

# 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 and/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
- **6.4.5** 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

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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 National Westminster Bank 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

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 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, December 31<sup>st</sup>

**16.19**

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

**16.19.1** in the form of vinyl disc or cassette or 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.



# GUIDE TO THE MCPS MEMBERSHIP AGREEMENT (MA2) AND ITS ANNEXES

## GUIDE TO THE MEMBERSHIP AGREEMENT

### INTRODUCTION

This document is a companion guide to the MCPS Membership Agreement and Annexes, which it is hoped will help you to understand the agreement better.

The agreement is a contract of agency. The principal can be anyone (whether a music publisher or writer) who has control over the right to grant a licence to record a musical work. In the agreement, the principal is referred to as a Member of MCPS. MCPS is the agent of the Member.

The remainder of the agreement specifies in detail the undertakings of both parties and the instructions under which MCPS will carry out its duties and exercise its powers as agent.

Many of the words and expressions used in the agreement are in capital letters, and, where this is so, they have a specific meaning which will be found in Clause 16.

These notes are provided to explain the context of the Membership Agreement, to highlight potential problems which may arise, and to help the member in providing specific examples of the practical effect of the agreement. They do not have legal effect, and cannot be used in any way to limit or define the terms and conditions of the Agreement itself.

### CLAUSE 1 APPOINTMENT OF MCPS

MCPS does not own the rights in Musical Works or act as exclusive licensee. Under Clause 1 of the Agreement, MCPS is appointed to act as the Member's sole and exclusive agent. The Agreement confers considerable powers on MCPS which may not be exercised by anyone else, even the Member, in a very widely defined territory. However, the powers are only exercisable in accordance with the remainder of the terms and conditions, and there are specific provisions giving the Member the right to exercise many of the powers himself.

The powers of MCPS range from the right to grant individual licences to the right to enter into blanket licence agreements and to lay down the standard terms and conditions on which licences may be available. The latter two powers were previously exercised by the Mechanical Rights Society Limited, which acted as a negotiating body for music copyright owners, both publishers and writers. The Mechanical Rights Society has now merged with MCPS, and accordingly MCPS now takes on board those rights which MRS previously had.

European Central Licensing Schemes are those where a licence to manufacture is granted by one collecting society in the EU, but is exercised through out the EU, and where accounting takes place centrally. British music publishers take the view that these schemes cannot be instituted by collecting societies on the Continent without their consent, and the membership agreement therefore provides not only for MCPS itself to institute any European Central Licensing Scheme, but also to approve or disapprove European Central Licensing Schemes instituted by other collecting societies on the Continent. Board approval or ratification is required in each case. In the case of schemes introduced by foreign collecting societies

MCPS's powers are subject to the member's rights not to participate in such schemes referred to under Clause 6.

In some cases, MCPS exercises its powers through sub-agents. Examples are foreign collecting societies in relation to territories outside the United Kingdom, and the panel of auditors which MCPS employs to carry out audits verifying whether or not correct royalties have been paid. MCPS appreciates however that members will need reassurance that MCPS's primary duties of licensing and collection in the United Kingdom are not delegated save in exceptional circumstances, and accordingly MCPS has no right to appoint such sub-agents unless the Board agrees that this is in the interests of the membership. An example is the Educational Recording Agency (ERA). Details of this are in the Terms and Conditions of Business, Other Licensing (BG.9).

All major agreements and schemes of MCPS require approval or ratification by the Board prior to their introduction. The same requirement applies as regards major amendments and variations to existing agreements and schemes. The Music Publishers' Association, a members' company which owns MCPS, has ensured that MCPS meets the broad wishes of copyright holders by appointing a Board of Directors which is broadly representative of all interests. It ensures that MCPS only exercises its powers to enter into blanket licence agreements and lay down standard terms and conditions to the extent appropriate and consistent with MCPS's function to serve its members by protecting the artistic and economic value of their works, and achieving a proper remuneration for the use of such works.

## **CLAUSE 2 FIRST RECORDING LICENCE**

This Clause is an important limitation of MCPS's powers. Where the work has not previously appeared on record in the EU, it means that the Member can make the granting of the first recording licence subject to his consent. Where the Member wishes to take advantage of this provision, he needs to notify MCPS in the space indicated on the MCPS/PRS Joint Notification (Works) Form.

## **CLAUSE 3 PHONOGRAPH RECORDS**

This Clause deals with the licensing of Phonograph Records. Most records are licensed under MCPS's Audio Product (AP) licensing scheme as ordered by the Copyright Tribunal on 12th March 1992.

