for this purpose, no account shall be taken of Discs which are Deletions (clause 18) or which are exports (clause 13).

1.12 "New Release" means a Disc containing a particular content and configuration of tracks, copies of which have not previously been put into circulation in the United Kingdom in that Format. A Disc shall not qualify as a New Release for the purposes of this Agreement where there has been a minor change in the content thereof.

1.13 "Notification of Intended Release" shall mean the form referred to in clause 24.11 below.

1.14 "Premium Record" shall mean a Disc supplied for use, or with the express or implied authority to sell it for use, as an incentive to purchase or acquire other goods or services of whatsoever nature.

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

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

1.17 "Reconciliation Statement" for the purposes of clause 17 shall mean a statement showing the following information for each Disc by Catalogue Number and Format :-

(a) separately in relation to each Quarter:-

(i) whether the retention was claimed under clause 17.1 or 17.2;

(ii) the retention percentage applied in that Quarter;

(iii) the Net Shipments in that Quarter;

(iv) the total number of Shipments against which royalties have been retained in relation to that Quarter;

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

(b) where the retention was claimed under clause 17.1, the release date;

(c) where the retention was claimed under clause 17.2, the date on which the television campaign began, and the regions within which the campaign took place;

(d) a summary of (a)(iii), (iv) and (v) for the total of all the relevant Quarters.

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

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

(a) any retention period as permitted by clause 17 when the Disc was a New Release has terminated and a proper Reconciliation Statement delivered to the Society and the balance of the royalties due (if any) paid; and

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

(c) the Producer has either destroyed its remaining stock of Discs or disposed of them as referred to in clause 18 and accounted to the Society for the royalties payable thereunder; and

(d) at least one Quarter has occurred between completion or the above and the re-issue in (g) below; and

(e) the Producer, having complied with (a), (b) and (c) above, has decided to re-issue the same Disc with the same content and configuration of tracks; and

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

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

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

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

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

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

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

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

## **2. REPERTOIRE OF THE SOCIETY**

2.1 The repertoire of the Society consists of:-

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

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

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

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

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

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

3.1 to the extent that such contract would otherwise apply in relation to the grant of the licence(s) referred to in this Agreement and/or the terms and conditions on which such licence(s) is or are granted, the terms and conditions of this Agreement shall during the subsistence of this Agreement replace the terms and conditions of that contract;

3.2 upon the written request of the Producer the Society will provide the Producer with evidence that the relevant member has become a member and has given the Society or the relevant Associated

Society authority to bind the member as regards this Agreement.

## **4. GRANT OF LICENCE**

4.1 Subject to the terms and conditions of this Agreement the Society hereby grants to the Producer the following non-exclusive licences to do the following acts in the United Kingdom:-

(a) make audio-only master recordings embodying one or more Musical Works within the Society's repertoire for the purpose referred to in sub-clause (b) below;

(b) make audio-only copies of such master recordings in the form of Discs with a view to their retail sale to the public for private use;

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

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

(a) those relating to the payment of royalties;

(b) those relating to the purposes for which Discs may be made and/or supplied under this Agreement;

(c) those relating to the circumstances in which Discs may not be made and/or supplied under this Agreement.

## **5. SCOPE OF LICENCE**

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

5.2 This Agreement applies to all such Discs:-

(a) made after the Commencement Date, notwithstanding the fact that other copies thereof were released prior to such date;

(b) put into circulation after the Commencement Date, notwithstanding the fact that such Discs were made prior to such date.

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

5.4 All rights other than those expressly granted in this Agreement are reserved, and, without prejudice to the generality of the foregoing, Discs made for purposes other than those referred to in clauses 4, 7.4 or 19 (by way of example only, Discs made and/or supplied for the purposes of broadcasting)

are not covered by the licence referred to in clause 4.

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

#### **6. LABELS TO WHICH LICENCE APPLIES**

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

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

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

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

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

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

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

6.6 The Society will notify the Producer of any importation of Discs bearing a trademark or tradename or issued on a label notified by the Producer to the Society under the above provisions

which to the Society's knowledge infringes any right of the Producer in any such trademark, tradename or label.

#### **7. RENTAL**

7.1 It is hereby confirmed that, subject to clause 7.4, the licences referred to in clause 4 do not extend to the making or putting into circulation of such Discs by or on behalf of the Producer with a view to or with express or implied authorisation for either the rental thereof or the lending thereof by any library authority.

