

MCPS MEMBERSHIP AGREEMENT (MA2) AND ANNEXES



1. APPOINTMENT OF MCPS

1.1

The Member hereby appoints MCPS to act as the Member's sole and exclusive agent in the Territory to manage and administer the Rights in the Works

1.2

Without prejudice to the generality of Clause 1.1 MCPS shall have the following sole and exclusive powers in its capacity as agent:-

1.2.1 to grant individual licences to exercise the Rights in relation to one or more Works

1.2.2 to institute and operate Licensing Schemes and Codes of Practice relating in any way to the Rights

1.2.3 to institute and operate any European Central Licensing Scheme in relation to which the relevant licence to exercise the Rights is granted in or from the United Kingdom and to authorise the institution and operation of any other European Central Licensing Scheme

1.2.4 to negotiate and enter into agreements with those who require licences to exercise the Rights in the Works or their representatives either in the form of Blanket Licence Agreements or Standard Licensing Agreements

1.2.5 to collect and give a good receipt for all royalties fees and other monies arising in relation to the Rights

1.2.6 to verify by audit or otherwise whether or not those in whose favour licences have been granted (whether or not by MCPS) and those with whom MCPS has entered into agreements in relation to the Rights are complying with the terms and conditions thereof

1.2.7 to determine by negotiation or otherwise the terms and conditions on which licences are granted in relation to the Rights including the royalties fees or other monies payable for such licences

1.2.8 to appoint and remunerate sub-agents. MCPS shall not have the right to appoint sub-agents to grant licences to exercise the Rights in the United Kingdom or to collect royalties fees or other monies arising in relation to the Rights in the United Kingdom except where the Board has approved such appointment

1.2.9 to amend and vary and agree to amendments or variations in relation to any licence Licensing Scheme European Central Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement

1.3

The appointment of MCPS as sole and exclusive agent and the sole and exclusive powers of MCPS are subject at all times to:-

1.3.1 the Member's rights to limit or exclude such appointment and/or powers as expressly permitted under this Agreement and

1.3.2 the limitations in relation to Territory referred to in Clause 6

1.4

MCPS shall have no right:

1.4.1 to introduce any major new Licensing Scheme Code of Practice or Standard Licensing Agreement or to introduce or authorise the introduction of any new European Central Licensing Scheme or to enter into any major new Blanket Licence Agreement unless the Board has approved or ratified the basic terms and conditions thereof including for the avoidance of doubt those relating to the amount of royalties fees or other monies payable thereunder or the principles for the calculation thereof

1.4.2 to agree to any major amendment to or variation of any Licensing Scheme European Central Licensing Scheme Code of Practice Blanket Licensing Agreement or Standard Licensing Agreement unless the Board has approved or ratified the same

2. FIRST RECORDING LICENCE

2.1

Where in relation to any Work no Phonograph Record reproducing the Work has been manufactured in or imported into the EU with the consent of the party entitled to grant consent for such reproduction or importation the Member may require that the right to grant a licence to manufacture the first such Phonograph Record be subject to his prior consent

2.2

If the Member wishes to invoke Clause 2.1 in relation to any Work he must notify MCPS when registering the Work with MCPS in accordance with [Clause 10.3.2](#) below.

3. PHONOGRAPH RECORDS

3.1

The following provisions in this Clause shall take effect only in relation to Phonograph Records

3.2

It is hereby confirmed that in accordance with Clause 1.2 above MCPS shall have the sole and exclusive power in its capacity as agent to grant licences for the manufacture in the United Kingdom (or outside the United Kingdom in the case of Custom-Pressings treated as manufactured in the United Kingdom) of Phonograph Records embodying one or more of the Works (whether or not together with other works) and for the issue of such Phonograph Records to the public. This Clause applies whether or not the Member chooses to collect royalties direct from the relevant record company as referred to in Clauses 3.3 and 3.8

3.3

The member shall have the right at his option to collect the royalties payable in return for the grant of such licences direct from all record companies which are parties to a Standard Licensing Agreement with MCPS which allows royalty accounting on the basis of the number of Phonograph Records sold as opposed to manufactured. For the avoidance of doubt this option may only be exercised in relation to all record companies which may from time to time be parties to such an agreement and not on an individual record company by record company basis

3.4

Clause 3.3 shall not apply to:-

- **3.4.1** any European Central Licensing Scheme to the extent that it does not provide for the direct collection of royalties
- **3.4.2** any royalties fees or other sums which may be payable for secondary exploitation of Phonograph Records (by way of example only rental or public performance/broadcasting) and which do not form part of the royalty payable in return for a licence to manufacture the relevant Phonograph Records

3.5

Where the Member wishes to exercise the option referred to in Clause 3.3 he shall notify MCPS in the Membership Registration Form. If he fails to so notify MCPS he may subsequently give notice to MCPS exercising the option provided that he gives MCPS at least 6 months notice not to take effect except on the first day of any Quarter. The Member may at any time give notice to MCPS that he no longer wishes to exercise the option

3.6

Where the Member is exercising the option referred to in Clause 3.3 the rate of commission referred to in Clause 7.7 for the grant of licences in accordance with Clause 3.2 shall be that set out in AP. 1 of the Terms and Conditions of Business. MCPS may only increase that rate with the approval of the Board and upon at least 6 months notice not to take effect except on the first day of a calendar month

3.7

The names of the record companies to which Clause 3.3 applies are those referred to in the Terms and Conditions of Business. Any additions deletions or amendments thereto shall be notified to the Member by MCPS

3.8

Where the record company is one which is due to account for royalties on the basis of the number of Phonograph Records manufactured as opposed to sold the Member may only collect the royalties payable in return for the grant of the licences referred to in Clause 3.2 direct from that record company if the Member and the record company are Related Parties. Where the Member wishes to collect royalties direct from any such record company he must notify MCPS in writing of the name and address of such company and provide MCPS with such evidence as MCPS may reasonably require that the Member and the record company are Related Parties

3.9

Clauses 3.3 and 3.8 shall not prevent MCPS from collecting any royalties which are found to be payable by the relevant record company upon MCPS carrying out an audit or investigation of that company

4. DIRECT LICENSING AND COLLECTION OTHER THAN PHONOGRAPH RECORDS

4.1

The following provisions shall take effect in relation to all Sound-Bearing Copies except those which are Phonograph Records

4.2

In all such cases it is hereby confirmed that in accordance with Clause 1.2 MCPS has the sole and exclusive power to institute and operate Licensing Schemes and Codes of Practice and to negotiate and enter into Blanket Licence Agreements or Standard Licensing Agreements relating to the Rights and include within the scope of the same all the Works of the Member. The present Licensing Schemes Codes of Practice Blanket Licence Agreements and Standard Licensing Agreements are those referred to in the Terms and Conditions of Business. Except as set out in Clause 4.5 this provision applies whether or not the Member chooses to exclude MCPS's power to grant licences as permitted under Clause 4.3

4.3

The Member may at his option exclude from MCPS's control the power to grant licences to exercise the Rights in relation to any Sound-Bearing Copy which is not the subject of a Blanket Licence Agreement or a Blanket Licensing Scheme

4.4

The Member may exercise the option referred to in Clause 4.3 in whole or in part. The present categories of partial exclusion are referred to in the Terms and Conditions of Business and the terms and conditions relating thereto may be amended only with the approval of the Board and on at least 3 months notice not to take effect except on the first day of a calendar month

4.5

Where the Member excludes the power to grant licences for the synchronisation of the Works with any 1 Motion Picture arid/or the power to grant licences for the reproduction of the Works in the form of any commercial advertisement:-

- **4.5.1** MCPS shall not have the right to include the Works in any Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement which provides for the grant of such licences
- **4.5.2** none of MCPS's powers referred to in Clause 1.2 shall apply in relation to the grant of such licences

4.6

In all other cases where the Member excludes the power to grant licences in accordance with this Clause:-

- **4.6.1** the Member shall only grant licences in accordance with the terms and conditions of the relevant Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement. Where there is no relevant Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement the Member may for the avoidance of doubt grant licences on such terms and conditions as he may think fit
- **4.6.2** the Member may only carry out an audit or other similar investigation of the relevant copyright user where the relevant Licensing Scheme Code of Practice Blanket Licensing Agreement or Standard Licensing Agreement does not provide for the same to be carried out by MCPS. Where there is no relevant Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement the Member may for the avoidance of doubt carry out such audits and investigations as he may think fit
- **4.6.3** the Member shall collect the royalties payable in return for the grant of such licences save for royalties fees or other sums:-
 - i) which are found to be payable upon MCPS carrying out an audit or other similar investigation
 - ii) which may be payable for any secondary exploitation of the relevant Sound-Bearing Copies and which do not form part of the royalties fees or other sums payable for a licence to make the relevant Sound- Bearing Copies

The Member must notify MCPS of any exclusion under this Clause 4 either in the Membership Registration Form or subsequently in writing on at least 3 months' notice not to take effect except on the first day of any Quarter. The Member may withdraw any such exclusion at any time by prior notice in writing

5. ADAPTATIONS

5.1

This agreement shall apply to each Adaptation of any Work (whether the Adaptation is one in existence now or made at any time in the future) the making of which has been licensed by or with the authority of the Member or by the original owner or any successor in title to the original owner.