In order to ensure that proper licences are in place for all records manufactured in the United Kingdom (including custom pressings manufactured abroad), MCPS has become the central licensing body for the United Kingdom, and grants all licences to make such records, and also to issue them to the public. No such licences may be granted direct by the Member, and this applies whether the copyright owner and record company are at arm's length, or are members of the same group.

However, in the case of record companies which have an AP.1 Agreement with MCPS entitling them to account on sales rather than manufacture, the Member may collect royalties himself. This option can only be exercised in relation to all such record companies, and not on a company by company basis. The commission which MCPS charges for granting the licence is presently 4.75%, and this is collected direct from the record company. Further details of this scheme appear as AP.1 in the Terms and Conditions of Business.

In the case of monies generated by European Central Licensing Schemes, the royalties are remitted to MCPS. Further details of this scheme appear as EC.1 in the Terms and Conditions of Business. These sums cannot be collected direct by the Member, and the same applies to monies generated through secondary exploitation of records — an example could be rental income.

In cases where the record company does not have a Sales Agreement with MCPS, the Member may only collect the royalties direct if the record company is a related party. This definition is referred to in Clause 16, but covers both holding companies and subsidiaries, as well as the position where the record company and member are the same person, or one owns the business of the other. In these circumstances, MCPS still grants the licence, but there is no charge for doing this under the present Terms and Conditions of Business. Further details of this scheme appear in AP.2.

It is important for members to note that ALL phonograph records (as defined in Clause 16.19) are covered by this Clause, not just records for retail sale under the AP.1 and AP.2 scheme. Separate schemes apply for example to record clubs, direct mail order, premium records and imports. In each case, MCPS grants the licence, not the member, and members should refer requests for licences to MCPS.

Where exclusions from collection are possible, these must be indicated in the Membership Registration Form.

## **CLAUSE 4 DIRECT LICENSING AND COLLECTION OTHER THAN PHONOGRAPH RECORDS**

This Clause covers all areas of exploitation of musical works except records. Here, the Clause provides a balance between direct licensing by members, and the powers previously exercised by MRS and now transferred to MCPS to enter into Blanket Licence Agreements and lay down the terms and conditions on which licences are granted. As regards the latter, in some cases this will include setting the usual rate at which licensing takes place, such as with the current MCPS/BPI Music Videogram Agreement, and in other cases MCPS may simply lay down the standard form of licence, and leave the fee or royalty to be negotiated by the Member. Again, no major Agreement or scheme may be introduced without Board ratification or approval.

Basically, the areas of exploitation fall into three categories.

First, there are blanket licence agreements where the licence to record the whole of MCPS's repertoire is granted centrally by MCPS, often in return for a lump sum. The obvious examples of this are the BBC and ITVA agreements. Here, no exclusion will be possible, and the licence will be granted by MCPS, just as formerly it was granted jointly by MRS and MCPS.

Secondly, there are areas where MCPS by agreement with user organisations or by laying down licensing schemes, will set the terms and conditions on which individual licences may be available. Here, the member may opt to grant the licence direct, but must do so on the terms and conditions laid down in the relevant agreement or scheme. An example of this is the Music Videogram Royalty.

Thirdly, there are areas where no blanket licence agreement applies, and no standard terms and conditions have been laid down. Examples are theatrical motion picture synchronisation, and commercial advertisements (where in both cases MCPS has no power under this agreement to enter into blanket agreements or lay down licensing schemes which will bind the Member) and independent television productions where these are not covered by mini-blanket licence agreements. In all these areas, the Member is free to grant licences direct on such terms as he thinks fit.

Special provisions are referred to in the Terms and Conditions of Business as regards Dramatic Musical Works, such as operas, ballets and musicals. Even where blanket licence agreements or standard terms and conditions apply, the Member may retain the right to grant licences direct where the user requires a licence to reproduce either the whole work or over a certain number or duration of extracts from the work. The extent to which extracts are covered is defined in the summary of each relevant scheme or agreement provided in the Terms and Conditions of Business.

Summaries of all the present schemes and agreements are provided in the Terms and Conditions of Business.

The options referred to may be exercised either in whole or in part. Details of the partial exclusions possible are referred to in the Terms and Conditions of Business - for example, in some areas MCPS can operate on a "first-call" basis, where MCPS handles the negotiation and takes a commission where the first enquiry comes to MCPS, and the member handles the negotiation and does not pay commission where the first enquiry comes to the member.

Where the member is signing or has signed the Multimedia Annex, the whole of this Clause 4 and the guide is subject to the terms and conditions of that Annex.

Again, any exclusions should be notified in the Membership Registration Form.