7.2 The Producer shall only carry out or authorise any such act after it has reached agreement with the Society as to the terms and conditions on which the same should take place, including the payment of a proportion of any royalties or fees (if any) payable to the Producer in relation to such rental or lending.

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

7.4 The licences referred to in clause 4 do extend to the supply of Discs direct to a library authority (as defined by the Public Libraries and Museums Act 1964) for the purposes of such library authority renting or lending such Discs where the Producer does not directly or indirectly charge or receive a royalty or other fee in relation to such renting or lending.

#### **8. FIRST RECORDINGS**

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

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

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

Producer should not have needed to make had the Society responded, then the Society shall reimburse the Producer its costs in relation to such enquiries.

#### **9. ARRANGEMENTS AND MORAL RIGHTS**

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

9.2 No such modification shall however be made which:-

(a) would amount to an adaptation of the Work; or

(b) would amount to a derogatory treatment of the Work within the meaning of Chapter IV of the Copyright, Designs and Patents Act 1988

unless the relevant member of the Society or Associated Society has consented in writing thereto.

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

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

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

#### **10. DURATION OF ROYALTIES PAYABLE**

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

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

#### **11. ROYALTIES PAYABLE**

11.1 Save as otherwise provided herein, the Producer shall pay to the Society or (where the Society so directs) to the Society's member in relation to each Disc which reproduces one or more Musical Work(s) in the Society's repertoire a royalty of 8.5% of the Published Dealer Price applicable to the relevant Disc on the day of the Shipment of the Disc from the Warehouse.

11.2 Where the Producer has not published a Published Dealer Price in relation to the relevant

Disc, but the Producer has published a fixed or suggested retail price in relation thereto, the royalty shall be calculated at a rate of 6.5% of the fixed or suggested retail price applicable to the relevant Disc on the day of Shipment of the Disc from the Warehouse.

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

11.4 This clause applies to sales to record clubs. No royalty shall accrue in relation to a Disc which is supplied by the Producer to a record club if the royalty will be paid by the record club pursuant to an agreement between the Society or any Associated Society and that record club provided that where the record club is not paying the royalties due there under the relevant Society is entitled on written notice to require that the Producer cease to supply such Discs until such royalties have been paid.

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

#### **12. TAXES**

12.1 Before calculating the royalties payable on any Disc, Value Added Tax (or, where clause 13.2 applies, any similar tax included in the royalty base price) shall be excluded.

12.2 No other tax which forms part of the relevant price shall be deducted there from prior to calculation of the royalty.

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

#### **13. EXPORTS**

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

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

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

(c) at the same time as submitting the Statement of Shipments referred to in clause 25, the Producer delivers a separate statement identifying the gross number of Discs by Catalogue Number and Format which have been exported royalty-free under this provision, and the name and address of the licensee, affiliate or importer to whom such Discs have been supplied.

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

(a) in relation to Discs exported to a territory within the EC, the royalty rate provided for in clause 11 shall be applied to the PPD or fixed or suggested retail price (as the case may be) of the Discs in the territory to which the Discs are exported;

(b) in relation to Discs exported to a territory outside the EC, the royalty shall be calculated in accordance with the appropriate standard mechanical rights agreement or (in default thereof) in accordance with the law in the territory to which the Discs are exported.

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

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

#### **14. PRO-RATING PROVISIONS**

14.1 This clause applies:-

(a) where a Disc reproduces Musical Works in the repertoire of the Society together with Musical Works which are not within the repertoire of the Society; and

(b) for the purposes of the Producer accounting, where the Producer has elected to account in accordance with clause 27.

14.2 In such circumstances:-

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

(b) in all other cases, the Society's share of the royalty shall be in the proportion which the number of tracks containing Musical Works in its repertoire bears to the total number of tracks on the Disc in question.

#### **15. ACCRUAL OF ROYALTIES**

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

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

#### **16. RETURNS**

16.1 When calculating the royalties due at the end of a Quarter in relation to a particular Disc by Format and Catalogue Number, the number of Returns during that Quarter of the same Disc by Format and Catalogue Number may be deducted from the gross Shipments thereof (including for the avoidance of doubt any exports which are deemed to be U.K. sales under clause 13.3 but not any other exports)

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

16.3 Where the Producer discontinues one Format of a particular Disc by Catalogue Number, and there remains a negative number of Shipments of that Format, then the Producer may deduct from any future Shipments of any Format of that Disc then remaining available the Equivalent Unit Quantity in relation to the negative number remaining, provided that the Musical Works and the duration thereof on each of the relevant Formats are identical, and there are no additional tracks or reduced number of tracks.