5.2

Subject to Clause 5.3 MCPS shall not have the right to grant licences without the consent of the Member for the making of an Adaptation of any Work

5.3

For the purposes only of laying down any Licensing Scheme or entering into any Standard Licensing Agreement relating to the making and issue to the public of Phonograph Records MCPS shall have the right to grant licences for the making of any modification to a Work which does not have the effect of altering the character of the Work

5.4

Nothing in this Agreement shall affect the moral rights of any author arising under the Act or any similar legislation for the time being in force in any part of the Territory

6. TERRITORY

The following situations take precedence over the appointment of MCPS under Clause 1 in relation to any country outside the United Kingdom:

- **6.1.1** The appointment by the Member of a sub-publisher or administrator in that country (whether or not an associate or affiliate of the Member)
- **6.1.2** The Member being a direct member of any other collecting society exercising the Rights in that country

6.2

The member must notify MCPS of any country to which Clause 6.1 applies either in the Membership Registration Form or subsequently in writing. Upon receipt of such notification MCPS will not take any active steps without the Member's consent to exercise the powers referred to in Clause 1 in relation to that country and such powers shall in any event become non-exclusive

6.3

The Member may in addition exclude from the Territory any country outside the United Kingdom. No country shall however be excluded unless the Member has given prior written notice thereof to MCPS either in the Membership Registration Form or subsequently on at least 3 months' notice not to take effect except on the first day of any Quarter. However the period of 3 months is not required where the notice is given in connection with that referred to in Clause 6.4.1 below. Any such exclusion may be withdrawn on written notice to MCPS in which

case the relevant country will thereafter be included in the Territory subject always to Clause 6.1

6.4

Notwithstanding any limitations as regards the countries in relation to which MCPS's sole and exclusive powers may from time to time apply MCPS shall have and retain the following powers:

- **6.4.1** those referred to in Clause 1.2.3 as regards any European Central Licensing Scheme the introduction of which has been approved or ratified by the Board. For the avoidance of doubt these powers shall include the power both in relation to European Central Licensing Schemes instituted by MCPS and those instituted by any other collecting society to grant licences or authorise the grant of licences to make the relevant Sound-Bearing Copies and (to the extent that the relevant Scheme provides) to collect the royalties fees or other monies arising in connection with the relevant Scheme whether from the party exercising the Rights or the local collecting society. However in the case of any European Central Licensing Scheme which has been instituted by any other collecting society or which such collecting society is proposing to institute the Member may on written notice to MCPS exclude the power referred to in this Clause 6.4.1 in relation to that particular scheme
- **6.4.2** to authorise the Custom-Pressing of Sound-Bearing Copies of any Work
- **6.4.3** to permit any Sound-Bearing Copy of any Work the making of which was authorised by MCPS or the Member to be exported for the purposes of the use and exploitation thereof in any other country. However the power given to MCPS under this provision shall not affect the rights of any party owning controlling or administering the copyright in such Work in that country including the right to control importation into and distribution within such country
- **6.4.4** to collect and distribute any royalties fees or other monies remitted to MCPS by any other collecting society which MCPS has not actively sought from such collecting society or which are remitted as unidentified sums or sums of a similar nature

6.5 This Clause applies where any collecting society operating outside the United Kingdom remits royalties fees or other monies to MCPS and MCPS subsequently distributes such sums or a share thereof to the Member. Where subsequently such collecting society debits MCPS for such sums or any part thereof for any reason (by way of example only because the Member has appointed a local sub-publisher or becomes a direct member of such society) MCPS shall notify the Member accordingly and unless the Member is within a reasonable time able to demonstrate to the reasonable satisfaction of MCPS that such debit was incorrectly made MCPS shall be entitled to recover the sum distributed to the Member either by way of debit or by requiring the Member to repay such sum forthwith

7. DISTRIBUTION AND REMUNERATION

7.1

At least once during each calendar month MCPS shall remit to the Member such royalties fees and other monies as have then been processed and computed due to the Member provided that the aggregate of such sums is not below the relevant minimum distribution value referred to in the Terms and Conditions of Business. The level thereof shall not be increased except on 6 months notice to the Member not to take effect except on the first day of a calendar month

7.2

MCPS shall process royalties fees and other monies received in relation to the Works as soon as is reasonably practicable. However where the sums paid to MCPS relate to one or more Works and one or more works of other members of MCPS such sums shall be allocated between the members of MCPS on such dates and in such manner as the Board shall from time to time decide. The present dates and the principles on which sums are divided between and distributed to the members of MCPS are referred to in the Terms and Conditions of Business and shall not be varied without the approval of the Board and without at least 3 months prior notice having been given to the Member not to take effect except on the first day of any calendar month

7.3

If any such royalties fees or other monies constitute Minor Sums (as defined in the Terms and Conditions of Business) MCPS shall retain the same and the Member shall have no claim in relation to such sums

7.4

MCPS shall pay interest on sums distributed:-

7.4.1 where MCPS through its neglect or fault fails to distribute sums to the Member by the date when they should have been distributed in which event the rate of interest shall be 3% over the base rate of Santander UK plc

7.4.2 where the relevant user has paid interest (but not interest which forms part of an audit recovery) and MCPS has failed to distribute the relevant royalties fees or other monies by the date when they would have been distributed to the Member had the user not paid them late in which event the rate of interest shall be that paid by the user

such interest to be calculated from the date when the relevant sums should have been distributed

7.5

The Member shall have no claim for any interest on royalties fees or other sums paid to MCPS or any part of such royalties fees or other sums which represents interest except as specifically set out in Clause 7.4 above

7.6

MCPS shall be entitled to commission on the following royalties fees and other sums the rate of such commission to be calculated in accordance with the Terms and Conditions of Business:-

7.6.1 those which MCPS is entitled to collect hereunder and which MCPS has collected

7.6.2 those which MCPS is entitled to collect hereunder but which the Member or his representative has collected direct in breach of this Agreement

7.6.3 those where the Member has given notice to MCPS as permitted by and in accordance with Clauses 3 or 4 that he wishes himself to grant licences and/or collect royalties fees and other monies but where he has thereafter used the services of MCPS to negotiate the terms and conditions on which the licence is granted or to collect such royalties fees or other monies. MCPS will only seek to enforce a claim for commission under this provision 7.6.3 where the Board in its absolute discretion determines that the circumstances are such that the claim should be enforced

7.6.4 those which the Board has empowered MCPS to distribute as referred to in Clause 9.9

7.7

Except as specifically set out in this Agreement MCPS shall not be entitled to commission in circumstances where the Member himself has the right under this Agreement to and does collect royalties fees or other monies but the Board shall be entitled to determine that commission be payable in relation to the exercise by MCPS of any powers and duties remaining with MCPS (by way of example only any administrative duties carried out by MCPS in licensing the exercise of any Right and the power of verification as referred to in Clauses 9.4 and 11) provided that such commission is payable on the same basis by other members of MCPS also themselves collecting such royalties fees or other monies in such circumstances

7.8

MCPS shall only be entitled to alter or amend the rates of commission referred to in the Terms and Conditions of Business with the approval of the Board and upon at least 6 months notice to the Member not to take effect except on the first day of a calendar month

7.9

Prior to distribution of the sums referred to in Clause 7.1 MCPS shall be entitled to deduct and retain:

7.9.1 any commission to which MCPS is entitled whether in relation to the sums being distributed or otherwise

7.9.2 any outstanding charge levied in accordance with the provisions of Clause 9.12

7.9.3 any sums due to be repaid to MCPS in accordance with the provisions in Clauses 6.5 and 10.3.6