## **CLAUSE 5 ADAPTATIONS**

It is an infringement of copyright to make an adaptation of a copyright work, whether the adaptation is in the form of an arrangement of the music or a translation of the words. MCPS does not usually grant licences to make adaptations except with the consent of the Member. However, one of the terms ordered by the Copyright Tribunal was that, under the terms of the Audio Product scheme, record companies may make such modifications to a musical work as they consider necessary in order to satisfy the requirements of the relevant recording. No modification can be made which is either an adaptation of the work or would amount to derogatory treatment. In such cases written consent is necessary.

Once an adaptation has been licensed, thereafter the membership agreement applies to that adaptation, and MCPS can exercise its powers under the membership agreement in the usual way in relation to that adaptation.

Under the 1988 Act, authors and composers of musical works have separate moral rights, firstly to be identified as the author of the work, and secondly to not have their works subjected to derogatory treatment. These rights are not at all affected by the Membership Agreement.

## **CLAUSE 6 TERRITORY**

The Board of MCPS has considered the territorial capabilities of MCPS and other licensing authorities and collecting societies. The purpose of this Clause is to ensure that members can obtain the maximum protection for their works outside the United Kingdom. Under this Clause, members retain the right to sub-publish, and be members of organisations similar to MCPS in other countries of the world, and such sub-publishing and local collecting society membership overrides the membership agreement. However, such countries still remain part of MCPS's territory, and this gives members the benefit of the safety net which MCPS offers. Where sub-publishing and local society membership fails for any reason, this enables MCPS's rights to be invoked. The society network then tries to resolve problems and royalties will flow as a last resort to the society in whose territory the original publisher resides.

Whilst MCPS does not seek to be active in other countries of the world outside the United Kingdom and the Republic of Ireland, it is a passive recipient of substantial royalties and details of accounting. This Clause empowers MCPS to distribute royalties to the rightful owner where otherwise they might remain in a copyright control account overseas.

On this basis there is no need for the Member to exclude countries from MCPS's control where the Member has a sub-publisher or is a member of the local collecting society. It is for this reason that the Board of MCPS does not expect Clause 6.3 to be generally invoked by the membership and would advise that members should not exercise the right to exclude MCPS's jurisdiction unless this is absolutely necessary. Before effecting any such exclusion, it is in any event recommended that the situation be discussed with MCPS.

So far as European Central Licensing Schemes are concerned, although MCPS does have the right to operate such schemes, the Member has the absolute right to prevent MCPS from including his works in any scheme instituted by another collecting society on the Continent. Since the Board will necessarily have considered the implications of such a scheme for the membership as a whole, it is expected that members would not wish to exercise this right save in exceptional circumstances.

As previously stated, MCPS acts as a safety net for its members, but on occasion distributions that have been made in good faith have been founded on incorrect information in the country of source. This can happen as the result of an appointment of a sub-publisher in a foreign country. Under inter-society rules, where royalties are paid by one collecting society to another, and a debit reversing the payment is later made, the collecting society against whom the debit is made must accept that debit. However, where the member is able to demonstrate that the debit was incorrectly made, MCPS will bear the burden of persuading the other collecting society that the debit was incorrectly made, and royalties which have already flowed through to the member will not be recoverable. In other circumstances, the royalties will be recovered from the member, as the Board is keen to ensure that no member gains at the expense of another.

Members should note that backdating sub-publishing agreements and failure to effect proper notification in foreign countries often causes a significant effort in accounting. The cost of this effort means that MCPS's goal of lowering its commission rate is affected, and the opportunity to make rebates to its members is also affected.

## CLAUSE 7 DISTRIBUTION AND REMUNERATION

The dates on which royalties become payable to the Member are referred to in the Terms and Conditions of Business, which also describe the principles on which such sums as blanket licence fees are allocated as between members. Distribution of monies takes place at least once a month, subject to the total royalties at the date of distribution being greater than the minimum distribution value referred to in the Terms and Conditions of Business. The Clause as a whole needs to be read carefully in conjunction with the Terms and Conditions of Business.

MCPS pays interest to its members in two circumstances. First, it does so where through its own neglect or fault it fails to distribute on time. Secondly, it pays interest where it is itself paid interest by a user, (unless this is part of an audit recovery) but only in relation to any period after the date when distribution would normally have been made. As stated, the relevant dates are referred to in the Terms and Conditions of Business.

In return for all its responsibilities and services, MCPS levies commission at the point of distribution on those sums which it is entitled to collect under the membership agreement. Where the member has instructed MCPS to collect, but the member collects himself in breach of the agreement, it is also considered right that MCPS is entitled to the relevant amount of commission when distribution would have taken place. The same applies where the member properly excludes MCPS's powers under the agreement, but still uses MCPS's services to negotiate and/or collect the licensing fees. In these circumstances it is not considered fair that one member should effectively benefit at the expense of other members, but the Board will have to approve the charging of commission to the member in each individual case before any entitlement can arise.

