

of mechanical or digital reproduction or otherwise on all forms of sound carrier now known or hereafter invented and on all forms of audio visual devices now known or hereafter invented;

- 2.3.4** to synchronise the Composition(s) or to grant licences authorising others to synchronise the Composition(s) with any and all audio-visual media now known or hereafter invented (including advertisements);
- 2.3.5** to use the titles of the Composition(s);
- 2.3.6** to make arrangements, adaptations and translations of the Compositions provided that the copyright in any such arrangements, adaptations and translations shall vest in the Composer and be exclusively licensed to the Publisher under the terms of this Agreement;
- 2.3.7** to print and publish (and licence others to print and publish) the Composition(s) as sheet music in any form provided that a copyright notice shall be included in all cases in substantially the following form: “© [Name of Composer] [Year of first publication] [Used by permission];
- 2.3.8** to distribute reasonable numbers of printed copies of the Composition(s) (including orchestrations) within the entertainment industry free of royalty (to the extent that the Publisher does not receive any payment) for the purpose of promoting the Composition(s);
- 2.3.9** to allow the Composition(s) to be reproduced in the press or printed in books or albums or in any multimedia format (such as but not limited to electronic press kits) or in periodicals for the purpose of review;
- 2.3.10** subject to any and all rights of the applicable Society to license the public performance, broadcast and transmission of the Composition(s) in live venues and in any and all audio and audio-visual media now known or hereafter invented including by way of digital streaming on the internet and/or via mobile applications and to licence the Composition(s) for inclusion in a cable programme service;
- 2.3.11** subject to any and all rights of any applicable rental and lending right societies throughout the Territory to license the rental and lending of the Composition(s);
- 2.3.12** to grant licences to dramatise the Composition(s) and license the use and performance of dramatic versions of the Composition(s) (so called “grand rights”);
- 2.3.13** to make literary versions of the Composition(s) and to print publish and sell literary versions of the Composition(s); and

2.3.14 to use and publish and permit others to use and publish the Composer’s approved name and professional name, approved photograph or other approved likeness and approved biographical material and the titles of any and all of the Composition(s) solely in connection with the promotion and exploitation of the Composition(s) under this Agreement.

2.4 Notwithstanding anything to the contrary in this Agreement, the Publisher shall not, without the Composer’s prior written approval (on a case by case basis) grant (or permit any third party to grant) any licence for any of the following:

- 2.4.1** any use of the title of any Composition(s), except: (i) in connection with such Composition(s); (ii) for audio and/or audio-visual products and/or services incorporating any Composition(s); and/or (iii) other than for the purposes of promoting, exploiting and/or administering any Composition(s); and any new title or change to the title of Composition(s);
- 2.4.2** the making of any material arrangements or adaptations of the Composition(s) and translations of the Composition(s) (except where such arrangements, adaptations or translations are made in accordance with the rules, regulations and practices of any local collecting society which are not within the Publisher’s reasonable control);
- 2.4.3** the grant of any “first use” mechanical licences of the Composition(s) except to the Composer or their authorised licensee;
- 2.4.4** (subject only to blanket licences in the Territory) the synchronisation or other use of any Composition(s) with any commercial, film, television programme, computer programme, video-game or other audio-visual production it being understood that no approval shall be required for the synchronisation or other use of any Composition(s) in any promotional video made by the Composer or their authorised licensee in order to promote any of the Composer’s recording(s) of Composition(s) and in commercials for records or videos produced by the Composer’s authorised licensee featuring the Composer’s recordings or promotional videos;
- 2.4.5** the inclusion of any Composition(s) as a sample in a third-party composition;
- 2.4.6** the use of any Composition(s) in any so-called “premium record” or covermount;
- 2.4.7** the use of any Composition(s) in or on so-called merchandise products to be made available for commercial sale (other than records in all formats featuring the Composer’s performances);
- 2.4.8** the use of any Composition(s) in any sponsorship, endorsement or other commercial tie-up or in

connection with politics, religion, the military or arms, pharmaceuticals, narcotics, tobacco, alcohol, violence, pornography, the fur trade or personal hygiene products;

2.4.9 the making of literary versions of the Composition(s) and/or printing, publishing or selling literary versions and/or sheet music and/or typographical arrangements of the Composition(s); and

2.4.10 the making of a dramatico-musical work of the Composition(s) and/or use of the Composition(s) in a dramatico-musical work and/or the granting of a so-called "grand rights" licence in respect thereof.

Requests for approval from the Publisher shall be sent by email to an email address specified by the Composer and approval provided or refused by the Composer by email shall be sufficient evidence of such approval having been provided or refused.