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

#### **17. RETENTIONS AGAINST RETURNS**

17.1 The following retention provisions apply in relation to Discs which are New Releases or Re-Releases and shall be applied separately in relation to each Format thereof:-

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

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

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

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

17.2 The following retention provisions apply in relation to Discs which are Television Promoted Discs, whether or not they are New Releases or Re-Releases, but in substitution for those set out in clause 17.1 if they are New Releases or Re-

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

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

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

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

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

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

17.3 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 Joint Record Agreement Committee.

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

## **18. DELETIONS**

18.1 Where at least 6 months after the date of first release, the Producer deletes a long-playing Disc (whether vinyl, cassette or compact disc) reproducing non-classical music from its catalogue, and thereafter sells or authorises the sale of its remaining stock of such Discs to one or more independent buyers on an arm's length basis, the royalty provisions set out in this clause shall apply in substitution for those referred to above.

18.2 The provisions of clause 18.1 shall apply to singles reproducing non-classical music, but substituting 3 months for 6 months.

18.3 The provisions of clause 18.1 above shall apply to Discs reproducing classical music, but substituting 2 years for 6 months.

18.4 The royalties payable in relation to such Discs shall be 10% of the gross price charged to the buyer(s) thereof with no deduction other than any appropriate duties or taxes provided for in clause 12.

18.5 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 the following percentage of the total number of Shipments of the Producer containing one or more Musical Works in the repertoire of the Society during the preceding calendar year:-

(a) singles: 10%;

(b) each other Format: 5%.

18.6 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 provided that where there remains a negative figure of units Shipped as a result of the application of clause 16, the Producer shall not pay any royalties on the Equivalent Unit Quantity of units sold as deletions.

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

## **19. PROMOTIONAL COPIES**

19.1 Discs which are bona fide supplied free of charge only for the purposes of the genuine promotion of sales of other copies of the Discs in question shall be exempt from the royalties otherwise payable under this Agreement on condition that the criteria set out in clauses 19.2 to 19.6 are fulfilled;

19.2 A Disc shall only be regarded as having been supplied for such purposes as are referred to in clause 19.1 where it is supplied to a broadcaster or disc jockey or critic or other party for the purposes of that party broadcasting it or playing it in public or reviewing it, or some other bona fide promotional situation. For the avoidance of doubt a Disc shall not therefore be regarded as having been supplied for such purposes where it is:-

(a) distributed commercially; or

(b) not supplied free of charge; or

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

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

19.4 The Statement of Shipments shall identify the number of Discs by Catalogue Number and Format which the Producer has supplied under the above provisions.

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

19.6 The Producer shall at all reasonable times and upon reasonable notice allow access to its premises

by representatives of the Society for the purposes of the Society checking the then current details of the numbers of Discs manufactured referred to in the above provisions and the persons, firms and companies to whom they are being supplied and the numbers supplied to each such person, firm or company and the Producer shall also maintain such information in such detail as will enable the representatives of the Society reasonably to verify during such access that the numbers of Discs being supplied under the above provisions broadly corresponds with claims for royalty-free supply under Statements of Shipments.

## **20. NOTICES AND CREDITS**

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

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

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

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

- (a) the title of each Musical Work reproduced thereon;
- (b) the name of each composer;
- (c) the name of each author;
- (d) the name of the arranger of the words and/or music where applicable.

20.4 Where it is technically impossible for the Producer to comply with clause 20.3, such information may be reproduced as follows:-

- (a) on the sleeve of the Disc; or
- (b) on the cardboard insert; or
- (c) on the surface of the Disc itself.

20.5 The Producer shall use its reasonable endeavours to include on the label (or as set out in clause 20.4) the name of the United Kingdom publisher of each Musical Work in the repertoire of the Society.

## **21. SUPPLY OF INFORMATION**

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

- (a) two copies of all catalogues, supplements to catalogues and lists or notifications of New Releases and Re-Releases;
- (b) two copies of each list of Published Dealer Prices or fixed or suggested retail prices and each amendment or addition thereto.

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

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

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

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

## **22. PRODUCER ACTING FOR THIRD PARTIES**

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

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

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

- (a) does not have a current agreement with the Society (either in this form or in the form of an AP.2 or AP.2A agreement) unless the Society has expressly authorised the Producer to carry out or arrange the same, such authorisation not to be unreasonably withheld or delayed; or
- (b) is in material breach of such an agreement, if the Society has notified the Producer of that breach and required the Producer to cease undertaking or arranging such pressing until such breach is rectified.