MCPS in some cases receives sums from users which it has not actively sought, and which ought strictly speaking to have been paid direct to members. In some cases, for example where the user's financial position is in doubt, or where repayment to the user may result in further delays in payment to members, the Board is empowered to instruct MCPS to pay the monies direct to the member and deduct commission.

In normal circumstances, the member's statement setting out the distributions made to him will accompany the distribution. In some circumstances, the Board will direct that distributions be made immediately upon receipt of the relevant sums from the user, without there being

sufficient time to prepare a statement. In any event, the statement will be sent to the member within 14 days of the end of the calendar month during which the distribution was made.

## **CLAUSE 8 VAT**

Members should note that MCPS operates a self-billing arrangement approved by the Commissioners for Customs and Excise, and all members are committed to the scheme by signing the membership agreement. MCPS has regularly been subjected to investigation by the Customs and Excise authorities, and the membership is asked to be extremely careful in notifying VAT registration numbers, amendments thereto or changes in VAT status. If the Member fails to comply with its VAT obligations, MCPS may itself suffer loss and damage, and, in order to prevent this being effectively borne by the membership as a whole, there is a right of indemnity against the member.

## **CLAUSE 9 MCPS UNDERTAKINGS**

This Clause sets out MCPS's undertakings to its members. Here, the co-operative nature of the venture is an overriding factor governing the agreement. MCPS exists to provide every member with the same service without favour or discrimination. It does not undertake to go to the ends of the earth for one member to the disadvantage of the others, and accordingly the "best endeavours" undertaking must be read as being subject to commercial feasibility, and this includes any financial constraints which are imposed by the Board. The undertakings by MCPS are necessarily modified where the member chooses himself to license direct within the terms of the membership agreement.

Should a member believe that a breach of undertakings may have taken place, or a loss may have been incurred because of error or inefficiency, then the Board would welcome a representation being made to it in writing through the Company Secretary.

## **CLAUSE 10 MEMBER WARRANTIES**

The warranties taken in this Clause relate to the member's authority to enter into the agreement, and to appoint MCPS as agent in relation to the musical works registered by the member with MCPS. The undertakings confirm that the member must keep MCPS properly informed and notified so that it can carry out its functions successfully.

The undertakings also reflect the co-operative venture which MCPS carries on. These warranties and undertakings are required for the benefit of the membership as a whole. If a member causes MCPS loss or expense, this means effectively that the membership as a whole suffers, again because of the effect this may have on administration expenses, and the possibility of making rebates. Nevertheless, MCPS does not expect it to be necessary to enforce the indemnity contained in this Clause. The Board has decided that no claim under the Clause can be made unless the Board has first determined that the circumstances are such that the claim should be made after giving the Member an opportunity to make representations.

## **CLAUSE 11 PROCEEDINGS**

As an agent, MCPS cannot sue for infringement of copyright in its own name, although it sometimes does commence proceedings under agreements which it has with users and

representative user bodies. In all other cases, it needs to be able to use the Member's name where court proceedings are involved. However, the Member's name will not be used, except where the Member gives his prior consent.

MCPS is acting for the common good, and therefore must consider its obligations in terms of the whole membership. It must determine whether it will take or continue with a case with this in mind. Where an individual member wishes to take proceedings which in the view of MCPS is not in the best interests of all the membership, then the member can do so, but must take over the cost of such proceedings. Members are asked to consider very carefully whether or not they should take proceedings in a case which the Board of MCPS feels is not in the best interest of all members.

## **CLAUSE 12 SUBSIDIARY COMPANIES**

This Clause enables members to enter into one agreement covering the Member's subsidiaries without the necessity of separate signatures.

It should be noted that the agreement applies to all the Member's musical works, whether or not the Member owns and controls such works, or simply sub-publishes them under an administration agreement.

## **CLAUSE 13 PRODUCTION (LIBRARY) MUSIC**

The exploitation of Production (Library) Music requires the application of special terms and conditions, because the rights in the musical works are inextricably linked with the rights in the sound recordings on which the works are reproduced. These rights were formerly owned by MRS, and will for the future be owned by MCPS following the merger of the two organisations. A separate side agreement covers these rights.

## **CLAUSE 14 DISPUTES**

MCPS is reluctant to involve itself in disputes between members as to the ownership of works or the rights and royalties appertaining thereto. Where MCPS is asked to be involved or finds itself so involved by the nature of the dispute, then it will apply the procedure as laid down by the Board. The current procedure is set out in a document available separately.