7.9.4. any further fees charged by MCPS and agreed by the Member for any additional tasks specifically undertaken for the Member at his request

7.10

All payments to the Member shall be subject to:

7.10.1 the deduction or withholding of any taxes required to be deducted or withheld under the laws of the United Kingdom or of any country in which the relevant royalties fees or other sums arose. Upon request by the Member MCPS will use its best endeavours to assist the Member in reclaiming any taxes by providing the Member with such information as is available to MCPS in relation to the sums deducted or withheld. Where MCPS has deducted any such sums MCPS shall at the request of the Member provide a certificate as to the sums so deducted

7.10.2 any governmental or other permission required to pay any party outside the United Kingdom or the country in which the relevant royalties fees or other sums arose

7.11

Not later than 14 days after the end of each calendar month MCPS shall send a statement setting out in detail the royalties fees and other sums distributed to the Member during that month identifying the gross sums payable and the deductions made therefrom as referred to in Clause 7.9 above. Each such statement will specify the title of each Work to which the distribution relates and the amount of royalties fees or other sums which have been processed and computed as being due in relation to each such Work

7.12

Once the Member has notified MCPS that he controls or administers the Rights in a Work MCPS will subject to Clause 14 remit all the royalties fees and other monies payable in respect of that Work to the Member notwithstanding the fact that the Member may not have controlled or administered such Rights for the whole of the period to which such sums relate. The Member is responsible for remitting to any other party controlling or administering the Rights during such period the portion of such sums to which that party is entitled and MCPS shall have no liability to pay that portion to any such party

8. VAT

8.1

Without prejudice to the specific obligations referred to in this Clause the Member shall comply with any and all obligations imposed on him by the VAT legislation in force from time to time and hereby indemnifies MCPS against all claims demands costs and expenses made against or incurred by MCPS whether by reason of the Member's failure to comply with such obligations or by reason of any notice or direction by the Commissioners substituting MCPS as the person accountable for VAT and/or such obligations as aforesaid

8.2

The Member undertakes to account to the Commissioners of Customs & Excise for any VAT due on royalties:

8.2.1 collected by MCPS as agent for the Member where Section 3 2(4) of the Value Added Tax Act 1983 does not apply and

8.2.2 distributed by MCPS to the Member

8.3

The Member hereby agrees to allow MCPS to operate any self-billing arrangements approved by the Commissioners of Customs & Excise and for such purpose undertakes with MCPS:

8.3.1 not to issue any VAT invoice or document purporting to be a VAT invoice in respect of royalties received from MCPS

8.3.2 if registered for VAT either at the Date of Commencement or at any time during the operation of this Membership Agreement to provide MCPS with the name and number under which the Member is registered and any other information requested by MCPS in connection with such self-billing arrangements

8.3.3 if the Member at any time ceases to be registered for VAT to inform MCPS of the effective date thereof forthwith upon receipt of notice of cancellation of the Member's registration

8.4

The Member hereby grants to MCPS full discretion on the Member's behalf to make any application or to support any application made by MCPS to the Commissioner of Customs and Excise concerning the treatment for VAT purposes of any supply of services (as that term is defined by the Value Added Tax Act 1983) made under the terms hereof by the Member through MCPS or by MCPS as agent for the Member

9. MCPS UNDERTAKINGS

9.1

Subject to Clauses 9.2 and 9.3 MCPS undertakes to use its best endeavours to protect the Rights in the Works from infringement and to collect the royalties fees and other sums arising under licences granted by MCPS. The obligations imposed on MCPS by this undertaking shall be carried out at MCPS's own expense subject only to Clause 7.7 but shall at all times be construed in accordance with the general commercial policies including any financial constraints adopted by the Board from time to time

9.2

MCPS shall have no such obligation as is referred to in Clause 9.1 in cases where the Member has chosen to collect royalties direct as referred to in Clause 3 or to exclude MCPS's power to grant licences as referred to in Clause 4 except to the extent that the Board requires MCPS to fulfil any such obligation. However where the Member has chosen to collect royalties himself in the circumstances referred to in Clause 3.3 but a record company has failed to pay the Member sums to which the Member is entitled the Member may on written notice to MCPS require MCPS to fulfil its obligation as set out in Clause 9.1 in relation thereto. In such circumstances MCPS will endeavour to procure that such sums be paid by the record company direct to the Member but will be entitled to accept payment of such sums to itself

9.3

MCPS shall have no obligation to commence or continue proceedings as part of its obligations under Clause 9.1:-

9.3.1 where in its reasonable opinion after consultation with the Member the amount of costs and expenses of such proceedings likely not to be recovered will be more than the amount of damages likely to be recovered

9.3.2 where MCPS has been advised by its lawyers that proceedings should not be commenced or continued on any other reasonable commercial or legal grounds

9.3.3 where the relevant dispute is one which involves another member of MCPS and relates to the plagiarism of any work or the ownership or control of any work or the royalties fees or other sums arising in relation thereto

and MCPS shall notify the Member accordingly when any of the above apply

9.4

Where any licence Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement which relates to any Right in any Work of the Member is referred to the Copyright Tribunal MCPS undertakes to use its best endeavours at its own expense but subject to Clause 7.7 to justify the terms and conditions thereof in proceedings before the Copyright Tribunal to the extent they are consistent with the provisions of the Act. MCPS shall have no such obligation in relation to any licence granted by the Member in breach of the provisions of this Agreement or which is not a licence granted in accordance with or under the terms of the relevant Licensing Scheme Code of Conduct or Standard Licensing Agreement

9.5

In prescribing Licensing Schemes and Codes of Practice and in negotiating the terms and conditions of Blanket Licence Agreements or Standard Licensing Agreements and in instituting any European Central Licensing Scheme MCPS undertakes to act in what the Board reasonably considers to be the best collective interest of all the members of MCPS including for the avoidance of doubt the Member

9.6

MCPS undertakes that not less than once every Quarter it will publish a summary containing details of each Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement introduced during the previous Quarter

9.7

MCPS undertakes not to discriminate between members of MCPS by giving preferential treatment to one member of MCPS against another member of MCPS except as provided for in this Agreement or where the Terms and Conditions of Business specify different terms for members dependent on the extent to which they exercise any option to exclude MCPS's powers as permitted under this Agreement

9.8

In operating any Licensing Schemes Codes of Practice or Standard Licensing Agreements MCPS undertakes not to grant licences except in accordance with the standard terms applicable in relation thereto unless MCPS has sought and obtained consent from the Member

9.9

MCPS undertakes not to collect royalties fees or other monies which the Member is entitled to collect under this Agreement. However MCPS shall not be in breach of this undertaking where it takes no active steps to collect such sums but such sums are remitted to MCPS by a copyright user in error and the Board may in such circumstances empower MCPS to distribute such sums to the Member and not return them for distribution by the copyright user

9.10

MCPS undertakes to investigate as soon as practicable any accounting irregularity notified by the Member to MCPS arising Out of any distribution to the Member or any failure to distribute to the Member under Clause 7. The Member must however notify any such irregularity as soon as practicable after the Member discovers it and the Member recognises that MCPS's ability to carry out an investigation may be limited or in some cases prevented where the irregularity relates to a period more than 6 calendar years prior to notification of the irregularity

9.11

Where as a result of any such investigation in accordance with Clause 9.10 MCPS discovers that it has failed to account correctly to the Member MCPS will rectify this as soon as practicable thereafter

9.12

Upon request by the Member MCPS undertakes to provide the Member with such detailed accounting information relating to one or more of the Works as the Member may reasonably require in addition to that which MCPS is required to supply to the Member under Clause 7 provided that such information is available to MCPS. MCPS reserves the right to charge the cost of supplying such additional information to the Member and also the cost of providing the Member with information or copies of documents which have already been supplied to the Member or his predecessor in title

9.13

MCPS undertakes that it will not without the consent of the Member unless directed by any court or governmental authority disclose to any other party except to its professional advisers any document supplied to it by the Member in accordance with this Agreement or the royalties fees and other sums payable to or paid to the Member or any information relating to the same

9.14

The Member recognises that MCPS does not itself carry on business outside the United Kingdom except in the Republic of Ireland. Notwithstanding any other term of this Agreement the obligations of MCPS in relation to any country outside the United Kingdom are limited to such as the Board considers in its absolute discretion to be reasonably practicable in the circumstances. This Clause shall not however limit MCPS's obligations in relation to any European Central Licensing Scheme instituted and operated by MCPS