2.5 The Publisher acknowledges that the Composer may, as a condition of entering into a recording, production or sample agreement be required to accept specific provisions in relation to the payment of mechanical royalties and in relation to the grant of licences (including synchronisation licences) and, provided that the grant of such licence is on reasonable commercial terms and is not unlawful or contrary to any local society rule or regulation and provided that the Composer delivers to the Publisher a copy of the relevant extracts from each such agreement, then the Publisher shall abide by such provisions and promptly grant (or procure the grant of) any licences requested by the Composer's authorised licensees without making any deductions from moneys payable to the Composer under this Agreement.

3. ADVANCE AND ROYALTIES

3.1 As a precondition to the grant of rights by the Composer under clause 2 the Publisher must pay to the Composer [insert advance in words] pounds (£TBC) plus VAT if applicable following execution of this Agreement and the Composer's submission of a valid invoice, by way of an advance which shall be non-returnable but fully recoupable from royalties payable to the Composer under this Agreement.

3.2 The Publisher shall account to the Composer for the following royalties on an "At Source Revenue" basis meaning one hundred per cent (100%) of gross earnings received by or credited to the Publisher or its licensees at the source of exploitation which is directly and identifiably attributable by title to the use and/or exploitation of the Composition(s) and/or the rights granted under this Agreement, after the following deductions only:

- (a)** local bona fide arm's length performing rights or mechanical rights societies' commissions or fees (or the equivalent thereof, including commissions or fees charged by the Harry Fox Agency and the Canadian Musical Rights Reproduction Agency Ltd) ; and
- (b)** VAT and any other taxes properly required to be

deducted in any part of the Territory; and

- (c)** any amounts paid by way of remuneration to arrangers, adaptors and translators such deductions being subject to the Composer's prior written approval or in accordance with local society rules or regulations or in accordance with statute in each instance.

For the avoidance of doubt:

any costs or expenses incurred by the Publisher in providing its services under this Agreement (including moneys payable to third party licensees, sub-publishers or agents) shall be the sole responsibility of the Publisher (except as expressly provided under sub clauses (a), (b) and (c) above); and

moneys which are received by the Publisher which are net of any retained amounts by any third party licensees, sub-publishers or agents in respect of its share shall be grossed up by such netted amount in computing the Composer's share of At Source Revenue.

- 3.2.1** Sheet music royalties: twelve point five per cent (12.5%) of retail price (excluding VAT) in the United Kingdom for direct sales and a pro-rata proportion for mixed folios and in respect of third party sales eighty per cent (80%) of At Source Revenue and a pro rata proportion of the same for mixed folios;
- 3.2.2** Mechanical royalties: eighty per cent (80%) of At Source Revenue;
- 3.2.3** Synchronisation fees: seventy five per cent (75%) of At Source Revenue where the synchronisation licence in question has been procured directly and identifiably by efforts of the Publisher or its authorised licensees or agents ("Procured Synchronisations") and otherwise eighty per cent (80%) of At Source Revenue;
- 3.2.4** General fees and uses and other income not specified in this clause 3: eighty per cent (80%) of At Source Revenue.
- 3.2.5** Performance income: The Composer will receive the so-called "Composer's Share" directly from the Society and the Publisher shall collect the so-called "Publisher's Share" and account to the Composer for sixty per cent (60%) of At Source Revenue except where such income is directly and identifiably attributable to Procured Synchronisations where the Publisher shall account for fifty per cent (50%) of At Source Revenue in lieu of sixty per cent (60%).

If the Composer is not a member of the Society then the performing rights in the Composition(s) shall be administered by the Publisher and the Publisher shall be entitled to collect the Composer's Share and the Publisher's Share and shall account and pay to the Composer one

hundred per cent (100%) of the Composer's Share without any deduction or set-off and irrespective of whether the Composer's royalty account is recouped.

4. ACCOUNTING

4.1 The Publisher shall keep complete and accurate books and records of account relating to the exploitation of the Composition(s) under this Agreement and shall account to the Composer by email clearly showing the calculation of royalties due to the Composer and the source of exploitation on a title by title basis twice yearly within ninety (90) days from 30 June and 31 December in each year and at the same time pay any sums shown to be due by bank transfer. Notwithstanding the foregoing if at any time the Publisher accounts quarterly to any of its composers it shall account quarterly to the Composer under this Agreement. The Publisher shall use all reasonable endeavours to procure that its licensees and sub-publishers account to it no less than twice yearly but this shall not oblige the Publisher to issue formal legal proceedings with respect thereto.