## **CLAUSE 15 TERMINATION**

This Clause defines the starting date of the agreement, and informs both parties that it will continue for at least one year. Thereafter, at least 6 months' written notice must be given by either party. However, if the Board of MCPS decides that an existing commission rate must be increased, then the Member is given a special right to terminate membership with effect from the date when the change takes place. The same applies where the Board makes a major change in policy by which the member is no longer entitled to license or collect direct.

Termination of the membership agreement does not affect pipeline monies, which MCPS will continue to collect. Termination also does not affect licences granted or agreements entered into prior to the date of termination. Where such an agreement is a blanket licence agreement, MCPS will continue to license the member's works through that agreement, and

remit the member's share of such royalties until the expiry date of the relevant agreement, when the member will thereafter be entitled to license direct.

It is hoped that no member will feel obliged to terminate his or its agreement with MCPS in the above circumstances. The Board of MCPS makes every endeavour to ensure that commission rates are fair and reasonable, and appropriate to the market that they affect. The Board would also not terminate an existing right to license or collect direct unless the circumstances were such that this should be done in the interests of the membership as a whole.



## GUIDE TO THE ANNEX RELATING TO RENTAL AND LENDING

### INTRODUCTION

Until 1st December 1996, creators and copyright owners of music did not have the right to control rental and lending of copies of their works. The only exception was rental and lending which constituted first distribution of the copies. Under the Government's Copyright and Related Rights Regulations 1996, Rental and Lending Rights have been given to creators and copyright owners of music for the first time. The new Rights take effect from 1st December 1996.

Rental and Lending have very specific meanings. These are set out in a new section 18A inserted into the Copyright Designs and Patents Act 1988, and this new provision is set out fully at the end of this Guide. Apart from the exemptions contained for example in section 18A(3) and (4), there are other exemptions, principally relating to lending by schools and other educational establishments, and also to lending by certain libraries and archives. However, the new Rights do apply to Rental and Lending by public libraries, except where the copy of the work being lent or rented is covered by the Public Lending Right (which primarily applies to books).

The purpose of this Annex is for these new Rental and Lending Rights to be included within the scope of the existing Membership Agreement: since the rights did not exist at the time the MCPS Membership Agreement was last revised, and were therefore not included in that Agreement, it is necessary for them to be dealt with in a separate document.

It should be noted that the Annex only covers the Rental and Lending Rights as defined in the Annex (see Clause 3 below). It does not cover any other rights given by virtue of the Regulations, such as the right of authors to equitable remuneration where they assign or have been deemed to assign the rental right to film or sound recording producers.

Throughout the Annex, references are made to the main Membership Agreement (MA2). Members should therefore read the Annex in conjunction with the main Agreement to make sure that they have a complete picture as regards MCPS's obligations and powers in relation to Rental and Lending.

As in the case of the Guide to the Membership Agreement, these notes are provided to explain the context of the various provisions of this Annex, to highlight particular points and to give some further explanatory detail. They do not have legal effect, and cannot be used in any way to limit or define terms or conditions of either the main Membership Agreement or this Annex.

### CLAUSE 1 APPOINTMENT OF MCPS

Under the main Membership Agreement (MA2), MCPS is appointed by the member to act as the sole and exclusive agent of the Member in relation to certain rights which form part of the copyright in musical works. These rights are in summary the right to make certain copies of the works, the right to issue those copies to the public and the right to import such copies. (A full definition of these rights is contained in Clause 16.21 of the main Membership Agreement). As the Member's agent, MCPS is responsible for licensing those rights and collecting and distributing the relevant royalties and other fees, subject always to the terms and conditions contained in the Membership Agreement.

Now that the Government has given creators and copyright owners of musical works the Rental and Lending Rights, Clause 1 of the Annex provides that these new rights are also included within the rights for which MCPS acts as sole and exclusive agent. So, when referring to the main Membership Agreement in the future, members signing this Annex will need to bear in mind that references in the Membership Agreement to 'the Rights' include the new Rental and Lending Rights.

The result of all this is that where MCPS or members have powers or obligations under the main Membership Agreement, those powers and obligations apply as much to the new Rental and Lending Rights as to all other rights. There is one main exception to this relating to Phonograph Records, and this is referred to under Clause 2 below.

## CLAUSE 2 MEMBER'S MANDATES TO MCPS

Under the main Membership Agreement, members are given some options to license the use of their works direct, and/or to collect royalties and other fees direct without using MCPS's services. These options are referred to in Clause 3 of the main Membership Agreement (relating to Phonograph Records) and Clause 4 (relating to all relevant copies other than Phonograph Records).