10. MEMBER'S WARRANTIES AND UNDERTAKINGS

10.1

The warranties undertakings and indemnities contained in this Clause are required for the protection of the membership of MCPS as a whole by ensuring that MCPS does not suffer damage or loss which might affect its ability to keep its administration expenses as low as possible or to make rebates. MCPS will only seek to enforce a claim for breach of any such warranty or undertaking or for an indemnity where the Board in its absolute discretion determines that the circumstances are such that the claim should be enforced after giving the Member an opportunity to make representations to the Board in relation to the claim

10.2

The Member hereby warrants to MCPS:

10.2.1 that he has full power and authority to enter into this Agreement and to grant the rights and powers referred to and to give MCPS all permissions and authorities contained in this Agreement

10.2.2 that the Rights in each work registered or hereafter registered by the Member with MCPS are or will be controlled or administered by the Member from the date of such registration or where the Member notifies MCPS on registration that he will control or administer the work at a later date then from that later date and in either case until such date as the Member both no longer controls or administers the Rights in the work and MCPS has been notified of this fact in writing either by the Member or his successor in title

10.3

The Member hereby undertakes to MCPS:

10.3.1 to complete accurately the Membership Registration Form supplied by MCPS to the Member

10.3.2 to register accurately and promptly with MCPS in the form from time to time required by MCPS each and every Musical Work or part thereof the Rights in which are controlled or administered by the Member in the Territory at any time during the subsistence of this Agreement

10.3.3 to keep MCPS fully and promptly informed of any changes in the facts and matters referred to in the Membership Registration Form or otherwise notified to MCPS as required by this Agreement and to give MCPS notification or ensure that MCPS is given notification of the date on which the Member ceases to control or administer the Rights in any Work in any part of the Territory

10.3.4 upon the request of MCPS to supply MCPS with copies of any document relating to the ownership control or administration of the Rights in the Works or the licensing of such Rights in the possession power custody or control of the Member and to use its best efforts to obtain any other such document reasonably requested by MCPS

10.3.5 subject as specifically referred to in this Agreement not itself to grant licences in relation to any Right in the Works or carry out any function which MCPS has the sole and exclusive power to do under this Agreement and at all times to act consistently with such terms and conditions of any applicable Licensing Schemes Codes of Practice Blanket Licence Agreements Standard Licensing Agreements and European Central Licensing Schemes as have been published by MCPS in accordance with Clause 9.6 or otherwise notified to the Member

10.3.6 upon receipt of each distribution statement referred to in Clause 7.11 above to check that the works referred to in that statement and the Rights in respect of which the royalties fees and other monies referred to in that statement are expressed to be paid are controlled or administered by the Member and that such royalties fees or other monies are due to the Member. The Member undertakes to report to MCPS promptly any inaccuracy of whatsoever nature in that or any other respect and in any event undertakes to repay to MCPS on demand any monies paid to the Member by mistake

10.3.7 upon the reasonable request of MCPS to provide MCPS with copies of any licence or licences granted by the Member and such details of

royalties fees or other monies collected direct by the Member as MCPS may reasonably require for the purposes only of MCPS verifying whether by audit or otherwise that any copyright user is obtaining proper licences and/or paying the correct sums whether in relation to the Works or works controlled or administered by other members of MCPS

10.3.8 to do all acts and things (including the execution and delivery of any deeds or documents) which shall be necessary expedient or desirable to give effect to the terms of this Agreement

10.3.9 to render such assistance and give such information to MCPS as MCPS may reasonably require for the purposes of this Agreement

10.3.10 to refrain from doing anything likely to limit or prejudice the success of MCPS in protecting and furthering the common interest of all members of MCPS in ensuring that their Rights are not infringed and that proper remuneration is paid by copyright users

10.4

The Member hereby agrees to indemnify MCPS against all costs actions proceedings claims or demands against MCPS and all costs (including legal costs on an indemnity basis) damages or expenses which MCPS may incur:

10.4.1 as a result of the breach of any warranties or undertakings contained in this Agreement

10.4.2 arising out of any valid claim either that the Member is not entitled to appoint MCPS as agent in accordance with Clause 1 or that any Work or the use or exploitation thereof infringes the copyright in any other work of any nature or is not subject to copyright or is defamatory or criminally obscene

11. PROCEEDINGS

In acting under this Agreement MCPS shall have the right at its own expense but subject to Clause 7.7:-

11.1.1 to bring defend take over or intervene in any proceedings of whatsoever nature which relate in any way to the Rights and to conduct maintain and continue any such proceedings before any Court of Justice or Tribunal or other body having appropriate jurisdiction and to submit any such matter to arbitration

11.1.2 to compromise or abandon any such proceedings or arbitrations as are referred to in Clause 11.1.1 above and disputes or claims relating in any way to the exercise of the Rights

11.2

MCPS shall have the right to use the name of the Member as plaintiff defendant or intervener in any proceedings to which this Clause applies but only after the Member has consented thereto. Consent is not required where the proceedings are representative proceedings and the name of the Member is not specifically referred to as plaintiff defendant or intervener. Where the Member's name is specifically referred to as plaintiff defendant or intervener whether or not in representative proceedings MCPS undertakes to keep the Member informed of

progress in such proceedings on a reasonable basis and to consult with the Member prior to compromising or abandoning such proceedings

11.3

Where MCPS has declined to take proceedings for infringement of the Rights in any Work or the recovery of any royalties or fees due in respect thereof the Member shall then have the right on written notice to MCPS to take such proceedings at the Member's own expense. In this event any damages for such infringement and for any such royalties and fees recovered by the Member shall belong to the Member absolutely and MCPS shall not be entitled to commission thereon

12. SUBSIDIARY COMPANIES

12.1

Where the Member is a company the Member may choose to enter into this Agreement on behalf of one or more of its Subsidiaries provided that:

12.1.1 such Subsidiaries are incorporated in the United Kingdom

12.1.2 such Subsidiaries at all times make the same exclusions from MCPS's control (if any) under Clauses 3 and 4

12.2

The names of such Subsidiaries now in existence must be set out in the Membership Registration Form. The names of any other such Subsidiaries may be notified by the Member at any time hereafter in which event this Agreement shall apply to any such Subsidiary with effect from the date of notification unless the Member specifies a later date. The Member warrants that the Member is entitled to enter into this agreement on behalf of the companies which the Member notifies MCPS as being its Subsidiaries

12.3

The Member may by notice to MCPS require either that separate accountings and/or payments be made to the Member and its Subsidiaries or that accountings and/or payments cover the Member and all its Subsidiaries

13. PRODUCTION (LIBRARY) MUSIC

If any Work constitutes a Production (Library) Work this Agreement is subject to the modifications and additional terms and conditions referred to in the separate agreement between MCPS and the Member relating to the exploitation of Production (Library) Works and Production (Library) Sound Recordings

14. DISPUTES

14.1

In the case of any dispute between the Member and any other member of MCPS relating to any Work MCPS will endeavour to maintain impartiality giving such assistance as it may deem necessary for the satisfactory settlement thereof

14.2

The Board may from time to time lay down rules and regulations relating to the administration of disputes over the ownership control or administration of Musical Works and/or the retention and distribution of royalties fees or other monies arising in relation thereto whether between members or between one or more members and one or more third parties which rules and regulations may modify the provisions of this Agreement and the Terms and Conditions of Business in relation to such Musical Works and/or sums and the Member shall comply with all such rules and regulations

15. DURATION

15.1

This Agreement shall continue for a period of one year from the Date of Commencement and thereafter unless determined by either party upon such party giving at least 6 months written notice not to take effect except on the first day of a calendar month. Where however the Member wishes to terminate his membership:

15.1.1 as a result of a change in the rate of commission referred to in the Terms and Conditions of Business he may give notice that his membership will cease on the day prior to the effective date of the new rate provided that he gives notice in writing to MCPS within 28 days after notification of that change

15.1.2 as a result of the introduction of any major new Licensing Scheme Code of Practice Blanket Licence Agreement or Standard Licensing Agreement which prevents the Member himself granting licences to exercise the Rights or to collect the royalties fees or other monies arising in connection therewith in circumstances where he has immediately prior to the introduction thereof carried on such licensing and/or collection in accordance with the terms of this Agreement he may give notice that his membership will cease with effect from when he is no longer entitled to do this provided he gives notice in writing to MCPS within 28 days after notification of the same