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

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

despatched and the name and address of the person, firm or company to whom they were despatched.

### **23. CO-EXPLOITANTS**

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

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

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

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

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

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

### **24. NOTIFICATIONS OF INTENDED RELEASE**

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

(a) the Producer has complied with its copyright obligations in relation thereto as regards the period prior to the Commencement Date; and

(b) the Producer has given sufficient information to the Society to enable the Society to verify that it has the relevant details of such Discs on its database or to incorporate such details on its database.

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

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

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

(b) a Notification of Intended Release must be submitted whether or not the Producer believes that the Disc contains any Musical Work in the repertoire of the Society.

24.3 Save in exceptional circumstances not caused or occasioned by the Producer's neglect or default, the Notification of Intended Release must be

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

24.4 A new Notification of Intended Release must be delivered to the Society in the event of any material change to the information referred to in clause 24.11. The Producer must also notify the Society if it subsequently decides not to release the relevant Disc.

24.5 Upon receipt of such Notification, the Society shall process the same and send notification to the Producer of the following information not later than the 7th working day following receipt of the accurate and properly completed Notification of Intended Release:-

(a) where the Society is making a claim on behalf of a member, the identity of that member:

(b) the share which that member claims in the relevant Musical Work:

(c) whether the royalties in relation thereto will be payable to the Society or direct to that member:

(d) the royalty percentage per track:

(e) any status referred to in clause 24.9:

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

(g) the Society's code number for each relevant Musical Work;

(h) in relation to each Musical Work referred to in the Notification, for which the 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 clause 2.2 or 8, and the identity of the member refusing that consent.

24.6 Subject to clauses 24.7 and 24.8 below, the licences referred to in clause 4 shall apply in respect of every Musical Work reproduced on the Disc which is in fact in the repertoire of the society, and that licence shall take effect even if the Society notifies the Producer that the Musical Work has one of the statuses described in clause 24.9 below.

24.7 In relation to the rights reserved as referred to in clause 2.2, the licence shall not apply until all the relevant members of the Society or Associated Society owning or controlling the rights in the relevant Musical Work(s) have consented to the grant of the licence in accordance with this Agreement.

24.8 Where there are joint owners of a Musical Work, and the Society does not represent all the parties owning or controlling the rights in such Musical Work, the licences referred to in clause 4 are not licences for the joint owner(s) whom the Society does not represent.

24.9 The statuses referred to in clause 24.5 are:-

(a) NS (non-member);

(b) SAI (copyright status not known at present);

(c) PAI (copyright owner not known at present);

(d) Public Domain work.

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

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

(a) the minimum information which the Producer is obliged to furnish is:-

(i) the Producer's name and address;

(ii) the label of the Producer on which the Disc will appear;

(iii) the title of the Disc;

(iv) the name of the main artist, broken down into tracks where the main artist is different on different tracks, (by way of example, compilations);

(v) the Format of the Disc;

(vi) the Catalogue Number;

(vii) the number of Discs, i.e. if double pack, boxed set etc;

(viii) the scheduled release date, where available;

(ix) the number of tracks;

(x) the titles of the Musical Works;

(xi) the writer/composer/arranger of each Musical Work;

(xii) the side and track sequence number, where available;

(xiii) the duration of each Work, where available;

(xiv) whether the track in whole or in part consists of a medley unless the Producer has supplied the side and track sequence numbers in relation to that Disc.

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

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

24.13 Without prejudice to the rights of either party hereto in respect of any breaches of this Agreement, where the Society expressly notifies the Producer pursuant to a specific obligation hereunder that a particular musical work is in its repertoire 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.

## **25. STATEMENTS OF SHIPMENTS**

25.1 At the end of each Quarter the Producer shall prepare a Statement of Shipments showing by Catalogue Number and Format the gross Shipments thereof and each deduction specifically provided for in this Agreement. The detailed information and format of such statement shall be in accordance with the 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 26.