For all relevant copies other than Phonograph Records, Clause 2 of this Annex makes it clear that the option applies to Rental and Lending Rights in the same way as it applies to all the other relevant rights covered by the Membership Agreement. To give an example, members have the option (in accordance with Clause 4.3 of the main Membership Agreement) to license direct the making and distribution of videos containing their music. Where they exercise this option, they will in the future automatically be able also to license directly the rental and lending of the videos. The only exception to this would be if a Blanket Licence Agreement or Licensing Scheme were to apply to such rental and lending: see Clause 4.3 of the main Membership Agreement.

Members should note that they do not have to give separate notices exercising options in relation to Rental and Lending Rights. If for example they have already exercised an option to license and collect direct in relation to videos, then the notice to MCPS exercising that option is deemed automatically to cover rental and lending of the videos.

For Phonograph Records (as defined in Clause 16.19 of the main Membership Agreement), the position is different from that set out above. Here, the Board of MCPS has determined that Rental and Lending Rights in relation to Phonograph Records (for example, rental and lending of CDs by public libraries) are best administered collectively if this is to be done in an efficient and cost-effective manner. On this basis, the option to collect royalties direct as referred to in Clauses 3.3 and 3 of the Membership Agreement will not apply in the case of Rental and Lending Rights.

## CLAUSE 3 DEFINITIONS AND MISCELLANEOUS

For the purposes of exploitation in the United Kingdom, the definition of Rental and Lending is as set out at the end of this Guide. However, although similar rights exist in many other countries throughout the world, they will not necessarily be defined in exactly the same way. Clause 3.1(a) therefore makes it clear that the local definition will apply to rental and lending outside the United Kingdom.

Members are reminded that the Territory covered by the main Membership Agreement and this Annex is wider than just the United Kingdom. The relevant provisions are contained in Clause 6 of the main Membership Agreement, and also the definition of "Territory" in Clause 16.26. It should be noted that the same provisions automatically apply to Rental and Lending Rights. So, for example, under Clause 6.1.1 of the main Membership Agreement, the

appointment of a sub-publisher takes precedence over MCPS's powers and duties in relation to the administration of the rights in the sub-publisher's territory, and this applies as much to Rental and Lending Rights as it does to the other rights covered by the Membership Agreement.

Rental and Lending Rights apply to all copyright musical works, and for these purposes it does not matter if the work was created before or after 1st December 1996 (the date on which the Government's law came into effect). Similarly, all the provisions of the main MCPS Membership Agreement are deemed to apply in relation to Rental and Lending Rights as regards all the member's works covered by the Membership Agreement. It does not matter for these purposes that the work was created or registered with MCPS before 1st December 1996.

## **CLAUSE 4 DURATION OF ANNEX**

As this Clause states, if the member was a member of MCPS on 1st December 1996, (the date on which the Government's law came into effect), then the terms and conditions of the Annex take effect retrospectively from that date. If however the member joins MCPS after that date, the Annex will take effect from the date of joining MCPS.

Once the member has agreed the terms of the Annex, it will continue unless and until the member or MCPS terminates the main MCPS Membership Agreement.

## **DEFINITION OF RENTAL AND LENDING**

Section 18A of the Copyright Designs and Patents Act 1988.

18A. (1) The rental or lending of copies of the work to the public is an act restricted by the copyright

in-

- (a) a literary, dramatic or musical work,
- (b) an artistic work, other than
  - (i) a work of architecture in the form of a building or a model for a building, or
  - (ii) a work of applied art, or
- (c) a film or a sound recording.

(2) In this Part, subject to the following provisions of this section-

(a) 'rental' means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and

(b) 'lending' means making a copy of the work available for use, on terms that it will or may be returned, other wise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.

(3) The expressions 'rental' and 'lending' do not include-

- (a) making available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
- (b) making available for the purpose of exhibition in public; or
- (c) making available for on-the-spot reference use.

(4) The expression 'lending' does not include making available between establishments which are accessible to the public.

(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

(6) References in this Part to the rental or lending of copies of a work include the rental or lending of the original.



## GUIDE TO THE ANNEX RELATING TO MULTIMEDIA

### INTRODUCTION

The main purpose of this Annex is twofold. Firstly, it is intended to clarify the position in relation to Multimedia under the main Membership Agreement. Secondly, where there is doubt, It Is Intended to ensure that MCPS Is given full and proper authority from members to negotiate agreements with Multimedia companies and their representatives.

Throughout the Annex, references are made to the main Membership Agreement. Members should therefore read the Annex in conjunction with the main Agreement to make sure that they have a complete picture as regards MCPS's obligations and powers in relation to Multimedia.