15.2

The provisions of this Agreement shall have effect in relation to all Works of the Member notwithstanding that any such Works were registered with MCPS prior to the commencement date. The Member shall not however he required to re-register such Works

15.3

Upon the expiry of any period of notice referred to under Clauses 3.5 4.7 6.2 6.3 or 15.1 above MCPS shall retain the right to collect all royalties fees and other monies which in the ordinary course of business should have been paid prior to the expiry of such notice or which relate to periods prior to such expiry and all the rights and powers MCPS under this Agreement shall continue for those purposes. Where the Member has terminated this Agreement validly in accordance with Clause 15.1 the rate of commission applicable to such royalties fees or other monies shall be that in force immediately prior to the effective date of termination

15.4

Neither termination of this Agreement nor the expiry of any other period of notice shall affect any licences granted or agreements entered into by MCPS prior to the date of termination which relate to any period after such termination. Where any such licence or agreement is a Blanket Licence Agreement all the terms and conditions of this Agreement shall continue in full force and effect for the purposes thereof but only for the unexpired term of that Agreement

15.5

Either party shall have the right to terminate this Agreement forthwith if the other party ceases trading or (if a company) enters into liquidation (other than voluntary liquidation for the purposes of amalgamation or reorganisation) or (if an individual) is made bankrupt. If MCPS ceases trading or enters into liquidation as aforesaid Clauses 15.3 and 15.4 shall not apply

16. DEFINITIONS

In this Agreement and the Terms and Conditions of Business:

16.1

"the Act" means the Copyright Designs & Patents Act 1988

16.2

"Adaptation" means any adaptation the making of which would be an infringement of copyright under the Act and therefore includes an arrangement of the music and a translation of the lyrics

16.3

"This Agreement" means the agreement between MCPS and the relevant Member which is made when an application to become a member is accepted the terms and conditions of such agreement being those set out in this document

16.4

"Blanket Licence Agreement" means any agreement between MCPS and one or more copyright users or a body representative of such users by which inter alia a licence is granted by MCPS to use such works of the Member and/or such works of other members of MCPS as the copyright user may choose from time to time

16.5

"Blanket Licensing Scheme" means any scheme under which MCPS lays down the terms and conditions on which a Blanket Licence Agreement is available

16.6

"Board" means the Board of Directors of MCPS as constituted from time to time

16.7

"Code of Practice" means any code or set of rules regulations or guidelines whether voluntary or contractual issued by MCPS relating in any way to the exercise grant or enforcement of any licence in relation to the Rights or intended to prevent or limit any infringement of the Rights

16.8

"Custom-Pressing" means the manufacture of one or more Sound-Bearing Copies of any Work by a third party to the specific order of any person holding an appropriate licence to so manufacture the same where such licence permits manufacture by such a third party and where such third party has no right to deal with such copies save to supply them to the person holding the licence or to his order

16.9

"Date of Commencement" means the date notified by MCPS to the Member as being the date with effect from which this Agreement commences

16.10

"EU" means the countries which from time to time make up the European Union

16.11

"European Central Licensing Scheme" means a scheme by which a licence is granted or made available by one collecting society in the EU to make Sound-Bearing Copies of works in the repertoire of that society inter alia in the EU for the purposes of the distribution of such copies primarily in the EU on terms which include a term that the royalties or fees arising in relation thereto should be accounted and/or paid to or as directed by that collecting society

16.12

"Library Work" is a Musical Work which is normally exploited by means of dubbing from a Library Sound Recording containing the work the copyright in which and the physical property of which is usually owned or controlled by the Member and where such musical work has been notified by the Member as being available for exploitation in accordance with any MCPS Library Music Rate Card

16.13

"Library Sound Recording" means the disc or tape or other sound-carrier on which a Library Work is reproduced for the purposes of the exploitation thereof

16.14

"Licensing Scheme" means a scheme or tariff or anything in the nature of a scheme or tariff which sets out the classes of case in which MCPS or one or more of its members including the Member is or may be willing to grant a licence to exercise any Right and the terms on which licences would or might be granted in those classes of case and shall include for the avoidance of doubt a Blanket Licensing Scheme

16.15

"Member" means a person firm or company application to become a member has been accepted by MCPS

16.16

"Membership Registration Form" means the document supplied by MCPS on which the Member is required to register the matters referred to in this Agreement

16.17

"Musical Work" include any lyrics or other words used in association with the music

16.18

"Quarter" means any of the calendar quarters ending respectively on March 31st, June 30th, September 30th, December 31st

16.19

"Phonograph Record" means an audio-only record:-

16.19.1 in the form of vinyl disc or cassette of compact disc or Digital Audio Tape or any other medium whether existing now or invented in the future and

16.19.2 made primarily for the purpose of issue to the public

16.20

A record company and the Member shall be regarded as "Related Parties" where:-

16.20.1 in the case of a record company which is incorporated under the Companies Act 1985 one is the holding company or a subsidiary of the other or one is the subsidiary of the holding company of the other (all such terms to be construed in accordance with that Act)

16.20.2 in any other case the record company and the Member are the same person or legal entity or where one owns the business of the other

16.21

"Rights" means:-

16.21.1 the right to make or authorise the making in the Territory of Sound-Bearing Copies of the Works for the purpose of the use or exploitation thereof in any manner or media now known or hereafter

invented. In the case of writer Members only this right does not include any film synchronisation right assigned to the Performing Right Society Ltd in accordance with the Articles of Association of that Company except to the extent that the Member is allowed by the Performing Right Society Ltd to appoint MCPS as agent in relation to that right

16.21.2 the right to import or authorise the importation of Sound-Bearing Copies of the Works into the Territory

16.21.3 the right to issue or authorise the issue to the public of such copies as are referred to in Clauses 16.21.1 and 16.21.2 throughout the Territory

16.22

"Sound-Bearing Copies" means each and every recording of the whole or any part of a Work from which sound reproducing the Work or part thereof may be produced directly or indirectly regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced and whether or not visual images may be reproduced or produced from such recording

16.23

"Standard Licensing Agreement" means any agreement regulating the rates terms and conditions on which licences to exercise the Rights may be available from time to time whether from the Member or MCPS

16.24

"Subsidiary" shall have the meaning set out in section 736 of the Companies Act 1985

16.25

"Terms and Conditions of Business" means the terms and conditions approved by the Board from time to time on which MCPS licences the Rights and collects and distributes the royalties fees and other monies arising in connection therewith

16.26

"Territory" means subject to Clause 6:-

16.26.1 the United Kingdom which shall for the avoidance of doubt include the Isle of Man and the Channel Islands together with the territorial waters of the United Kingdom and the United Kingdom sector of the Continental Shelf as referred to in s.161 of the Act

16.26.2 each other country of the World save for any country in relation to which the Member does not own control or administer such of the Rights as may subsist in that country unless the party owning controlling or administering the Rights in that country is a subpublisher or administrator of the Member

16.27

"Theatrical Motion Picture" means a film primarily intended for first exploitation by means of exhibition in cinemas

16.28

"Work(s)" means each and every Musical Work or part of such work the Rights in which are directly or indirectly controlled or administered in the Territory by the Member at any time during the operation of this Agreement

16.29

Reference to the singular includes a reference to the plural and vice versa

16.30

Reference to any gender includes a reference to all other genders

16.31

Words importing persons shall include firms corporations and unincorporated associations

17. MISCELLANEOUS

17.1

Whilst acting under this Agreement MCPS must have regard to what the Board considers to be the general interest of its members and in the event of conflict the general interest of the members of MCPS shall be paramount over the specific interest of the Member

17.2

The terms and conditions of this Agreement shall at all times be subject to the provisions of the Treaty of Rome and all regulations made thereunder and the decisions of the European Commission and the European Court of Justice

17.3

This Agreement shall be construed according to the Laws of England and the parties hereto agree to submit to the jurisdiction of the High Court of Justice in England and Wales

ANNEX RELATING TO MULTIMEDIA

Whereas

- A. Multimedia products are being made available which reproduce copyright Musical Works.
- B. MCPS and the Member have agreed that MCPS should seek to ensure that such products are properly licensed by laying down the terms and conditions for such licences and by entering into licence agreements with users.
- C. This Annex sets out some clarifications and variations to the current MCPS Membership Agreement to enable MCPS to do this.