4.2 The Publisher shall be entitled to deduct or authorise the deduction of any sums which may be demanded from it or its licensees by governments or other fiscal authorities of the respective countries throughout the Territory in which the Composition(s) are exploited provided that the Publisher shall use all reasonable endeavours to minimise any such deductions. The Publisher shall provide the Composer with a certificate or other evidence of any such deduction or withholding and provide such assistance as may be reasonably necessary for the Composer to reclaim such deductions or withholding or obtain a tax credit for it. If the Publisher subsequently receives a tax credit it shall credit the Composer's royalty account with a proper share of same.

4.3 In the event that the Publisher does not receive payment in the United Kingdom or it receives payment anywhere in the Territory in a currency other than sterling which, by reason of currency or other governmental regulations or restrictions, it cannot convert into sterling it will notify the Composer and the Publisher or its designee shall deposit to the Composer's credit in a depository selected by the Composer in the country in which such sums are held the portion of such sums representing the applicable royalties payable to the Composer.

4.4 At any time within three (3) years after any royalty statement is rendered under this Agreement the Composer shall have the right to appoint an independent chartered accountant to examine the Publisher's books and records with respect to such statement. Such examination shall be commenced within three (3) months after the date of such notice and not more than one (1) such examination shall be carried out in any calendar year. Such examination shall be made on reasonable written notice during the Publisher's normal business hours at the place where the Publisher maintains its books and records necessary to verify the accuracy of the statement or statements specified in the Composer's said notice. If any such examination reveals an underpayment in the sums which should have been paid to the Composer

during the period covered by such examination the Publisher shall forthwith pay such underpayment to the Composer. If such underpayment is in excess of ten per cent (10%) of the sums which should have been paid to the Composer then in addition the Publisher shall forthwith reimburse the Composer with the costs of such examination (excluding travel, subsistence and accommodation costs).

4.5 The Publisher shall not construct its affairs so as to artificially reduce royalties payable to the Composer under this Agreement. The Publisher shall not cross-collateralize royalties and moneys payable to the Composer or costs incurred (or unrecouped balances) under this Agreement against royalties and moneys payable to the Composer or costs incurred (or unrecouped balances) under any other agreement.

5. PUBLISHER'S OBLIGATIONS

5.1 The Publisher shall use its best endeavours to exploit the Composition(s) for the benefit of the Composer throughout the Territory during the Retention Period and to procure the accurate registration of copyrights and the collection of all moneys arising from the exploitation of the Composition(s) under this Agreement.

5.2 The Publisher warrants that all third party licences entered into by it in respect of the Composition(s) shall be on a bona fide arms' length commercial basis on the most favourable terms the Publisher is reasonably able to negotiate at the time.

5.3 Notwithstanding anything contained herein, if in the case of any Composition(s) there has not taken place in any part of the Territory at any time within two (2) years from the date of this Agreement:

- (i)** the issue of a mechanical licence of such Composition(s) for a bona fide commercial fee;
- (ii)** the publication of such Composition(s) in printed form for a bona fide commercial fee distributed in reasonable commercial numbers through normal retail outlets in the UK or USA for sale to the public;
- (iii)** the grant of a licence for the synchronisation of such Composition(s) for a bona fide commercial fee; or
- (iv)** the performance of such Composition(s) in public for a bona fide commercial fee;

then the Composer shall be entitled to give notice in writing at any time after the date of the expiry of the said two (2) year period specifying the Composition(s) which have not been so exploited.

5.4 If none of the uses referred to in clause 5.3 has in fact taken place prior to receipt of such notice and does not take place in respect of such Composition(s) within a further period of three (3) months from the date of receipt of such notice by the Publisher, then with effect from the expiration of such three (3) month period all rights granted to the Publisher in

respect of such Composition(s) shall automatically revert to the Composer without the need for further formality.

6. WARRANTIES AND INDEMNITY

6.1. The Composer warrants that:

- 6.1.1 The Composer is entitled to enter into this Agreement and make the grant of rights contained in this Agreement free of all claims and encumbrances;
- 6.1.2 The Composition(s) are new and original and will not to the best of the Composer's knowledge and belief infringe the rights of any third parties;
- 6.1.3 Promptly following execution of this Agreement the Composer will deliver true and accurate details of each Composition(s) to the Publisher together with a manuscript copy of the lyrics (if any); and
- 6.1.4 The Composer will at the Publisher's expense (and subject to the Composer being afforded the opportunity to take legal advice thereon), do such further things and execute all such further instruments as the Publisher may from time to time reasonably require including without limitation all directions to the Society and other documents for the purpose of confirming the terms of this Agreement;

6.2 The Composer indemnifies the Publisher against any liability, loss or damage (including reasonable legal costs) suffered by the Publisher from a third party claim which arises directly as a result of a proven breach of the Composer's obligations or warranties in this Agreement provided that such liability, loss or damage (and reasonable legal costs) are adjudicated pursuant to an adverse final judgment in a court of competent jurisdiction or settled with the Composer's prior written approval (not to be unreasonably withheld).