As in the case of the Guide to the Membership Agreement, these notes are provided to explain the context of the various provisions of this Annex, to highlight particular points and to give some further explanatory detail. They do not have legal effect, and cannot be used in any way to limit or define terms or conditions of either the main Membership Agreement or this Annex.

### CLAUSE 1 MULTIMEDIA COPIES

Under Clause 1 of the main Membership Agreement, MCPS is appointed as the Member's sole and exclusive agent to manage and administer certain rights in the Member's catalogue of musical works, which includes associated lyrics. Clause 1 of the Annex now makes it clear that MCPS's powers and duties as agent extend to Multimedia.

Further details of MCPS's specific powers and duties are included in Clause 2. Subject to those provisions, Members should refer back to the main Membership Agreement (and particularly Clause 1.2), which explains in more detail MC PS's powers as agent.

The expression multimedia is commonly used to cover a whole variety of products. In the Annex, it is defined broadly, but the important governing words used are "interactive Optical Disc product".

Members should note that if a particular type of multimedia is not within the definition, the Annex will not apply. However, even where the Annex does not apply, MCPS will still have obligations and powers under the main Membership Agreement to the extent that the relevant product falls within the definition of "Sound-Bearing Copies" (see the definition contained in clause 16.22 of the main Membership Agreement).

### CLAUSE 2 MCPS'S POWERS OF AGENCY

This Clause provides further details of MCPS's powers as agent in relation to Multimedia.

Under the main Membership Agreement, MCPS has the power to lay down Licensing Schemes governing the terms and conditions on which licences are granted to users. It also has the power to introduce Codes of Practice, and to enter into agreements with users. Clause 2.1 of the Annex confirms that all these powers apply in the case of Multimedia.

However, these powers are qualified as followed:

- MCPS cannot introduce (or make major amendments to) major Schemes or Codes or Agreements unless the Board of MCPS has given its approval: Clause 2.2

- As in the case of commercial records, licences can only be granted by MCPS, and not direct by the member. However, before granting a licence MCPS must obtain prior consent from the member to do this: Clause 2.3
- MCPS cannot delegate the granting of licences or collection or distribution of income. It must do this itself: Clause 2.4

Finally, Clause 2.5 is important in containing two clarifications to the main Membership Agreement which expressly apply to all cases, and not just Multimedia.

Firstly, many products which contain music (and not just Multimedia) nowadays involve the use of computer technology. In such cases, the normal use of the product (for example, loading the product into the relevant hardware) will involve copying it, albeit on a temporary basis. This type of copying was not expressly referred to in the Membership Agreement. The opportunity has therefore been taken to confirm that MCPS's powers extend to this.

Secondly, it is now much more common for audio visual Sound-Bearing Copies to be capable of reproducing not only the sound of the music and lyrics but also the text on screen. Again, this applies not just to Multimedia but other forms of exploitation such as broadcasting and video karaoke. This type of copying was also not expressly referred to in the main Membership Agreement. The opportunity has been taken to confirm that MCPS's powers extend to this. However, there is also express confirmation that MCPS is not authorised to license the making of Printed Copies.

## **CLAUSE 3 TERRITORY**

MCPS's principal territories remain the United Kingdom and the Republic of Ireland. However, Clause 6 of the main Membership Agreement does provide for MCPS to exercise certain powers in relation to other countries. Clause 3 of the Annex confirms that exactly the same provisions on territory apply as are in Clause 6 of the main Agreement.

Where the Member consents to the granting of a licence for a particular Multimedia product, there is provision for the Member to extend the geographical area being licensed.

## **CLAUSE 4 MISCELLANEOUS CONDITIONS AND DEFINITIONS**

Many of the words and phrases used in the Annex are defined in the main Membership Agreement and Members should refer to that Agreement where there is no definition in the Annex.

Members should also note that, except as stated in the Annex, all the relevant provisions of the main Membership Agreement apply to Multimedia as they apply to any other Sound-B Copy. The subjects of MCPS's commission and the distribution of royalties from Multimedia are dealt with in the covering letter to this Annex.

MCPS's undertakings to each Member as contained in Clause 9 of the main Agreement will also apply to Multimedia. It is particularly important for the Member to note that the warranties and undertakings and indemnities given by the Member to MCPS under Clause 10 of the main Membership Agreement apply in relation to Multimedia.

With the present pace of change, many long-established methods of exploitation of music may for the future rely on technology which would be within the definition of Multimedia. Clause 4.3 makes it clear that the introduction of the Annex will not require any change to any existing Licensing Scheme or Agreement with users.

## CLAUSE 5 DURATION

The basic period for the Annex to apply is until 31 December 1995. The basic period will remain in force even if the Member terminates the main Membership Agreement under Clause 15 of that Agreement. 6 months notice is required to terminate with effect from 1 January 1996.