25.2 The statement 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).

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

## **26. ACCOUNTING PERIOD AND PAYMENTS: CALCULATION BY SOCIETY**

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

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

26.3 The Society will procure that each invoice indicates the payee (that is, the Society itself, or its relevant member) and the details of the account to which the monies should be transferred. Save in the case of and to the extent of any manifest error,

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

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

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

## **27. ACCOUNTING PERIOD AND PAYMENTS: CALCULATION BY PRODUCER**

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

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

(a) the Producer shall still comply with clause 25 of this Agreement;

(b) clause 26 shall not apply;

(c) the Producer shall prepare a royalty statement showing the royalties due in relation to the Society's repertoire using exactly the same information as was contained in the statement referred to in clause 25 and delivered to the Society. Such royalty statement shall be in such standard form as shall enable the Society to process the royalties due to its members without delay and to reconcile the Society's information and calculations with those of the Producer. The royalty statement shall further be provided to the Society on industry standard computer readable magnetic media in a format and layout to be agreed by the Society and shall include the information specified in Annex D hereto.

(d) Not later than 35 days after the end of the relevant Quarter, the Producer shall deliver in relation to the relevant royalties due for that Quarter:-

(i) the royalty statement to the Society;

(ii) To any member which is collecting its royalties direct as notified by the Society to the Producer, a self-billing invoice for the royalties due to that member;

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

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

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

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

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

27.4 Where the Producer has elected to account in accordance with the above provisions, but delivers royalty statements and/or invoices materially late or which are materially inaccurate for 2 consecutive Quarters or 2 out of 4 consecutive Quarters, the Society shall be entitled by notice in writing to require that the Society carry out the accounting in accordance with clause 26. In such circumstances, the Producer shall not be entitled to elect to account again until the Producer has demonstrated to the reasonable satisfaction of the Society (subject to review by the Joint Record Agreement Committee provided that the Producer has so elected a review in writing within 21 days of notification of the Society's decision to require that the Society continue to carry out the accounting) that the Producer will comply with the provisions hereof.

## **28. COPYRIGHT CONTROL ACCOUNT**

28.1 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 Work within the repertoire of the Society. The Producer shall continue to pay royalties in relation to that Work or interest therein into that account until it has discovered the person, firm or company entitled to the relevant royalties, or until the Society notifies the Producer that the Musical work or interest is within the repertoire of the Society.

28.2 Where a third party (not being a member of the Society or an Associated Society) claims the right to grant the licences referred to in clause 4 in relation to a Musical Work or interest therein which remains designated by the Society as SAI or PAI:-

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

(b) at the same time as giving such notice, the Producer may require the Society to investigate the position, and notify the Producer within 3 months of receipt of such notification whether the Society claims that the relevant rights are controlled by a

member of the Society 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.

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

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

(a) the Musical Works in relation to which the Producer paid royalties into the account referred to in clause 28.1;

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

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

## **29. DISPUTES**

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

29.2 In any circumstances where both the Society and a third party not being a member of the Society or an Associated Society make a claim against the Producer in relation to the same Musical Work or the same interest in a Musical Work, the Producer shall pay the royalties relating to that Work or interest therein (calculated in accordance with this Agreement) into an interest-bearing account in the joint names of the 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.

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

(a) the Musical Works in relation to which the Producer paid royalties into the account referred to in clause 29.2;

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

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

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

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

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

30.2 Where the Society notifies the Producer that a Musical Work or interest therein previously designated SAI or PAI is in the repertoire of the Society, the Producer shall within 7 working days of receipt of such notification pay to the Society any royalties held in the Copyright Control Account in relation thereto, together with the interest thereon PROVIDED THAT where the Society's member is or has a direct contract with the author of that Musical Work or interest and such member has failed without good cause to notify its claim to the Society promptly, no interest shall be payable. Where any royalties have been paid to a third party in accordance with clause 28, and the Producer accepts or the Court adjudicates that the Society is entitled thereto, then the Society's claim shall, subject to clause 28.2, be limited to such royalties as should have been paid if the Work or interest therein had been designated as within the repertoire of the Society, together with interest thereon from the date on which such royalties should normally have been paid to the date of payment. The Producer shall not be obliged to account for such royalties on magnetic media.

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

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

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

### **31. AUDITS**

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

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

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

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

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

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

31.6 Such accounting records together with any supporting documentation relating thereto shall be open for inspection (both during and for 9 months after termination of this Agreement) by representatives of the 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 the premises of the Producer. The Society's representatives shall be entitled to inspect, make extracts and take copies of the information available, and to carry out such work as is in their reasonable opinion considered necessary to verify the royalties due to the Society including for the avoidance of doubt the examination of stock movements.

31.7 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) discloses underpayment of royalties in excess of a sum equal to 7½% of the total royalties found due for the calendar year or any other financial period to which the audit relates. In that event and provided that either:-

(a) the Producer agrees and accepts that such unpaid royalties are due; or

(b) the quantum of unpaid royalties is determined by the Court as a result of legal action

the said reasonable fees shall be paid by the Producer.