Now it is hereby agreed as follows:

1. MULTIMEDIA COPIES

1.1

The Member agrees and confirms that MCPS's powers and duties under the current MCPS Membership Agreement (MA2) apply to Multimedia, and that the expression "Sound-Bearing Copies" in MA2 extends to Multimedia.

1.2

The expression "Multimedia" shall mean any interactive Optical Disc product which incorporates or reproduces or is capable of reproducing as digital data the sounds of one or more Musical Works with other data types (whether or not of Musical Works) such as film, video, graphics or text. By way of example only, this shall include all interactive music-based products, feature films, karaoke, games, training and educational products, and informational and biographical products.

2. MCPS's POWERS OF AGENCY

2.1

Subject to Clause 2.2 below, the Member therefore agrees and confirms for the avoidance of doubt that MCPS's powers of agency under MA2 in relation to Multimedia include the powers referred to in Clause 1.2 of MA2 inter alia to institute and operate Schemes and Codes of Practice and to negotiate and enter into Agreements which extend to or include Multimedia.

2.2

MCPS agrees and confirms that its powers of agency are subject to the conditions in Clause 1.4 of MA2 relating to the requirement of Board approval

2.3

The Member's option contained in Clause 4.3 of MA2 shall not apply in relation to Multimedia. However, the Board shall require that the grant of any licence by

MCPS in relation to any Multimedia product shall be subject to the prior consent of the Member.

2.4

In relation to Multimedia only, MCPS shall not without the consent of the Member have the power to appoint sub-agents for the purpose of granting licences or collecting or distributing the royalties or other fees arising therefrom.

2.5

MCPS and the Member confirm and agree that the expression "the Rights" in MA2 extends in all cases (including for the avoidance of doubt Multimedia) to:-

2.5.1 the right to license transient copying and downloading as well as any other electronic copying associated with the normal operation and the use of the relevant copy.

2.5.2 the right to license the copying of the text of Musical Works (whether words or music or both) for the purpose of or in connection with any display thereof on screen. For the avoidance of doubt, however, MCPS does not have the right to grant licences for the making of Printed Copies of the Member's Musical Works.

3. TERRITORY

3.1

Subject to Clause 3.2 below, the territorial operation of this Annex shall be the same as that set out in MA2.

3.2

If the Member grants consent as referred to in clause 2.3 above, the Member may authorise MCPS to extend the territories in relation to which consent is granted. In such a case, MCPS's powers shall apply additionally in relation to those territories.

4. MISCELLANEOUS CONDITIONS AND DEFINITIONS

4.1

In this Annex, the following terms shall have the following meanings:-

4.1.1 "Optical Disc" means any disc on which is capable of being stored digital data of whatsoever nature and to whatsoever technical standard, and which is accessed by laser optical scanning.

4.1.2 "Printed Copies" means the graphic representation of music by notation and of lyrics or other words by printed word on paper.

4.1.3 All other words and phrases used in this Annex which are defined in MA2 shall bear the same meaning as in MA2.

4.2

Save as expressly stated in this Annex, all the provisions of MA2 shall apply in relation to Multimedia as they apply to all other Sound-Bearing Copies. By way of example only, both MCPS's undertakings in Clause 9 and the Member's warranties and undertakings in Clause 10 shall apply in relation both to Multimedia and the provisions of this Annex.

4.3

Nothing in this Annex shall require any change or amendment of whatsoever nature to be made as regards the operation of any existing MCPS Licensing Scheme Code of Practice or Blanket Licence Agreement or Standard Licensing Agreement under which MCPS itself grants or may grant licences and collect and distribute the royalties or other fees arising therefrom, or any variation or novation thereof.

5. DURATION

5.1

This Annex shall, unless the member is notified to the contrary prior to 30 June 1994, take effect from 1 January 1994. If notification is given, this shall not invalidate anything done in accordance with the Annex by MCPS or the Member prior to the date thereof.

5.2

This Annex shall apply until 31 December 1995, and thereafter subject to each party's right to give at least six months' written notice, to expire no earlier than 31 December 1995 or any subsequent last day of a Quarter.

5.3

Termination of this Annex shall not affect:-

5.3.1 MA2

5.3.2 Licences granted or Agreements entered into whilst this Annex applies, and any renewals or extensions thereof.

5.4

Termination of MA2 shall not affect the operation of this Annex in relation to Multimedia (including those provisions of MA2 which apply to Multimedia in accordance with Clause 4.2 above) until 1 January 1996. However, with effect from that date termination of MA2 in accordance with the provisions of MA2 shall automatically terminate this Annex

ANNEX RELATING TO RENTAL AND LENDING

Whereas

(A) With effect from 1st December 1996, copyright law in the UK has been amended by the Copyright and Related Rights Regulations 1996 (referred to below as the 1996 Regulations) inter alia to give copyright owners of music and lyrics the right to authorise or prohibit the rental and lending of copies of their works.

(B) MCPS and the Member have agreed that MCPS should act as the Member's agent in relation to these rights on the same terms and conditions as are set out in the MCPS Membership Agreement (referred to below as MA2) and (where applicable) the Annex to MA2 relating to Multimedia (referred to below as the Multimedia Annex).

Now it is hereby agreed as follows:

1. APPOINTMENT OF MCPS

1.1

The Member hereby appoints MCPS to act as the Member's sole and exclusive agent in the Territory to manage and administer the Rental and Lending Rights (as defined below) in the Member's Works

1.2

For these purposes, the definition of "Rights" in Clause 16.21 of MA2 shall include the Rental and Lending Rights, and all references to the Rights in MA2 and any associated documentation (including the Multimedia Annex where the Member has agreed the terms and conditions of that document) shall be deemed to include a reference to Rental and Lending Rights.

1.3

Accordingly, with effect from the applicable date referred to in Clause 4 below, MCPS shall have the same rights, powers of agency, duties and obligations under MA2 in relation to the Rental and Lending Rights as it has in relation to any other Rights, subject to the terms and conditions of this Annex.

2. MEMBER'S MANDATES TO MCPS

2.1

Where the Member has already exercised any option permitted in accordance with Clause 4 of MA2 to license the Member's Works and/or collect the royalties arising in relation to the Member's Works direct, then the option shall automatically apply to Rental and Lending Rights in the same manner as it applies to any other Rights, subject to Clause 4.2 of MA2, and no further formality shall be required to confirm this.

2.2

Where the Member hereafter gives notice to exercise any such option, then such notice shall automatically apply to Rental and Lending Rights in the same manner as it applies to any other Rights, subject to Clause 4.2 of MA2, and no separate notice shall be required for these purposes.

2.3

For the avoidance of doubt, Clauses 2.1 and 2.2 do not apply to Phonograph Records, and there shall be no option in relation to Phonograph Records for the Member to license Rental and Lending Rights or collect royalties, fees or other sums arising from the exercise of such Rental and Lending Rights direct

3. DEFINITION AND MISCELLANEOUS

3.1

In this Annex:

(a) the expression 'Rental and Lending Rights' shall mean:

(i) in relation to the UK the exclusive right to authorise or prohibit rental and lending of Sound-Bearing Copies of Works as conferred by section 18A of the 1988 Copyright Designs and Patents Act and Regulation 10 of the 1996 Regulations; and

(ii) in relation to all other countries of the Territory all similar or equivalent rights which may now exist or hereafter arise, be created or conferred; but subject where applicable to the exceptions and limitations contained in the relevant laws, and (in the case of paragraph (a) (ii) of this Clause 3.1) to the provisions relating to the Territory contained in Clause 6 of MA2;

(b) all other words and phrases used in this Annex and which are defined in MA2 shall bear the same meaning as in MA2.

3.2

For the avoidance of doubt, all the terms and conditions of MA2 (including MCPS's undertakings in Clause 9 of MA2 and the Member's warranties and undertakings in Clause 10 of MA2) apply to the Rental and Lending Rights in the Member's Works already registered with MCPS, notwithstanding the fact that such Rental and Lending Rights did not exist at the time of registration.

4. DURATION OF ANNEX

4.1

If the Member was a Member of MCPS on 1st December 1996, this Annex shall be deemed to have taken effect on that date.

4.2

If the Member has become a Member of MCPS after 1st December 1996, this Annex shall take effect from the date on which MA2 took effect.

4.3

This Annex may only be terminated if the Member terminates membership of MCPS, and notice of termination under Clause 15 of MA2 shall be deemed to include notice of termination of this Annex.