If notice is given to terminate the Annex with effect from 1 January 1996, this notice will not automatically terminate the main Membership Agreement and separate notice under Clause 15 of that Agreement will be required.

If however notice is given to terminate the main Membership Agreement with effect from 1 January 1996, this notice will automatically terminate the Annex.

As in the case of the main Membership Agreement, termination does not affect licences already granted or agreements already entered into.

## GUIDE TO THE ANNEX RELATING TO ONLINE EXPLOITATION

### INTRODUCTION

The purpose of this Annex is to ensure that MCPS has the full and proper authority from members to negotiate agreements with and grant licences to online companies.

Throughout the Annex, references are made to the main Membership Agreement. Members should read the Annex in conjunction with the main Agreement to make sure that they have a complete picture as regards MCPS's obligations and powers in relation to online exploitation.

As in the case of the Guide to the Membership Agreement, these notes are provided to explain the context of the various provisions of this Annex, to highlight particular points and to give some further explanatory detail. They do not have legal effect and cannot be used in any way to limit or define the terms or conditions of either the main Membership Agreement or this Annex.

This Annex does not apply to licensing schemes which came into operation, or are renewed or replaced, after 1 September 2001, such as the schemes covering Mobile Ringtones, Broadcast Blanket Licensing, Mobile Telegrams, Karaoke, Midi and Backing tracks, Background Music, Music on Hold and Premium Phone Line Services.

It should be noted that in accordance with the wishes of a number of MCPS members, the MCPS Board agreed to modify certain clauses within the original proposed annex document issued to members in October 2001. The version of the annex available online has been updated to include the changes detailed in the letter of 4<sup>th</sup> December 2001, notifying these changes to members. New applicants will normally receive copies of both documents as part of their Membership Agreement/Application package.

### CLAUSE 1: DIRECT LICENSING AND COLLECTION OTHER THAN PHONOGRAPH RECORDS

Clause 4 of the main Membership Agreement deals with the licensing of musical works except records. It describes the procedure by which blanket licensing schemes may be entered into and sets out the various mandate options available to members for such licensing. Clause 1 of this Annex now sets out the procedure for the implementation and administration of Online Licensing Schemes, and gives members the right to opt out of particular schemes and licence agreements.

Where the Board approves a new Online Licensing Scheme, the Member will be sent details of the scheme and asked to notify MCPS within 30 days if he does not wish his works to be licensed within the scheme. Members who have not responded within the 30 day period will be deemed not to have opted out. After the expiry of the 30 day period the Board will decide whether or not to implement the proposed scheme. Please note that the success of MCPS in the online world depends on a high degree of member loyalty: if members opt out of a scheme MCPS may not be able to make the scheme available to any members. Even if the scheme is implemented, the repertoire of members who have opted out will not be included within it.



Any licence agreement granted under an Online Licensing Scheme will be for a renewable finite period. The Member may withdraw his works from any online licence agreement by notifying MCPS at least six weeks before the date on which MCPS would have to give the licensee notice to terminate the agreement (or six weeks before the expiry of the agreement in cases where no notice is required). To enable members to know when the relevant dates are, they will have access to an MCPS register containing full details of all licence agreements. The Board may decide to terminate a particular licence agreement and/or scheme if members withdraw their works.

## **CLAUSE 2: TERRITORY**

Under the main Membership Agreement, MCPS's territorial mandate is limited in many circumstances. However given the worldwide nature of much online exploitation, licensees obviously prefer not to obtain separate online licences for each individual territory where copies of works may be made and stored. The Annex therefore gives MCPS the ability to license the downloading and storage of works in countries outside the UK, to the extent covered by specific Online Licensing Schemes.

## **CLAUSE 4: MISCELLANEOUS AND DEFINITIONS**

Many of the words and phrases used in the Annex are defined in the main Membership Agreement and members should refer to that Agreement where there is no definition in the Annex.

Members should also note that, except as stated in the Annex, all the relevant provisions of the main Membership Agreement apply to online exploitation as they apply to any other Sound-Bearing Copy.

## **CLAUSE 5: COMMENCEMENT**

Unless members are notified to the contrary before 14 December 2001, the Annex will take effect from 1 January 2002 for members who were members of MCPS on 9 October 2001. For members who join MCPS after 9 October 2001, the Annex will take effect from the date the main Membership Agreement takes effect.

The Annex can only be terminated if the Member terminates the main Membership Agreement. It will automatically terminate on termination of the main Agreement.

As is the case in the main Membership Agreement, termination does not affect licences already granted or agreements already entered into.