31.8 The 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 31.7.

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

31.10 The agents of the Society with access to the premises of the Producer under clause 31.6 shall, subject to clause 31.11, be independent qualified Chartered or Certified Accountants (or persons employed by or under the supervision of the same), and shall not directly or indirectly own any interest in any phonographic business or trade.

31.11 Where the turnover of the Producer from the sale of Discs for the four Quarters preceding the commencement of the relevant audit has not exceeded £5 million (such figure to be increased on 1st January 1993 and each subsequent 1st January by the percentage increase in the latest Retail Prices Index by comparison with the equivalent figure in the corresponding month of the previous year), the agents of the Society with access to the premises of the Producer under clause 31.6 may be:-

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

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

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

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

31.12 The obligation as to confidentiality referred to in clause 34.2 shall for the avoidance of doubt apply in relation to such audits as are referred to above and the 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.

### **32. CIRCULATION OF RECORDING MATRICES**

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

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

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

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

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

(a) the name and address of the consignee;

(b) sufficient details to enable the Society to identify the recordings included on the Recording Matrix.

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

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

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

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

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

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

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

(b) to require the Producer to comply with the standard terms and conditions of the AP.2 or AP.2A version of the Society's licensing scheme for the manufacture and distribution of Discs for retail sale to the public for private use.

33.4 The Society shall in addition have the rights referred to in clause 33.3(a) or (b) where there has been a material change in the factors on the basis of which the Society granted the Producer this Agreement provided that:-

(a) the Society shall have given the Producer 28 days' notice in writing specifying the material changes relied on;

(b) the Producer may within 7 days of such notice elect to have the matter reviewed by the Joint Record Agreement Committee by notice in writing to the Company Secretary of the Society.

33.5 Upon the Society validly terminating this Agreement in accordance with the above provisions royalties shall become due on the total number of Discs remaining in the possession, power, custody or control of the Producer in accordance with the standard terms and conditions referred to in clause 33.3(b).

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

(a) for failure to deliver the statements or invoices as referred to in clause 25.2 or 27.2 within the time specified therein, interest shall be payable on the total royalties payable on the basis of the information which should have been included therein;

(b) for omitting Musical Works in the repertoire of the Society notified as such by the Society or Discs reproducing any such Musical Work from such statements or invoices, interest shall be payable on the royalties which should have been payable in relation thereto;

(c) for any invoices properly due and not paid in full within the time prescribed by clause 26.3 or 27.2, interest shall be paid on the relevant sums not paid.

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

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

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

In such an event:-

(a) all Discs remaining in the possession, power, custody or control of the Producer or the Producer's distributor or subsequently returned thereto shall be deemed unlicensed;

(b) the Producer and its Co-Exploitants shall cease forthwith to make or supply any Discs containing Musical Works in the repertoire of the Society;

(c) any royalties accrued which have not yet become payable or have not yet been paid shall become payable forthwith, and Statements of Shipments or (where the Producer is accounting under clause 27) royalty statements as referred to in clause 27.2(c) shall be sent to the Society within 21 days.

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

33.9 Upon the Society properly giving notice of termination in accordance with clause 33.3, 33.4 or 33.7, the Society may deduct from any deposit or advance paid to the society such amount as is

required to pay any sums payable under this Agreement.

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

33.11 After termination of this Agreement (other than by the Society under clause 33.3 or 33.7) the Producer may place at the disposal of a third party which has signed an agreement with an Associated Society to pay mechanical royalties any Recording Matrix which has been lawfully made and/or exploited provided that such third party reaches agreement with such Society that the terms of its agreement with that Society will govern the exploitation of such Recording Matrix. Subject thereto, the Producer shall not exploit the relevant Recording Matrix or authorise such exploitation or supply the Recording Matrix for the purposes of such exploitation without the consent of the Society or the Society's relevant member.

#### **34. FINAL CLAUSES**

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

34.2 Save for the purposes of complying with its obligations to the Producer or to its members or to any Associated Society and save for disclosure to its professional advisers, the Society shall not, without the Producer's written consent, disclose any confidential information (so long as it remains confidential) supplied by the Producer hereunder to any other person or Society.

34.3 For the purpose only of calculating interest under this Agreement where any payment or statement is sent by first class post:- (a) the postmark shall be sufficient proof of the date the payment or statement was sent; and (b) such payment or statement shall be deemed to have been received before close of business on the second working day after posting.

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