ANNEX RELATING TO ONLINE EXPLOITATION

Whereas:

- (A) Content is being made available in the online environment that involves the reproduction of copyright Musical Works.
- (B) This agreement ("the Annex") sets out certain additions and variations to the current MCPS Membership Agreement MA2 ("MA2") in the light of such types of exploitation.

Now it is hereby agreed as follows:

1. DIRECT LICENSING AND COLLECTION OTHER THAN PHONOGRAPH RECORDS

1.1

A new clause 4.8 shall be inserted into MA2 as follows:

4.8 Where the Board has approved an Online Licensing Scheme or any amendment or any variation thereto the following procedure shall apply:

4.8.1 details of the proposed Online Licensing Scheme or amendment or variation thereto shall be made available to Members in the manner prescribed by the Board, such details to include the period of notice required to terminate Online Licence Agreements entered into under the Scheme;

4.8.2 Members shall have a period of 30 days to notify the MCPS person designated in the details referred to in Clause 4.8.1 in writing (including by email) as to whether they wish to opt out of the proposed Online Licensing Scheme specifying to MCPS the details of the relevant Works unless the notice relates to all the Member's Works. Any Member who fails to so respond within the 30 day period shall be deemed not to have opted out of the proposed Online Licensing Scheme.

4.8.3 following the expiry of the 30 day period referred to the Board shall review the extent to which Members have opted out of such scheme and shall decide in its discretion whether to implement the proposed Online Licensing Scheme. If it does so decide to implement, then those Members who have not opted out shall notwithstanding any other limitation referred to in this Clause 4 save for Clause 4.5 be bound by the terms of the Online Licensing Scheme. However, in relation to those Members who have opted out, MCPS's powers to grant licences shall be excluded in relation

to the specific exploitation covered by the proposed Online Licensing Scheme

1.2

A new Clause 4.9 shall be inserted into MA2 as follows:

4.9 Where an Online Licensing Scheme has been implemented pursuant to Clause 4.8.3 the following shall apply:

4.9.1 MCPS shall have the non-exclusive right to enter into non-exclusive Online Licence Agreements under the Online Licensing Scheme for a renewable finite period (as set out in the Online Licensing Scheme)

4.9.2 MCPS shall maintain a register (accessible to Members in the manner prescribed by the Board) of all such Online Licence Agreements which shall include details of their expiry dates and the date when notice must be given by MCPS to terminate such Agreements and including details of the MCPS person to whom notices must be given under Clause 4.9.3.

4.9.3 a Member may on giving no less than six weeks notice prior to the date when MCPS must give notice as referred to in Clause 4.9.2 above to the said MCPS person prior to the expiry of an Online Licence Agreement notify MCPS that he wishes to withdraw his Works from that particular Online Licence Agreement, specifying to MCPS the details of the relevant works unless the notice relates to all the Member's Works. Upon expiry of that notice MCPS's powers to include the relevant Works within such Online Licence Agreement shall be excluded

4.9.4 where one or more Members has given notice under Clause 4.9.3 prior to the renewal date of the relevant Online Licence Agreement the Board shall have the option at its discretion as to whether or not (a) to terminate that particular Online Licence Agreement or (b) to terminate the whole Online Licensing Scheme. Any such decision shall be communicated by MCPS to its Members in the manner prescribed by the Board. In the event of a decision under (a) to terminate the Online Licensing Agreement MCPS's powers to include any Members' Works under such Online Licence Agreement shall be excluded. In the event of a decision under (b) to terminate the Online Licensing Scheme MCPS's powers to include any Members' Works shall be excluded in relation to the specific exploitation covered by the relevant Online Licensing Scheme. Such decisions may be reversed on at least three months' notice as prescribed by the Board.

4.9.5 where the Member has opted out of an Online Licensing Scheme or has excluded his Works from any individual Online Licence Agreement in accordance with this Annex the Board shall include the Member's Works in any audit or other similar investigation and shall be able to collect and distribute any royalties that are payable as a result of such audit or investigation on the same basis as any other audit or investigation and as if the Works

were included in the Licensing Scheme or Online Licence Agreement. However, the obligation in this clause is subject to the provisions of the relevant Licensing Scheme or Agreement, and also subject to the Member co-operating in disclosing to MCPS such information as MCPS may require and in the manner and at the time MCPS may require in order for the audit to be carried out in a cost-effective and efficient manner.

1.3

A new clause 4.10 shall be inserted into MA2 as follows:

4.10 For the avoidance of doubt the procedure set out in Clauses 4.8 and 4.9 does not apply to Blanket Licence Agreements Standard Licensing Agreements Licensing Schemes (or any other licence agreement issued by MCPS in relation to Works either under a Licensing Scheme or specifically approved by the Member) which have been approved by the Board or in accordance with the Board's mandates and are in operation or where licences have been specifically granted prior to 1 September 2001. However, upon any such Agreement or Scheme or agreement expiring or being replaced, the procedure shall apply.

1.4

In order to reflect the new provisions set out above, Clause 4.2 shall be amended by the deletion of the words "Clause 4.3" at the end of the last sentence and their replacement with the words "Clauses 4.3 4.8 and 4.9"

2. Territory

2.1

For the purposes only of MCPS being able to grant effective Online Licence Agreements where these require licences to be granted for copies to be created or stored outside the UK the territorial scope of MA2 shall be extended, but only as set out in this Clause. However, for the avoidance of doubt, the extension of the scope of MA2 will only apply to the extent covered by the relevant Online Licensing Scheme as approved by the Board

2.2

Clause 6.4.3 shall be amended by replacing the first sentence with the following:

to permit any Sound-Bearing Copy (other than an Online Copy) of any Work the making of which was authorised by MCPS or the Member to be exported for the purposes of the use and exploitation thereof in any other country.

2.3

The existing Clause 6.4.4 shall be renumbered 6.4.5 and a new Clause 6.4.4 inserted as follows:

6.4.4 to permit any Online Copy of any Work the making of which was authorised by MCPS or the Member to be exported for the purposes of the use and exploitation thereof in any other country. In relation to Online Copies, the expression "export" shall mean the situation where the licensee of MCPS transmits or causes the transmission of electronic data from a Data Storage Device in one country as result of which a Sound Bearing Copy is created in another country

2.4

The definition of "Custom Pressing" in Clause 16.8 shall be replaced with the following:

16.8 "Custom Pressing" means the manufacture or copying onto or storing copies on a Data Storage Device of one or more Sound-Bearing Copies of any Work by a third party to the specific order of any person holding an appropriate licence to so manufacture or copy or store the same where such licence permits manufacture or copying or storage by such a third party and where such third party has no right to deal with such copies save to supply them to the person holding the licence or to his order. In the case of Online Copies the expression extends to caching by the licensee himself.

3. MCPS undertakings

3.1

A new Clause 9.15 shall be inserted into MA2 as follows:

9.15 For the avoidance of doubt, the MCPS undertakings referred to in Clauses 9.1, 9.2 and 9.4 shall not apply to members (a) in relation to Online Licensing Schemes, to the extent that the Member has opted out of that Online Licensing Scheme under Clause 4.8 and (b) in relation to an Online Licensing Agreement, to the extent that the Member has withdrawn his Works from that Agreement under Clause 4.9.

4. Miscellaneous and definitions

4.1

Clause 1.2.4 of MA2 shall be amended by the insertion of the words "Online Licence agreements" after the words "Blanket Licence Agreements"

4.2

The definition of "Licensing Scheme" in Clause 16.14 shall be amended by adding the words "and Online Licensing Scheme" to the end of the definition

4.3

The existing Clauses 16.10 to 16.17 shall be renumbered 16.11 to 16.18 and the existing Clauses 16.18 to 16.31 shall be renumbered 16.22 to 16.35 as applicable.