7. LEGAL PROCEEDINGS

The Publisher shall have the right (and obligation) to take such action as is reasonably necessary either in the Publisher's or in the Composer's name or in both names against any third party to protect all rights and interests acquired under this Agreement provided that any action in the Composer's name shall be subject to the Composer's prior written approval and the Publisher must as a precondition to prosecuting any such action provide the Composer with a specific written indemnity against costs. Subject to the foregoing the Composer agrees to cooperate with the Publisher at the Publisher's expense in any dispute or litigation concerning the rights and interests acquired by the Publisher under this Agreement. If the Publisher recovers on a judgment or as a result of any settlement its reasonable and proper expenses (including reasonable legal fees) then the balance of any recovery shall be divided between the Composer and the Publisher in accordance with clause 3. Any shortfall in costs shall be borne by the Publisher.

8. TERMINATION

8.1 The Composer may terminate the Retention Period and Collection Period with immediate effect by written notice to the Publisher if:

- 8.1.1 the Publisher enters into liquidation (other than a voluntary liquidation for the purposes of a bona fide reconstruction or reorganisation), the Publisher is subject to a winding up petition, the Publisher makes any composition with all or any class of its creditors, or any trustee, administrator or receiver is appointed to take over all or a substantial part of the Publisher's assets and is not discharged within thirty (30) 30 days; or
- 8.1.2 the Publisher fails to render any accounting or any related payment when due under this Agreement or is otherwise in material breach of this Agreement and such failure or breach continues for thirty (30) days after the Publisher's receipt of written notice from the Composer specifying such failure or breach and requiring its remedy; or
- 8.1.3 royalties of less than one hundred pounds (£100) are paid to the Composer or credited to the Composer's royalty account during any two (2) consecutive half yearly periods (as shown by the Publisher's accounting statements for such periods).

8.2 If the Composer terminates the Retention Period and Collection Period under clause 8.1 all rights granted to the Publisher shall automatically revert to the Composer without the need for further formality.

8.3 Following the expiry of the Retention Period by effluxion of time all rights granted by the Composer shall automatically revert to the Composer without the need for further formality subject only to the Publisher's right to collect income arising during the Retention Period for the Collection Period.

9. GENERAL

- 9.1 All notices (unless otherwise provided in this Agreement) shall be sent by courier or by recorded delivery mail with proof of delivery to the parties' addresses on page 1 (or such other addresses as may be notified by the parties from time to time) and shall be deemed served on the date signed for by the recipient party. A courtesy copy of all notices to the Composer shall be sent simultaneously to Incorporated Society of Musicians 4-5 Inverness Mews, London, W2 3JQ (Attention: David Abrahams).
- 9.2 The Publisher may not without the Composer's prior written approval assign this Agreement in whole or in part save that it shall without the Composer's approval be entitled to assign this Agreement to any parent, subsidiary, associated or affiliated company of the Publisher or to any other company with which the Publisher may merge or which acquires a controlling interest in or a substantial portion of its business or catalogue provided that as a pre-condition of any such

assignment the applicable assignee must enter into a direct covenant in writing with the Composer to fulfill the Publisher's obligations under this Agreement (which must be acceptable to the Composer having taken legal advice thereon). Any purported assignment by the Publisher which does not fulfill the conditions specified in the previous sentence shall be void ab initio.

9.3 No failure or delay by any party in exercising its rights under this Agreement will operate as a waiver of that right nor will any single or partial exercise by either party of any right preclude any further exercise of any other right. Any modification or variation to this Agreement must be in writing and signed by the parties hereto.

9.4 Each party confirms that this Agreement sets out the entire agreement and understanding between the parties and that it supersedes all previous agreements, arrangements and understandings between them. Nothing in this Agreement excludes any liability for fraud or misrepresentation.

9.5 No person who is not a party to this Agreement shall derive any benefit or have any entitlement or claim in relation to this Agreement by virtue of the Contract (Rights of Third Parties) Act 1999.

9.6 This Agreement (and any non-contractual disputes arising out of it) shall be governed and construed in accordance with the laws of England and any legal proceedings that may arise out of it are subject to the exclusive jurisdiction of the English courts SAVE THAT either party shall be entitled to apply for the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of the terms of this Agreement in any applicable country outside of England.

The above terms have been read and agreed by each of the parties set out below.

Signed by

Signed by

For and on behalf of
[PUBLISHER]

[COMPOSER]

SCHEDULE

Composition(s)

<u>TITLE</u>	<u>COMPOSER'S % INTEREST</u>
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[Clearly state the title(s) and your interest here]