4.4

A new definition shall be inserted as Clause 16.10 as follows:

16.10 "Data Storage Device" means any medium on which data can be stored (whether temporarily or permanently) whether existing now or invented in the future

4.5

A new definition shall be inserted as Clause 16.19 as follows:

16.19 "Online Copy" means any Sound-Bearing Copy made pursuant to an Online Licence Agreement

4.6

A new definition shall be inserted as Clause 16.20 as follows:

16.20 "Online Licence Agreement" means any licence agreement entered into pursuant to an Online Licensing Scheme between MCPS and one or more copyright users or a body representative of such users which shall be subject to the terms of that Online Licensing Scheme

4.7

A new definition shall be inserted as Clause 16.21 as follows:

16.21 "Online Licensing Scheme" means a Licensing Scheme pursuant to which Works (with or without any associated data such as text or visual images, whether or not any such associated data is licensed by MCPS) are exploited in the following manner

16.21.1 one or more Sound Bearing Copies are stored on a Data Storage Device to be made available to users by means of telecommunications networks (whether by wire or wireless means or a combination of both) in such a manner that

16.21.2 the Sound Bearing Copy or Copies reside(s) on the user's Data Storage Device (either temporarily or permanently) or

16.21.3 the user is able to access the Sound Bearing Copy or Copies during the delivery but no permanent copy resides on the user's Data Storage Device

For the avoidance of doubt the above definition excludes traditional terrestrial, satellite and cable, radio and television broadcast services (whether analogue or digital) and near-audio or near-video on demand services as both such expressions are commonly understood as at 9 October 2001 (by way of example pay per view or pay per listen) and similar services which are in a form determined by the provider of the service and which require no action on the part of the individual consumer other than simply turning on the reception equipment and where appropriate choosing from a selection of services whether following a payment for the service or not (a "Broadcast Service"). However where a service is so excluded then the Board shall have the right to require that the simultaneous transmission of such service in the manner described in sub-clauses 16.21.1 to 16.21.3 (but which is not otherwise a Broadcast Service) may be licensed in accordance with the Blanket Licensing Scheme or Blanket Licence Agreement for that service and thus is not subject to the terms of the Online Licensing Scheme.

For the further avoidance of doubt, the fact that the definition of an Online Licensing Scheme includes Blanket Licensing Schemes does not affect in any way the obligations of MCPS to follow the procedures set out in clauses 4.8., 4.9. and 4.10.

4.8

References in this Annex to Clauses are references to clauses of MA2 unless the context implies otherwise.

4.9

For the avoidance of doubt and save as expressly provided in this Annex the provisions of MA2 remain otherwise unaffected by this Annex.

5. Commencement

5.1

This annex shall take effect from 1 January 2002 in relation to those members who have accepted before that date. The Board shall however have the right to terminate the Annex with effect from 1 March 2002 provided that MCPS gives written notice to the member prior to that date.

5.2

As regards any other Members, the date when the Annex takes effect will be agreed with them, but the Board shall retain the right referred to in clause 5.1 as regards any Member who accepts the Annex before 1 March 2002.

5.3

This Annex may only be terminated if the Member terminates his membership of MCPS and notice of termination under Clause 15 of MA2 shall be deemed to include notice of termination of this Annex.

ANNEX RELATING TO ARTIFICIAL INTELLIGENCE & FALSE REGISTRATIONS

WHEREAS

- (A) Artificial intelligence can be used in the creation of music and lyrics.
- (B) MCPS has adopted the policy not to accept registrations by its Members of AI-Generated Works (as defined below). This policy is without prejudice to MCPS's position that copyright does not subsist in AI-Generated Works but is made to clarify the position to members having regard to present legal uncertainties including in jurisdictions outside the UK.
- (C) This Annex sets out certain additions and variations to the current MCPS Membership Agreement MA2 ("**MA2**") in respect of AI-Generated Works and false registrations.

Now it is hereby agreed as follows:

1. Definitions

- 1.1 The following new definition shall be inserted into clause 16 of MA2:

"AI-Generated Work" means a Musical Work that is created by a generative artificial intelligence model or similar technology (including, without limitation, large language models and machine learning models)"

- 1.2 The definition of "Musical Work" in clause 16 of MA2 shall be deleted in its entirety and replaced with the following:

"Musical Work" means any musical work (as defined in the Act) and any lyrics or words written to be used with such musical work (if applicable)."

- 1.3 The definition of "Works(s)" in clause 16 of MA2 shall be deleted in its entirety and replaced with the following:

"Work(s)" means each and every copyright Musical Work or part of such work the Rights in which are directly or indirectly controlled or administered in the Territory by the Member at any time during the operation of this Agreement excluding, for the avoidance of doubt, any and all AI-Generated Works."

2. Member's undertakings

- 2.1 A new clause 10.3.11 shall be inserted into clause 10.3 of MA2 as follows:

"not to register with MCPS any AI-Generated Works."

- 2.2 Clause 10.3.2 shall be amended by deletion of the word "Musical" in the second line.

3. Remedies

- 3.1 The following provisions set out certain additions to MA2 in respect of the registration of AI-Generated Works and other false registrations.

MCPS MEMBERSHIP AGREEMENT - MA2

Page 37

- 3.2 In the event that the Member makes or has made a registration in respect of an AI-Generated Work or a registration which is otherwise false or misleading, without prejudice to any rights or remedies otherwise available to MCPS:
- 3.2.1 MCPS shall be entitled:
- 3.2.1.1 to deem such registration ineffective;
 - 3.2.1.2 to require the Member to repay any sum obtained from MCPS improperly;
 - 3.2.1.3 to require the Member to repay any and all costs and expenses incurred by MCPS in connection with such improper registration, including without limitation all investigation and administration costs;
 - 3.2.1.4 to recover the sums referred to in clauses 3.2.1.1-3.2.1.3 from the Member as a civil debt;
 - 3.2.1.5 to set-off, deduct or withhold from any distributions of royalties, fees and other sums otherwise due and owing to the Member (and cease making future distributions accordingly of) the sums referred to in clauses 3.2.1.1-3.2.1.3, and for the avoidance of doubt in each case MCPS may withhold distributions of royalties, fees and other sums from the Member in the interim where there is reason to believe that fees have been obtained improperly and while the facts are being ascertained;
 - 3.2.1.6 subject to Independent Board Approval (as defined in clause 3.3 below), to audit (or appoint a third party to audit) the Member's compliance with its registration obligations hereunder and to recover from the Member MCPS's reasonable costs and expenses incurred in connection with such audit; and
 - 3.2.1.7 subject to Independent Board Approval, and without prejudice to clause 15 of MA2, to terminate the Member's MCPS membership on 60 days' notice;
- 3.2.2 the Member shall waive any, and accepts that it shall have no entitlement to any, claim, cause of action or remedy against MCPS and/or any licensee, and MCPS and any licensee are not liable for, any actions carried out by MCPS and/or a licensee in respect of the affected registered Works, provided MCPS has acted in accordance with this Agreement and the licensee has acted in accordance with its licence (unless, in both cases, they are prevented from doing so as a result of the breach) in respect of such registered Work; and
- 3.2.3 the Member shall provide to MCPS any information, documentation or other assistance as MCPS may reasonably require, including by providing reasonable access to the Member's premises, IT systems and personnel, and all reasonable co-operation, to MCPS or its third party auditors in the exercise of MCPS's rights under clause 3.2.1.6.
- 3.3 For the purposes of this clause 3, "**Independent Board Approval**" shall mean the approval of the Independent Non-Executive Directors and the CEO of MCPS (or, in the event that no Independent Non-Executive Directors are appointed and the CEO is an individual who is a representative of or otherwise affiliated with a Member, the approval of an independent third party appointed by the Board for this purpose), having regard to all of the relevant circumstances, including without limitation the following factors: (i) whether the Member knows or has reason to believe or suspect that a registration

MCPS MEMBERSHIP AGREEMENT - MA2

Page 38

concerns an AI-Generated Work or is otherwise false or misleading; (ii) whether the Member has reasonable organisational systems and processes in place to prevent registrations of AI-Generated Works or otherwise false or misleading registrations; and (iii) whether the Member has previously made any registration(s) in respect of AI-Generated Works or other false or misleading registration(s), and having regard moreover to the need to act in a non-discriminatory manner as between Members.

4. Miscellaneous

- 4.1 In the event of any inconsistency between the terms of this Annex and the terms of MA2, the terms of this Annex shall prevail.
- 4.2 For the avoidance of doubt and save as expressly provided in this Annex the provisions of MA2 remain otherwise unaffected by this Annex.

5. Commencement

- 5.1 This Annex shall take effect from 1 January 2025. By continuing as a member of, and by continuing to receive distributions from, MCPS, the Member agrees to comply with the terms of this Annex.
- 5.2 This Annex may only be terminated if the Member terminates its membership of MCPS and notice of the termination under Clause 15 of MA2 shall be deemed to include notice of termination of this Annex. For the avoidance of doubt, any such termination shall not affect either party's rights or remedies accrued prior to such termination becoming effective.